



PROFESSIONAL SERVICES AGREEMENT

(version 5-1-2020)

This AGREEMENT (“Agreement”) is entered by and between **Freese and Nichols, Inc.** (“Professional”), located at **11200 Broadway Street, Pearland, Texas 77584** and the **City of League City** (“City”), a home-rule municipality, located at 300 W. Walker St., League City, Texas 77573 on the date set forth below.

Terms:

1. **Scope of Services:** Professional will perform the services as set forth in **Exhibit A**, which is attached and incorporated herein, and which can be generally described as **Capital Improvement Plan Project Management Assistance**. If there is a conflict between the terms of this Agreement and Exhibit A, the terms of this Agreement will prevail.
2. **Term and Termination:** This Agreement shall commence on **October 1, 2020** and shall expire on **September 30, 2022** City reserves the right to terminate this Agreement for convenience upon seven (7) days written notice to Professional. Upon such termination, City shall pay Professional, at the rate set out in **Exhibit A**, for services satisfactorily performed up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, City will not be required to pay or reimburse Professional for any services performed or for expenses incurred by Professional after the date of the termination notice that could have been avoided or mitigated by Professional.
3. **Compensation:** Professional shall be paid for the services as set forth in **Exhibit A**. In no event shall the total compensation exceed **\$398,000** during the term of this Agreement. City shall tender payment (including progress/partial payments) for services only after such services are completed and are deemed to be acceptable under this Agreement, in the sole reasonable discretion of City. Professional must submit to City invoices for all services provided, which invoices must include details and dates of service. Payment by City shall be made within thirty (30) days of receipt of an invoice, except for any portion of the invoiced amount that City disapproves as not compliant under this Agreement, in the sole reasonable discretion of City. If City disapproves any amount submitted for payment by Professional, City shall give Professional specific reasons for disapproval in writing.
4. **Insurance:** Professional **is** required during the Contract Term to maintain insurance as set forth below:
 - (a) Comprehensive General Commercial Liability insurance covering bodily injury and property damage, with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate;
 - (b) Professional Liability (errors and omissions/malpractice) insurance with minimum coverage limits—exclusive of defense costs—of \$2,000,000 per occurrence; and
 - (c) If at any point during the Contract Term it is foreseeable that Professional will enter upon City premises:
 - (i) Worker’s Compensation coverage with statutory limits for the State of Texas, and
 - (ii) Commercial Automobile Liability coverage with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate.All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name the City as Additional Insured. Professional shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City.

Professional shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

5. **Independent Professional:** Professional is an independent Professional and is not an employee, partner, joint venture, or agent of City. Professional understands and agrees that he/she will not be entitled to any benefits generally available to City employees. Professional shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by City for such expenses except as otherwise provided in this Agreement.
6. **Intellectual Property:** This Agreement shall be an Agreement for services and the parties intend and consider any work created as a result of this Agreement, including any and all documentation, images, products or results, to be a work (the "Work") for hire under federal copyright law. Ownership of the Work shall belong to and remain the exclusive property of City. The Work may be edited at any time within City's discretion. If the Work would not be considered a work-for-hire under applicable law, Professional hereby assigns, transfers, and conveys any and all rights, title and interest to City, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the Work, City maintains and asserts the rights to use, reproduce, make derivative works from, and/or edit the Work in any form of medium, expression or technology now known or hereafter developed, at any time within City's discretion. Professional shall not sell, disclose or obtain any other compensation for the services provided herein or the Work. If the Work is one to which the provisions of 17 U.S.C. § 106A apply, Professional hereby waives and appoints City to assert on Professional's behalf Professional's moral rights or any equivalent rights regarding the form or extent of any alteration to the Work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the work, in any medium, for City's purposes.
7. **Confidentiality:** During the course of the services to be provided under this Agreement, Professional may become privy to confidential information of City. Professional agrees to treat as confidential the information or knowledge that becomes known to Professional during performance of this Agreement and to not use, copy, or disclose such information to any third party unless authorized in writing by City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Professional shall promptly notify City of any misuse or unauthorized disclosure of City's confidential information and upon expiration of this Agreement shall return to City all confidential information in Professional's possession or control. Professional shall further comply with all information security policies of City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Agreement or the engagement of Professional without the prior written approval of City.
8. **Warranties and Representations:** Professional warrants and agrees that Professional shall perform its services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any service performed on premises owned or controlled by City, Professional warrants and agrees that Professional will perform said services in compliance with all City rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
9. **Licenses/Certifications:** Professional represents and warrants that it will obtain and maintain in effect, and pay the cost of, all licenses, permits or certifications that may be necessary for Professional's performance of this Agreement. If Professional is a business entity, Professional warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its formation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Professional.
10. **Performance/Qualifications:** Professional agrees and represents that Professional has the personnel, experience, and knowledge necessary to qualify Professional for the particular duties to be performed under

this Agreement. Professional warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards.

11. **Conflict of Interest:** Professional warrants, represents, and agrees that Professional presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Professional's performance of the services hereunder. Professional further warrants and affirms that no relationship or affiliation exists between Professional and City that could be construed as a conflict of interest with regard to this Agreement.
12. **INDEMNIFICATION: PROFESSIONAL SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, AND EACH OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF PROFESSIONAL OR ANY AGENT, EMPLOYEE, SUBPROFESSIONAL, OR SUPPLIER OF PROFESSIONAL IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, TO THE EXTENT THE CLAIM ARISES FROM NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT OR VIOLATION OF LAW.**
13. **Force Majeure:** Neither party shall be liable to the other for (i) any delay in performance; (ii) any other breach; (iii) any loss or damage; or (iv) any contribution to or aggravation of any of the foregoing; arising solely from uncontrollable forces such as fire, theft, storm, war, or any other cause that could not have been reasonably avoided by the party's exercise of due diligence.
14. **Notices:** Any notice given under this Agreement by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the Parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notices shall be deemed communicated three (3) days after mailing.
15. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006 of the Texas Family Code, Professional certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
16. **State Auditor:** Professional understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, the "Auditor"), to conduct an audit or investigation in connection with those funds. Professional agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Professional will include this provision in all contracts with permitted subprofessionals.
17. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.
18. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for

in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by City and Professional to attempt to resolve any claim for breach of contract made by Professional that cannot be resolved in the ordinary course of business. The Director of Finance of City shall examine Professional's claim and any counterclaim and negotiate with Professional in an effort to resolve such claims. This provision shall not be construed as a waiver by City of its right to seek redress in the courts.

19. **Entire Agreement:** This Agreement contains the entire understanding between the Parties and supersedes all prior agreements, arrangements, and understanding, oral or written between the Parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the Parties executed subsequent to this Agreement.
20. **Eligibility to Receive Payment:** Professional certifies that, as a matter of state law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this representation is inaccurate.
21. **Payment of Debt/Delinquency to State:** Professional certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Professional agrees that any payments owing to Professional under the Agreement may be applied directly toward any debt or delinquency that Professional owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.
22. **Products and Materials Produced in Texas:** If Professional will provide services under the Agreement, Professional covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
23. **Risk of Loss:** If applicable, all work performed by Professional pursuant to the Agreement will be at Professional's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work prior to City's acceptance, bearing such loss or damage will be Professional's responsibility.
24. **Publicity:** Professional shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.
25. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this Agreement are declared to be severable. The Parties may mutually agree to renegotiate the Agreement to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.
26. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Any terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.

27. **Sovereign Immunity:** The Parties agree that neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement constitutes a waiver of sovereign immunity by City.
28. **Authority:** Professional warrants and represents that Professional has full power and authority to enter into and perform this Agreement and to make the grant of rights contained herein. The person signing on behalf of City represents that he/she has authority to sign this Agreement on behalf of City.
29. **Non-Waiver:** The Parties specifically agree that neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Professional. No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.
30. **Prohibition on Boycotting Israel:** Pursuant to Section 2270.002 of the Texas Government Code, by executing this Agreement Professional verifies that Professional: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.
31. **Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations:** Professional warrants, covenants, and represents that Professional is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152 of the Texas Government Code.

(signature block on next page)

Executed on _____ . *(date to be filled in by City Secretary)*

FREESE AND NICHOLS INC. - "Professional"

Jeff Taylor, Division Manager/Vice President

CITY OF LEAGUE CITY – "City"

John Baumgartner
City Manager

Attest:

Diana Stapp, City Secretary

Approved as to Form:

Office of the City Attorney

Exhibit A

Scope of Services/Description of Products/Payment Schedule
(5 number of pages, including this page)

See Next Page

EXHIBIT A
CITY OF LEAGUE CITY
CIP PROJECT MANAGEMENT ASSISTANCE
SCOPE OF SERVICES

Freese and Nichols, Inc. (FNI) shall render professional engineering and management services to assist the City of League City (City) in managing City's Capital Improvements Program (CIP). To that end, FNI shall be expected to represent and promote the interests of the City throughout all aspects and phases of the City's CIP activities and shall, when and as requested by the City, fully support the City in its dealings with contractors, approving agencies, engineers and consultants, the City's legal counsel, right-of-way acquisition consultants, traffic engineering consultants, governmental entities and the public.

FNI shall provide CIP Project Management services for projects identified by City personnel. Project Management Services may involve one or more activities for all project phases to include, but not limited to: project identification and estimation, design consultant selection, assisting City Personnel in managing CIP projects, review of studies, plans & specifications prepared by other consultants.

A. PRELIMINARY & DESIGN PHASE PROJECT ASSISTANCE SERVICES:

1. Provide technical assistance in review and evaluation of design consultant selections.
2. Assist CIP PMs in defining scope of services to be included in contracts with design consultants.
3. Assist CIP PMs in contract negotiations with design consultants.
4. Assist CIP PMs in review of design schedules and milestone deliverables by consultants.
5. Assist CIP PMs in review of any warranted Preliminary Engineering Reports, Studies, and other documents in support of implementing the CIP projects.
6. As needed, assist CIP PMs in review of all submitted plans, specifications, and cost estimates at each specific design milestones. Provide review comments and assist in review meetings with consultants.
7. Provide technical and general guidance to City CIP PMs in managing their consultant contracts and meetings with consultants.
8. Provide technical assistance and general guidance to City CIP PMs on parts of each design project which City is responsible for.
9. Provide technical and general assistance to the City in meeting with approving, permitting, and funding agencies.
10. Provide technical and general assistance to CIP PMs and City ROW agent in securing the necessary right-of-way and easements for the project.
11. Attend internal CIP projects progress and coordination meetings.

12. Provide assistance to CIP PMs in coordination with design consultants to prepare projects for bid and construction phases.
13. Provide assistance to CIP PMs in internal project-specific coordination and meeting with other departments.

B. BID PHASE PROJECT ASSISTANCE SERVICES:

1. Assist the City CIP PMs in working with each project consultant in conducting pre-bid conferences for the construction projects and review addenda, as necessary.
2. Assist the City CIP PMs in review of award of contract documents and execution of construction contracts from design consultants.

C. CONSTRUCTION PHASE PROJECT ASSISTANCE SERVICES:

1. Provide technical and general project assistance to City CIP PMs in reviews of change order documents, meetings with contractor(s) and consultants.
2. If needed, review contractor's construction schedule and review contract time extension requests.
3. Provide assistance to CIP PMs in questions which may arise on payment requests by the contractor.
4. Provide assistance to CIP PMs in review of Requests for Information from the contractor and responses prepared by the consultant.
5. Provide assistance to CIP PMs in working with the contractor and consultant in final project closure activities such as Substantial Completion, Final Completion, Record Drawings, Final Payment, and Close-out.

D. OTHER GENERAL ENGINEERING SERVICES:

1. Provide general and technical assistance to CIP Managers and PMs in defining and scoping future CIP projects and cost estimates and scheduling.
2. Provide assistance to CIP Department in meetings and coordination with other City departments as relates to implementing, scheduling, defining, CIP projects scopes and funding.

COMPENSATION

For and in consideration of the services to be rendered by FNI, City shall pay the fees hereinafter set forth.

- A. COMPENSATION: Budget for services rendered by FNI is based on actual man-hours of at-City and FNI offices assistance provided by our Project Manager and the necessary man-hours needed by the technical staff (if necessary) in support of our Project Manager to provide the desired assistance to the City, for a duration estimated to be 24 months (through September 30, 2022). Budget allocation shall be a fee not to exceed \$199,000 for City Fiscal Year 2020-2021 and a fee not to exceed \$199,000 for City Fiscal Year 2021-2022 for a total fee not to exceed \$398,000. City shall authorize a budget for each Fiscal Year.
- B. COMPENSATION TERMS:
1. Charges will be invoiced based on hourly rates attached on monthly basis including expenses such as mileage, printing, etc.
- C. BASIC SERVICES:
1. Upon authorization from the City, FNI shall proceed with the services outlined in different phases of the Project.
 2. If other Additional Services are required and authorized by the City, FNI shall be compensated as follows:
 - a. Where the services of individuals are supplied by FNI, as authorized by City, payment for these services will be based on Hourly Rates.
 - b. Services for direct non-labor expense and sub-contract expense provided by FNI shall be reimbursed at actual cost times a multiplier of 10%.

COMPENSATION

Compensation to FNI for Basic Services in Exhibit A shall be computed on the basis of the Schedule of Charges, but shall not exceed Three Hundred Ninety Eight Thousand Dollars (\$398,000). 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 Exhibit A, FNI will notify CITY for CITY's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

Schedule of Charges:

<u>Position</u>	<u>Rate</u>
Professional - 1	121
Professional - 2	145
Professional - 3	165
Professional - 4	190
Professional - 5	221
Professional - 6	253
Construction Manager - 1	96
Construction Manager - 2	125
Construction Manager - 3	146
Construction Manager - 4	184
CAD Technician/Designer - 1	103
CAD Technician/Designer - 2	133
CAD Technician/Designer - 3	164
Corporate Project Support - 1	98
Corporate Project Support - 2	117
Corporate Project Support - 3	157
Intern/ Coop	60
Senior Advisor	175

Rates for In-House Services

	<u>Bulk Printing and Reproduction</u>	
	<u>B&W</u>	<u>Color</u>
<u>Travel</u>		
Standard IRS Rates		
	Small Format (per copy)	\$0.10
	Large Format (per sq. ft.)	\$0.25
	Bond	\$0.25
	Glossy / Mylar	\$0.75
	Vinyl / Adhesive	\$1.50
	Mounting (per sq. ft.)	\$2.00
	Binding (per binding)	\$0.25

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.10. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office and 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. 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 rates will be adjusted annually in February.

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