

EXHIBIT "A"

AGREEMENT FOR PROFESSIONAL SERVICES

UTILITY MASTER PLAN UPDATES AND SYSTEM ASSESSMENTS PROJECT PHASE I (2018)

STATE OF TEXAS §

COUNTY OF TARRANT §

This Agreement is entered into by the City of Keller, hereinafter called, "City of Keller" or "Owner" and Freese and Nichols, Inc., hereinafter called "FNI." In consideration of the Agreement herein, the parties agree as follows:

- I. **EMPLOYMENT OF FNI:** In accordance with the terms of this Agreement: Owner agrees to employ FNI; FNI agrees to perform professional services in connection with the Project; Owner agrees to pay to FNI compensation. The Project is described as follows: **Utility Master Plan Updates and System Assessments Project Phase I (2018).**
- II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with Project as set forth in Attachment SC - Scope of Services and Responsibilities of Owner which is attached to and made a part of this Agreement.
- III. **COMPENSATION:** Owner agrees to pay FNI for all professional services rendered under this Agreement in accordance with Attachment CO - Compensation which is attached hereto and made a part of this Agreement. FNI shall perform professional services as outlined in the "Scope of Services" for a not to exceed fee of \$400,000. Details concerning the fee are included in Attachment CO.

If FNI's services are delayed or suspended by Owner, or if FNI's services are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.
- IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement which is attached to (Attachment TC) and made a part of this Agreement shall govern the relationship between the Owner and FNI.

Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Owner and FNI, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and FNI and not for the benefit of any other party.

This Agreement constitutes the entire Agreement between Owner and FNI and supersedes all prior written or oral understandings.

This contract is executed in two counterparts.

IN TESTIMONY HEREOF, they have executed this Agreement, the ____ day of _____, 2018.

ATTEST:

City of Keller
(Owner)

By: _____

Print Name and Title

ATTEST:

Freese and Nichols, Inc.
(FNI)



By: 

Thomas Haster, Senior Vice President
Print Name and Title

**SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNER
UTILITY MASTER PLAN UPDATES AND SYSTEM ASSESSMENTS PROJECT PHASE I
(2018)**

PROJECT UNDERSTANDING:

This scope of work represents Phase I of the Utility Master Plan Updates and System Assessments Project, and a summary of future phases along with deliverables are outlined in the Project Plan.

ARTICLE I

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

Task A: Project Kickoff, Data Collection, and Water Master Plan Update Phase I: Capacity Analysis (\$100,000)

- A1. Project Kickoff Meeting and Obtain Data: Freese and Nichols, Inc. (FNI) will provide the City with a Data Request Memorandum listing the data needed for this study. FNI will hold an initial meeting with the City that will include discussion of the following:
- Present and discuss methodology and approach
 - Scheduling and project coordination
 - Information and data needs from the City
- A2. Data Collection and Review: FNI will compile and review information from the City detailed in the Data Request Memorandum, including as-built drawings, water supply and wastewater flow data, billing meter data, planning documents, and historical population and employment information.
- A3. Meet with City to Discuss Land Use and Timing of Growth: FNI will meet with the City to discuss the existing and future land uses and current and projected populations for existing, 5-year, and buildout.
- A4. Update Land Use Assumptions: FNI will use land use maps, water billing records, NCTCOG data, and input from the City's staff to update non-residential and population projections for existing, 5-year, and buildout conditions. FNI will spatially allocate the populations and non-residential growth throughout the City using land use assumptions from the ongoing Future Land Use Plan and geocoded spatial distribution from water billing records. FNI will coordinate with the ongoing Land Use Plan for consistency of planning assumptions and utilize work completed as part of the ongoing study to the extent possible.
- A5. Develop and Distribute Updated Water Demands: FNI will review historical water usage records and use information to update per capita water usage, non-residential usage and peaking factors. FNI will develop water demand projections for existing, 5-year, and buildout conditions. FNI will utilize billing data to estimate the existing number of connections per pressure plane and distribute existing calculated water demands and population and non-residential growth to distribute future calculated water demands.

- A6. Update Water System Model: FNI will update the water model using the updated water system GIS. The updated model will consist of all lines 6" and larger in diameter plus recently constructed lines that may not appear in the GIS. FNI will also update the model to reflect the most current pressure plane boundaries.
- A7. Pumping and Storage Evaluation: FNI will evaluate the system by pressure plane for compliance with the TCEQ Chapter 290 regulations. FNI will analyze pumping capacity, elevated storage capacity and total storage capacity by pressure plane to determine if any deficiencies exist. FNI will develop pumping and storage recommendations for capacity and redundancy.
- A8. Evaluate System Pressures and Pressure Plane Delineation: FNI will analyze the existing pressure plane delineation based on operations of Knox and Whitley elevated tanks, modeling results, field testing data, and water supply locations. FNI will evaluate and recommend modifications to the existing pressure plane boundaries. FNI will present mapping showing proposed water system pressures throughout City under new pressure plane boundary alternatives vs. existing pressure plane delineation. FNI will update the 2010 system pressure contours map and provide recommendations for low pressure areas, including Biltmore and Monarch Hill.
- A9. Perform Modeling of Existing Water System: FNI will develop average day and maximum day model scenarios and will conduct EPS modeling of the existing water system to determine capacity and deficiencies within the existing water system. FNI will utilize the water system model to conduct fire flow analysis under existing maximum day demands to identify areas with less than adequate fire flow capacity.
- A10. Review Meeting: FNI will meet with City Staff to discuss water demand projections, existing system analysis, and pressure plane delineation evaluation.
- A11. Determine Water System Improvement Alternatives: FNI will develop and utilize buildout system water model runs to determine improvement alternatives needed to meet projected growth through Buildout. FNI will utilize the 5-year model runs to determine which improvement alternatives are needed in the next 5 years. System improvements will include transmission, storage, pumping and distribution system related needs. Water facilities and lines will be sized to provide adequate fire flows under maximum day demand conditions and meet peak hour demands with adequate residual pressures. FNI will determine if the proposed 16-inch Florence Road Water Line project recommended in the 2015 Impact Fee Study is still required. FNI will include recommendations on operational improvements including a recommendation on the current strategy of throttling the 16-inch valve on Robin Court.
- A12. Water Quality Analysis: FNI will conduct water age modeling to determine the impact of proposed improvements and pressure plane modifications on water age. FNI will investigate capital projects to help reduce water age including automatic flushers, water line looping, and tank mixing systems. FNI will include the Knox EST recommendation, previously presented in the Water Model Update and Water Quality Analysis Technical Memorandum, dated October 19, 2017.
- A13. Develop Draft Water Capital Improvement Plan (CIP) Costs, Phasing Plan & Mapping: FNI will develop costs for each proposed water system project. Costs will be in Year 2018 dollars and will include engineering and contingencies. FNI will develop draft CIP scheduling of projects based on modeling and mapping showing project locations.

- A14. Utilize the Water System Model to Evaluate System Reliability and Resiliency: FNI will utilize the water model with proposed improvements to determine system capacity for up to three (3) outage scenarios of a pump station, storage facility, and/or large transmission lines. FNI will also analyze what improvements will be needed to provide a defined level of service (e.g. average day water demands) if the City should temporarily lose a major facility. FNI will present reliability modeling results to the city and adjust the proposed system improvements as needed to reduce water system vulnerability to system outages.
- A15. Review Meeting: FNI will meet with City Staff to discuss reliability and resiliency analysis and future water system improvements. and water age modeling results.

Task B: Flow Monitoring and Infiltration and Inflow (I/I) Prioritization (\$120,000)

- B1. Identify and Map Flow Monitoring Locations: FNI will review the TRA I/I assessment data to identify any areas of concern. FNI will identify up to fifteen (15) locations for flow monitoring based on model calibration needs and areas of concern from the City, including the area upstream of the Shady Hollow Lift Station. FNI will prepare procedures for testing showing proposed locations of testing, duration of testing, and required data and assistance from the City during testing period.
- B2. Conduct Flow Monitoring: FNI will assist and coordinate with the City in performing flow monitoring. Velocity and depth readings will be obtained at 15-minute intervals to allow analysis of flow at that point. The flow metering equipment will be maintained and data collected for a period of sixty (60) days to cover representative dry weather flows and any rainfall events which may happen to occur. Four (4) rainfall gauges will also be installed within the study area to obtain localized rainfall data.
- B3. Flow Data Analysis and Evaluation: FNI will reduce raw field monitoring data and tabulate 15-minute flow data for the entire flow monitoring period. FNI will analyze the Trinity River Authority I/I Assessment data to determine areas of concern. FNI will evaluate temporary flow meter data to quantify base average dry weather flow, peak dry weather flow, and peak wet weather flow rates, quantity of infiltration and inflows (I/I) from each sewer basin, and update recommendations for infiltration and inflow allowances.
- B4. Flow Monitoring Summary Report: FNI will develop a report summarizing findings of flow monitoring.

Task C: Wastewater Master Plan Update Phase I: Capacity Analysis and Pipeline Risk Based Condition Assessment (\$127,200)

- C1. Develop and Distribute Updated Wastewater Flows: FNI will review historical wastewater flows and flow monitoring data to develop design criteria for wastewater flow projections including per capita wastewater usage, non-residential usage, and peaking factors. FNI will develop wastewater flow projections for existing, 5-year, and buildout conditions. FNI will allocate existing and future calculated wastewater flows into the wastewater model.

- C2. Wastewater System Model Development and Calibration: FNI will develop the wastewater model in the *InfoSewer* software by *Innovyze* using the updated GIS and as-built drawings of facilities. FNI will utilize the flow monitoring data and obtain hourly wastewater flow data by meter from Trinity River Authority to develop dry weather and wet weather model calibration scenarios and confirm that the model closely matches metered flows.
- C3. Document Age and Material of Pipelines: FNI will utilize GIS shapefiles, as-builts, work orders, and any other available data to determine the age and material of all of the wastewater lines in the existing wastewater collection system.
- C4. Summarize Historical Repair and SSO Data: FNI will evaluate and document the City's work order history, repair history, and sanitary sewer overflow data to determine areas to focus renewal efforts.
- C5. Develop Condition and Criticality Scoring Parameters: FNI will develop a draft condition and criticality scoring program for wastewater system pipelines. FNI will meet with City Staff to obtain input on draft parameters.
- Potential condition parameters include:
 - Pipe age
 - Pipe material
 - Maintenance history
 - Soil conditions
 - Potential criticality parameters include:
 - Number of customers served
 - Ease of access of repairs
 - Environmental impact
 - Critical facilities
 - Alley/street condition/replacement schedule
- C6. Apply Condition and Criticality Scoring System to Pipelines: Based on available data, FNI will utilize the *InfoMaster* software by *Innovyze* to apply the condition and criticality scoring system to the collection pipeline network. Each line segment will receive a condition, criticality, and overall risk score and an overall prioritized ranking of pipelines will be prepared. FNI will develop large scale color-coded mapping of the results of the condition, criticality, and risk scoring analysis. The *InfoMaster* scoring system is to include a decision tree that develops a preferred rehabilitation recommendation.
- C7. Perform Existing System Capacity Evaluation: FNI will utilize the model to perform a capacity evaluation of the existing gravity and force mains and lift stations to identify deficiencies under peak wet weather conditions. FNI will prepare system-wide mapping that illustrates areas with capacity concerns.
- C8. Review Meeting: FNI will meet with City Staff to discuss wastewater flow projections, wastewater model calibration, and existing system analysis.
- C9. Determine Prioritized and Phased Wastewater System Improvement Alternatives: FNI will utilize buildout system wastewater model runs to determine improvement alternatives needed to meet projected growth through Buildout. FNI will utilize the 5-year model run to determine which improvement alternatives are needed in the next 5 years. FNI will assume septic conversion for unserved existing areas by Buildout. Wastewater facilities and lines will be sized to meet peak wet weather flows.

- C10. Develop Draft Wastewater Capital Improvement Plan (CIP) Costs, Phasing Plan & Mapping: FNI will develop a CIP to address capacity and renewal needs. FNI will develop costs for each proposed wastewater system project. FNI will evaluate the proposed Kirkwood Meter Station to determine if a future lift station may be needed to serve that area. Costs will be in Year 2018 dollars and will include engineering and contingencies. FNI will develop draft CIP scheduling of projects based on modeling and mapping showing project locations.
- C11. Review Meeting: FNI will meet with the City to discuss future wastewater system improvements.

Task D: Water and Wastewater Master Plan Update Report (\$52,800)

- D1. Develop Draft Water and Wastewater Master Plan Update Report: FNI will prepare and provide one (1) electronic PDF copy and five (5) hardcopies of the draft Water and Wastewater Master Plan Update Report discussing methodology and findings. The report will include results of the analysis, mapping showing the existing system and proposed system improvements with cost estimates, summary of the wastewater pipeline risk-based assessment, and the flow monitoring analysis report.
- D2. Meet with the City Staff: FNI will meet with the City Staff to discuss the draft report. Following the meeting, FNI will incorporate revisions into the Water and Wastewater Master Plan Update Report.
- D3. Council Presentation: FNI will prepare and attend one (1) City Council presentation to present the results of the study. FNI will obtain feedback from City Staff prior to the Council presentation.
- D4. Finalize Water and Wastewater Master Plan Update Report: Based on comments by City Staff, FNI will finalize and provide one (1) electronic PDF copy and ten (10) hardcopies of the final Water and Wastewater Master Plan Update Report to the City.

ARTICLE II

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

- A. Field surveying required for the preparation of designs and drawings.
- B. Field layouts or the furnishing of construction line and grade surveys.
- C. GIS mapping services or assistance with these services.
- D. Making property, boundary and right of way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
- E. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by Owner.
- F. Providing renderings, model, and mock-ups requested by the Owner.

- G. Assisting Owner in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- H. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
- I. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- J. Design, 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. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
- L. Provide Geotechnical investigations, studies and reports.

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 in accordance with the following schedule: FNI will complete Basic Services within sixteen (16) months from 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 Owner or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

ARTICLE IV

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

- A. Designate in writing a person to act as Owner'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 Owner's policies and decisions with respect to FNI's services for the Project.
- B. Provide all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the drawings and specifications.
- C. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

- D. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Owner deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.
- F. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project. FNI will assist Owner in preparing permit applications.
- G. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Owner may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as Owner may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as Owner may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- H. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article II of this Agreement or other services as required.
- I. Bear all costs incident to compliance with the requirements of this Article V.

ARTICLE V

DESIGNATED REPRESENTATIVES: Owner shall have the ability to designate key project personnel and such personnel shall not be changed without prior consent of the Owner. Owner from time to time can ask project personnel to be removed from the project and FNI will work with Owner to seek suitable replacement. Owner acknowledges that such changes can have an impact on project costs and schedules, and as such, FNI may seek adjustment to fee and schedule.

OWNER's Designated Representative: Dennis Fritz, P.E., P.O. Box 770, Keller, Texas 76244; Phone 817-743-4083; dfritz@cityofkeller.com

FNI's Designated Principal-in-Charge: Thomas Haster, P.E., 4055 International Plaza, Suite 200, Fort Worth, Texas 76109; Phone 817-735-7238; email th@freese.com

FNI's Designated Project Manager: Melissa Brunger, P.E., 2711 N. Haskell Avenue, Suite 3300, Dallas, Texas 75204; Phone 214-217-2323; email mrb@freese.com

FNI's Designated Accounting Representative: Jana Collier, 4055 International Plaza, Suite 200, Fort Worth, Texas 76109; Phone 817-735-7354; email jvc@freese.com

COMPENSATION
UTILITY MASTER PLAN UPDATES AND SYSTEM ASSESSMENTS PROJECT PHASE I (2018)

Compensation to FNI for Basic Services in Attachment SC shall be computed on the basis of the Schedule of Charges, but shall not exceed Four Hundred Thousand Dollars (\$400,000). 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 Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

Schedule of Charges:

<u>Position</u>	<u>Min</u>	<u>Max</u>
Professional 1	79	125
Professional 2	102	150
Professional 3	130	208
Professional 4	141	246
Professional 5	196	305
Professional 6	206	374
Construction Manager 1	83	164
Construction Manager 2	113	170
Construction Manager 3	161	192
Construction Manager 4	172	259
CAD Technician/Designer 1	62	121
CAD Technician/Designer 2	98	142
CAD Technician/Designer 3	115	188
Corporate Project Support 1	46	110
Corporate Project Support 2	66	155
Corporate Project Support 3	89	242
Intern / Coop	42	73

Rates for In-House Services**Technology Charge**

\$8.50 per hour

Bulk Printing and Reproduction

	<u>B&W</u>	<u>Color</u>
Small Format (per copy)	\$0.10	\$0.25
Large Format (per sq. ft.)		
Bond	\$0.25	\$0.75
Glossy / Mylar	\$0.75	\$1.25
Vinyl / Adhesive	\$1.50	\$2.00
Mounting (per sq. ft.)	\$2.00	
Binding (per binding)	\$0.25	

Travel

Standard IRS Rates

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 ranges and rates will be adjusted annually in February. Last updated February 2018.

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**TERMS AND CONDITIONS OF AGREEMENT
UTILITY MASTER PLAN UPDATES AND SYSTEM ASSESSMENTS PROJECT PHASE I (2018)**

1. **DEFINITIONS:** The term Owner as used herein refers to the City of Keller, Texas. The term FNI as used herein refers to Freese and Nichols, Inc., its employees and agents; also its subcontractors and their employees and agents. As used herein, Services refers to the professional services performed by Freese and Nichols pursuant to the Agreement.
2. **CHANGES:** Owner, without invalidating the Agreement, may order changes within the general scope of the WORK required by the Agreement by altering, adding to and/or deducting from the WORK to be performed. If any change under this clause causes an increase or decrease in FNI's cost of, or the time required for, the performance of any part of the Services under the Agreement, an equitable adjustment will be made by mutual agreement and the Agreement modified in writing accordingly.
3. **TERMINATION:** The obligation to provide services under this Agreement may be terminated by either party upon ten days' written notice. In the event of termination, FNI will be paid for all services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.
4. **CONSEQUENTIAL DAMAGES:** In no event shall FNI or its subcontractors be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental or consequential damages, such as loss of product, loss of use of the equipment or system, loss of anticipated profits or revenue, non-operation or increased expense of operation or other equipment or systems.
5. **INFORMATION FURNISHED BY OWNER:** Owner will assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project. FNI shall have no liability for defects or negligence in the Services attributable to FNI's reliance upon or use of data, design criteria, drawings, specifications or other information furnished by Owner and Owner agrees to indemnify and hold FNI harmless from any and all claims and judgments, and all losses, costs and expenses arising therefrom. FNI shall disclose to Owner, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications or other information furnished by Owner to FNI that FNI may reasonably discover in its review and inspection thereof.
6. **INSURANCE:** FNI shall provide to Owner certificates of insurance which shall contain the following minimum coverage:

Commercial General Liability		Workers' Compensation	
General Aggregate	\$2,000,000	Each Accident	\$1,000,000
 Automobile Liability (Any Auto)		 Professional Liability	
CSL	\$1,000,000	\$3,000,000 Annual Aggregate	
7. **SUBCONTRACTS:** If, for any reason, at any time during the progress of providing Services, Owner determines that any subcontractor for FNI is incompetent or undesirable, Owner will notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the Agreement shall create any contractual relation between any subcontractor and Owner.
8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports data and other project information developed in the execution of the Services provided under this Agreement shall be the property of the Owner upon payment of FNI's fees for services. FNI may retain copies for record purposes. Owner agrees such documents are not intended or represented to be suitable for reuse by Owner or others. Any reuse by Owner or by those who obtained said documents from Owner without written verification or adaptation by FNI will be at Owner's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants, and Owner shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data and other project information in the execution of the Services provided under this Agreement in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to Owner, and FNI shall indemnify and hold harmless Owner from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.

9. **POLLUTANTS AND HAZARDOUS WASTES:** It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing the Services required by this Agreement, FNI does not take possession or control of the subject site, but acts as an invitee in performing the services, and is not therefore responsible for the existence of any pollutant present on or migrating from the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.
10. **OPINION OF PROBABLE COSTS:** FNI will furnish an opinion of probable project development cost based on present day cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices.
11. **CONSTRUCTION REPRESENTATION:** If required by the Agreement, FNI will furnish Construction Representation according to the defined scope for these services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the Contract Documents. In performing these services, FNI will endeavor to protect Owner against defects and deficiencies in the work of Contractors; FNI will report any observed deficiencies to Owner, however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for the supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or the safety precautions and programs incident to the work of the Contractor. FNI shall not be responsible for the acts or omissions of any person (except his own employees or agent) at the Project site or otherwise performing any of the work of the Project. If Owner designates a person to serve in the capacity of Resident Project Representative who is not a FNI's employee or FNI's agent, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in writing and made a part of this Agreement before the Construction Phase of the Project begins.
12. **PAYMENT:** Progress payments may be requested by FNI based on the amount of services completed. Payment for the services of FNI shall be due and payable upon submission of a statement for services to Owner and in acceptance of the services as satisfactory by the Owner. Statements for services shall not be submitted more frequently than monthly. Any applicable new taxes imposed upon services, expenses, and charges by any governmental body after the execution of this Agreement will be added to FNI's compensation.

If Owner fails to make any payment due FNI for services and expenses within thirty (30) days after receipt of FNI's statement for services therefore, the amounts due FNI will be increased at the rate of one percent (1%) per month from said thirtieth (30th) day, and, in addition, FNI may, after giving seven (7) days' written notice to Owner, suspend services under this Agreement until FNI has been paid in full, all amounts due for services, expenses and charges.

13. **ARBITRATION:** No arbitration arising out of, or relating to, this Agreement involving one party to this Agreement may include the other party to this Agreement without their approval.
14. **SUCCESSORS AND ASSIGNMENTS:** Owner and FNI each are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and FNI are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

Neither Owner nor FNI shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of services hereunder.

15. **PURCHASE ORDERS:** If a Purchase Order is used to authorize FNI's Services, only the terms, conditions/instructions typed on the face of the Purchase Order shall apply to this Agreement. Should there be any conflict between the Purchase Order and the terms of this Agreement, then this Agreement shall prevail and shall be determinative of the conflict.