

**AGREEMENT BETWEEN THE CITY OF SEGUIN AND
THE MEADOW LAKE NOLTE DAM ASSOCIATION
FOR FUNDING AN ENGINEERING STUDY OF THE NOLTE DAM
TO BE PERFORMED BY FREESE AND NICHOLS, INC.**

This Reimbursement Agreement (the "Agreement") is made on November __, 2021, between the City of Seguin, Texas (the "City"), a Texas municipal corporation, 205 N. River Street, Seguin, Texas 78155, and the Meadow Lake Nolte Dam Association ("MLNDA"), a Texas non-profit corporation headquartered at 40 E. Hampton Drive, Seguin, Texas 78155.

WHEREAS, the Guadalupe Blanco River Authority ("GBRA") owns the Nolte Dam, a hydro-electric dam, that also holds the waters known as Meadow Lake; and

WHEREAS, the dams managed by GBRA, including Nolte Dam, have aged and need significant repair in order to remain viable; and

WHEREAS, the MLNDA was formed to preserve the shoreline of Meadow Lake, protect the lake from undue exploitation and cooperate with GBRA to maintain the lake in a safe condition; and

WHEREAS, GBRA has preliminarily agreed to consider allowing the City of Seguin, on behalf of the MLNDA, to seek a preliminary engineering study and report from Freese and Nichols, Inc ("FNI") concerning the viability and cost of replacing the spillway gates and development of an overall comprehensive plan for rehabilitation of the Nolte Dam; and

WHEREAS, FNI has provided the City with a professional services agreement along with a scope of services to cover the study of the Nolte Dam.

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the MLNDA agree as follows:

AGREEMENT:

The City and MLNDA, in consideration of the mutual promises, covenants and agreements set forth in this Agreement, agree and contract as follows:

1. Contract with Freese and Nichols, Inc. The City and FNI will execute a Professional Services Agreement, attached hereto as Exhibit "A," including a scope of services, to provide an engineering study evaluating the feasibility of installing pneumatic rubber bladder assisted leaf gates (Obermeyer gates) with the objective of providing an engineering basis for final design based on existing conditions. This initial contract will result in a documented Preliminary Engineering Report.

2. Engineering Scope of Services. The attached Scope of Services (attached as Exhibit “B”) has been approved by MLNDA and the City and shall form the basis for the work performed by FNI.

3. Payment by MLNDA. Prior to the City executing the attached Agreement with FNI, the MLNDA shall pay the City the sum of \$125,000.00 that is needed to fund the FNI Agreement. The MLNDA also agrees that prior to the execution of any change order for additional work the funds needed for said work shall be submitted to the City. In return for such payment(s) by MLNDA, MLNDA shall be entitled to receive copies of any and all correspondence, draft and final reports, invoices, and any other communications between the City and FNI relating to the Professional Services Agreement between the City and FNI. The City also agrees that the MLNDA shall be entitled to communicate directly with FNI regarding the services performed by FNI and the work done by FNI under the Professional Services Agreement. If any of the referenced funds (including any additional funds paid by MLNDA for change orders), remain in the City’s possession after FNI’s completion of its Scope of Services and payment of all funds due and owing to FNI, the City agrees to refund any such remaining funds to the MLNDA.

In addition, the City shall forward to MLNDA (c/o Jacy Robbins, MLNDA President), copies of all “Progress Payment” requests received from FNI (pursuant to paragraph 12 of Attachment TC to Exhibit A hereto), promptly after receipt by the City. If MLNDA has objections to any such Progress Payment request, MLNDA shall present those objections to the City and FNI within five (5) business days after MLNDA’s receipt of the payment request. The City agrees to cooperate with MLNDA in resolving any such objections with FNI prior to making any requested Progress Payment, but only to the extent that any resulting delay in payment does not cause the City to be in breach of its agreement with FNI.

4. Additional Services. Should FNI determine that additional services, as defined by the attached scope of services, are needed, the City shall not approve the additional services without prior written agreement from MLNDA; along with payment in accordance with Paragraph 3 above. Additional services, evidenced by a properly executed change order, shall be considered part of and subject to this Agreement.

5. Contract Management. The City, along with coordination from MLNDA, shall manage the contract with FNI and shall jointly fulfill their respective Client Responsibilities set out in Article V of the attached Scope of Services.

6. Applicable Laws. This Agreement is subject to all valid and applicable ordinances, rules, regulations, and laws of all governmental agencies having lawful jurisdiction over the subject matter hereof.

7. Entire Agreement; Amendment; Assignment. This Agreement constitutes the entire agreement between the parties hereto and may be amended only by a written document signed by the parties hereto. This Agreement shall be binding upon the successors and assigns of the parties hereto. The assignment of all or part of this Agreement by a party hereto is not valid without the written consent of the other party hereto.

8. Signatory Authority. Each of the persons executing this Agreement represent that he or she has full power and authority to execute this Agreement on behalf of the party that person represents.

9. Construction; Venue; Immunity. This Agreement shall be construed and enforced according to the laws of the State of Texas; and exclusive venue for any legal action arising under this Agreement shall lie in Guadalupe County, Texas. The City's execution of and performance under this Agreement will not act as a waiver of any immunity of the City to suit or liability under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

Executed and effective on November ____, 2021.

City of Seguin, Texas:

Meadow Lake Nolte Dam Association:

By: _____
Steve Parker, City Manager

By: _____
Jacy Robbins, President