

**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 Quality Control and Construction Inspection.
- 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 one million fourteen thousand five hundred thirty-seven dollars (\$1,014,537).  
  
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: Charles Kucherka, P.E.; Vice President

Print Name and Title

Date: January 25, 2023ATTEST: **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) plans to deliver the following projects in support of servicing the Springs Hill WSC – Water Transfer Area. The projects will be designed, bid and have construction management provided by three consultants, TRC, Trihydro Corporation and Kimley-Horn (the Consultants). Below is FNI’s understanding of the projects to be delivered:

Project Packages			
Project Bid Packages	Consultant	Design Schedule	Construction Schedule
S1 – Stempel Road Transmission Main Extension (West) S2 - Huber Road Transmission Main S4 – Huber Road Water Line Expansion S5 – New West Booster Pump Station Water Line	Trihydro	2/23 – 12/24	1/25 – 12/25
S3 – SH-46 Water Line Expansion 5 – 24-Inch and 16-Inch Cedar Street Water Line	Kimley-Horn	2/23 – 12/24	1/25 – 12/25
S5 – New West Booster Pump Station 6 – High Service Pump Station Expansion	TRC	2/23 – 7/24	7/24 – 12/25

The City has requested FNI to provide Quality Control Reviews at 30%, 60%, 90% and 100% design completion for each project bid package for a total of three (3) bid packages. FNI will continue to support the projects during construction by providing construction inspection services.

### ARTICLE I

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

1. Quality Control Reviews:
  - a. Attend three (3) project kick-off meetings with the City and Consultants to discuss the QC process.
  - b. Review each bid package (3 total) at the 30%, 60%, 90% and 100% design completion levels.
    - 1) Preliminary engineering reports and design memorandums will be included in the 30% review.
    - 2) It is assumed contract documents and specifications will be provided for review at the 60%, 90% and 100% design completion levels.
    - 3) Opinions of Probable Construction Costs (OPCC’s) will be included in each review.
  - c. Reviews will be completed in Bluebeam Software and comments will be provided in PDF format.
  - d. FNI will meet with each Consultant and the City via MSTeams to discuss QC comments after each

review.

e. Consultants will:

- 1) Provide all documents to FNI in PDF format.
- 2) Allow fourteen (14) calendar days for FNI QC reviews.

2. Construction Inspection:

a. General Services

FNI will endeavor to protect Consultant(s) and City in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI will not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI will 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.

Design services for this project are being provided by the Consultant(s) and not associated or contracted with FNI. Consultant(s) are the Engineer of Record and is responsible for the preparation of the construction documents. In performing the tasks outlined in the scope of services, FNI is not assuming responsibility for the content of the construction contract documents or any engineering design associated with these projects.

Consultant(s) and City agrees to include provisions in the construction contract documents that will require the Contractor to include FNI to be listed as an additional insured on Contractor's insurance policies.

b. Communication - Establish communication procedures and protocol with City, Consultants, and the Contractor(s).

c. Cost Management

- 1) Coordinate with Consultants and the Contractor(s) to establish a basis and procedure for reviewing monthly quantities of work in place and payment requests.
- 2) Review proposed schedule of values and payment request format prepared by Contractor(s).
- 3) Based on FNI's, City's and the Consultant's observations of ongoing construction during visits to the site, review the payment requests and supporting documentation submitted by Contractor, determine the amount that FNI recommends Contractor be paid on monthly and final payment requests.

d. Record Management

- 1) Reviewed and approved construction submittals will be provided to FNI by the Consultants.
- 2) FNI will review as-built drawings from the Contractor(s) prior to Contractor(s) submitting

drawings to the Consultant(s) for preparation of Record Drawings.

- e. Schedule Management - Review baseline and monthly construction progress schedules prepared by the Contractor(s). Monitor progress of actual work completed relative to planned progress and address any identified schedule slippage or other anomalies with Contractor(s).
- f. Meetings/Site Visits:
  - 1) Pre-Construction Meeting:
    - a) Attend a maximum of three (3) pre-construction meetings in-person.
    - b) Establish communication procedures and protocol with City, Consultant(s), and Contractor(s).
    - c) Provide direction to the Contractor(s) on procedures and expectations for the project.
    - d) Meeting agendas and meeting minutes will be provided by the Consultant(s).
  - 2) Monthly Progress Meeting:
    - a) Attend monthly progress meetings for each project with City, Consultant(s) and the Contractor to exchange information regarding progress of construction, status of submittals, status of modifications, and to address any project related issues.
    - b) Agendas and meeting minutes will be prepared by the Consultant(s).
  - 3) Site Visits:
    - a) Make visits to the site at appropriate stages of construction to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the construction contract documents.
    - b) In this effort, FNI will endeavor to protect the City against defects and deficiencies in the work of Contractor and will prepare a Site Visit Report to be submitted to the Consultant(s) and/or City documenting observations made during visit including any observed deficiencies.
    - c) Notify the Contractor of non-conforming work observed on site visits.
    - d) Visits to the site in excess of the specified number are an additional service.
  - 4) Substantial Completion:
    - a) When Contractor requests that substantial completion be granted for the project (or applicable portions thereof), FNI will conduct, in company with Consultant(s) and/or City, a review of the Project for conformance with the design concept of the Project and general compliance with the construction contract documents. (Maximum of 3 total visits, 1 visit per project)
    - b) Prepare a list of deficiencies to be corrected by the Contractor before recommendation of substantial completion is granted and/or any partial release or reduction of retainage

is made. Consultant(s) will be responsible for collecting and issuing the punch list of deficiencies to the Contractor(s).

5) Final Completion

- a) Conduct, in company with Consultant(s) and/or City, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. (Maximum of 5 total visits, 1 visit per project)
  - b) Provide Consultant(s) a list of deficiencies to be corrected by the Contractor before recommendation of final payment.
  - c) Provide one final visit to the project site to verify all deficiencies have been corrected. (Maximum of 5 total visits, 1 visit per project)
- g. Monthly Reports - Submit monthly reports of construction progress for each project to Consultant(s) and City. Reports will describe construction progress in general terms and summarize project costs, cash flow, construction schedule, pending and approved contract modifications, change order status, and major outstanding issues.

h. Resident Project Representative

FNI will provide a full-time (50 hours per week) qualified inspector (Resident Project Representative - RPR) for the projects throughout construction who will work between each of the three (3) bid packages. During the nine (9) month peak construction period (all projects in construction phase at once) an additional qualified inspector will be provided on an as needed basis (up to 40 hours per week.) The RPR is the authorized representative of the Consultant(s) and City and will be assigned to the Site or any part thereof. The RPR will act as directed by the Consultant(s) and City for the projects in order to provide regular and more extensive representation at the Project sites during the construction phase. RPR is the Consultant's agent at the site and will act as directed by and under the supervision of Consultant(s). RPR's dealings in matters pertaining to the on-site Work shall in general be with Consultant's and the Contractor, with regular reports to the Consultant(s) and/or City, as necessary or requested. RPR's communications with Subcontractors will only be through or with full knowledge and approval of the Contractor. RPR will communicate with City with the knowledge of and under the direction of the Consultant(s). Duties and Responsibilities of RPR include the following:

- 1) Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- 2) Project Documents: Review Contractor's submittals and Engineer's comments, including correspondence, requests for information, modification requests, shop drawings, schedules, payment requests, and other submittals to remain familiar with the requirements of the construction contract documents for the project and provide written reports, as required.
- 3) Liaison:

Serve as Consultant's and City's liaison with Contractor, working with the Consultant(s) and Contractor's superintendent and assist in monitoring conformance with the Contract

Documents.

Assist in obtaining from the City and Consultant(s) additional details or information, when required for proper execution of the Work.

4) Review of Work, Rejection of Defective Work, Inspections and Tests:

Conduct on-site observations of the Work in progress to determine if the Work is proceeding in accordance with the Contract Documents.

Report whenever RPR believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise of Work the RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

Implement quality assurance testing plan developed by the Consultant(s) to monitor Contractor's quality control testing and products. Coordinate time and location of tests and survey with Consultant(s). Communicate with Contractor the results of the tests as necessary.

Verify that tests, equipment and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and the Contractor maintains adequate records thereof; and observe, record, and report appropriate details relative to the test procedures and start-ups.

Upon coordination with the City and Consultant(s), accompany visitors representing public or other agencies having jurisdiction over the Project; record and report the discussions from these inspections.

Interpretation of Contract Documents: Coordinate with Consultant(s) and City and report in writing when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by the Consultant(s).

5) Reports:

Furnish written daily reports of progress of the work and of Contractor's compliance with the progress schedule and schedule of Shop Drawings and Sample submittals. Daily reports are to be submitted on a weekly basis.

Consult with City and Consultant(s) in advance of scheduled major tests, inspections or start of important phases of the construction.

Report, in writing, immediately to City and Consultant(s) of the occurrence of any accident.

6) Payment Requests: Assist with the processing of contractor's Applications for Payment. Verify the status of Contractor's record drawings on a monthly basis and report, in writing, to Consultant(s) and/or City.

7) Completion:

Observe and report whether Contractor has performed inspections required by laws or regulations, ordinances, codes or order applicable to the Work, including but not limited to those to be performed by public agencies having jurisdiction over the Work.

Conduct a final inspection in the company of the City, Consultant(s), and Contractor and prepare a final list of items to be completed or corrected.

Observe whether all items on final list have been completed or corrected and make written recommendations to the Consultant(s) and/or City concerning acceptance.

8) Limitations of authority of RPR, RPR shall not:

- a) Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless approved by the Consultant(s).
- b) Exceed limitations of the City's and Consultant(s) authority as set forth in this Agreement or the Contract Documents.
- c) Undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.
- d) Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
- e) Advise the Contractor, issue directions regarding or assume control over safety precautions and programs in connection with the construction or any activities or operations of Contractor.
- f) Accept shop drawing or sample submittals from anyone other than the Contractor.
- g) Participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by the City and Consultant(s).

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.

1. Assist Consultant(s) and/or City with other project related issues not specifically identified in the proposed scope. These services will be provided on an as-needed basis as an additional service.
2. Assisting Consultant(s) and/or City in claims or disputes with Contractor(s).
3. Construction Materials Testing. (CMT subconsultant services can be added to this contract once

project documents, established and testing parameters outlined, and a CMT scope and fee are developed.)

4. Construction management services
5. IBC Chapter 17 Special Inspections
6. Welding Inspection
7. Coating Inspection

#### ARTICLE IV

**TIME OF COMPLETION:** FNI will complete the proposed scope of work as identified in the schedule indicated in the “Project Understanding”.

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. 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.
- B. 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.
- C. 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.
- D. 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.
- E. 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.



- F. 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.
- G. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.
- H. Bear all costs incident to compliance with the requirements of this Article V.

#### ARTICLE VI

**COMPENSATION:** City agrees to pay the Professional for the Services rendered under this Agreement in accordance with the schedule of charges and table below and made a part of this Agreement. City shall pay the Professional to perform the Services described in Article I in an amount not to exceed \$1,014,537.

	<b>Cost</b>
Quality Control Reviews	\$140,989
Construction Services / RPR	\$655,787
Additional RPR (during 9-month peak construction period)	\$217,761
<b>Total</b>	<b>\$1,014,537</b>

## ARTICLE VII

### **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 –

Jake Heimann  
9601 McAllister Fwy. #1108  
San Antonio, Texas 78216  
832-827-4320  
jake.heimann@freese.com

FNI's Accounting Representative –

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

**COMPENSATION**

ATTACHMENT CO

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 Million Fourteen Thousand Five Hundred Thirty Seven Dollars (\$1,014,537).

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.

<b><u>Position</u></b>	<b><u>Hourly Rate</u></b>
Professional 1	112
Professional 2	137
Professional 3	153
Professional 4	177
Professional 5	207
Professional 6	236
Construction Manager 1	97
Construction Manager 2	120
Construction Manager 3	131
Construction Manager 4	164
Construction Manager 5	197
Construction Manager 6	225
Construction Representative 1	87
Construction Representative 2	97
Construction Representative 3	120
Construction Representative 4	131
CAD Technician/Designer 1	96
CAD Technician/Designer 2	123
CAD Technician/Designer 3	152
Corporate Project Support 1	91
Corporate Project Support 2	110
Corporate Project Support 3	146
Intern / Coop	56
Senior Advisor	175

**Rates for In-House Services and Equipment**

<b><u>Mileage</u></b>	<b><u>Bulk Printing and Reproduction</u></b>		<b><u>Equipment</u></b>	
Standard IRS Rates		<b><u>B&amp;W</u></b>	<b><u>Color</u></b>	Valve Crew Vehicle (hour) \$75
	Small Format (per copy)	\$0.10	\$0.25	Pressure Data Logger (each) \$200
	Large Format (per sq. ft.)			Water Quality Meter (per day) \$100
<b><u>Technology Charge</u></b>	Bond	\$0.25	\$0.75	Microscope (each) \$150
\$8.50 per hour	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
				<b><u>Survey Grade</u></b> <b><u>Standard</u></b>
				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.**