

**PROFESSIONAL SERVICES AGREEMENT
FOR
<CITY OF PFLUGERVILLE ENGINEERING DESIGN MANUAL AND STANDARD
SPECIFICATIONS AND DETAILS UPDATE>**

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 AND PROJECT SCHEDULE

Consultant agrees to provide the services described in this Article III entitled Scope of Services and Project Schedule in exchange for the compensation described in Article IV. Compensation. Scope of Services and Project Schedule are detailed in *Attachment A (Exhibits A, B, and C)* which are incorporated by reference as if written and copied herein. The terms and conditions of this Agreement shall control in the event of a conflict with any terms and conditions set forth therein.

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 eighty-three thousand dollars (\$283,000.00) as total compensation, to be paid to Consultant as further detailed in Exhibit B.

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 City.

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. In the event of such termination, it is understood and agreed that only the amounts due to Consultant for goods, commodities and/or services actually rendered and expenses incurred to and including the date of termination, will be due and payable. No penalty will be assessed for City's termination of this Agreement for convenience.

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: **Robyn Claridy-Miga**
Assistant Director, Development

Engineering
P.O Box 589
Pflugerville, Texas 78660

If intended for Consultant, to: Freese and Nichols, Inc.
Attn: **Giancarlo Patino, PE, CFM,**
PMP Project Manager
10431 Morado Circle
Suite 300
Austin, Texas 78759

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 “*City of Pflugerville Engineering Design Manual and Standard Specifications and Details Update*” 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
Public Works Department
P.O. Box 589

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: N/A Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City 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.

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, if applicable, subject to formal approval by the City Council.

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; (ii) will not boycott Israel during the term of the contract; (iii) does not boycott energy companies; (iv) will not boycott energy companies during the term of the contract; (v) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and (vi) will not discriminate during the term of the contract against a firearm entity or firearm trade association (Texas Government Code, Chapter 2271.002; 2274.002).

Company hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as this term is defined in the Texas Government Code, Section 808.001, as amended. Company hereby verifies that it does not boycott energy companies, and agrees that, during the term of this agreement, will not boycott energy companies as this term is defined in Texas Government Code, Section 809.001, as amended. Company hereby verifies that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and agrees that, during the term of this agreement, will not discriminate against a firearm entity or firearm trade association as those terms are defined in Texas Government Code, Section 2274.001, as amended.

Further, Company 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 Organizations.

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

**CITY OF
PFLUGERVILLE**

FREESE AND NICHOLS, INC.



(Signature)

(Signature)

Printed Name: Sereniah Breland

Title: City Manager

Date: _____

Printed Name: **Chance Sparks, FAICP,
CNU-A, ENV SP**

Title: **Principal & Vice President |
Group Manager Urban
Planning & Design Group**

Date: **January 21, 2025**

APPROVED AS TO FORM:

Charles E. Zech

City Attorney

DENTON NAVARRO RODRIGUEZ BERNAL SANTEE & ZECH, P.C.

**ATTACHMENT A
SCOPE OF SERVICES
CITY OF PFLUGERVILLE ENGINEERING DESIGN MANUAL AND STANDARD SPECIFICATIONS
AND DETAILS UPDATE**

ARTICLE I

BASIC SERVICES: Freese & Nichols, Inc. (FNI) shall render the professional services described in this contract attachment.

PROJECT UNDERSTANDING

As described herein, the City of Pflugerville (City or Owner) has engaged FNI (Consultant) to develop a unified Engineering Design Manual (EDM) and to recommend updates to current adopted Construction Standard Specifications and Details, consistent with public improvement engineering design and construction standards, procedures, and best management practices in Central Texas (the "Project"). This Project generally includes updating the transportation, utilities, drainage, parks sections and other public infrastructure sections referenced in the miscellaneous sections of the EDM. Execution of the Project contract by all parties shall constitute Consultant's Notice to Proceed.

Tasks prepared as part of the Project effort may occur concurrently or sequentially where appropriate, or in some cases may deviate from the general sequence of activities provided in this Scope of Services.

Task 1A & 1B: Project Management & Quality Control

Perform general project management and control project quality, progress, and budget for the contract period of performance, including monthly reporting and invoicing, monthly status meetings with City staff, and other administrative efforts.

Deliverables:

- i. Project Schedule, updated as needed
- ii. Monthly One-Page Reports and Invoices

Task 2: Engagement and Project Meetings

The consultant will prepare an engagement plan for approval by the City, consistent with the following:

A. Project Initiation / Internal Kickoff Meeting

A conference call or virtual meeting will be held by the Consultant's Project Team to familiarize all disciplines with the Project scope, schedule, initiation, resourcing, data needs, invoicing, communication, key stakeholders, and other significant considerations advantageous to understand before formal Project kick-off.

B. External Kick-off Meeting

Attend one (1) kick-off meeting on-site (in person) with the City. The purpose of the meeting will be to build upon discussions of the staff initiation conference call.

C. Internal Project Meetings

Four (4) virtual meetings will be held by the Consultant's Project Team to maintain all disciplines aware of the Project scope, schedule, resourcing, data needs, invoicing, communication, key stakeholders, and other significant considerations advantageous to continue to progress the manual on budget and schedule.

D. Client Check-In Meetings

The Consultant will meet with City staff monthly throughout the Project to discuss task progress, key action items and responsibilities, and the overall Project schedule. These meetings will take place through standing conference calls (up to 10 virtual meetings). The Project's progress and status will be provided through monthly updates that summarize progress and document upcoming tasks. The monthly status updates will outline any upcoming key decisions which may require input from or discussion with the City.

E. Staff Interviews

Each affected City department will make available key staff for interviews to convey issues and challenges with existing engineering-related City Ordinances, standards, specifications, policy documents, and procedures.

F. Stakeholder Meetings/Outreach

The following descriptions define the targeted stakeholders and their roles within the EDM development process:

1. Advisory Committee – The Advisory Committee will consist of selected City staff with technical expertise (SME), which will ensure information and inquiries are shared between City staff and the Consultant Team throughout the Project. The Advisory Committee should be limited to a maximum of five (5) individuals.
2. Engineering & Development Community – Local engineering professionals, businesses, developers, and agents who work with or are impacted by City, standards, specifications, policy documents, and procedures governing the engineering design and construction of public improvements.

The Consultant will assist the City implementing virtual stakeholder engagement where stakeholders such as the development community, engineering professionals, business and community groups provide input in regards to the existing version of the EDM in an online environment. The process involves gathering feedback, building consensus, and ensuring stakeholder participation in decision making. Up to three (3) such stakeholder meetings are included, in virtual format. A stakeholder engagement report summarizing the outcomes of the virtual engagement process will be provided to the City. The report will

EXHIBIT A

include an executive summary, stakeholder demographics, methodology, findings, and recommendations.

G. City Council Workshop/Meeting and Planning and Zoning Meeting with presentations

1. One (1) in-person meeting with Planning and Zoning Commission
2. One (1) in person update with City Council during the Project
3. One (1) in-person workshop is planned with the City Council to gain perspectives from policymakers regarding engineering criteria during the Task 3.1 Diagnostic Analysis Project phase
4. One (1) in-person meeting with the City Council for the required public hearing and EDM adoption

Deliverables: The Consultant may make up to eight (8) trips as part of the total Project effort.

- i. Tasks A, C, D: Virtual setting with summary of engagement activity
- i. Task B: In-person setting with summary of engagement activity
- ii. Task E: Virtual setting (up to 5) with summary of engagement activity
- iii. Task F:
 - a. One in-person meeting upon advisory committee selection to discuss goals and objectives
 - b. Virtual setting meetings (up to 2) with stakeholder engagement report
- iv. Task G: In-person meetings, including presentations, and all associated supporting material as described herein to execute and deliver the meetings at City facilities.

Task 3: Project Initiation and Planning

A. Diagnostic Analysis

A diagnostic analysis of the City's existing codes, standards, policies, and procedures will help lay the foundation for development of the EDM and recommendations for updating Construction Standard Specifications and Details. This task will incorporate an outline of proposed recommendations for modifying the City's engineering design manual and construction standards to improve usability and address the City's needs. The diagnostic report will also identify conflicts between the EDM and current Unified Development Agreement in the form of an "issues conflict" log as an appendix to the report.

B. Work Plan (Road map)

A work plan and table of contents will be prepared and finalized to develop a new, unified Engineering Design Manual (specific document title to be determined). This task includes capturing engineering design and construction standards for public improvements within existing adopted City Ordinances, Construction Specifications and Details, master plans, manuals, guidelines, policies, and procedures.

The City's intent is to develop a single, independent Engineering Design Manual addressing utility, transportation, drainage, water quality, and other public

EXHIBIT A

infrastructure. The resulting document will incorporate, at a minimum, elements from the following documents integral to public infrastructure engineering design and construction in the City:

1. Code of Ordinances
 - a) Titles V,
 - b) Title VII,
 - c) Title IX and
 - d) Title XV
2. Aspire Pflugerville 2040 - Comprehensive Plan
3. Parks Recreation and Open Space Master Plan
4. Long-Range Planning
 - a) Transportation Master Plan
 - b) Wastewater Master Plan
 - c) Water Master Plan
 - d) Reclaimed Water Master Plan
 - e) Drainage Master Plan

C. Alignment with Other Development Regulations

With direction from the City, the Consultant will utilize the reports (as provided by the City) associated with all on-going efforts that may impact the EDM, including but not limited to the Unified Development Code analysis, Broadband Master Plan and Mobility Master Plan project and recommend other critical development regulations with which to align engineering design and construction standards for public improvements for Code consistency and cross-reference, as needed, but will remain unaltered and outside of this Project scope.

Deliverables:

- i. One (1) EDM Work Plan & Table of Contents – April 30, 2025

Task 4: Refinement of Regulations and Engineering Criteria

This task will focus effort to streamline the remainder of the Engineering Design Manual development process, identifying issues common with Code users and stakeholders, discussing potential resolutions, and identifying the selected course of action. Process refinement under this task will include:

- A. Best practices evaluation, focusing on engineering design and construction standards common to Central Texas cities. A benchmark summary will be prepared to highlight relevant comparisons and recommended best practices.
- B. Establishment of the recommended organizational structure for the Engineering Design Manual.
- C. Creation of an annotated outline to connect current Code provisions to the Engineering Design Manual.

EXHIBIT A

- D. Integrating necessary amendments to Code to address critical issues. Recommended amendments should be discrete, isolated items rather than wholesale Code revisions.

Deliverables:

- i. One (1) Draft Diagnostic Report – June 25, 2025
- ii. One (1) Final Diagnostic Report – August 6, 2025

Task 5: Preparation of the Engineering Design Manual

Consultant shall complete a draft EDM to achieve a compendium of standards that is complete, implementable, technically sound, internally consistent, and aligned to the Project Stakeholders' vision. The Diagnostic Evaluation will define organizational structure, and is anticipated to include:

- A. General
- B. Streets
- C. Sidewalk, Pedestrian and Bicycle Facilities
- D. Drainage
- E. Water
- F. Wastewater
- G. Pollution Control
- H. Traffic Impact Analysis
- I. Miscellaneous Design Guidelines (e.g., survey requirements, underground utility lines, public utility easements, and streetlights)
- J. Lift Station Design
- K. Wireless Services Design for Network Nodes, Node Support Poles and Transfer Facilities
Excluded - Currently under a separate contract through another consultant; therefore, not to be revised/updated within this Project scope
- L. Miscellaneous (e.g., commercial solid waste collection, retaining walls, fencing, public spaces)

Submittal of the draft EDM will be coordinated with City staff and may be provided as a single draft or a modular approach. If a modular approach is requested by the City, only one (1) draft of each section/module will be provided to the City for review, and the complete document will then be assembled based on staff feedback on each of the sections/modules. Per the schedule's start dates included in Exhibit C of this contract (modular approach), the Consultant will have twenty business days (20) to prepare and submit a draft version of each section/module listed above. The City staff will have twenty days (20) to review and provide comments for each one of the draft sections/modules submitted by the Consultant.

Alternatively, if a consolidated approach is desired by the City, the Consultant will have forty business days (40) to prepare and submit a consolidated draft version and the City staff will have forty business days (40) to review and consolidated review comments following the receipt of the working draft document by the Consultant. After all written comments have been provided, the Consultant and City staff will hold a virtual meeting [approximately one (1) to two (2) hours, as needed] to review City staff's comments and direction. The purpose of the virtual meeting will be to discuss the document before submitting the final draft EDM for consideration of adoption by the City Council.

EXHIBIT A

Following review and coordination with staff regarding comments, the Consultant will provide one (1) Final Draft Engineering Design Manual for City staff.

Deliverables:

- i. Project deliverables include all electronic files in Microsoft Word and Adobe PDF formats to edit and reproduce the Engineering Design Manual – November 12, 2025

ARTICLE II

ADDITIONAL SERVICES: Additional Services to be performed by the Consultant, if authorized by City, which are not included in the described Basic Services include:

Task 6: Construction Standard Specifications and Details Updates

The City's Construction Standard Specifications and Standard Details are anticipated to be included as appendices to the Manual. Concurrent with Task 5, Consultant shall provide recommendations for updating the following current adopted Construction Standard Specifications and Details:

- A. Series 300 Street Surface Courses
- B. Series 400 Concrete Structures
- C. Series 500 Pipe & Appurtenance
- D. Series 600 Environmental Enhancements
- E. Series 700 Incidental Construction
- F. Series 800 Urban Transportation
- G. Series 1000 Roadway & Utility Assignments
- H. Series 1100 Traffic & Pavement
- I. Series 1200 Roadside Signs & Pedestrian Lights
- J. Series 1300 Parks & Recreation Department Standards.
- K. Standard Specifications
- L. Special Provisions for Construction

This Additional Services **Task 6** may be considered as part of an amended scope in FY 2026

Deliverables:

- i. Project deliverables include a maximum of 100 individual technical specifications (.doc format), a maximum of 50 individual construction detail sheets (.dwg format), and a maximum of 30 individual special products (.doc format).

EXHIBIT A

ARTICLE III

TIME OF COMPLETION: Consultant is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the basic services within **ten (10) months of the notice to proceed (Exhibit C)**.

If Consultant's services are delayed through no fault of Consultant, Consultant shall be entitled to adjust the contract TIME OF COMPLETION consistent with the number of days of delay. These delays may include, but are not limited to, delays in City or regulatory reviews, delays in the flow of information to be provided to Consultant, regulatory body approvals, etc. These delays may result in an adjustment to compensation as outlined in the Agreement and will be based upon rates outlined in Attachment C.

ARTICLE IV

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

- A. Provide meeting space and coordinate equipment needs, room set up, and logistics for meetings outlined in ARTICLE I.
- B. Provide information from all previous and current studies and projects (as available) that may affect the outcome of the Project. This information will be provided in digital format when possible and available.
- C. Provide any identified Code deficiencies or issues known to City Staff.
- D. Provide any map data that may be required for the Project. These data will be in a file type native to ESRI ArcGIS.
- E. Contact meeting invitees for stakeholder and other meetings. This includes email, mail, newsletter, website interface, or other forms of notification.
- F. Examine and provide prompt feedback on all submittals, draft reports, sketches, drawings, and other documents presented by Consultant within a reasonable time (per schedule in Exhibit C) so as not to delay the services of Consultant. City comments should be consolidated with clear and concise edits, preferably typed for legibility.
- G. Designate in writing a person to act as City's representative with respect to Project 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 Consultant's services for the Project.
- H. Arrange for access to and make all provisions for Consultant's Project Team members to enter upon public and private property as required for Consultant to perform services under this Agreement.
- I. Bear all costs incident to compliance with the requirements of this Article IV.

EXHIBIT A

ARTICLE V

DESIGNATED REPRESENTATIVES: Consultant and City designate the following Project representatives:

Client's Project Representative	Name: Robyn Claridy-Miga E-mail: robynm@pflugervilletx.gov Phone: 512 990 6400 Address: <u>15500 Sun Light Near Way Bldg.6</u> <u>Pflugerville, Texas</u>
Client's Accounting Representative	Name: <u>Cindy Breaux</u> E-mail: CindyB@pflugervilletx.gov Phone: <u>512 990 6431</u> Address: <u>15500 Sun Light Near Way Bldg.6</u> <u>Pflugerville, Texas</u>
Consultant's Project Representative	Name: <u>Giancarlo Patino</u> E-mail: Giancarlo.Patino@freese.com Phone: <u>214 217 2296</u> Address: <u>10431 Morado Circle, Suite 300</u> <u>Austin Texas 78759</u>
Consultant's Accounting Representative	Name: Erin Westbrook E-mail: Erin.Westbrook@freese.com Phone: 817 735 7395 Address: 801 Cherry Street, Suite 2800 Fort Worth, Texas 76102

**EXHIBIT B
COMPENSATION**

TASK	DESCRIPTION	FEE
1A	Project Management	\$ 16,025.00
1B	Quality Management	\$ 10,596.00
2	Engagement and Project Meetings	\$ 73,860.00
3	Project Initiation and Planning	\$ 64,078.00
4	Refinement of Regulations and Engineering Criteria	\$ 11,746.00
5	Preparation of the Engineering Design Manual	\$ 106,695.00

TOTAL FEE \$ 283,000.00

EXHIBIT C

