

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §

COUNTY OF TARRANT §

This Agreement is entered into by City of Seguin, hereinafter called "City" 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, City agrees to employ and compensate FNI to perform professional services in connection with the Project. The Project is described as Water and Wastewater Impact Fee Update.
- 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 City which is attached to and made a part of this Agreement.
- III. **COMPENSATION:** Compensation to FNI for Basic Services in Attachment SC shall be computed on the accordance with Attachment CO – Compensation which is attached and made a part of this Agreement but shall not exceed Sixty-Eight Thousand Eight Hundred Seventy Dollars (\$68,870).

If FNI's services are delayed or suspended by City, 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 City and FNI.

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

This Agreement constitutes the entire Agreement between City 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.By: Victor M. Vasquez, Principal
Print Name and Title

Date: 2-14-22

ATTEST: **City of Seguin**

By: _____

Print Name and Title

Date: _____

ATTEST: _____



SCOPE OF SERVICES AND RESPONSIBILITIES OF CITY**PROJECT UNDERSTANDING**

Freese and Nichols, Inc. (FNI) understands that the City of Seguin (City) is seeking to update their water and wastewater impact fees consistent with the requirements of Chapter 395 of the Texas Local Government Code. FNI will update the water service area to incorporate additional potential CCN area. Data from the recent Water and Wastewater Master Plans will be utilized to update the land use assumptions and capital improvements plan. The study will be coordinated through a Capital Improvements Advisory Committee (appointed by the City) and culminate with adoption through a public hearing process.

ARTICLE I

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

1. Project Kickoff Meeting: FNI will attend a project kickoff meeting at the City to discuss project scope and schedule. A data request memorandum will be developed and presented at the meeting.
2. Update Land Use Assumptions: FNI will define the service area to incorporate the additional potential water CCN area. FNI will develop land use assumptions for the additional potential water service area and utilize the projections from the Water and Wastewater Master Plans to update the land use assumptions for 2022 and 2032 conditions.
3. Progress Meeting #1: Land Use Assumptions: FNI will meet with the City to present the proposed land use assumptions and draft presentation for CIAC Meeting #1.
4. CIAC Meeting #1: FNI will meet with the Capital Improvements Advisory Committee to present Impact Fees 101 and the draft land use assumptions.
5. Identify Existing Projects Eligible for Impact Fee Cost Recovery: FNI will review recently completed water and wastewater improvements and determine which projects have excess capacity for future growth.
6. Analyze Proposed Water and Wastewater Projects: FNI will analyze the projects proposed in the Water and Wastewater Master Plans to refine the timing of the recommended improvements. Demand triggers will be developed to identify when the proposed projects are needed.
7. Develop Water and Wastewater Impact Fee CIP: FNI will develop an impact fee CIP based on the existing eligible improvements and the proposed projects identified in the Water and Wastewater Master Plans. Proposed projects will be evaluated and updated to incorporate changes in land use assumptions and additional service area. Maps will be prepared showing the proposed water and wastewater capital improvement plan projects included in the impact fee calculations.
8. Progress Meeting #2: Water and Wastewater Impact Fee CIP: FNI will meet with the City to present the proposed water and wastewater impact fee CIPs and the draft presentation for CIAC Meeting #2.
9. CIAC Meeting #2: Water and Wastewater Impact Fee CIP: FNI will meet with the CIAC to present the

proposed water and wastewater impact fee CIPs

10. Conduct Water and Wastewater Capacity Analysis: FNI will utilize the water model and wastewater model to determine the capacity utilized of each project due to the 10-year growth projections.
11. Calculate Project Costs Eligible for Impact Fee Cost Recovery: FNI will calculate the portion of the project costs that is impact fee eligible based on the capacity analysis. Cost estimates developed as part of the Water Master Plan and Wastewater Master Plan will be used for the proposed projects. Estimated project costs provided by the City will be used for existing eligible projects.
12. Develop Service Unit Equivalents (SUEs) for Water Systems: FNI will utilize equivalent capacity of water meters to establish the service unit equivalents (SUEs) required in Chapter 395 of the Local Government Code for both existing and 10-year growth conditions to be used as the basis for the calculation of both water and wastewater impact fees.
13. 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.
14. Development of Credit Analysis: FNI will perform an analysis of the proposed projects to be included in the impact fee calculation to serve new customers to determine if a credit is applicable, as defined by Local Government Code Chapter 395. FNI will compare the proposed projects against the City's past and present funding sources and the portion of those funding sources that are included, or expected to be included, in the City's Water and Wastewater rates. If necessary, a credit will be developed to ensure that new customers are not charged twice for capital improvements attributed to them, through impact fees and again through rates.
15. Progress Meeting #3: Maximum Allowable Impact Fee: FNI will meet with the City to discuss the draft impact fee CIP, the maximum allowable impact fees, and the draft presentation for the CIAC meeting.
16. CIAC Meeting #3: Maximum Allowable Impact Fee: FNI will meet with the CIAC to present the draft impact fee CIP and the maximum allowable impact fees.
17. Develop Draft Impact Fee Report: FNI will prepare a Draft Water and Wastewater Impact Fee Report showing land use assumptions, water and wastewater impact fee eligible capital improvement costs, and maximum allowable water and wastewater impact fees. An electronic PDF copy will be delivered to City for review.
18. Progress Meeting #4: Draft Report: FNI will meet with City to review the draft report and the draft presentation for the City Council Public Hearing.
19. Finalize Impact Fee Report: FNI will prepare a final Water and Wastewater Impact Fee Report and deliver an electronic PDF copy and five (5) hard copies to the City.
20. City Council Presentation: FNI will attend a meeting to set the date for the public hearing. FNI will present the findings of the study and address questions.
21. City Council Public Hearing: FNI will attend one Public Hearing to present and address questions

about the land use assumptions, capital improvements plan, and impact fee calculations.

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 will complete the proposed scope of work within 8 months of notice to proceed.

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 City 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 CITY: City shall perform the following in a timely manner so as not to delay the services of FNI:

- A. City 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 City 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 City 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 City'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 City's policies and decisions with respect to FNI's services for the Project.
- C. Provide all criteria and full information as to City'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 City 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 City 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. City 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. City 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 City.
- H. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as City 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 City 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 City 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 City 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 City designate the following representatives:

City's Designated Representative – Tim Howe

P.O. Box 591
Seguin, Texas 78156
830-386-2540
THOWE@SEGUINTEXAS.GOV

City'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 –

Jana Collier
801 Cherry Street, Suite 2800
Fort Worth, TX 76102
817-735-7354
jvc@freese.com

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** The term City as used herein refers to the City of Seguin. The term FNI as used herein refers to Freese and Nichols, Inc., its employees and agents, and its subcontractors and their employees and agents. As used herein, Services refers to the professional services performed by FNI pursuant to the Agreement.
2. **CHANGES:** City, without invalidating the Agreement, may order changes within the general scope of the work required by the Agreement by altering, adding to and/or deducting from the work to be performed. If any change under this clause causes an increase or decrease in FNI's cost of, 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 modified in writing accordingly.
3. **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.
4. **CONSEQUENTIAL DAMAGES:** In no event shall FNI or its subcontractors 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 the equipment or system, loss of anticipated profits or revenue, non-operation or increased expense of operation or other equipment or systems.
5. **INFORMATION FURNISHED BY CITY:** City 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 City and City 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 City, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications or other information furnished by City to FNI that FNI may reasonably discover in its review and inspection thereof.
6. **INSURANCE:** FNI shall provide City with certificates of insurance with the following minimum coverage:

Commercial General Liability General Aggregate \$2,000,000 Automobile Liability (Any Auto) CSL \$1,000,000	Workers' Compensation As required by Statute Professional Liability \$3,000,000 Annual Aggregate
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7. **SUBCONTRACTS:** If, for any reason and at any time during the progress of providing Services, City determines that any subcontractor for FNI is incompetent or undesirable, City will 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 City.
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 City upon payment of FNI's fees for Services. FNI may retain copies for record purposes. City agrees such documents are not intended or represented to be suitable for reuse by City or others. Any reuse by City or by those who obtained said documents from City without written verification or adaptation by FNI, will be at City's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants, and City 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 City, and FNI shall indemnify and hold harmless City from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.
9. **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 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.

10. **OPINION OF PROBABLE COSTS:** FNI will furnish an opinion of probable project development cost based on present day cost, 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 their prices.
11. **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 Contract Documents. In performing these services, FNI will report any observed deficiencies to City, 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 means, methods, techniques, sequences or procedures of construction selected by the Contractor, 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 City 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.
12. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** City agrees to include provisions in the General Conditions of the Construction Contract that require Contractor to include FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by Contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the Contractor's indemnification provisions where the Owner is named as an indemnified party.
13. **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 CITY and in acceptance of the Services as satisfactory by the City. Statements for Services shall not be submitted more frequently than monthly. Any applicable new 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 City fails to make any payment due FNI for services and expenses 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 City, suspend services under this Agreement until FNI has been paid in full, all amounts due for services, expenses and charges.
14. **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.
15. **SUCCESSORS AND ASSIGNMENTS:** City and FNI each are hereby bound and the partners, successors, executors, administrators and legal representatives of City and FNI 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 City 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.
16. **PURCHASE ORDERS:** If a Purchase Order is used to authorize FNI's Services, only the terms, conditions/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 shall be determinative of the conflict.

ATTACHMENT CO

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.

Rates for In-House Services and Equipment

OTHER DIRECT EXPENSES:

These ranges and/or rates will be adjusted annually in February. Last updated 2021.

Attachment CO-1

Task	Hours	Total Labor Effort	Total Expense Effort	Total Effort
Project Kickoff Meeting	12	\$2,076	\$172	\$2,248
Update Land Use Assumptions	40	\$6,262	\$340	\$6,602
Progress Meeting #1 Land Use Assumptions	12	\$2,076	\$172	\$2,248
CIAC Meeting #1	12	\$2,076	\$172	\$2,248
Identify Existing Projects Eligible for Impact Fee Cost Recovery	10	\$1,514	\$85	\$1,599
Analyze Proposed Water and Wastewater Projects	25	\$3,816	\$213	\$4,029
Develop Water and Wastewater Impact Fee CIP	25	\$3,816	\$213	\$4,029
Progress Meeting #2 W and WW IF CIP	12	\$2,076	\$102	\$2,178
CIAC Meeting #2: W and WW IF CIP	12	\$2,076	\$172	\$2,248
Conduct Water and Wastewater Capacity Analysis	23	\$3,542	\$266	\$3,808
Calculate Project Costs Eligible for Impact Fee Cost Recovery	21	\$3,268	\$179	\$3,447
Develop Service Unit Equivalents (SUEs) for Water	6	\$966	\$51	\$1,017
Calculate Maximum Allowable Impact Fees	29	\$4,652	\$247	\$4,899
Development of Credit Analysis	40	\$9,600	\$340	\$9,940
Progress Meeting #3 Maximum IF	12	\$2,076	\$172	\$2,248
CIAC Meeting #3: Maximum IF	12	\$2,076	\$172	\$2,248
Develop Draft Impact Fee Report	30	\$4,892	\$255	\$5,147
Progress Meeting #4: Draft Report	12	\$2,076	\$172	\$2,248
Finalize Impact Fee Report	11	\$1,723	\$94	\$1,817
City Council Meeting	12	\$2,076	\$299	\$2,375
City Council Public Hearing	12	\$2,076	\$172	\$2,248
Total	380	\$64,811	\$4,059	\$68,870