

**PROFESSIONAL SERVICES AGREEMENT
FOR
COMPREHENSIVE PLAN**

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Agreement is entered into by and between the City of Pflugerville, a Texas Municipal Corporation (“City”), acting by and through its City Manager, and Freese and Nichols, Inc. (“Consultant”), both of which may be referred to herein singularly as “Party” or collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Consultant” is defined in the preamble of this Agreement and includes its successors.

“City Manager” shall mean the City Manager and/or his designee.

II. TERM

2.1 This agreement shall become effective upon execution by the City and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. Scope of Services are detailed in *Attachment SC* which are incorporated by reference as if written and copied herein.

All work performed by Consultant hereunder shall be performed to the satisfaction of the City Manager. The determination made by City Manager shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to City Manager. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant’s work not be satisfactory to City Manager; however, City shall have no obligation to terminate and

may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed two hundred fifty seven thousand four hundred seventy dollars (\$257,470.00) as total compensation, to be paid to Consultant as further detailed in *Attachment SC*.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the Pflugerville City Council by passage of an ordinance therefore.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be the City Manager. Payment will be made to Consultant following written approval of the final work products and services by the City Manager. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction. Any use of such writings, documents and information on extensions of this project or on any other project without specific adaptation by Consultant shall be at the City's sole risk and without liability to the Consultant.

VI. RECORDS RETENTION

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided

hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 *Termination Without Cause.* This Agreement may be terminated by either Party upon 15 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 *Termination For Cause.* Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 *Defaults With Opportunity for Cure.* Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

7.5 *Termination By Law.* If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to

City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 *Termination not sole remedy.* In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for City, to: City of Pflugerville
Attn: Emily Barron, AICP
Planning Director
P.O. Box 589
Pflugerville, Texas 78660

If intended for Consultant, to: Freese and Nichols, Inc.
Attn: Chance Sparks, AICP, CNU-A
Urban Planning Project Manager
1251 Sadler Drive
Building 1, Suite 1150
San Marcos, Texas 78666

IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City, which shall be clearly labeled “*Comprehensive Plan*” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

9.3 A Consultant’s financial integrity is of interest to the City; therefore, subject to Consultant’s right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

City of Pflugerville

Insurance Requirements

Consultant performing work on City property or public right-of-way for the City of Pflugerville shall provide the City a certificate of insurance evidencing the coverage provisions identified herein. Consultant shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverage as required herein or that the subcontractors are included under the contractor’s policy. The City, at its own discretion, may require a certified copy of the policy.

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Pflugerville.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and amounts of coverage or provisions depending on the nature of the work.

Type of Insurance	Amount of Insurance	Provisions
Commercial General (Public) Liability to include coverage for: Premises/Operations	1,000,000 per occurrence, 2,000,000 general aggregate Or	City to be listed as additional insured and provide 30 days' notice of cancellation or material change in coverage
Products/ Completed Operations	2,000,000 combined single coverage limit	City to be provided a waiver of subrogation
Independent Contractors		City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Personal Injury		
Contractual Liability		
Business Auto Liability	1,000,000 combined single limit	City to be provided a waiver of subrogation
Workers' Compensation & Employers Liability	Statutory Limits 1,000,000 each accident	City to be provided a waiver of subrogation
Professional Liability	1,000,000	

Questions regarding this insurance should be directed to the City of Pflugerville (512) 990-6100. A contract will not be issued without evidence of Insurance. City will only accept the ACORD 25 or ISO certificate of insurance forms.

9.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of Pflugerville
Capital Improvement Program
P.O. Box 589
Pflugerville, Texas 78691-0589

9.5 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as ***additional insured by endorsement under terms satisfactory to the City***, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Pflugerville where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.7 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

9.9 It is agreed that, excepting Professional Liability, Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Pflugerville for liability arising out of operations under this Agreement.

9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

9.11 Consultant and any of its Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNIFICATION

10.1 CONSULTANT covenants and agrees to INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a

subcontractor or supplier committed by the CONSULTANT or the CONSULTANT's agent, CONSULTANT under contract, or another entity over which the CONSULTANT exercises control. Such acts may include personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any negligent or intentional acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.

10.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.

10.3 Duty to Defend – Consultant covenants and agrees to hold a DUTY TO DEFEND the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all claims, liens, proceedings, actions or causes of action, other than claims based wholly or partly on the negligence of, fault of, or breach of contract by the CITY, the CITY'S agent, the CITY'S employee or other entity, excluding the CONSULTANT or the CONSULTANT'S agent, employee or sub-consultant, over which the CITY exercises control. CONSULTANT is required under this provision and fully satisfies this provision by naming the CITY and those representatives listed above as additional insured under the CONSULTANT'S general liability insurance policy and providing any defense provided by the policy upon demand by CITY.

10.4 CONSULTANT is required to perform services to the City under the standard of care provided for in Texas Local Government Code § 271.904 (d)(1-2).

10.5 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

10.6 Force Majeure - City agrees that the CONSULTANT is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; or failure of any third party governmental agency to act in timely manner not caused or contributed to by CONSULTANT.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

11.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: TXP, Inc. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of Pflugerville City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

11.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIII. CONFLICT OF INTEREST

13.1 Consultant acknowledges that it is informed that the Charter of the City of Pflugerville and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 11.06 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a Party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it will comply with the City’s Ethics Code.

13.3 Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, or any subsequent changes thereto requiring City Council approval, the City may not accept or enter into a contract until it has received from the Consultant a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission (“TEC”), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Consultant understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC’s website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 must be provided to the City prior to the award of the contract. The City does not have the ability to verify the information included in a TEC Form 1295, and does not have an obligation or undertake responsibility for advising Consultant with respect to the proper completion of the TEC Form 1295.

XIV. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XV. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of Pflugerville, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal,

or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVI. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVII. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XVIII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XIX. LAW APPLICABLE

19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN TRAVIS COUNTY, TEXAS.

19.2 Venue for any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent jurisdiction in Travis County, Texas.

XX. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXI. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIII. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be incorporated herein for all purposes:

Attachment "A" - Scope of Services, including Project Description/Scope of Services; Fee Summary for Professional Services and Proposed Project Schedule

XXIV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XIV. Amendments.

XXV. MISCELLANEOUS CITY CODE PROVISIONS

25.1 Representations and Warranties by Consultant. If Consultant is a corporation, partnership or a limited liability company, Consultant warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

25.2 Franchise Tax Certification. A corporate or limited liability company Consultant certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

25.3 Eligibility Certification. Consultant certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

25.4 Payment of Debt or Delinquency to the State or Political Subdivision of the State. Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Consultant agrees that any payments owing to Consultant under the Agreement may be applied directly toward any debt

or delinquency that Consultant owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

25.5 Texas Family Code Child Support Certification. Consultant certifies that they are not delinquent in child support obligations and therefore is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

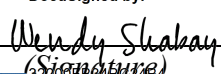
25.6 Texas Government Code Mandatory Provision. The City of Pflugerville may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it; (i) does not boycott Israel; and (ii) will not boycott Israel during the term of the contract. (Texas Government Code, Chapter 2270.002) by accepting this rider, the Consultant hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as that term is defined in the Texas Government Code, Section 808.001, as amended. Further, the Consultant hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organization.

EXECUTED and **AGREED** to as of the dates indicated below.

**CITY OF
PFLUGERVILLE**

CONSULTANT
Freese and Nichols, Inc.

(Signature)

DocuSigned by:


(Signature)

Printed Name: Sereniah Breland

Printed Name: Wendy Shabay, FAICP

Title: City Manager

Title: Vice-President
and Principal

Date: _____

Date: 5/20/2020

APPROVED AS TO FORM:

Charles E. Zech
City Attorney
DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNERARTICLE I

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

PROJECT UNDERSTANDING:

The City of Pflugerville (City) is engaging Freese and Nichols, Inc. (FNI) to prepare a local comprehensive plan consistent with standards, procedures and best management practices in Texas. The project planning area will encompass the existing Pflugerville city limits and extraterritorial jurisdiction (ETJ) as identified by the City.

PROJECT ASSUMPTIONS:

1. The City will appoint a Comprehensive Plan Advisory Committee (CPAC) to help guide FNI and the City throughout the comprehensive planning process. Composition of the Committee will be determined by the City. The CPAC will select a Committee Chair. FNI will provide guidance and feedback on the potential Committee members.
2. The Planning Director of Pflugerville will serve as the City contact person to work with FNI and to act as an intermediary with FNI, the Advisory Committee, and other city, county and state government staff persons as required. FNI will take direction from the City-appointed contact person.
3. The City will coordinate contact, meetings and the transfer of necessary information from the City and other organizations/entities as necessary for this effort.
4. The City will coordinate arrangements for locations, setup, refreshments, and notifications and advertising for all stakeholder, focus group and public meetings. FNI will assist with flyers, e-mail blasts, advertisements and other electronic media used in advertising, including content creation.
5. The City will provide information from all previous and current studies and projects (as available) that may affect the outcome of the Comprehensive Plan. This information will be provided in digital format when possible and available. The list of previous and current studies and projects will include, but not be limited to, the following:
 - a. 2010 Comprehensive Plan
 - b. 2011 Parks, Recreation and Open Space Master Plan
 - c. 2013 Trails Master Plan and Park Development Plans
 - d. 2019 Recreation and Senior Facility Needs Assessment
 - e. 2019 Wastewater Master Plans
 - f. 2019 Water Master Plans
 - g. 2015 Reclaimed Water Master Plan
 - h. 2019 Master Transportation Plans
 - i. 2009 Old Town Vision Report
 - j. Downtown Action Plan (2019-2021)
 - k. Downtown Parking Study

- l. Pflugerville Community Development Corporation Economic Development Strategic Plan (CEDs 2.0)
 - m. 2019 Land Use Fiscal Analysis
 - n. Regional Fair Housing Study
 - o. Departmental strategic plans (i.e. communications, library)
 - p. Active Municipal Utility District (MUD) Agreements
 - q. Other ongoing active planning efforts
6. The City will provide FNI with the most recently updated digital base map and aerial imagery of the planning area for use during the comprehensive plan preparation process. These files will be in the form of GIS file types native to ESRI ArcGIS.
 7. Tasks prepared as part of this planning effort may occur concurrently or sequentially where appropriate, or in some cases may deviate from the sequence shown in this Scope of Services document.
 8. This scope identifies a specific number of meetings. Any significant additions to that number of meetings will be considered a change in scope and may increase the project cost.
 9. All deliverables will be provided electronically in the native format in which they were prepared as well as PDF format. The plan will be prepared using Adobe InDesign. Fifteen (15) bound copies of the final document will also be provided.
 10. The process is envisioned as an integrated effort between FNI and the City staff. FNI and City staff will work in good faith to provide written Plan content, rather than treating the project as a turn-key service by FNI. Through this coordinated effort, the Plan will have one voice informed by the perspectives of many.

SCOPE OF SERVICES:

Task 1: Project Management and Quality Control

Perform general project management and control project quality, progress and budget for the scoped period of completion, including FNI's monthly one-page reporting and invoicing requirements.

Task 1 Deliverables:

- One-Page Progress Reports for the duration of the project
- Monthly check-in conference calls for the duration of the project

Task 2: Engagement and Meetings

For all engagement meetings described below, the City and FNI may mutually agree to reassign meetings as needed to best meet the needs of the project, provided that such effort is similar. For example, the City and FNI may agree to reassign one of the Staff-Level engagement meetings in order to allow an additional meeting with City Council.

1. Staff Initiation Conference Call

A conference call or virtual meeting with City staff will take place at the beginning of the project in order to familiarize all parties with the scope, project schedule, project kick-off, data request needs and timing, invoicing, communication and key staff, and describe the Comprehensive Plan Advisory Committee intent and composition along with any recommendations FNI has for composition. This will provide an early opportunity to discuss communications, expectations of all and any information that may be useful prior to the kickoff meeting and study area tour.

2. Kickoff Meeting and Study Area Tour (1 Meeting, 1 Tour; 6 Hours)

FNI and involved subconsultants will attend one (1) kick-off meeting with the City. The purpose of the meeting will be to build upon discussions of the Staff Initiation Conference Call, focusing on the following as examples:

- Effectiveness of the previous Comprehensive Plan and any issues identified from working with the Plan since its adoption;
- Identification of any key priorities the City wants to ensure the Plan addresses, supports and identifies;
- Any controversial issues or topics FNI should be aware of, particularly when preparing for stakeholder meetings and the first advisory committee meeting;
- Discussion of the City's proposed Comprehensive Plan Advisory Committee members; and
- Refinement of the Public Involvement Plan.

Immediately following the kick-off meeting, FNI and the City will participate in a site tour of the study area. The goal of this tour is to provide spatial context to conversations about Pflugerville's challenges and opportunities. If unable to conduct this as an in-person tour, the City will provide a recommended tour route and key information elements to FNI. FNI and the City may also mutually agree to other approaches, such as a virtual study area tour.

3. Staff-Level Engagement Meetings (6 Meetings; 2 Hours Each)

Staff-Level Engagement Meetings allow for in-depth discussion and understanding with key topical staff, as well as linking effects of differing topical issues to one another, such as between development practices and infrastructure planning demands. This setting will help to build and coordinate institutional knowledge and identify key policy direction and resolutions. These meetings will allow internal exploration of possible scenarios, debriefs of public participation efforts and to receive direction. Such sessions will include an agenda, maps and/or handouts for review, and drafts of key tasks for review and comment. These meetings will use a digital conference calling platform. A total of six (6) meetings are included in this scope of work.

4. Advisory Committee Meetings (6 Meetings; 2 Hours Each)

Advisory Committee Meetings will allow for the review of key components of the plan in detail, to explore possible scenarios, to debrief public participation efforts and to receive direction on Plan issues and topics (vision, guiding principles, goals, recommended actions and other relevant perspectives to assist in making the plan reflective of the community). Such sessions will include an agenda, maps and/or handouts for review, and drafts of key tasks for review and comment. A total of six (6) meetings are included in this scope of work.

5. Stakeholder Meetings (5 Meetings in Single Day; twice during the course of the project; 8 hours each day)

Stakeholders have a vested interest in communities, and their input and insights are critical in a planning process. A total of up to ten stakeholder group interviews are included, split into two days during the project. One day of Stakeholder Meetings is envisioned near the beginning of the project to support vision and guiding principle development as well as assessment of existing conditions, with another near the midpoint as key plan elements are developed. Other entities affecting the Plan, such as the various transportation agencies active in and near Pflugerville, shall be included. These meetings shall last no longer than an hour each and should be scheduled as back-to-back meetings, if possible, on the same day to ensure continuity in the discussion, with logical breaks as necessary. These meetings may also be conducted using a videoconferencing platform, subject to mutual agreement by the City and FNI.

6. Online Survey (2 Surveys)

Leveraging of technological outreach is likely to strengthen and diversify engagement with the citizens of Pflugerville, reaching individuals that have not historically participated in Pflugerville's planning efforts. This allows our team to engage the public at their convenience, which is critical for those citizens that struggle to find the time for public meeting environments or are uncomfortable expressing themselves in those environments. FNI will develop two online community surveys with the assistance of the City during the course of the project. FNI will utilize tools to reach citizens on a digital platform accessible by home computers and smart phones, as well as various forms of social media.

7. Community Workshops, Open Houses or Other Engagement Effort (4 Meetings; 2 Hours Each)

Four community open houses will be held during the process to identify issues and opportunities and gather feedback on citizens' visions for Pflugerville. The open houses will have a variety of passive interactive exercises and issue-based stations. The workshops will likely involve smaller breakout groups in a charrette atmosphere and similar structures to facilitate conversation. This may include interactive polling during the events in addition to survey efforts identified in 7, above, as deemed appropriate by FNI. Efforts will be made to coordinate outreach to align with other community events in order to reach broader audiences, with attention toward tailoring the outreach to align with the atmosphere of the event. These efforts may be substituted for other forms of outreach with similar effort in order to leverage other opportunities in the community or allow for other creative approaches as established in the public involvement plan mutually agreed to by the City and FNI. This includes digital alternatives should the City and FNI deem such approaches necessary or preferred due to external factors such as public health emergencies.

8. City Council Check-In and Adoption Meetings (4 Meetings; 2 Hours Each)

It is important for City leadership to be engaged and informed during the planning process. The plan will ultimately develop recommendations that will inform policies in the future. Therefore, FNI and the City will receive input from and give updates to the City Council. There will be an initial update shortly following the project kickoff, a midpoint update to confirm the vision and goals/guiding principles, as well as two (2) Comprehensive Plan adoption meetings. The City and FNI may mutually agree to reassign these meetings as needed.

Task 2 Deliverables:

- FNI will provide draft meeting materials to the City prior to meetings, survey openings and other

engagement events

- Facilitate and develop materials for six (6) CPAC meetings
- Facilitate and develop materials for up to four (4) community open houses, workshops or other engagement events
- Facilitate and develop materials for six (6) staff-level meetings
- Facilitate and develop materials for ten (10) stakeholder meetings
- Facilitate initial input meeting(s) with City Council to confirm vision, guiding principles and direction, and an additional meeting later in the process (2 meetings)
- Attend and present at P&Z and City Council Comprehensive Plan Adoption (2 meetings)
- Provide content for a project website and other City-initiated social media outreach
- Provide supportive content and advice for City-initiated engagement efforts and meetings beyond the scope described (excludes meeting attendance by FNI)
- Develop community two (2) online surveys with input from the City
- Advise in the development of the Comprehensive Plan branding logo

Task 3: Draft Community Snapshot and Existing Conditions

1. Baseline Analysis

The Baseline Analysis is intended to provide background information about the City of Pflugerville and its extraterritorial jurisdiction. This is vital to the planning process because without the knowledge of where the City is today, assessing what it can be in the future becomes increasingly difficult. The components that are included within the Baseline Analysis will allow everyone involved in the planning process, including FNI, City officials and citizens, to have a clear understanding of the City and its existing social, economic, land use and neighborhood characteristics. Historic trends, population growth and demographic profile will involve the following:

- a. FNI will study a historic timeline of Pflugerville, including major events impacting physical development of the community. City staff will assist in drafting plan content regarding the historic timeline of Pflugerville.
- b. Historic population and related growth trends and patterns will be analyzed, including benchmarking to relevant jurisdictions as appropriate.
- c. Demographic profile will consist of age, gender, ethnicity, income, and household type, as well as any other data identified by FNI as relevant to potential plan recommendations.

FNI will explain patterns and impacts of demographic information collected. Demographic data will be based upon the most recent U.S. Census American Community Survey data available at the time Notice to Proceed is given by the City. The population projections utilized within the Future Land Use Plan and the other components of the Comprehensive Plan will be derived from this information. Population projections will also be compared to those prepared for the area by other agencies such as the Texas Water Development Board and Capital Area Metropolitan Planning Organization.

2. Existing Land Use Analysis

The relationships of existing and future land uses will shape the character and quality of life of the community for many years to come. In order to assess the City's future land use needs, an analysis of past land use trends and present land use patterns are of primary importance. The following are the specific elements to be documented in order to describe land use characteristics.

Assessment of the land use characteristics will be undertaken once data gathering has been completed. The existing land use inventories (conducted using a base map of the City provided by Pflugerville, the county or similar entity) will include:

- a. Analysis of types of land use (color-coded by category) and quantified by acres.
- b. Brief discussion of existing development patterns.
- c. Discussion of existing land use relationships, both opportunities and constraints. The City staff will assist in providing written plan content in support of this discussion.

3. Planning Context

An understanding of the planning context will help to set the framework from which general planning decisions can be made. The following are elements to be documented in order to establish the planning context:

- a. Evaluate existing planning documents, which should include high-level comparison of the prior comprehensive plan to the current reality. Review past and ongoing planning efforts conducted by the City. For this effort, FNI and the City will coordinate review as follows:
 - i. City staff-prepared reviews
 1. 2011 Parks, Recreation and Open Space Master Plan
 2. 2013 Trails Master Plan and Park Development Plans
 3. 2009 Old Town Vision Report
 4. Downtown Action Plan (2019-2021)
 5. Downtown Parking Study
 6. Regional Fair Housing Study
 7. Departmental Strategic Plans
 8. Active Municipal Utility District Agreements
 - ii. FNI-prepared reviews
 1. 2010 Comprehensive Plan
 2. 2019 Recreation and Senior Facility Needs Assessment
 3. 2019 Wastewater Master Plan
 4. 2019 Water Master Plan
 5. 2015 Reclaimed Water Master Plan
 6. 2019 Master Transportation Plan
 7. Pflugerville Community Development Corporation Economic Development Strategic Plan (CEDS 2.0)
 8. 2019 Land Use Fiscal Analysis
 9. Other ongoing active planning efforts

- b. Evaluate regional initiatives, including activities of adjacent cities, the Texas Department of Transportation, Capital Area Metropolitan Planning Organization and Texas Turnpike Authority (TTA) and Pflugerville Independent School District.
- c. Coordinate with ongoing updates to other plans.
- d. Physical features assessment, including topography, floodplains, developed/undeveloped land, natural features, sensitive environmental areas and other physical implications that impact growth and development
- e. Evaluate implications of public health emergencies and specifically the COVID-19 pandemic on the City's planning context.

Task 3 Deliverables:

- The Community Snapshot Analysis Report will be a draft Plan element of written information, supported with charts, tables and other graphics depicting the above information, explaining the importance, patterns and meaning of the facts as they relate to Pflugerville and the Comprehensive Plan. This will include the following:
 - Demographic snapshot
 - Existing land use analysis
 - Physical features assessment, including topography, floodplains, developed/undeveloped land, natural features, sensitive environmental areas and other physical implications that impact growth and development
 - Planning context that addresses external issues, influences and past planning efforts which all impact the comprehensive planning efforts

Task 4: Draft Vision, Guiding Principles and Goals

1. Community Vision

Based on an assessment of the existing goals and objectives of Pflugerville, an understanding of existing community constraints, and a summary of public input and feedback, the community's vision will be developed.

2. Guiding Principles and Goals

The foundation of the Comprehensive Plan will be defined through the guiding principles and goals. The plan recommendations and implementation result from the Comprehensive Plan's guiding principles and goals, which support the community's vision. FNI will develop guiding principles and goals based on analysis, community input and feedback received at the beginning of the process.

Task 4 Deliverables

- A draft Plan element of written information, supported with charts, tables and other graphics depicting the above information. This will include:
 - Summary of community input and surveys
 - Development of guiding principles to assist in recommendations and formation of implementation strategies

Task 5: Draft Regional Growth Perspectives, Land Use and Character

1. Future Land Use/Development Types and Projections

A key component of the Future Land Use Plan is the definition and discussion of future land use types, including any new land use types that may be applicable within the City. Discussions of the types of land uses will include associated character guidelines and preferred locations. Land use projections will depict the acreage by land use type as reflected within the Future Land Use Plan Map described below.

2. Future Land Use Plan and Scenarios

The Future Land Use Plan is a policy document which is intended to guide City staff and officials as they make decisions on where, when and how the City should grow and redevelop. The development of a future land use plan will ensure a cohesive and unified vision for Pflugerville is presented to developments and property owners as future development and redevelopment occurs within the community. FNI will develop a future land use plan that will take into account existing land use information, neighborhood compatibility, current zoning regulations, economic development strategies, past development patterns, infill and redevelopment opportunities, and integrate them into a graphic depiction of the community's future.

FNI will prepare normative scenarios to increase awareness of interconnectivity, unintended consequences, and reduce consideration of issues within silos. Scenarios are designed to illustrate tradeoffs related to complex issues regarding future development patterns. For example, a scenario might focus on a disproportionate level of single-family housing versus commercial development. Another scenario might evaluate capital spending for the City if future development locates near existing infrastructure versus unserved greenfield areas. All these scenarios will need to balance and bridge the gap between:

- Current market demand (ex. house price point and size)
- Long-term desired state or aspiration goals of the community that emerge from the Comprehensive Plan
- Financial resources required, if any, to accelerate preferred development if the market is not yet aligned

This is designed to foster better understanding of how decisions made in the short-term about what type of development to encourage, locations, and how it impacts the fiscal situation for Pflugerville 10 years later. For consistency, fiscal analysis aspects will use Fiscal Analysis Table 1.0 and Fiscal Analysis Table 2.0 from Pflugerville's recently completed *Land Use Fiscal Analysis*, along with consideration of updated market analysis perspectives and other relevant data.

FNI will work with the City to develop up to three (3) land use scenarios, which will be evaluated based on relevant indicators as identified by FNI. Additionally, the scenarios will consider the City's previous and current planning studies as identified in the Project Assumptions. The growth scenarios will be developed by scanning the current reality, projected forecasts, and influential internal and external factors to produce a set of plausible potential futures.

One (1) scenario will be selected or adapted to become the final preferred scenario and Future Land Use Plan Map.

FNI will develop initiatives, projects, and policies (i.e., tactics) that support the preferred scenario, which may appear within this plan element or elsewhere within the Plan as appropriate. Indicators that a scenario component is likely to occur may be established to alert planners that the likelihood of a scenario becoming a reality is higher, contingent tactics as the future unfolds to adjust to the anticipated scenario or to further bolster the preferred scenario.

3. Population Patterns

FNI will develop a new projected growth rate and population projections for the City based upon historical growth patterns and future growth considerations. The population projections will help inform decisions pertaining to infrastructure, public facilities, parks and other Capital Improvement Program items. FNI will evaluate shifting population patterns and trends to increase understanding of Pflugerville's stage of growth and development relative to likely build-out.

4. Future Land Use Map

The Future Land Use and Character/Intensity Map will depict color-coded land uses within the City's planning area. The map will consider the following:

- a. Consideration of the scenarios above and the preferred scenario.
- b. Location of future residential, non-residential, mixed uses, open space and institutional land uses along with associated intensities.
- c. Location of environmentally sensitive areas or barriers that should be considered when making future development decisions.
- d. Location of future land uses along major transportation corridors along with associated intensities.
- e. Economic productivity through development and redevelopment strategies.
- f. Compatibility of adjacent uses and contexts in order to provide thoughtful transitions and buffering.

5. Growth and Jurisdiction Management

Growth perspectives will be discussed, particularly with regard to changing legislative authority pertaining to jurisdictional boundaries. Approaches to growth response and deployment of fiscal/service analysis will be identified with relevance to Pflugerville, as well as tying into infrastructure discussions and logical geographic limits to urban services. Various planning tools will be discussed for managing infrastructure demand in a high-growth environment, including consideration of Certificates of Convenience and Necessity (CCNs) and the ETJ (see also Task 7).

Task 5 Deliverables:

- A draft Plan element of written information, supported with charts, tables and other graphics depicting the above information. This will include:
 - Future Land Use Plan and land use categories
 - Up to three scenarios

- Identification of character and intensity areas
- Identification of critical subareas
- Fiscal analysis of future land use plan
- Identification of planning trends that are applicable and suitable for Pflugerville
- Updated population projections
- Open space and landscape opportunities
- Identification of growth and jurisdictional management approaches applicable to Pflugerville
- Goal, policy and action items

Task 6: Draft Transportation and Mobility

FNI will evaluate consideration for all modes of travel, including bicycles, pedestrians and public transit, as appropriate. A primary focus of the transportation component will be the identification of corridors and facilities where multi-modal extensions, such as bike, pedestrian and transit facilities, may be incorporated.

1. Evaluation and Integration of Transportation Master Plan

The City's recent Transportation Master Plan effort will be reviewed for coordination with other elements of this Comprehensive Plan, such as whether potential land use changes will prompt amendments to the existing network. The goals and recommendations of the 2019 Transportation Master Plan will be integrated into the new Comprehensive Plan, including any additional strategies on partnerships for transportation funding not already addressed in the 2019 Transportation Master Plan.

2. Land Use and Transportation Alignment

Alignment of land use with transportation infrastructure will be particularly considered in a manner that seeks to leverage adjacent private development to result in a supportive and sustainable fiscal environment for transportation infrastructure. The FNI team will likewise review regional transportation networks for impacts that have not been accounted for in other planning efforts. Coordinating with regional and state plans and entities on planned and proposed improvements to the transportation network (roads, trails and transit) as needed.

3. Alternative Transportation Modes

The current network of sidewalks, roadways and trails will be reviewed. Recommendations will be developed to improve connectivity and access for those choosing transportation modes that rely on off-street facilities and specialized on-street facilities, with consideration towards identifying logical connections and nodes in commercial/retail areas with potential to usefully connect with existing residential areas. Necessary connections between on- and off-street facilities that support pedestrian and bicycle routes for transportation as well as recreation will be identified. Transit alternatives will be discussed.

4. Transportation Sector Market Disruption and Innovation

Market disruption through innovation in the transportation sector and overall economy will be

discussed, such as transportation network companies, autonomous vehicles, subscriber-based ownership models and decentralized delivery models.

Task 6 Deliverables:

- A draft Plan element of written information, supported with charts, tables and other graphics depicting the above information. This will include:
 - Coordination with regional and state plans and entities on planned and proposed improvements to the transportation network (roads, trails and transit)
 - Development of suggested recommendations for future updates to the transportation plan based on land use projections
 - Identification of appropriate multi-modal facilities, such as bike, pedestrian and transit enhancements, and how elements can be incorporated in Pflugerville
 - Discussion of market disrupting technologies and approaches in transportation, and identification of strategies appropriate to Pflugerville to address them
 - Integration of the Transportation Master Plan recommended goals, policies and actions, identifying and reconciling impacts of proposed land use and development intensity

Task 7: Draft Infrastructure

All aspects of infrastructure will link back to growth response and jurisdiction management, with particular attention towards policies involving water and wastewater Certificates of Convenience and Necessity (CCNs) and logical jurisdictional boundaries based on infrastructure efficiency. Emphasis will be placed on coordination between city-initiated CIPs and developer-initiated/funded CIPs, and how to incorporate best practices for cost-efficient infrastructure implementation.

1. Integration of Water, Wastewater and Reclaimed Water Master Plans

Implications for Pflugerville’s infrastructure resulting from plan direction for land use and development intensity will be identified and discussed, integrating with the recent Water and Wastewater Master Plans as well as the Reclaimed Water Master Plan. Goals and recommendations of the Water Master Plan and Wastewater Master Plan will be incorporated into the Comprehensive Plan.

2. Stormwater Infrastructure

The Comprehensive Plan will include goal, policy and action items for a stormwater/drainage utility component. This will focus on the municipal separate stormwater system and the Gilleland Creek I-Plan, including conveyance of water efficiently from storm events, treatment of runoff to preserve natural assets and the environment, and positioning the City for efficient operations and maintenance into the future. This effort will lay the necessary policy goals and actions groundwork to support a future Stormwater Master Plan.

Task 7 Deliverables:

- A draft Plan element of written information, supported with charts, tables and other graphics depicting the above information. This will include:

- Integration of the Water Master Plan, Wastewater Master Plan and Reclaimed Water Master Plan recommended goals, policies and actions, identifying and reconciling impacts of proposed land use and development intensity
- Establishment of goals, policies and action items to support a future Stormwater Master Plan
- Discussion of growth and jurisdiction management best practices related to efficient services and shifting municipal boundary authority by the State Legislature.

Task 8: Draft Community Facilities and Public Services

The population and economic growth of Pflugerville, coupled with changing community expectations and best practice approaches to municipal service, will be applied to Pflugerville's community facilities and public services. Recommended goals, policies and actions will be incorporated from ongoing facility master plan efforts. While Travis County Emergency Services District No. 2 is a separate entity, they will be incorporated as appropriate. The Comprehensive Plan will establish key planning horizons for consistency, including population and geographic factors. Likewise, service trends will be explored based on changing consumer expectations.

Task 8 Deliverables:

- A draft Plan element of written information, supported with charts, tables and other graphics depicting the above information. This will include:
 - Integration of the goals, policies and recommendations of active and recent master facilities plans
 - Identification of relevant trends in municipal facilities and services, and their application to Pflugerville
 - Establishment of planning horizons for facilities planning purposes

Task 9: Draft Economic Development

The recent economic challenges brought about by the coronavirus highlight the need to build economically resilient and diverse communities. While many of the strategies being pursued by the Pflugerville Community Development Corporation (PCDC) are still relevant, FNI will evaluate these efforts considering the new economic issues facing Central Texas and Pflugerville.

FNI will begin by reviewing the goals, policies, and action items found in existing studies and the economic market study completed by PCDC's consultant. The broader factors influencing new development, redevelopment, and tourism activity in Pflugerville will be examined. A focus will be on complete neighborhoods and equitable access to economic opportunity. The element will address density needs and variables that influence the vibrancy of commercial corridors and nodes such as SH45 and SH130.

Building on the findings of Task 5, major land use components or catalytic areas will emerge. FNI will examine the high level economic and tax impacts of the major components of the Plan, providing the City with a sense of how much new job activity and incremental revenue will be captured over the next 10 to 20 years.

FNI understands that this section of the report is not a standalone economic development plan for Pflugerville, but rather supports the Comprehensive Plan and builds upon existing efforts. FNI's recommendations and findings will take into consideration Pflugerville position within Central Texas'

competitive economic development environment, seeking to identify those attributes that can distinguish Pflugerville and bring about the desired quality of life.

Task 9 Deliverables:

- A draft plan element of written information, supported with charts, tables and other graphics depicting the above information. This will include:
 - Review prior revitalization studies, corridor plans, and economic development plans of the City and PCDC
 - Gather background information on current economic and demographic conditions
 - Reconcile community expectations with market limiting factors, developing recommendations to prompt higher quality development aligned with community expectations
 - Refine economic development goals, policies and actions for validation in the context of a Comprehensive Plan
 - Identify specific actions and policy changes that can close the gap between the desired development form and the market limiting factors
 - Produce high-level economic and tax impacts of the major components of the Plan

Task 10: Draft Community Building, Healthy Communities and Neighborhood Vitality

The cornerstone of a livable community lies within its neighborhoods and human connection. The aim of this section is to evaluate and develop recommendations to protect and enhance existing neighborhoods and encourage quality design of new development and redevelopment.

1. Neighborhood Assessment

Key to this will be evaluating Pflugerville's neighborhoods at a high-level in terms of completeness: where residents have easy, convenient access to many of the places and services they use daily including grocery stores, restaurants, schools and parks, without relying heavily on a car. This evaluation will inform concepts of community building and healthy communities.

A variety of neighborhood programs will be identified and evaluated to address any emerging issues. Housing typologies will be explored to address compatibility with character while allowing for incremental change, such as the use of accessory dwellings, townhomes as transitional uses, lower-maintenance condominium-style projects in a variety of building type formats and other forms of housing responsive to market interest and need.

2. Neighborhood/Small Area Planning Framework Guidance

In addition, the Plan will evaluate approaches to engaging neighborhoods to establish effective feedback loops between local government and the neighborhoods and communities they serve, based around creating a policy foundation for neighborhood and small area planning.

3. Planning Trends

FNI will examine and provide current, applicable planning trends, which may be utilized as tools for infill development or as tools for new development on remaining vacant land. Some sustainable design principles may include:

- a. Compact development principles, with attention towards public service efficiency

- b. Traditional neighborhood design
- c. Neighborhood interconnectivity
- d. Life-cycle housing
- e. Low-impact development
- f. Mixed-Use development
- g. Infill development

4. Urban Design and Character

FNI will develop policies that address community gateways, community image, integration of major roadway corridors and the preservation of character-giving community elements in addition to examining opportunities to maintain and enhance the overall quality of life. Recommendations will be made to address the following:

- a. Street design enhancements
- b. Pedestrian enhancements
- c. Gateways, with particular attention towards SH45, SH130, Pecan Street and other key routes to and through Pflugerville to establish high-level goal, policy and action items
- d. Community image
- e. Screening and buffering techniques

Task 10 Deliverables:

- A draft plan element of written information, supported with charts, tables and other graphics depicting the above information. This will include:
 - Neighborhood assessment
 - Identification and recommendations of vitality techniques to increase neighborhood engagement
 - Recommended neighborhood programs to respond to emerging issues
 - Identification of planning and sustainability trends applicable to Pflugerville
 - Community gateway, community image and other character-giving recommendations, using example images to portray ideas, to maintain and enhance quality of life

Task 11: Draft Implementation

The implementation plan will be structured into a coordinated action program so that City leaders, staff and other decision-makers can easily identify the steps that are necessary to achieve the vision for the City that is described within the Comprehensive Plan. The implementation plan will outline priorities in a matrix format, primarily by:

1. Reviewing the various policies and related recommendations from each plan element.
2. Dividing the policies and related recommendations into applicable implementation techniques/actions, such as regulatory actions (e.g., possible zoning or subdivision ordinance updates), programs, and intergovernmental partnerships, to create an overall Action Plan.
3. Prioritizing the implementation techniques/actions into appropriate time periods.
4. Establishing appropriate metrics from which to gauge the effectiveness of the strategies

implemented and progress toward plan implementation.

Task 11 Deliverables:

- A draft plan element of written information, supported with charts, tables and other graphics depicting the above information. Actions will be organized by responsible party, time period and priority, and will include performance measures and metrics.

Task 12: Preparation of Final Documents

1. Draft Report

Individual draft plan elements will be sent throughout the planning process. To the extent possible, these elements will be provided in a format to ease review and commenting for the City. The City will consolidate comments from staff, steering committee and others and provide one set of consolidated comments per plan element to FNI.

FNI will prepare a draft Comprehensive Plan Report (Draft 1) that will document the planning process and aforementioned tasks. It will present a clear narrative with accompanying graphics and figures, as necessary, to describe the intentions of the community. The document will be designed with modern graphic design and narrative approaches to be approachable by both technical and non-technical audiences. The draft will be provided to the City, Steering Committee and other parties the City wishes to include for review and comments. The City will consolidate comments from staff, steering committee and others on Draft 1, and provide one set of consolidated comments. FNI will provide a comment review meeting to clarify any comments.

FNI will prepare a revised draft Comprehensive Plan Report (Draft 2) to address the comments and revisions from Draft 1. This draft will serve as the draft for approval consideration by the Planning and Zoning Commission and City Council.

An Executive Summary will be created in digital format as part of Draft 1 or Draft 2, including both text and mapping, such that it will be easily reproducible. It will be designed as a graphic-rich document that is incorporated into the final plan, but also function as a separate standalone document.

2. Final Report and Deliverables

FNI will produce an “as adopted” final report to incorporate any changes made during the adoption process by City Council. This document will be created in digital format, including both text and mapping, such that it will be easily reproducible. Electronic files of the final Comprehensive Plan will be provided to the City.

3. Plan Mapping

Project mapping is vital to both dissemination of information at meetings as well as to the Comprehensive Plan document. All mapping created by the Consultant will be prepared using ESRI’s ArcGIS software and other necessary rendering software. It is assumed that the City will provide all necessary base mapping data in compatible electronic format in order to generate necessary mapping.

Task 12 Deliverables:

- Plan element drafts as described above and throughout
- Draft report for review (Draft 1 and Draft 2)
- Final report and other plan deliverables
- The results of the Comprehensive Plan documentation will be: two (2) flash drives with digital files of the final Comprehensive Plan, including mapping data, photos, presentations, and any other material utilized during the planning process. Electronic files may also be provided through other digital file transfer systems mutually agreed to by the City and FNI.

ARTICLE II

ADDITIONAL SERVICES: Additional Services to be performed by FNI, if authorized by City, which are not included in the above described basic services, are described as follows:

A. Enhanced Implementation – Diagnostic of Development Ordinances to Operationalize Plan

FNI will prepare a diagnostic analysis and report on the City's current development ordinances to identify alterations and amendments necessary in order to align the regulatory documents to the recommendations of the Plan(s) produced under this project.

Enhanced implementation will be billed hourly in accordance with the rates outlined in Attachment CO. FNI, following a request for assistance from the City, will prepare an estimate for approval by the City prior to initiating work.

B. Enhanced Implementation – Online Metric and Progress Reporting Tool

FNI will prepare, in coordination with the City, an online interface to serve as a transparent reporting tool on Plan implementation. This tool will indicate progress on recommendations as well as outcome metrics as appropriate. FNI anticipates this tool being built on Tableau, ArcGIS or a similar data visualization platform.

Enhanced implementation will be billed hourly in accordance with the rates outlined in Attachment CO. FNI, following a request for assistance from the City, will prepare an estimate for approval by the City prior to initiating work.

C. Enhanced Scenario Planning

FNI will prepare, in coordination with the City, enhanced analysis of scenarios. Examples include, but are not limited to, variations in absorption schedules, comparison of alternative land use plans or a comparison of alternative development patterns. The enhanced analysis should be cumulative in order to evaluate the fiscal impacts of all anticipated development within the city over a defined period.

Enhanced scenario planning will be billed hourly in accordance with the rates outlined in Attachment CO, and for any time and materials attributable to a subconsultant. FNI, following a request for assistance from the City, will prepare an estimate for approval by the City prior to initiating work.

D. Printing and binding of documents will be billed in accordance with the rates outlined in Attachment CO. FNI, following a request for assistance from the City, will prepare an estimate for approval by the City prior to initiating work.

E. Making revisions to drawings or other report documents when such revisions are 1) not consistent with approvals or instructions previously given by City or 2) due to other causes not solely within the control of FNI.

F. Preparation of any data, reports, surveys, analysis, public meetings, plan language or recommendations pertaining to preparation of a Parks, Recreation and Open Space Master Plan will be billed hourly in accordance with the rates outlined in Attachment CO.

ATTACHMENT SC - PLANNING

FNI, following a request for assistance from the City, will prepare an estimate for approval by the City prior to initiating work.

- G. Meeting or trips in excess of the number of meetings included in Article I for coordination meetings, public meetings or other activities. Additional meetings requested by the City in excess of those included in Article I will be billed hourly in accordance with the rates outlined in Attachment CO.
- H. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- I. Preparing data and reports for assistance to City in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- J. Revisions, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- K. Providing basic or additional services on an accelerated time schedule. This includes cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the City.
- L. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- M. Providing document revisions in excess of those outlined in Article I.

ARTICLE III

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services within **eighteen (18) months of the 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 will be based upon rates outlined in Attachment CO.

ARTICLE IV

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

- A. Provide meeting space and coordinate equipment needs, room set up, and logistics for meetings outlined in Article I.
- B. Contact meeting invitees for stakeholder and public meeting(s). This includes email, mail, newsletter or other forms of notification.
- C. Examine and provide prompt feedback on all submittals, draft reports, sketches, drawings, and other documents presented by FNI within a reasonable time so as not to delay the services of FNI. City comments should be consolidated with clear and concise edits, preferably typed for legibility.
- D. 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.
- 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. Bear all costs incident to compliance with the requirements of this Article IV.

ARTICLE V

DESIGNATED REPRESENTATIVES: FNI and City designate the following representatives:

City's Project Representative	Name: Emily Barron, AICP E-mail: emilyb@pflugervilletx.gov Phone: 512-990-6302
City's Accounting Representative	Name: Sabrina Schmidt E-mail: sabrinas@pflugervilletx.gov Phone: 512-990-6140
FNI's Project Representative	Name: Chance Sparks, AICP, CNU-A E-mail: Chance.sparks@freese.com Phone: 512-617-3156
FNI's Accounting Representative	Name: Stephanie Kirchstein E-mail: Stephanie.kirchstein@freese.com Phone: 214-217-2212

COMPENSATION

Compensation to FNI for Basic Services in Attachment SC shall be the lump sum of Two Hundred Fifty Seven Thousand Four Hundred Seventy Dollars (\$257,470).

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>
Professional 1	122
Professional 2	146
Professional 3	165
Professional 4	187
Professional 5	218
Professional 6	249
Construction Manager 1	100
Construction Manager 2	126
Construction Manager 3	147
Construction Manager 4	182
CAD Technician/Designer 1	105
CAD Technician/Designer 2	135
CAD Technician/Designer 3	162
Corporate Project Support 1	101
Corporate Project Support 2	120
Corporate Project Support 3	157
Intern / Coop	66
Senior Advisor	184

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)	\$100
	Large Format (per sq. ft.)			Water Quality Meter (per day)	\$100
	Bond	\$0.25	\$0.75	Microscope (each)	\$150
	Glossy / Mylar	\$0.75	\$1.25	Pressure Recorder (per day)	\$200
	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 1.10. 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 February 2019.