

AGREEMENT TO PROVIDE PROFESSIONAL SERVICES

THIS AGREEMENT ("Agreement") is entered into this _____, **202X** effective immediately by and between the _____ ("CONTRACTOR") and the Town of Westlake, Texas, a municipal corporation of the State of Texas ("TOWN"). For convenience, the CONTRACTOR and the TOWN may sometimes be referred herein collectively as "parties" and individually as a "party."

WITNESSETH

WHEREAS, TOWN desires to engage the CONTRACTOR to provide professional services as more fully described in the Quotation for Professional Services contained in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, CONTRACTOR agrees to provide such work and services for the TOWN in accordance with the terms of this Agreement;

NOW, THEREFORE, for the mutual promises set forth herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually agree as follows:

1. **Employment of CONTRACTOR.**

(a) TOWN agrees to engage the CONTRACTOR and the CONTRACTOR hereby agrees to perform the services described in Exhibit "A" attached hereto and incorporated herein by reference.

(b) Notwithstanding anything to the contrary contained in this Agreement, TOWN and CONTRACTOR agree and acknowledge that TOWN is entering into this Agreement in reliance on CONTRACTOR's special and unique abilities. CONTRACTOR accepts the relationship of trust and confidence established between it and the TOWN by this Agreement. CONTRACTOR acknowledges that CONTRACTOR shall be solely responsible for determining the methods for performing the services described in Exhibit "A" attached hereto. CONTRACTOR covenants with TOWN to use its best efforts, skill, judgment, and abilities to perform the work required by this Agreement and to further the interests of TOWN in accordance with TOWN's requirements, in accordance with the highest standards of CONTRACTOR's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. The CONTRACTOR warrants, represents, covenants, and agrees that all of the work to be performed by the CONTRACTOR under or pursuant to this Agreement shall be of the standard and quality which prevail among same similar professionals of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving the work to be performed in accordance with Exhibit "A" attached hereto and incorporated herein.

CONTRACTOR warrants, represents, covenants, and agrees that the work he performs will be accurate and free from any material errors.

(c) CONTRACTOR will be responsible for supplying all tools and equipment necessary for CONTRACTOR to provide the services set forth in Exhibit "A" attached hereto.

2. **Compensation.** The TOWN agrees to pay the CONTRACTOR the fees set forth in Exhibit "A" attached hereto. Within fifteen (15) days of the end of the month within which services were rendered, CONTRACTOR shall provide TOWN an invoice specifying the services provided during the previous month and the total amount owed by the TOWN. Payment will be made by the TOWN within thirty (30) days of receipt of an invoice from CONTRACTOR.
3. **Changes.** TOWN may, from time to time require changes in the scope of services of the CONTRACTOR to be performed hereunder. Such changes, which are mutually agreed upon by and between TOWN and the CONTRACTOR, shall be incorporated in written amendment to this Agreement.
4. **Services and Materials to be Furnished by TOWN.** TOWN shall furnish the CONTRACTOR with all available information and data CONTRACTOR requests pertinent to the execution of this Agreement. TOWN shall cooperate with the CONTRACTOR in carrying out the work herein and shall provide adequate staff for liaison with the CONTRACTOR.
5. **Ownership of Documents.** All reports, plans, specifications, computer files and other documents prepared by CONTRACTOR pursuant to this Agreement shall be the property of the TOWN. CONTRACTOR will deliver to the TOWN copies of the prepared documents and materials. CONTRACTOR shall make all documents and related data and material utilized in developing the documents available to TOWN for inspection whenever requested. CONTRACTOR may make copies of any and all such documents and items and retain same for its files. CONTRACTOR shall have no liability for changes made to or use of the drawings, specifications, and other documents by anyone other than CONTRACTOR subsequent to delivery of the prepared documents and materials. However, any such change or other use shall be sealed by the individual making the change or use and shall be appropriately marked to reflect what was changed or modified.
6. **Termination of Agreement.** Either party may terminate this agreement at any time by providing thirty (30) days written notice to the other party.
7. **Completeness of Contract.** This Agreement and the documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto. If there is any conflict between the terms of this Agreement and the documents

attached hereto, the terms of this Agreement shall control. This Agreement may not be subsequently modified except by a writing signed by both parties.

8. **TOWN Not Obligated to Third Parties.** TOWN shall not be obligated or liable hereunder to any party other than the CONTRACTOR.
9. **Final Decisions.** Serving as a CONTRACTOR to the TOWN, CONTRACTOR shall advise all parties that final decisions shall be made by the Town Council and/or Town Manager.
10. **Indemnification.** THE CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE TOWN AND ALL OF ITS OFFICERS, EMPLOYEES, COUNCIL MEMBERS AND AGENTS FROM ANY AND ALL CLAIMS BY THIRD PARTIES, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR DAMAGES, JUDGMENTS, ATTORNEY'S FEES, EXPENSES, INJUNCTIVE OR EQUITABLE RELIEF, INTEREST, PERSONAL INJURY, AND DEATH, THAT MAY ARISE FROM THE CONTRACTOR'S PERFORMANCE UNDER THIS AGREEMENT. **IT IS UNDERSTOOD AND AGREED THAT THE INDEMNITY PROVIDED FOR IN THIS AGREEMENT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY, PROTECT, AND HOLD HARMLESS TOWN AND/OR ITS OFFICERS, EMPLOYEES, COUNCIL MEMBERS, AND AGENTS FROM ALL LIABILITY, INCLUDING LIABILITY FOR THE CONSEQUENCES OF THE NEGLIGENCE OF TOWN AND/OR ITS OFFICERS, EMPLOYEES, COUNCIL MEMBERS OR AGENTS WHETHER THAT NEGLIGENCE IS THE SOLE OR CONTRIBUTING CAUSE OF THE RESULTANT INJURY, DEATH, AND/OR DAMAGE.**
11. **Insurance.** CONTRACTOR agrees to maintain insurance for comprehensive general liability, automobile liability insurance, workers' compensation and professional liability during the term of this Agreement in the amounts not less than those required of other professional consultants and contractors retained by TOWN. CONTRACTOR shall provide TOWN with evidence of such coverages in a form which is acceptable to the TOWN. Such policies shall name the TOWN, its officers, and employees as an additional insured and shall provide for a waiver of subrogation against the TOWN.
12. **Personnel.** All of the services required hereunder will be performed by the CONTRACTOR or under CONTRACTOR's supervision, and all personnel engaged in the work shall be qualified to perform such services.
13. **Independent Contractor.** In performing the services under this Agreement, CONTRACTOR is acting as an independent contractor. No term or provision hereof be construed as making CONTRACTOR the agent, servant, or employee of the TOWN or as creating a partnership or joint venture relationship between CONTRACTOR and the TOWN.

14. **Assignability.** The parties hereby agree that CONTRACTOR may not assign, convey or transfer its interest, rights and duties in this Agreement without the prior written consent of TOWN.
15. **Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action brought to interpret or enforce the terms of this Agreement shall lie in Tarrant County, Texas.
16. **Authority to Sign.** The parties hereby warrant and represent that the undersigned persons have full authority and are duly authorized to sign on behalf of their respective principals and that such principals have duly authorized the transaction contemplated by this Agreement.
17. **Notice.** Any notices or communications under this agreement shall be sent in writing to the following:

To the Town:

Name: Wade Carroll, Town Manager
Address: 1500 Solana Blvd.
Building 7, Suite 7200
Westlake, Texas 76262

To the Consultant:

Name: _____
Address: _____

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, TOWN and the CONTRACTOR have executed this Agreement as of the date first written above.

TOWN OF WESTLAKE, TEXAS

By: _____

Print Name: _____

Title: _____

CONSULTANT NAME

By: _____

Print Name: _____

Title: _____

Exhibit A

[Scope of Services]

Exhibit A
Town of Westlake
Scope of Work
Water, Wastewater, and Roadway Impact Fee Study

Project Understanding

Freese and Nichols, Inc. (FNI) understands that the Town of Westlake (Town) is seeking to develop water, wastewater, and roadway impact fees, consistent with the requirements of Chapter 395 of the Texas Local Government Codes. The Town seeks to do this by developing service areas, performing an existing conditions analysis, determining the growth for the 10-year planning period, developing an impact fee capital improvements program, defining a service unit equivalency table, and calculating the maximum fee per service unit for the water, wastewater, and roadway systems. The study will be coordinated through a Capital Improvements Advisory Committee (appointed by the Town) and culminate with adoption through a public hearing process.

Task A: Project Management, Kick-Off and Data Collection

- A1. Kick-Off Meeting: FNI will provide the Town with a Data Request Memorandum listing the data needed for this study. FNI will hold an initial meeting with the Town that will include a discussion of the following:
- Present and discuss methodology and approach
 - Schedule and project coordination
 - Information and data needs from the Town
 - Advisory Committee meetings
- A2. Project Management: FNI will perform general administration duties with the project, including progress meeting scheduling, general correspondence, and office administration. A Monthly Status Report will be submitted summarizing progress against specific tasks and scheduled tasks to be accomplished in the upcoming month; outlining upcoming key decisions which will require input from, or discussion with, Town staff; and listing any problems or unresolved issues.
- A3. Data Collection: FNI will prepare a data request memorandum summarizing the data needs for the project. This may include:
- GIS information
 - Previous impact fee studies
 - Existing impact fee ordinance
 - Water facility information
 - Existing water and wastewater CIP projects
 - Existing and future land use mapping
 - Utility billing meter data
 - Existing debt information
 - Water, wastewater, and roadway models
 - Construction cost data
 - Traffic count and other roadway studies

Task B: Water and Wastewater Impact Fee Analysis

- B1. Identify Existing Projects Eligible for Impact Fee Cost Recovery: FNI will review recently completed water and wastewater improvements and determine which projects are eligible for future cost recovery from growth.
- B2. Conduct Water and Wastewater Impact Fee Capacity Analysis for Existing Projects: FNI will utilize the water model to analyze recently completed projects for remaining capacity for impact fee cost recovery for 10-year projected growth. FNI will work with Town staff to conduct a desktop analysis of the wastewater system needs to identify projects to be added to the Impact Fee CIP.
- B3. Develop Water and Wastewater Impact Fee CIP: FNI will develop an impact fee CIP based on the improvements recommended as part of the capacity analysis. Impact fee eligible improvements are intended to serve growth within the next 10 years. Maps will be prepared showing the proposed water and wastewater capital improvement plan projects included in the impact fee calculation.
- B4. Conduct Water and Wastewater Impact Fee Capacity Analysis for Proposed Projects: FNI will utilize the water model to analyze proposed water improvements for eligible capacity for impact fee cost recovery for 10-year projected growth. FNI will conduct a desktop analysis of the wastewater projects to determine the eligible capacity.
- B5. Calculate Project Costs Eligible for Impact Fee Cost Recovery: FNI will utilize the capacity analysis and capital project costs to calculate the percentage of project cost eligible for impact fee cost recovery.
- B6. Progress Meeting #1: Impact Fee Eligible CIP Review: FNI will meet with the Town to review the impact fee eligible CIP.
- B7. Develop Service Unit Equivalents for Water and Wastewater Systems: FNI will utilize equivalent capacity of water meters to establish the service unit equivalents required in Chapter 395 of the Local Government Code for both existing and 10-year growth conditions.
- B8. Calculate Maximum Allowable Impact Fees: FNI will develop maximum allowable water and wastewater impact fees using the 50% credit method based on the existing and proposed capital improvement costs to support 10-year growth based on projected increase in service unit equivalents.
- B9. Progress Meeting #2: Impact Fee Calculations: FNI will meet with the Town to present the impact fee calculations.

Task C: Roadway Impact Fee Analysis

- C1. Thoroughfare Plan Review: This task will review the current thoroughfare plan for functional street classification and road sizing relative to long-term travel demand. FNI will obtain the latest readily available 2045 travel forecast for assessment of the Westlake Thoroughfare Plan and identify any recommended adjustments to the plan. A brief technical memo supporting any

amendments will be submitted to the Town. FNI will support amendments through any required public hearing processes with a brief presentation. One (1) meeting is budgeted for this task.

- C2. Conduct Traffic Count Data Study: FNI will collect traffic count data at up to 15 locations throughout the Town. Data to be collected includes the PM peak hour directional volumes. If available, other recently collected traffic data or study information will be used to supplement this effort. Estimates of other critical roadways throughout the Town will be developed from volume data collected. FNI will assist the Town in identifying locations for traffic data collection.
- C3. Inventory of Existing Roadways: FNI will prepare an inventory of existing roadways for each of the service areas. The existing inventory will contain the following information of collector and arterial status roadways by service area:
- Roadway segment name
 - Roadway segment limits
 - Length (in miles)
 - Number of lanes
 - Type (divided, undivided, minor arterial, major arterial, etc.)
 - Existing traffic volume (by direction during the peak hour)
 - Capacity supplied
 - Existing deficiencies (in any)
- C4. Projected Roadway Demand: The service unit equivalency table developed in supplemented with data from the land use assumptions will serve as the basis for determination of the number of new trips that will be generated within each service area over the 10-year planning period. FNI will work closely with Town Staff and NCTCOG to obtain available trip length data for specific land uses. Other sources to be investigated include the National Household Survey of trip lengths. Data to be identified includes determination of appropriate trip lengths for specific land uses and the percentage of state and local vehicle-miles of travel within Westlake.
- C5. Roadway Capital Improvement Plan: FNI will identify specific roadway projects (and proposed project limits), cost estimates, and design characteristics. Cost estimates to be developed include, engineering, right-of-way, construction, and debt service. Unit cost data by roadway facility type will be developed and confirmed by Town Staff at the outset of CIP preparation process and serve as a basis for the development of project costs. It is assumed that Town Staff will provide information related to any previous assessments collected from development for previously built roadway facilities and/or cost data for projects identified for system recoupment. The following information will be developed:
- Roadway segment name
 - Proposed project limits
 - Number of lanes
 - Length
 - Project cost
- One (1) capital improvement plan scenario is included as part of this scope. Revisions or additional scenarios will be at additional cost.
- C6. Preparation of Roadway Project Database: FNI will utilize the information contained in the Capital Improvement Program to develop a roadway projects database for the impact fee and

proportionality systems. This database will include for each service area the following information:

- Roadway segment name
- Roadway segment limits
- Number of lanes
- Length
- Type
- Cost
- Number of vehicle-miles of capacity supplied

- C7. Development of Land Use Equivalency Table: FNI will prepare a listing of specific land use types (based on ITE land use categories) and develop a recommended service unit generation rate for each land use. The service unit generation rate will be based on the number of primary trips generated by the land use during the peak hour, and the average trip length of each trip. Trip generation data will be based on published statistics contained in the ITE *Trip Generation Manual*, 11th Edition. Trip length data from the National Household Travel Survey (NHTS), NCTCOG workplace survey, and NCTCOG's travel demand model will be used to serve as a basis for derived lengths for individual land uses.

Task D: Impact Fee Report Development and Meeting Attendance

- D1. Develop LUA/CIP Report: FNI will prepare and provide one (1) electronic PDF copy of the draft Impact Fee Land Use Assumptions (LUA) and Capital Improvements Plan (CIP) Report discussing methodology and analysis. The report will include mapping showing growth projections and proposed system improvements required to meet projected 10-year growth for the water, wastewater, and roadway service areas. This report will support the initial Public Hearing.
- D2. Develop Impact Fee Report: FNI will prepare and provide one (1) electronic PDF copy of the draft Water, Wastewater, and Roadway Impact Fee Report discussing methodology and impact fee calculations. The report will include a summary of growth projections, proposed system improvements, and maximum allowable cost per service unit calculations for water, wastewater, and roadway impact fees. Based on comments by Town Staff, FNI will finalize and provide one (1) electronic PDF copy and one (1) hard copy of the final Water, Wastewater, and Roadway Impact Fee Study to the Town.
- D3. Attend Project Meetings: Meetings with Town Staff, advisory committee and the Town Council will be held at critical project milestones to present data and obtain project feedback. Attendance at meetings during the public hearing process will also be provided to support methodologies, findings and recommendations for the system update. In addition to meetings with Town Staff, it is anticipated that six (6) meetings will be held throughout the impact fee process and include the following: three (3) advisory committee meetings, one (1) workshop with Town Council, and two (2) public hearings.
- D4. Impact Fee Benchmarking: FNI will develop comparison tables of impact fees of the Town with area peer cities for use by the Town in considering collection rates. Town Staff and/or the CIAC will identify up to ten (10) area cities for the comparison. Fee comparisons will be based on the

single-family residential land use type. FNI will prepare charts depicting the combined result of water, wastewater, and roadway impact fees for a single-family residential home.

Summary of Meetings and Deliverables

Meetings:

- Kick-off Meeting
- Progress Meeting #1: Impact Fee Eligible CIP Review
- Progress Meeting #2: Impact Fee Calculations
- CIAC Meeting #1: Impact Fees 101, Growth Rates
- CIAC Meeting #2: LUA and CIP
- CIAC Meeting #3: Impact Fee Calculations
- Town Council Workshop on Impact Fees
- Public Hearing #1: LUA and CIP
- Public Hearing #2: Impact Fee Calculations

Deliverables:

- Draft/Final Impact Fee Report
- Impact Fee Calculator

Schedule:

It is anticipated that the proposed scope of services will be completed in 10 months from the notice to proceed.

Project Fee:

The project fee is shown in the table below. The Town agrees to pay FNI for all professional services rendered under this Agreement. FNI shall perform professional services under this Agreement for a lump sum fee of \$118,000.00.

Task	Fee (Lump Sum)
A. Project Management, Kick-Off and Data Collection	\$4,949
B. Water and Wastewater Impact Fee Analysis	\$20,213
C. Roadway Impact Fee Development and Analysis	\$40,880
D. Impact Fee Report Development and Meeting Attendance	\$51,958
Total	\$118,000

ADDITIONAL SERVICES NOT INCLUDED IN THIS SCOPE

- Field survey data collection
- Review or preparation of impact fee ordinance
- Impact fee credit calculation
- Attendance of additional meetings outside of the project scope