

EXHIBIT "A"

Rev. 4/19

PROFESSIONAL SERVICES AGREEMENT

UTILITY MASTER PLAN UPDATES AND SYSTEM ASSESSMENTS PROJECT PHASE IV (2021)

STATE OF TEXAS §

COUNTY OF TARRANT §

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

- I. **EMPLOYMENT OF FNI:** In accordance with the terms of this Agreement, Client agrees to employ and compensate FNI to perform professional services in connection with the Project. The Project is described as Utility Master Plan Updates and System Assessments Project Phase IV (2021).
- 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 Client which is attached to and made a part of this Agreement.
- III. **COMPENSATION:** Client agrees to pay FNI for all professional services rendered under this Agreement for time and materials in accordance with Attachment CO – Compensation which is attached 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 Three Hundred Thousand Dollars, \$300,000.00.

If FNI's services are delayed or suspended by Client, 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 as set forth as Attachment TC – Terms and Conditions of Agreement shall govern the relationship between the Client and FNI.

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

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

This contract is executed in two counterparts. IN TESTIMONY HEREOF, Agreement executed:

Freese and Nichols, Inc.

By: SA Cole

Scott A. Cole, Vice President

Print Name and Title

Date: 05/18/2021

ATTEST: Melissa Brungin

City of Keller

By: _____

Mark Hafner, City Manager

Print Name and Title

Date: June, 2021

ATTEST: _____

SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT

PROJECT UNDERSTANDING

This scope of work represents Phase IV of the Utility Master Plan Updates and System Assessments Project. Based on the Project Plan developed with the City, the primary effort for Phase IV will consist of SSES activities identified by previous flow monitoring efforts. The fieldwork will include manhole inspections and smoke testing in the basins identified. The results of the fieldwork will be used to develop renewal recommendations to reduce potential infiltration and inflow (I/I) in the wastewater collection system.

ARTICLE I

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

Task A: SSES Prioritization Phase III (\$300,000)

It is anticipated that the SSES activities will take place in the following basins. These basins showed the highest amount of infiltration and inflow (I/I) during flow monitoring performed in previous phases.

- Big Bear Southwest 3
- Big Bear Central
- Little Bear West 3
- Big Bear Central 3
- Big Bear Southwest 4 (manhole inspection only)

- A1. Meeting to Discuss SSES Approach: FNI will meet with the City to review the project scope, team, and schedule.
- A2. Project Management: FNI will perform project management duties including preparing and updating project schedule, monthly invoicing, development of monthly progress reports, written summaries of meetings (minutes), and any informal project collaboration.
- A3. Sanitary Sewer Evaluation Survey (SSES): FNI will conduct the following field investigations as part of the focused SSES work. The project team will perform SSES work as described below:
 - Manhole Inspections: FNI field personnel will inspect up to 530 sanitary sewer manholes. This includes approximately 70 manholes in the Big Bear Southwest Basin 3, 108 manholes in the Big Bear Central Basin, 167 manholes in the Little Bear West 3 Basin, 125 manholes Big Bear Central 3 Basin, and 60 manholes in the Big Bear Southwest 4 Basin. The purpose of the manhole inspection is to systematically locate and determine the physical condition and possible sources and amounts of I/I. The inspection activities will include collection and recording of physical information and shall be supplemented by photographs. High-resolution photography for each manhole will generally target views of the ring and cover, interior view showing invert flow conditions, defects, and pipe conditions for upstream and downstream pipe penetrations. Photographs of invert flow conditions and pipe conditions will be dependent on flow characteristics at the time of inspection.

Utilizing industry standard safety procedures and appropriate traffic control, all subsurface manhole components will be inspected. Manholes will be GPS using a tablet to sub-meter accuracy and scanned utilizing 3D Optical Manhole Scanner technology, where applicable. Inspections will be conducted according to NASSCO MACP Level 2 standards. Investigation data collected during field investigations will be reviewed on a weekly basis and analyzed routinely. A minimum of 15 minutes per visit will be spent trying to access manholes for inspection. Manholes that could not be inspected will be revisited by separate individuals to confirm status prior to being turned over to City staff.

The information obtained during the physical survey will allow the FNI team to evaluate and prioritize defects in manholes and assist in determining appropriate rehabilitation methods. The FNI team will submit the manhole inspection data in a standard MACP Exchange Database.

- Smoke Testing: FNI field personnel will smoke test up to 160,000 linear feet (LF) of sewer lines. This includes approximately 29,206 LF in the Big Bear Southwest Basin 3; 37,433 LF in the Big Bear Central Basin; 56,333 LF in the Little Bear West 3 Basin; and 36,874 LF Big Bear Central 3 Basin.

Smoke testing will be conducted using dual axial blowers. Each 12-inch diameter and smaller segment shall be isolated by sandbagging. Smoke candles shall be used to generate smoke for the smoke testing. Smoke testing will be performed only during dry ground periods which are anticipated to be between July and August. Dry conditions in other months will be utilized for this activity as appropriate.

Flags shall be placed at observed smoke locations and digital images shall be captured. All defects identified by smoke testing shall be flagged and photographed. Blower setup locations and smoke defect locations shall be recorded on sketches or by obtaining GPS coordinates. All private sector smoke defect images shall be entered into the field inspection database. Main line defects and service lateral defects shall be scrutinized to ensure that a conservative determination of public vs. private side defects is made. If necessary, the line shall be earmarked for television inspection.

- A4. Meeting to Review SSES Results: FNI will meet with the City to discuss the initial results and findings of the focused SSES work.
- A5. Develop Rehabilitation Recommendations: FNI will develop recommendations for a rehabilitation strategy for the wastewater collection system for the basins where SSES work was performed. FNI will develop planning level cost estimates for recommended rehabilitation projects.
- A6. Draft Technical Memorandum – SSES and Rehabilitation Recommendations: FNI will prepare a technical memorandum (TM) that documents the results and recommendations from SSES task. FNI will submit digital files in PDF format of the draft TM.
- A7. Meet with City to discuss the Draft Memorandum: FNI will meet with the City to review and solicit comments on the draft technical memorandum.
- A8. Finalize TM – SSES and Rehabilitation Recommendations: FNI will revise the TM to incorporate comments from the City. FNI will submit one (1) hard copy and digital files in PDF format of the final TM.

Summary of Deliverables:

- Phase A
 - Draft Technical Memorandum – SSES and Rehabilitation Recommendations
 - Final Technical Memorandum – SSES and Rehabilitation Recommendations
 - MACP Exchange Database
 - Smoke testing defect shapefile

ARTICLE II

SPECIAL SERVICES: FNI shall render the following professional services in connection with the development of the Project, if authorized by City:

- No Special Services identified.

ARTICLE III

ADDITIONAL SERVICES: Any services performed by FNI that are not included in the Basic Services or Special Services described above are Additional Services. N/A

ARTICLE IV

TIME OF COMPLETION: The project schedule will be 12 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 Client 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 V

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

- A. Client recognizes and expects that change orders may be required to be issued during construction. The responsibility for the costs of change orders will be determined on the basis of applicable contractual obligations and professional liability standards. FNI will not be responsible for any change order costs due to unforeseen site conditions, changes made by or due to the Client or Contractor, or any change order costs not caused by the negligent errors or omissions of FNI. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, FNI is liable for change order costs. It is recommended that the Client budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.
- B. Designate in writing a person to act as Client'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 Client's policies and decisions with respect to FNI's services for the Project.

- C. Provide all criteria and full information as to Client'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 Client will require to be included in the drawings and specifications.
- D. 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.
- E. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- F. 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 Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay, or cause rework in, the services of FNI.
- G. 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.
- H. Client shall make or arrange to have made all subsurface investigations, including but not limited to borings, test pits, soil resistivity surveys, and other subsurface explorations. Client shall also make or arrange to have made the interpretations of data and reports resulting from such investigations. All costs associated with such investigations shall be paid by Client.
- I. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Client 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 Client 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 Client 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.
- J. Give prompt written notice to FNI whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
- K. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.
- L. Bear all costs incident to compliance with the requirements of this Article V.

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and Client designate the following representatives:

Client's Designated Representative – Dennis Fritz, P.E.
PO Box 770
Keller, TX 76244
817-743-4083
dfritz@cityofkeller.com

FNI's Designated Representative – Stephen Johnson
801 Cherry Street, Suite 2800
Fort Worth, TX 76102
817-735-7375
Stephen.Johnson@freese.com

FNI's Accounting Representative – Jana Collier
801 Cherry Street, Suite 2800
Fort Worth, TX 76102
817-735-7354
JVC@freese.com

COMPENSATION

Compensation to FNI for Basic Services in Attachment SC shall be computed on the basis of the Schedule of Charges, but shall not exceed Three Hundred Thousand Dollars (\$300,000). 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.

Position	Hourly Rate	
	Min	Max
Professional 1	80	148
Professional 2	100	157
Professional 3	122	228
Professional 4	152	244
Professional 5	185	350
Professional 6	197	398
Construction Manager 1	89	176
Construction Manager 2	109	190
Construction Manager 3	167	224
Construction Manager 4	205	289
CAD Technician/Designer 1	71	147
CAD Technician/Designer 2	104	158
CAD Technician/Designer 3	133	208
Corporate Project Support 1	52	126
Corporate Project Support 2	73	175
Corporate Project Support 3	105	266
Intern / Coop	42	107
Senior Advisor	175	175

Rates for In-House Services and Equipment

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>		<u>Equipment</u>	
Standard IRS Rates		<u>B&W</u>	<u>Color</u>	Valve Crew Vehicle (hour) \$75
	Small Format (per copy)	\$0.10	\$0.25	Pressure Data Logger (each) \$100
	Large Format (per sq. ft.)			Water Quality Meter (per day) \$100
<u>Tech Charges</u>	Bond	\$0.25	\$0.75	Microscope (each) \$150
8.50 per hour	Glossy / Mylar	\$0.75	\$1.25	Pressure Recorder (per day) \$200
	Vinyl / Adhesive	\$1.50	\$2.00	Ultrasonic Thickness Guage (per day) \$275
				Coating Inspection Kit (per day) \$275
	Mounting (per sq. ft.)	\$2.00		Flushing / Cfactor (each) \$500
	Binding (per binding)	\$0.25		Backpack Electrofisher (each) \$1,000
				<u>Survey Grade Standard</u>
				Drone (per day) \$200 \$100
				GPS (per day) \$150 \$50

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.10. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multiplier of 1.05. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and/or rates will be adjusted annually in February. Last updated February 2021.

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** The term Client as used herein refers to the City of Keller. The term FNI as used herein refers to Freese and Nichols, Inc., its employees and agents, and its subcontractors and their employees and agents. As used herein, Services refers to the professional services performed by FNI pursuant to the Agreement.
2. **CHANGES:** Client, 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, 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 10 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 CLIENT:** Client 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 Client and Client 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 Client, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications or other information furnished by Client to FNI that FNI may reasonably discover in its review and inspection thereof.
6. **INSURANCE:** FNI shall provide Client with certificates of insurance with the following minimum coverage:

Commercial General Liability		Workers' Compensation
General Aggregate	\$2,000,000	As required by Statute
Automobile Liability (Any Auto)		Professional Liability
CSL	\$1,000,000	\$3,000,000 Annual Aggregate
7. **SUBCONTRACTS:** If, for any reason and at any time during the progress of providing Services, Client determines that any subcontractor for FNI is incompetent or undesirable, Client 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 Client.
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 Client upon payment of FNI's fees for Services. FNI may retain copies for record purposes. Client agrees such documents are not intended or represented to be suitable for reuse by Client or others. Any reuse by Client or by those who obtained said documents from Client without written verification or adaptation by FNI, will be at Client's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants, and Client 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 Client, and FNI shall indemnify and hold harmless Client 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 report any observed deficiencies to Client, 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 its own employees or agents) at the Project site or otherwise performing any of the work of the Project. If Client designates a Resident Project Representative that is not an employee or agent of FNI, the duties, responsibilities and limitations of authority of such Resident Project Representative will be set forth in writing and made a part of this Agreement before the Construction Phase of the Project begins.
12. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** Client agrees to include provisions in the General Conditions of the Construction Contract that require Contractor to include FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by Contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the Contractor's indemnification provisions where the Owner is named as an indemnified party.
13. **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 CLIENT and in acceptance of the Services as satisfactory by the Client. 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 Client fails to make any payment due FNI for services and expenses within 30 days after receipt of FNI's statement for services therefore, the amounts due FNI will be increased at the rate of 1 percent per month from said 30th day, and, in addition, FNI may, after giving 7 days' written notice to Client, suspend services under this Agreement until FNI has been paid in full, all amounts due for services, expenses and charges.

14. **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.
15. **SUCCESSORS AND ASSIGNMENTS:** Client and FNI each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client 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 Client 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.

16. **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.