

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §
COUNTY OF TARRANT §

This Agreement is entered into by City of Keller (Client) and Freese and Nichols, Inc. (FNI). In consideration of FNI providing professional services for Client and Client utilizing these services, the parties hereby agree:

- 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 Back-up Generators.
- II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with the 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:**
 - Basic Services:
Client agrees to pay FNI for all basic professional services rendered under this Agreement. FNI shall perform basic professional services under this Agreement for a lump sum fee of \$657,000.00.
 - Special Services A – Resident Project Representation:
Client agrees to pay FNI for the resident project representation special professional services rendered under this Agreement. FNI shall perform special professional services under this Agreement for a lump sum fee of \$140,056.00.
 - Special Services B – Electrical Building:
Client agrees to pay FNI for the electrical building special professional services rendered under this Agreement. FNI shall perform special professional services under this Agreement for a lump sum fee of \$315,744.00.
- IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement, as set forth in Attachment TC – Terms and Conditions of Agreement, shall govern the relationship between the Client and FNI.
- V. **GOVERNING LAW; VENUE:** This Agreement shall be administered and interpreted under the laws of the State of Texas. Venue of any legal proceeding involving this Agreement shall be in Tarrant County, Texas.
- VI. **EFFECTIVE DATE:** The effective date of this Agreement is July 11, 2023.

Nothing in this Agreement shall be construed to give any rights or benefits under this Agreement to anyone other than the Client and FNI. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and FNI and not for the benefit of any other party. This Agreement constitutes the entire agreement between the Client and FNI and supersedes all prior written or oral understandings.

PROFESSIONAL SERVICES AGREEMENT

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

City of Keller

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

FRESE AND NICHOLS, INC.

By:  _____

Name: Vimal Nair, PE

Title: Vice President

Date: July 11, 2023

Attest: Stephanie Stephenson

SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT

PROJECT UNDERSTANDING

The City of Keller wishes to implement the recommendation of adding generators from the AWIA RRA (America's Water Infrastructure Act Risk & Resiliency Assessment). The City wishes to add diesel generators to the following structures: Katy Road Lift Station, Shady Hollow Lift Station, Shady Lane Lift Station, Tuscany Lift Station, and Pearson Pump Station. The city also wishes to add the necessary switchgear at the Pearson Pump Stations.

The scope set forth herein defines the work to be performed by the ENGINEER to complete the project. Both the CITY and ENGINEER have attempted to clearly define the work to be performed and address the needs of the Project.

The scope of work covers design of back up electric generation including sizing and locating of generator(s) and any electrical gear necessary to support the generators. The electrical gear is expected to have the capability to be expanded in the future, if necessary. The design will include all necessary generator(s) to support the noted locations.

This proposal consists of Design, bid, and construction services.

The generator sizes will be determined during the design phase. In addition to the following major equipment, the service size and historical usage will be considered for the generator sizing. The Katy Road Lift Station has two 6HP pump motors and associated ancillary equipment. The Shady Hollow Lift Station has two 5.4HP pump motors and associated ancillary equipment. The Shady Lane Lift Station has two 10HP pump motors and associated ancillary equipment. The Tuscany Lift Station has two 15HP pump motors and associated ancillary equipment. The Pearson Pump Station has one 250HP pump motor, one 400HP pump motor, one 300HP pump motor, one 150HP pump motor and associated ancillary equipment.

It is anticipated that the existing electrical equipment (gear, soft starters, panels) will remain and all other appurtenances (pumps, motors, lights, receptacles, panelboards, HVAC equipment, etc.) are existing to remain as well. Design to modify or replace these systems is consider additional services. The electrical equipment including transfer switches for the generators along with the generators are anticipated to be located outside. Therefore, no building is anticipated and if a building is required, the design, specification, and construction services for a building is considered additional services.

It is assumed that improvements at all five locations will be bid together with the same procurement and construction package. Freese and Nichols, Inc. (FNI) will serve as a Prime consultant. This scope and fee are based on providing Design, bid and construction with a project duration of 25-months.

The generator systems at each location will be able to accommodate a minimum of 24 hours of continuous operation at max day capacity. The exact amount of time for back up generation will be coordinated with the City and finalized during the design phase.

The bid package will include the generators, the switchgear, and installation of the generator(s), switchgear, and all other necessary appurtenances. No pre-purchase packages will be developed for the project.

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Design of SCADA improvements will be a part of this contract, but programming will be in the SCADA Integrator's contract (part of the Construction Contract). Additionally, the existing SCADA RTU's will be utilized for the project and additional I/O will be added as required. FNI technical specifications will give direction on SCADA requirements.

Coordinate with the electric utility company for any connection to the electrical service(s) to each pump station generator switchgear.

Site improvements including grading, drainage structures, paving and fencing.

ARTICLE I

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

A. DESIGN PHASE: FNI shall provide professional services in this phase as follows:

1. Coordination:

- a. FNI will conduct a virtual kickoff meeting via Microsoft Teams with the City staff to introduce the FNI project team, review the scope of services and project schedule, and identify communication approaches.
- b. FNI will attend 1 generator sizing review with the client via teams.
- c. FNI will attend 1 meeting with ONCOR to discuss electrical service to each site.
- d. FNI will attend 3 review virtual meetings with city staff via Microsoft Teams (1 for each submittal level - 60%, 90%, Final).
- e. FNI will attend 1 site visit to the pump and lift stations.
- f. FNI will send meeting summaries with action items.
- g. FNI will send monthly schedule updates & progress reports.

2. Preliminary Design Phase (60%)

- a. Prepare preliminary design documents consisting of final design criteria, preliminary drawings, and outline specifications.
- b. Based on the information contained in the preliminary design documents, submit a revised opinion of probable Project Costs.
- c. Up to 1 virtual meeting will be conducted via Microsoft Teams or attended during the preliminary design phase.

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- d. The ENGINEER will prepare standard and special detail sheets for generator and switchgear installation. These may include connection details between various parts of the project, details unique to the construction of the project, trench details, and foundation details.
 - e. Furnish one (1) electronic copy (.pdf format) of the above preliminary design documents and present and review them with Client.
3. Final Design (90%) and Final Construction Documents (100%):

ENGINEER will develop the Final design of the back-up power improvements as follows:

- a. Development of Preliminary Design Drawings and Specifications, for the generator(s) and associated electrical gear, shall include the following:
 - i. Overall site plan showing each improvement, coordinates and elevations of each improvement, items such as pipes and duct banks that run between improvements.
 - ii. Detail sheets for one-lines, buildings, site plans, interconnection diagrams, and necessary appurtenances
 - iii. Plans, sections, elevations, special details and special notes for each design discipline
 - iv. All specifications

- b. Geotechnical Investigation:

The pads will likely be supported upon a shallow foundation, but subsurface and site conditions could require a deep foundation. The proposed geotechnical scope of work for the project will consist of field exploration, laboratory testing, engineering analysis, and reporting foundation recommendations, as presented below.

- i. Field Exploration

- 1. Coordinate with City personnel for access at each site. Visit sites to mark proposed borings and confirm with the City that the boring locations will be clear from obstructions and utilities.
- 2. Select and mark 8 boring locations (two borings at each lift station site) and up to 4 borings at Pearson PS depending how close the switchgear is to the generator. Notify Texas 811 (in addition to the City) to request location and marking of existing underground utilities prior to the field exploration.
- 3. Subcontract with a geotechnical drilling contractor to drill the borings to the following depths:
 - 2 borings at 35 feet
 - 10 borings at 25 feet

Samples will be collected intermittently using continuous flight augers and either split-spoon or tube samplers. Rock and rock-like materials will be sampled using an NX core barrel and/or tested insitu using a TxDOT Cone Penetration Test, as appropriate for the material. At completion, the boreholes will be backfilled with auger cuttings.

- 4. Provide an Engineer or Geologist experienced in logging borings to direct the drilling, log the borings, and handle and transport the samples. Visual classification of the subsurface stratigraphy shall be provided per the Unified Soil Classification System (USCS).

- ii. Laboratory Testing

1. Testing shall be performed on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials. FNI will select samples for laboratory testing, assign tests, and review the test results. Testing will be performed by a geotechnical testing subcontractor.
 2. Laboratory tests will be assigned based on the specific subsurface materials encountered during exploration. Test type and quantity may vary, but are expected to include:
 - a. Classification tests (liquid and plastic limits and percent passing the no. 200 sieve or gradation)
 - b. Moisture content
 - c. Dry unit weight
 - d. Unconfined compressive strength
 - e. Swell tests
- iii. Engineering Analysis
1. Prepare a technical memorandum of the geotechnical investigation for each site to include:
 - a. Attachment with the boring locations, boring logs, laboratory test results, and a key to the symbols used.
 - b. Discussion of subsurface conditions and soil properties indicated by the field and laboratory work, and the implications for design.
 - c. Foundation and site preparation recommendations for the proposed generator pads at the site and for the switchgear at the Pearson Pump Station.
 - d. Earthwork related recommendations for use during development of the plans and specifications.
- iv. Assumptions:
1. All boring locations will be accessible using a truck-mounted drill rig. If site conditions require clearing of trees and/or brush or there are space limitations or site conditions which require a track rig, then they will be included as Additional Services.
- c. Electrical
- i. Develop electrical design for the generator(s) and associated electrical gear with provisions for additional generators and electrical distribution installed in the future. Electrical gear, backup generator(s) and equipment footprint will be sized to accommodate generators for each pump station site,
 - ii. Coordinate with Electrical Utility.
- d. SCADA/instrumentation
- i. Develop control narratives for generator operation at the pump station/lift stations for generators and electrical gear.
 - ii. Coordinate any instrumentation with recommended manufacturers.
 - iii. Modifications to the existing site communication and Keller SCADA Network is not included as a part of this project.
- e. Structural
- i. Prepare plans, specifications and required main structural feature quantities.
 - ii. Design generator pad foundations based on geotechnical recommendations at five

- (5) different sites and switchgear pad foundation at one (1) site. Provide structural plan, sections, and details along with required construction technical specifications.
- iii. Provide layout drawings and technical specifications for prefabricated metal stairs and platform for the generator at the Pearson Pump Station.

The ENGINEER shall submit a final design estimate of probable construction cost with both the 90% and 100% design packages.

- a. Prepare drawings, specifications, Construction Contract Documents, designs, and layouts of improvements to be constructed.
 - b. Submit drawings, specifications, and Construction Contract Documents to the applicable federal, state and/or local agency(s) for approval, where required.
 - c. Furnish such information necessary to utility companies whose facilities may be affected, or services may be required for the Project.
 - d. Prepare revised opinion of probable construction cost.
 - e. Prepare bidder's proposal forms (project quantities) of the improvements to be constructed.
 - f. Provide design submittals at 90% and 100% design.
 - g. Furnish Client one (1) electronic copy (.pdf format) of drawings, specifications, and bid proposals marked "Preliminary" for approval by Client, for each design submittal as described above. Upon final approval by Client, FNI will provide Client one (1) set of reproducible "Final" drawings.
- B. BID OR NEGOTIATION PHASE: Upon completion of the design services and approval of "Final" drawings and specifications by Client, FNI shall provide professional services in this phase as follows:
- 1. Assist Client in securing bids. Issue a Notice to Bidders to prospective contractors and vendors listed in FNI's database of prospective bidders, and to selected plan rooms. Provide a copy of the notice to bidders for Client to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by Client.
 - 2. Print Bid Documents and distribute to selected plan rooms, and to prospective bidders that respond to the Notice to Bidders.
 - 3. Maintain information on entities that have been issued a set of bid documents. Distribute information on plan holders to interested contractors and vendors on request.
 - 4. Assist Client by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents to plan holders if necessary.
 - 5. At Client request, FNI will assist Client in the opening, tabulating, and analyzing the bids received. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project. Recommend award of contracts or other actions as appropriate to be taken by Client. Pre-qualification of all

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prospective bidders and issuing a list of eligible bidders prior to the bid opening is an additional service.

6. Assist the Client in conducting a pre-bid conference for the construction projects and coordinate responses with Client. Response to the pre-bid conference will be in the form of addenda issued after the conference. Attend the tour of the project sites after the pre-bid conference.
7. Assist Client in the preparation of Construction Contract Documents for construction contracts. Provide ten (10) sets (full size, hard copies) of Construction Contract Documents which include information from the apparent low bidders bid documents, legal documents, and addenda bound in the documents for execution by the Client and construction contractor. Distribute five (5) copies of these documents to the contractor with a notice of award that includes directions for the execution of these documents by the construction contractor. Provide Client with the remaining five (5) copies of these documents for use during construction. Additional sets of documents can be provided as an Additional Service.

C. CONSTRUCTION PHASE GENERAL REPRESENTATION:

Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase general representation services as described below.

The overall construction duration is anticipated to be sixteen (30) months, including 24 months of equipment lead time. FNI will provide general construction representation services for the duration of construction (5 months for the base scope, with 2 additional months for the special service electrical building, if selected), as follows:

In performing these services, 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 any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. 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.

These services are based on the use of FNI's standard General Conditions for construction projects. Modifications to these services required by use of other general conditions or contract administration procedures are an additional service. If General Conditions other than FNI's standard are used, the Client agrees to include provisions in the General Conditions 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 Client is named as an indemnified party.

1. Assist Client in conducting pre-construction conference(s) with the Contractor(s), review construction schedules prepared by the Contractor(s) pursuant to the requirements of the construction contract, and prepare a proposed estimate of monthly cash requirements of the Project from information provided by the Construction Contractor.

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2. Establish communication procedures with the Client and contractor. Submit quarterly reports of construction progress. Reports will describe construction progress in general terms and summarize project costs, cash flow, construction schedule and pending and approved contract modifications.
3. Establish and maintain an electronic project management information system (PMIS) utilizing the web based FNI Manager system. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Produce monthly reports indicating the status of all submittals in the review process. Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
 - a. Review up to:
 - i. 6 Shop drawings
 - ii. 20 RFIs
 - iii. 3 Change proposals
 - iv. 3 Change Orders
4. Based on FNI's observations as an experienced and qualified design professional and review of the Payment Requests and supporting documentation submitted by Contractor, determine the amount that FNI recommends Contractor be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract.
5. Make two total (not per site) visits to the construction site (as distinguished from the continuous services of a Resident Project Representative) to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort FNI will endeavor to protect the Client against defects and deficiencies in the work of Contractors and will report any observed deficiencies to Client. Visits to the site in excess of the specified number are an Additional Service.
6. Notify the Client of non-conforming work observed on site visit. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction contract documents.
7. Coordinate the work of testing laboratories and inspection bureaus required for the testing or inspection of materials, witnessed tests, factory testing, etc. for quality control of the Project. The cost of such quality control shall be paid by Client and is not included in the services to be performed by FNI.
8. Interpret the drawings and specifications for Client and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by Client, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.

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9. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf of the Client to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the Client. Documentation of field orders, where cost to Client is not impacted, will also be prepared. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the Client are an additional service. Substitutions of materials or equipment or design modifications requested by the Client are an additional service.
10. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the Client on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor on behalf of the Client if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of FNI are an additional service.
11. Conduct, in company with Client's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the City in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor(s). Visiting the site to review completed work in excess of one (1) trip is an Additional Service.
12. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. Furnish Client one (1) electronic copy (.pdf format) of "Record Drawings."

ARTICLE II

SPECIAL SERVICES: FNI shall render the following professional services, which are not included in the Basic Services described above, in connection with the development of the Project. The City shall inform FNI in writing with the Notice to Proceed, if any of the special services below are desired.

1. Design, Bid, Construction Services for an electrical building to house the switchgear, excluding the generator, if the Owner formally notifies FNI to include this option. The building will be CMU construction, approximately 30 ft x 30 ft. HVAC design with heating and cooling is provided using packaged DX air-conditioning and heating. Plumbing and fire protection is excluded. This design includes demolition of the existing electrical equipment, a building for the electrical equipment, foundations, duct banks, lights, and receptacles.
2. Resident Project Representation Services, as outlined in the attachment RPR. If the City chooses not to utilize the Resident Project Representation Special Services, the City is expected to provide a City Inspector or City Engineer to fill that role.

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. Additional Services to be performed by FNI, if authorized by Client, are described as follows:

Additional Services not included in the existing Scope of Services - CITY and ENGINEER agree that the following services are beyond the Scope of Services described in the tasks above. However, ENGINEER can provide these services, if needed, upon the CITY'S written request. Any additional amounts paid to the ENGINEER as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include the following:

1. Negotiation of easements or property acquisition including temporary right-of-entries.
2. Services related to development of the CITY'S project financing and/or budget.
3. Services related to disputes over pre-qualification, bid protests, bid rejection and re-bidding of the contract for construction.
4. Construction management and inspection services
5. Periodic site visits during construction phase, other than those noted in basic services
6. Design phase public meetings
7. Performance of materials testing or specialty testing services.
8. Services necessary due to the default of the Contractor.
9. Services related to damages caused by fire, flood, earthquake, or other acts of God.
10. Services related to warranty claims, enforcement, and inspection after final completion.
11. Services related to submitting permits (ie. TxDOT, railroad, etc...)
12. Services related to Subsurface Utility Engineering Levels A, B, C or D
13. Services related to Survey Construction Staking
14. Services related to acquiring real property including but not limited to easements, right-of-way, and/or temporary right-of-entries.
15. Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY.
16. Performance of miscellaneous and supplemental services related to the project as requested by the CITY.

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17. Emergency generators and associated generator connections design services for remote sites not specifically listed nor included above.
18. Natural gas generators or dual fuel generators will not be evaluated for this study/design.
19. Fees associated with development or building permitting.

ARTICLE IV

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 schedule presented in the Schedule Attachment.

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.

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- 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. If Client designates a person to serve in the capacity of Resident Project Representative who is not FNI or FNI's agent or employee, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in an Attachment attached to and made a part of this Agreement before the Construction Phase of the Project begins. Said attachment shall also set forth appropriate modifications of the Construction Phase General Representation services as defined in Attachment SC, Article I, D, together with such adjustment of compensation as appropriate.
- K. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job-related meetings and substantial completion inspections and final payment inspections.
- L. 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.
- M. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.
- N. Bear all costs incident to compliance with the requirements of this Article V.

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ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and Client designate the following representatives:

Client's Designated Representative – Larry Jones
PO Box 770
Keller, TX 76244
817-743-4083
ljones@cityofkeller.com

FNI's Designated Representative – Rita Tohme
801 Cherry Street, Suite 2800
Fort Worth, TX 76102
817-735-7388
rita.tohme@freese.com

FNI's Accounting Representative – Misty Ballard
801 Cherry Street, Suite 2800
Fort Worth, TX 76102
8177357290
misty.ballard@freese.com

RESIDENT PROJECT REPRESENTATION

The Engineer will have a Resident Project Representative on the Site. In performing these services, 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 any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. 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.

The scope identified below is based on the following anticipated schedule for construction management and full-time inspection services: 20 hours/week on-site representation by resident inspector for 5 months for basic services, and 2 additional month if the electrical building special service is selected.

- A. The duties, responsibilities, and the limitations of authority of the Resident Project Representative, and designated assistants, are as follows:
1. Resident Project Representative is Engineer's agent at the site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding Resident Project Representative's actions. Resident Project Representative's dealings in matters pertaining to the on-site Work shall in general be with Engineer and Contractor, keeping Client advised as necessary. Resident Project Representative's dealings with Subcontractors shall only be through or with full knowledge and approval of Contractor. Resident Project Representative shall generally communicate with Client with the knowledge of and under the direction of Engineer.
 2. These services are based on the use of FNI's standard General Conditions for construction projects. Modifications to these services required by use of other general conditions or contract administration procedures are an additional service. If General Conditions other than FNI's standard are used, the Client agrees to include provisions in the General Conditions 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 Client is named as an indemnified party.
- B. Duties and Responsibilities of Resident Project Representative:
1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedules of values prepared by Contractor and consult with Engineer concerning acceptability.
 2. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

3. Liaison:
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of Contract Documents; and assist Engineer in serving as Client's liaison with Contractor when Contractor's operations affect Client's on-site operations.
 - b. Assist in obtaining from Client additional details or information, when required for proper execution of the Work.
4. Shop Drawings and Samples:
 - a. Record date of receipt of Shop Drawings and Samples.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by Engineer.
5. Review of Work, Rejection of Defective Work, Inspections and Tests:
 - a. Conduct on-site observations of the Work in progress to determine if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever Resident Project Representative believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of Work the Resident Project Representative believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and the Contractor maintains adequate records thereof; and observe record and report to Engineer appropriate details relative to the test procedures and start-ups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to Engineer.
6. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

7. Request for Revisions: Consider and evaluate Contractor's suggestions for revisions to Drawings or Specifications and report with Resident Project Representative's recommendations to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. Records:
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents, including all Work Change Directives, Addenda, Change Orders, Field Orders, Written Amendments, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, submittals and correspondence received from and delivered to Contractor and other Project related documents.
9. Reports:
 - a. Furnish to Engineer periodic reports as required of progress of the work and of Contractor's compliance with the progress schedule and schedule of Shop Drawings and Sample submittals.
 - b. Consult with Engineer in advance of scheduled major tests, inspections or start of important phases of the Work.
 - c. Draft proposed Written Amendments, Change Orders and Work Change Directives, obtaining backup material from Contractor and recommend to Engineer Written Amendments, Change Orders, Work Change Directives, and Field Orders.
 - d. Report immediately to Engineer and Client the occurrence of any accident.
10. Payment Requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Client, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment at the Site but not incorporated in the Work.
11. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to Engineer for review and forwarding to Client prior to final payment for the Work.
12. Completion:
 - a. Before Engineer issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
 - b. Observe whether Contractor has performed inspections required by laws or regulations, ordinances, codes or order applicable to the Work, including but not limited to those to be performed by public agencies having jurisdiction over the Work.

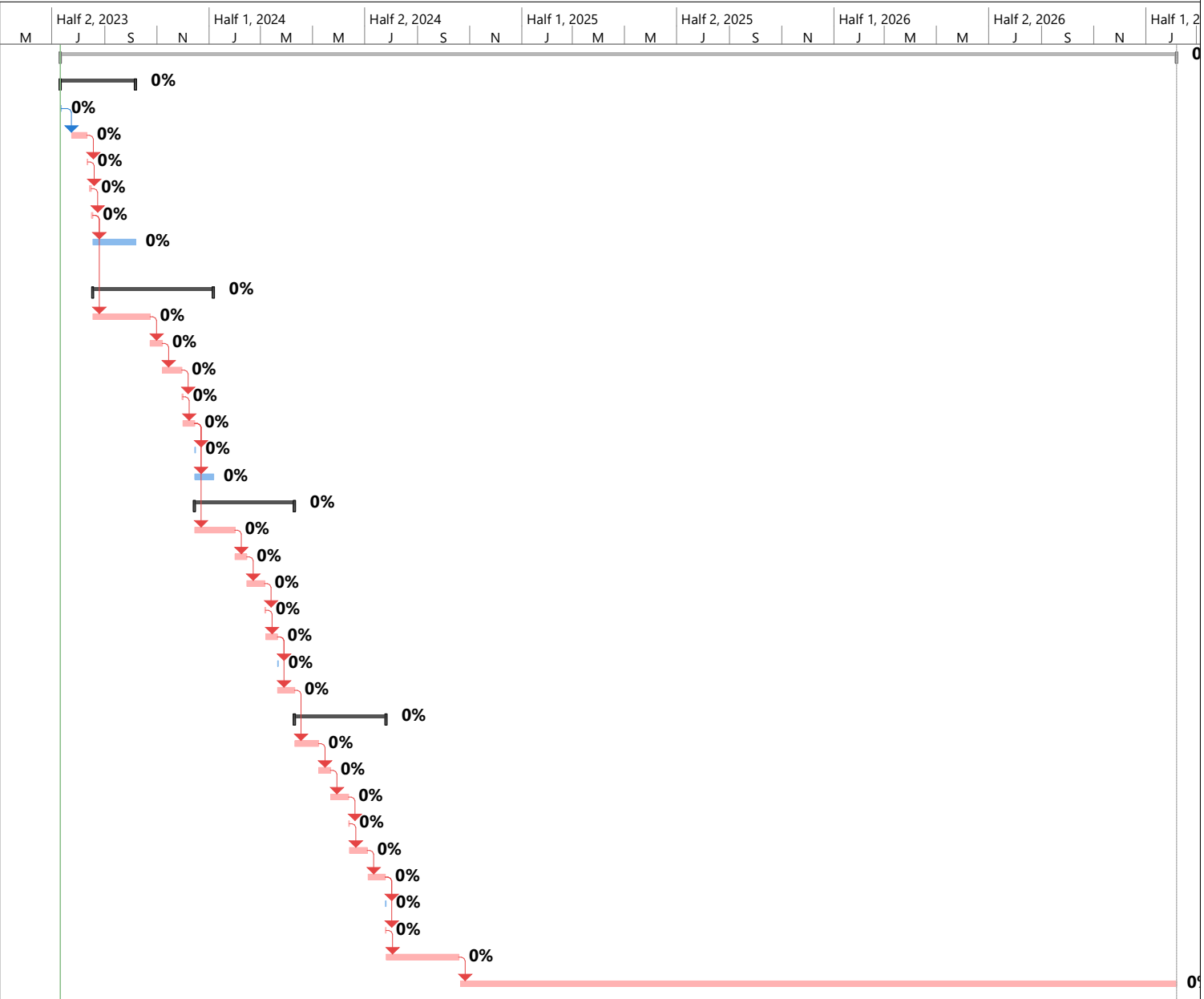
- c. Conduct a final inspection in the company of Engineer, Client and Contractor and prepare a final list of items to be completed or corrected.
- d. Observe whether all items on final list have been completed or corrected and make recommendations to Engineer concerning acceptance.

C. Limitations of Authority of Resident Project Representative:

- 1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by Engineer.
- 2. Shall not exceed limitations of Engineer's authority as set forth in Agreement or the Contract Documents.
- 3. Shall not undertake any of the responsibilities of Contractor, Subcontractor, Suppliers, or Contractor's superintendent.
- 4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
- 5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work or any activities or operations of Client or Contractor.
- 6. Shall not accept shop drawing or sample submittals from anyone other than the Contractor.
- 7. Shall not participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by Engineer.

Keller Backup Generator

| ID | Task Mode | Task Name | Duration | Start | Finish | % Complete | Predecessors | Resource Names | Timeline | | | | | | | | | | | | | | | | | | | | | | | |
|----|-----------|---|-----------------|---------------------|--------------------|------------|--------------|----------------|----------|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|--|
| | | | | | | | | | M | J | S | N | J | M | M | J | S | N | J | M | M | J | S | N | J | M | M | J | S | N | J | |
| 0 | | Backup Generators | 921 days | Tue 7/11/23 | Fri 2/5/27 | 0% | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | | Project Setup | 63 days | Tue 7/11/23 | Fri 10/6/23 | 0% | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | | Proposal sent to COK | 1 day | Tue 7/11/23 | Tue 7/11/23 | 0% | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3 | | COK Proposal Review | 14 days | Mon 7/24/23 | Thu 8/10/23 | 0% | 2 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4 | | Receive Notice To Proceed | 1 day | Fri 8/11/23 | Fri 8/11/23 | 0% | 3 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5 | | Project Setup and Internal Kickoff | 2 days | Mon 8/14/23 | Tue 8/15/23 | 0% | 4 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6 | | External Kick-Off | 2 days | Wed 8/16/23 | Thu 8/17/23 | 0% | 5 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7 | | Data Collection, Generator Sizing, ONCOR meeting and Review | 35 days | Fri 8/18/23 | Fri 10/6/23 | 0% | 6 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8 | | 60% Design | 94 days | Fri 8/18/23 | Fri 1/5/24 | 0% | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9 | | Prepare Drawings | 45 days | Fri 8/18/23 | Mon 10/23/23 | 0% | 6 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 10 | | 60% QC Review | 10 days | Tue 10/24/23 | Mon 11/6/23 | 0% | 9 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 11 | | Pick up QC Comments and Backcheck | 14 days | Tue 11/7/23 | Wed 11/29/23 | 0% | 10 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 12 | | Submit 60% to COK for Review | 1 day | Thu 11/30/23 | Thu 11/30/23 | 0% | 11 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 13 | | COK Review | 10 days | Fri 12/1/23 | Thu 12/14/23 | 0% | 12 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 14 | | 60% design review meeting | 1 day | Fri 12/15/23 | Fri 12/15/23 | 0% | 13 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 15 | | Review COK Comments | 14 days | Fri 12/15/23 | Fri 1/5/24 | 0% | 13 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 16 | | 90% Design | 79 days | Fri 12/15/23 | Tue 4/9/24 | 0% | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 17 | | Prepare Drawings and Specs | 30 days | Fri 12/15/23 | Tue 1/30/24 | 0% | 13 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 18 | | 90% QC Review | 10 days | Wed 1/31/24 | Tue 2/13/24 | 0% | 17 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 19 | | Pick up QC Comments and Backcheck | 14 days | Wed 2/14/24 | Tue 3/5/24 | 0% | 18 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 20 | | Submit 90% to COK for review | 1 day | Wed 3/6/24 | Wed 3/6/24 | 0% | 19 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 21 | | COK Review | 10 days | Thu 3/7/24 | Wed 3/20/24 | 0% | 20 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 22 | | 90% Design review meeting | 1 day | Thu 3/21/24 | Thu 3/21/24 | 0% | 21 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 23 | | Review COK Comments | 14 days | Thu 3/21/24 | Tue 4/9/24 | 0% | 21 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 24 | | 100% Design - Signed | 74 days | Wed 4/10/24 | Thu 7/25/24 | 0% | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 25 | | Incorporate 90% COK Comments | 20 days | Wed 4/10/24 | Tue 5/7/24 | 0% | 23 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 26 | | 100% QC Review | 10 days | Wed 5/8/24 | Tue 5/21/24 | 0% | 25 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 27 | | Pick up QC Comments and Backcheck | 14 days | Wed 5/22/24 | Tue 6/11/24 | 0% | 26 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 28 | | Submit 100% to COK | 1 day | Wed 6/12/24 | Wed 6/12/24 | 0% | 27 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 29 | | COK Review | 14 days | Thu 6/13/24 | Wed 7/3/24 | 0% | 28 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 30 | | Incorporate Final COK Comments | 14 days | Fri 7/5/24 | Wed 7/24/24 | 0% | 29 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 31 | | 100% design review meeting | 1 day | Thu 7/25/24 | Thu 7/25/24 | 0% | 30 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 32 | | Submit Issued For Bid Submittal to COK | 1 day | Thu 7/25/24 | Thu 7/25/24 | 0% | 30 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 33 | | Bid Phase | 60 days | Fri 7/26/24 | Fri 10/18/24 | 0% | 32 | | | | | | | | | | | | | | | | | | | | | | | | | |
| 34 | | Construction | 30 mons | Mon 10/21/24 | Fri 2/5/27 | 0% | 33 | | | | | | | | | | | | | | | | | | | | | | | | | |



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|-------------------|--|---------------|--|-------------|--|----------------|--|--------------------|--|-----------------|--|--------------------|--|--------------------|--|
| Critical | | Task | | Manual Task | | Duration-only | | Baseline Milestone | | Summary | | External Tasks | | Inactive Milestone | |
| Critical Split | | Split | | Start-only | | Baseline | | Milestone | | Manual Summary | | External Milestone | | Inactive Summary | |
| Critical Progress | | Task Progress | | Finish-only | | Baseline Split | | Summary Progress | | Project Summary | | Inactive Task | | Deadline | |

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** As used herein: (1) City refers to the party named as such in the Agreement between the City and FNI; (2) FNI refers to Freese and Nichols, Inc., its employees and agents, and its subcontractors and their employees and agents; and (3) Services refers to the professional services performed by FNI pursuant to the Agreement.
2. **INFORMATION FURNISHED BY CITY:** City 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 City. To the fullest extent permitted by law, City 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 City, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications, or other information furnished by City to FNI that FNI may reasonably discover in its review and inspection thereof.
3. **STANDARD OF CARE:** The standard of care for all professional Services performed or furnished by FNI under this Agreement will be the skill and care ordinarily used by members of the subject profession practicing under the same or similar license and circumstances at the same time and in the same locality. FNI makes no warranties, express or implied, under this Agreement or otherwise, in connection with any Services performed or furnished by FNI.
4. **INSURANCE:** FNI shall provide City with certificates of insurance with the following minimum coverage:

| | |
|--|-------------------------------|
| <u>Commercial General Liability</u> | <u>Workers’ Compensation</u> |
| \$2,000,000 General Aggregate | As required by Statute |
| <u>Automobile Liability (Any Auto)</u> | <u>Professional Liability</u> |
| \$1,000,000 Combined Single Limit | \$3,000,000 Annual Aggregate |

5. **CHANGES:** City, without invalidating the Agreement, may order changes within the general scope of the Services required by the Agreement by altering, adding, and/or deducting from the Services to be performed. If any such change under this clause causes an increase or decrease in FNI’s cost 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 will be modified in writing accordingly.

FNI will make changes to the drawings, specifications, reports, documents, or other deliverables as requested by City. However, when such changes differ from prior comments, directions, instructions, or approvals given by City or are due to causes not solely within the control of FNI, FNI shall be entitled to additional compensation and time required for performance of such changes to the Services authorized under this Agreement.

6. **OPINION OF PROBABLE CONSTRUCTION COSTS:** No fixed limit of project construction cost shall be established as a condition of the Agreement, unless agreed upon in writing and signed by the parties hereto. If a fixed limit is established, FNI shall be permitted to include contingencies for design, bidding, and price escalation in the construction contract documents to make reasonable adjustments in the scope of the Project to adjust the project construction cost to the fixed limit. Such contingencies may include bid allowances, alternate bids, or other methods that allow FNI to determine what materials, equipment, component systems, and types of construction are to be

included in the construction contract documents. Fixed limits, if any, shall be increased by the same amount as any increase in the contract price after execution of the construction contract.

FNI will furnish an opinion of probable construction or program cost based on present day pricing, 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 prices. Accordingly, FNI cannot and does not warrant or represent that bids or cost proposals will not vary from the City's project budget or from any estimate or opinion of probable construction or program cost prepared by or agreed to by FNI.

7. **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 City and in acceptance of the Services as satisfactory by City. Statements for Services shall not be submitted more frequently than monthly. Any applicable 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 City fails to make any payment due FNI for Services, expenses, and charges 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 City, suspend Services under this Agreement until FNI has been paid in full for all amounts due for Services, expenses, and charges.

If FNI's Services are delayed or suspended by City or 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.

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 City upon payment of FNI's fees for Services. FNI may retain copies for record purposes. City agrees such documents are not intended or represented to be suitable for reuse by City or others. Any reuse by City or by those who obtained said documents from City without written verification or adaptation by FNI, will be at the City's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants. To the fullest extent permitted by law, City 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 City, and FNI shall indemnify and hold harmless City from all claims, damages, losses, and expenses including reasonable attorneys' fees arising out of or resulting therefrom.
9. **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.

10. **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 construction contract documents. In performing these Services, FNI will report any observed deficiencies to City, 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 contractor's means, methods, techniques, sequences, or procedures of construction 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 City 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.
11. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** City agrees to include provisions in the general conditions of the construction contract that name FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by the contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the indemnification provisions where the City is named as an indemnified party.
12. **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 project 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.
13. **SUBCONTRACTS:** If, for any reason and at any time during the progress of providing Services, City determines that any subcontractor for FNI is incompetent or undesirable, City shall 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 City.
14. **PURCHASE ORDERS:** If a purchase order is used to authorize FNI's Services, only the terms, conditions, and 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 be determinative of the conflict.
15. **CONSEQUENTIAL DAMAGES:** In no event shall FNI 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 equipment or systems, loss of anticipated profits or revenue, non-operation or increased expense of operation), arising out of, resulting from, or in any way related to this Agreement or the Project.
16. **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.

17. **SUCCESSORS AND ASSIGNMENTS:** City and FNI and the partners, successors, executors, administrators, and legal representatives of each 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 City 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.