

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §

COUNTY OF TARRANT §

This Agreement is entered into by City of Seguin, hereinafter called "Client" and Freese and Nichols, Inc., hereinafter called "FNI." In consideration of the Agreements herein, the parties agree as follows:

- I. **EMPLOYMENT OF FNI:** In accordance with the terms of this Agreement, Client agrees to employ and compensate FNI to perform professional services in connection with the Project. The Project is described as On-Call Water and Wastewater Modeling.
- II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with Project as set forth in Attachment SC – Scope of Services and Responsibilities of Client which is attached to and made a part of this Agreement.
- III. **COMPENSATION:** Client agrees to pay FNI for all professional services rendered under this Agreement for time and materials in accordance with Attachment CO – Compensation which is attached and made a part of this Agreement. FNI shall perform professional services requested by the City. Details concerning the rates are included in Attachment CO. Compensation shall not exceed \$100,000 per year without authorization from the Client.

If FNI's services are delayed or suspended by Client, or if FNI's services are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

- IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement as set forth as Attachment TC – Terms and Conditions of Agreement shall govern the relationship between the Client and FNI.

Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and FNI, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and FNI and not for the benefit of any other party.

This Agreement constitutes the entire Agreement between Client and FNI and supersedes all prior written or oral understandings.

This contract is executed in two counterparts. IN TESTIMONY HEREOF, Agreement executed:

Freese and Nichols, Inc.

City of Seguin

By: 

By: _____

Charles Kucherka, Principal
Print Name and Title

Print Name and Title

Date: September 15, 2022

Date: _____

ATTEST: _____

ATTEST: _____

SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT

PROJECT UNDERSTANDING

The City of Seguin is quickly growing and needs assistance evaluating new developments and the timing and sizing of infrastructure. FNI will provide water and wastewater modeling services for: (1) reviewing of timing and sizing of projects; (2) updating hydraulic models to include recently constructed projects; (3) the analysis of proposed developments; (4) project coordination meetings with City Staff and/or developers; (5) other tasks related to the Water and Wastewater Master Plans.

ARTICLE I

BASIC SERVICES: FNI shall render the following professional services in connection with the development of the Project:

- (1) Review of Timing and Sizing of Projects: As new development information becomes available, FNI will utilize the water and wastewater hydraulic models to verify the sizing of proposed improvements and update the order of proposed CIP projects if necessary.
- (2) Update Hydraulic Models to Include Recently Constructed Projects: As new projects are built and added to GIS, FNI will incorporate changes to the hydraulic models to keep them up to date.
- (3) Analysis of Proposed Developments:
Water model development review tasks will include: (1) calculating average day, maximum day and peak hour demands for new developments; (2) adding proposed water lines and nodes to model; (3) assigning C- factors, water demands and elevations; (4) running the model at maximum day demand for required fire flow; (5) writing a memorandum detailing results of model runs and proposed recommendations.
Wastewater model development review tasks will include: (1) calculating peak wet weather loads for new developments; (2) adding proposed wastewater lines, manholes and lift stations to model; (3) assigning Manning's N values; (4) wastewater load and rim and invert elevations; (5) running the model peak wet weather flow conditions; (6) writing a memorandum detailing results of model runs and proposed recommendations.
- (4) Project Coordination Meetings with City Staff and/or Developers: FNI will be available to meet with City Staff and/or development or project representatives for coordination on development service analysis or project implementation as requested by the City. Meetings may be held virtually or in-person.
- (5) Other Water and Wastewater Master Plan Tasks: FNI will perform additional tasks related to Water and Wastewater Master Planning as requested by the City. Additional tasks may include, but are not limited to, project cost estimates, Capital Improvement Plan updates, and distribution system pressure testing.

Through this contract, FNI will provide those services listed above as well as any additional engineering services requested on an hourly billing rate basis.

Individual Task Order

The City will request modeling services under this contract on an as needed basis. When on-call modeling services are required, the City will submit a request to FNI detailing the updates needed. When effort is anticipated to exceed \$3,000 per task, FNI will submit an estimation of resources necessary to provide requested services to the City for written authorization prior to proceeding. Compensation to FNI will be made by the City based upon the actual effort and expenses required to complete each task. If the assumptions on the level of effort differs from this estimate, FNI will notify the City prior to reaching the contract limit.

ARTICLE II

SPECIAL SERVICES: FNI shall render the following professional services, which are not included in the Basic Services described above, in connection with the development of the Project: N/A

ARTICLE III

ADDITIONAL SERVICES: Any services performed by FNI that are not included in the Basic Services or Special Services described above are Additional Services. N/A

ARTICLE IV

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in accordance with the individual task requests.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Client or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

ARTICLE V

RESPONSIBILITIES OF CLIENT: Client shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Client recognizes and expects that change orders may be required to be issued during construction. The responsibility for the costs of change orders will be determined on the basis of applicable contractual obligations and professional liability standards. FNI will not be responsible for any change order costs due to unforeseen site conditions, changes made by or due to the Client or Contractor, or any change order costs not caused by the negligent errors or omissions of FNI. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, FNI is liable for change order costs. It is recommended that the Client budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.
- B. Designate in writing a person to act as Client's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions,

receive information, interpret and define Client's policies and decisions with respect to FNI's services for the Project.

- C. Provide all criteria and full information as to Client's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Client will require to be included in the drawings and specifications.
- D. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- E. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- F. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay, or cause rework in, the services of FNI.
- G. Client shall make or arrange to have made all subsurface investigations, including but not limited to borings, test pits, soil resistivity surveys, and other subsurface explorations. Client shall also make or arrange to have made the interpretations of data and reports resulting from such investigations. All costs associated with such investigations shall be paid by Client.
- H. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Client may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as Client may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as Client may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- I. Give prompt written notice to FNI whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
- J. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.
- K. Bear all costs incident to compliance with the requirements of this Article V.

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and Client designate the following representatives:

Client's Designated Representative – Tim Howe
P.O. Box 591
Seguin, Texas 78156
830-386-2540
THOWE@SEGUINTEXAS.GOV

Client's Accounting Representative – Tim Howe
P.O. Box 591
Seguin, Texas 78156
830-386-2540
THOWE@SEGUINTEXAS.GOV

FNI's Designated Representative – Jessica Vassar, PE
10431 Morado Circle, Building 5 Suite 300
Austin, TX 78759
512-617-3167
jbv@freese.com

FNI's Accounting Representative – Misty Ballard
801 Cherry Street, Suite 2800
Fort Worth, TX 76102
817-735-7354
Misty.Ballard@freese.com

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** As used herein: (1) Client refers to the party named as such in the Agreement between the Client and FNI; (2) FNI refers to Freese and Nichols, Inc., its employees and agents, and its subcontractors and their employees and agents; and (3) Services refers to the professional services performed by FNI pursuant to the Agreement.
2. **INFORMATION FURNISHED BY CLIENT:** Client will assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project. FNI shall have no liability for defects or negligence in the Services attributable to FNI's reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by Client. To the fullest extent permitted by law, Client agrees to indemnify and hold FNI harmless from any and all claims and judgments, and all losses, costs, and expenses arising therefrom. FNI shall disclose to Client, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications, or other information furnished by Client to FNI that FNI may reasonably discover in its review and inspection thereof.
3. **STANDARD OF CARE:** The standard of care for all professional Services performed or furnished by FNI under this Agreement will be the skill and care ordinarily used by members of the subject profession practicing under the same or similar license and circumstances at the same time and in the same locality. FNI makes no warranties, express or implied, under this Agreement or otherwise, in connection with any Services performed or furnished by FNI.
4. **INSURANCE:** FNI shall provide Client with certificates of insurance with the following minimum coverage:

Commercial General Liability

\$2,000,000 General Aggregate

Automobile Liability (Any Auto)

\$1,000,000 Combined Single Limit

Workers' Compensation

As required by Statute

Professional Liability

\$3,000,000 Annual Aggregate

5. **CHANGES:** Client, without invalidating the Agreement, may order changes within the general scope of the Services required by the Agreement by altering, adding, and/or deducting from the Services to be performed. If any such change under this clause causes an increase or decrease in FNI's cost or the time required for the performance of any part of the Services, an equitable adjustment will be made by mutual agreement and the Agreement will be modified in writing accordingly.

FNI will make changes to the drawings, specifications, reports, documents, or other deliverables as requested by Client. However, when such changes differ from prior comments, directions, instructions, or approvals given by Client or are due to causes not solely within the control of FNI, FNI shall be entitled to additional compensation and time required for performance of such changes to the Services authorized under this Agreement.

6. **OPINION OF PROBABLE CONSTRUCTION COSTS:** No fixed limit of project construction cost shall be established as a condition of the Agreement, unless agreed upon in writing and signed by the parties hereto. If a fixed limit is established, FNI shall be permitted to include contingencies for design, bidding, and price escalation in the construction contract documents to make reasonable adjustments in the scope of the Project to adjust the project construction cost to the fixed limit. Such contingencies may include bid allowances, alternate bids, or other methods that allow FNI to determine what materials, equipment, component systems, and types of construction are to be

included in the construction contract documents. Fixed limits, if any, shall be increased by the same amount as any increase in the contract price after execution of the construction contract.

FNI will furnish an opinion of probable construction or program cost based on present day pricing, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices. Accordingly, FNI cannot and does not warrant or represent that bids or cost proposals will not vary from the Client's project budget or from any estimate or opinion of probable construction or program cost prepared by or agreed to by FNI.

7. **PAYMENT:** Progress payments may be requested by FNI based on the amount of Services completed. Payment for the Services of FNI shall be due and payable upon submission of a statement for Services to Client and in acceptance of the Services as satisfactory by Client. Statements for Services shall not be submitted more frequently than monthly. Any applicable taxes imposed upon Services, expenses, and charges by any governmental body after the execution of this Agreement will be added to FNI's compensation.

If Client fails to make any payment due FNI for Services, expenses, and charges within 30 days after receipt of FNI's statement for Services therefore, the amounts due FNI will be increased at the rate of 1 percent per month from said 30th day, and, in addition, FNI may, after giving 7 days' written notice to Client, suspend Services under this Agreement until FNI has been paid in full for all amounts due for Services, expenses, and charges.

If FNI's Services are delayed or suspended by Client or are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports, data, and other project information developed in the execution of the Services provided under this Agreement shall be the property of Client upon payment of FNI's fees for Services. FNI may retain copies for record purposes. Client agrees such documents are not intended or represented to be suitable for reuse by Client or others. Any reuse by Client or by those who obtained said documents from Client without written verification or adaptation by FNI, will be at the Client's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants. To the fullest extent permitted by law, Client shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data, and other project information in the execution of the Services provided under this Agreement in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to Client, and FNI shall indemnify and hold harmless Client from all claims, damages, losses, and expenses including reasonable attorneys' fees arising out of or resulting therefrom.
9. **TERMINATION:** The obligation to provide Services under this Agreement may be terminated by either party upon 10 days' written notice. In the event of termination, FNI will be paid for all Services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.

10. **CONSTRUCTION REPRESENTATION:** If required by the Agreement, FNI will furnish construction representation according to the defined scope for these Services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the construction contract documents. In performing these Services, FNI will report any observed deficiencies to Client, however, it is understood that FNI does not guarantee the contractor's performance, nor is FNI responsible for the supervision of the contractor's operation and employees. FNI shall not be responsible for the contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident to the work of the contractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the project site or otherwise performing any of the work of the Project. If Client designates a resident project representative that is not an employee or agent of FNI, the duties, responsibilities, and limitations of authority of such resident project representative will be set forth in writing and made a part of this Agreement before the construction phase of the Project begins.
11. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** Client agrees to include provisions in the general conditions of the construction contract that name FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by the contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the indemnification provisions where the Client is named as an indemnified party.
12. **POLLUTANTS AND HAZARDOUS WASTES:** It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the project site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing the Services required by this Agreement, FNI does not take possession or control of the subject site, but acts as an invitee in performing the Services, and is not therefore responsible for the existence of any pollutant present on or migrating from the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.
13. **SUBCONTRACTS:** If, for any reason and at any time during the progress of providing Services, Client determines that any subcontractor for FNI is incompetent or undesirable, Client shall notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the Agreement shall create any contractual relation between any subcontractor and Client.
14. **PURCHASE ORDERS:** If a purchase order is used to authorize FNI's Services, only the terms, conditions, and instructions typed on the face of the purchase order shall apply to this Agreement. Should there be any conflict between the purchase order and the terms of this Agreement, then this Agreement shall prevail and be determinative of the conflict.
15. **CONSEQUENTIAL DAMAGES:** In no event shall FNI be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental, or consequential damages (such as loss of product, loss of use of equipment or systems, loss of anticipated profits or revenue, non-operation or increased expense of operation), arising out of, resulting from, or in any way related to this Agreement or the Project.
16. **ARBITRATION:** No arbitration, arising out of or relating to this Agreement, involving one party to this Agreement may include the other party to this Agreement without their approval.

17. **SUCCESSORS AND ASSIGNMENTS:** Client and FNI and the partners, successors, executors, administrators, and legal representatives of each are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

Neither Client nor FNI shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of Services hereunder.

COMPENSATION

Compensation to FNI for Basic Services in Attachment SC shall be computed on the basis of the following Schedule of Charges, but shall not exceed One Hundred Thousand Dollars (\$100,000).

If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the following Schedule of Charges.

<u>Position</u>	<u>Hourly Rate</u>	
	<u>Min</u>	<u>Max</u>
Professional 1	86	151
Professional 2	112	176
Professional 3	108	246
Professional 4	170	256
Professional 5	201	360
Professional 6	218	426
Construction Manager 1	107	138
Construction Manager 2	93	177
Construction Manager 3	136	168
Construction Manager 4	160	218
Construction Manager 5	197	275
Construction Manager 6	243	309
Construction Representative 1	87	89
Construction Representative 2	89	97
Construction Representative 3	102	163
Construction Representative 4	118	187
CAD Technician/Designer 1	71	148
CAD Technician/Designer 2	115	172
CAD Technician/Designer 3	151	219
Corporate Project Support 1	59	120
Corporate Project Support 2	77	191
Corporate Project Support 3	121	286
Intern / Coop	51	87

Rates for In-House Services and Equipment

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>		<u>Equipment</u>	
Standard IRS Rates		<u>B&W</u>	<u>Color</u>	Valve Crew Vehicle (hour) \$75
	Small Format (per copy)	\$0.10	\$0.25	Pressure Data Logger (each) \$200
<u>Technology Charge</u>	Large Format (per sq. ft.)			Water Quality Meter (per day) \$100
\$8.50 per hour	Bond	\$0.25	\$0.75	Microscope (each) \$150
	Glossy / Mylar	\$0.75	\$1.25	Pressure Recorder (per day) \$100
	Vinyl / Adhesive	\$1.50	\$2.00	Ultrasonic Thickness Gauge (per day) \$275
				Coating Inspection Kit (per day) \$275
	Mounting (per sq. ft.)	\$2.00		Flushing / Cfactor (each) \$500
	Binding (per binding)	\$0.25		Backpack Electrofisher (each) \$1,000
				<u>Survey Grade</u> <u>Standard</u>
				Drone (per day) \$200 \$100
				GPS (per day) \$150 \$50

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.15. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multiplier of 1.15. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and/or rates will be adjusted annually in February. Last updated 2022.