

AGREEMENT FOR FUTURE LAND USE PLAN UPDATE PROFESSIONAL SERVICES

STATE OF TEXAS §

COUNTY OF TARRANT §

This Agreement is entered into by the City of Keller, Texas, 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 FNI; FNI agrees to perform professional services in connection with the Project; Client agrees to pay to FNI compensation. The Project is described as follows: Future Land Use Plan Update
- 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 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 lump sum fee of \$197,650. Details concerning the fee are included in Attachment CO.

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 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, they have executed this Agreement, the _____ day of _____, 2018.

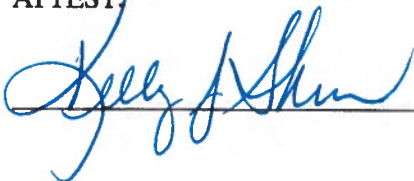
ATTEST:

City of Keller, Texas
(Client)

By: _____

Print Name and Title

ATTEST:



Freese and Nichols, Inc.
(FNI)

By:  _____

Wendy D. Shabay, Vice President/ Principal

SCOPE OF SERVICES AND RESPONSIBILITIES OF CITY

ARTICLE I

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

Purpose

The purpose of this Scope of Services is to develop a Future Land Use Plan that will guide the growth and development of Keller over the next 10 to 20 years.

FNI proposes a work program with the following six (6) tasks:

- Task 1 – Planning Framework/Baseline Analysis
- Task 2 – Visioning
- Task 3 – Future Land Use Plan
- Task 4 – Implementation Plan
- Task 5 – Proposed UDC Amendments
- Task 6 – Report and Adoption

Scope of Work

Task 1 – Planning Framework/Baseline Analysis

Keller's planning framework and baseline analysis will be summarized in this task. Demographic data will be collected, analyzed, and graphically depicted to convey an understandable story of what the City of Keller is today. Additionally, the community's history, population growth trends, existing land use, and other physical and environmental factors will be examined.

Meetings for Task 1:

- One (1) City Council Kick-off and Visioning Meeting
FNI and Catalyst Commercial (Subconsultant) will conduct one workshop meeting with City Council to discuss project vision, goals, and details.

Work Plan for Task 1:

- 1.1) Historic Trends, Population Growth, and Demographic Profile
In terms of social and economic characteristics, a discussion of the following will be conducted:
 - Historical timeline of Keller, including major events impacting the physical development of the community
 - Historical population and related growth trends
 - Demographic profile (age, race, income, household type)
- 1.2) Existing Land Use Analysis
An inventory of existing land use will be conducted and will include:
 - Analysis of the types of existing land uses (color-coded by category; quantified by acres)
 - Discussion of existing development patterns
 - Discussion of existing land use relationships, both positive and negative
- 1.3) Physical Constraints
Keller's man-made and natural physical environment greatly influences its future land use pattern and rate of growth. The following are the specific elements to be documented to describe the existing physical environment:
 - Documentation of the City's current municipal boundaries and regulatory control

- Analysis of the City's major topographic features, open spaces, prominent physical features, and drainage basins
- Any special features within the planning area

1.4) Planning Context

An understanding of the planning context will help to set the framework for which general planning decisions can be made. The following are elements to be documented to establish the planning context:

- Evaluation of existing planning documents
- Past and ongoing planning efforts conducted by the City
- Regional initiatives
- Coordinate with ongoing updates to other plans

Catalyst (Subconsultant) Support for Task 1:

1.5) City Council Kick-off and Visioning Meeting

Prepare for and meet with the City and FNI team to discuss project goals, data format, deliverables, timing, political issues, growth challenges, goals by district, corridor and small areas, and other constraints. Prepare brief write up on understanding, goals and success factors. Deliverable: Brief memo on Meeting #1 findings.

1.6) Context and Data Organization

Catalyst will support FNI in understanding growth trends by neighborhood, including pricing, velocity and typology of housing in Keller in context of adjacent cities and the DFW Region. This task shall help identify local market trends to support future build out analysis. The City shall prepare a baseline data in GIS format at the parcel level which includes ownership, existing land use, improvement and parcel size, land value, improvement value, year built, vacant parcels. The City shall provide an existing budget including estimated breakdown of all sources of revenue and expenses by non-residential vs residential activities (if applicable) to be used for future build-out model. Data shall also include any constraints, such as floodplain, city owned/civic, and other limitations affecting build-out.

1.7) Cost of Service, Fiscal Impact

Catalyst will create a baseline model that simulates existing fiscal impact, cost of service and other economic outputs using Keller's existing land uses.

1.8) Internal Workshop #1

Internal workshop to understand findings and impacts on FLUP planning efforts. FNI shall translate any transferable findings into GIS format.

Task 2 – Visioning

The Visioning task involves conducting exercises to determine the community's vision and values and how they may be conveyed and reflected within the physical environment. This task will result in clear goals and objectives that will inform the development of the Future Land Use Plan and accompanying policy recommendations.

Meetings for Task 2:

- Five (5) Community Charrettes
FNI will conduct five (5) community charrettes, at locations shown on Exhibit A, to solicit community input regarding Keller's vision and identify key issues.

Work Plan for Task 2:

2.1) Public Involvement Plan (PIP)

FNI will assist the City in developing a PIP to outline goals, target groups, communication methods, schedules, and meetings, and will provide branding assistance. The following public involvement approach will be implemented:

- Facebook and Instagram Pages
Since the City has active Facebook and Instagram pages, the FNI team suggest content to post on the social media outlets.
- Community Charrettes and Public Meetings
FNI will conduct five community charrettes as part of Task 2 (anticipated between February and March) and two public meetings as part of Task 3 (anticipated between June and August) at the locations shown on the Charrettes and General Meetings Map (Exhibit A). The purpose of these meetings is to solicit input to understand the community's vision for Keller, identify key issues people believe are important for the FLUP update to address, and to discuss the results for consensus building. Meeting coordination may include the following:
 - Collaboration with the Chamber of Commerce to give away gift cards from local businesses during the charrettes;
 - Pop-up vendors and activities (food trucks, face painting, treats and refreshments, etc.) during the charrettes;
 - Instant polling software to instantly show and discuss public preference results; and
 - Interactive boards at strategic locations within the meeting room to gather opinions.
- Meetings-in-a-Box
A meeting-in-a-box kit will be created with materials and instructions that allow City staff, local organizations, and civic groups to facilitate and provide input at their regularly scheduled meetings.
- Project Website
A project website will be created to interface with the City's website. The project website will include a brief project description, project schedule, allow presentations and documents to be posted, and provide a link to the Facebook and Instagram pages. Through coordination with City staff and the City Communications office, an online public input survey will be posted on the website. The survey will be tailored to gather feedback on plan elements, such as compatible land use types, appropriate densities and locations, and desired community character.
- Video Post
FNI will assist the City in posting video (provided the City is able to video meetings) on the website and social media outlets.

2.2) Preparation of Goals and Objectives

Goals and objectives will be formed from the information accumulated in Task 1 and Task 2.1. The finalized goals and objectives are intended to both guide the formation of the FLUP and ultimately serve as the basis for the plan's policy recommendations and action items.

Catalyst (Subconsultant) Support for Task 2:

2.3) Developer, Property Owner, and Broker Interviews

Catalyst (Subconsultant) will conduct one (1) full day of interviews with developers of existing and planned projects, existing property owners (to understand goals, constraints and other factors affecting development potential and private sector business plans), and brokers of existing residential and commercial listings (to understand market forces).

2.4) Internal Workshop #2

Prepare for and meet with the City and FNI team to discuss findings in Task 1 and efforts from Task 2 on FLUP planning. This includes economic context, summary of owner interviews, broker summary and developer plans.

Task 3 – Future Land Use Plan

FNI will create a draft of the Future Land Use Plan during this task.

Meetings for Task 3:

- Two (2) Public Meetings

FNI will conduct two (2) public meetings, at locations shown on Exhibit A, to discuss the results of Task 3 for consensus building.

Work Plan for Task 3:

3.1) Future Land Use Types

The information acquired from Tasks 1 and 2 will be used to establish land use types, associated character/design guidelines, appropriate locations, and general density guidelines for residential uses.

3.2) Applicable Planning Elements

The following planning elements will be considered in the development of the Future Land Use Plan:

- Parks, Recreation, and Open Space

A vital amenity in Keller is the space devoted to satisfying the active and passive recreational needs of citizens, including the extraordinary trail system for which Keller is known. For this amenity continues to be adequately planned for and allocated, the Parks and Open Space Plan and Trails Master Plan will be referenced and integrated (where applicable) into the FLUP.

- Transportation and Circulation

Transportation plays a vital role in the success of land development. As land use and transportation decisions are interrelated, it is critically important that appropriate access and circulation be considered as part of land use planning. The Thoroughfare Plan will be reviewed in the context of potential changes in land use planning.

- Infrastructure

To verify the efficiency of existing and future public utilities, it is important to examine existing infrastructure to determine whether water, wastewater and storm water systems are meeting the needs of the existing population, and whether such facilities can accommodate future growth depicted within the FLUP. FNI will conduct a high-level review of the City's current water, wastewater and storm water systems to determine future infrastructure needs based on the FLUP map.

3.3) Land Use Projections

Land use projections, based upon projected growth scenarios, will be calculated. Land use projections will define the acreage by land use type as reflected within the FLUP Map.

3.4) Ultimate Capacity and Population Projections

The ultimate capacity of Keller, based upon the FLUP Map, will be calculated to provide a general carrying capacity. FNI will also develop a projected growth pattern for the City based on historical growth patterns.

3.5) Future Land Use Plan Map

The FLUP will culminate with the depiction of color-coded land uses within the City's planning area. The plan will consider the following:

- Location of future residential, non-residential, and public land uses
- Location of environmentally sensitive areas or open spaces that should be considered when making future development decisions
- Location of future land uses along major transportation corridors

Catalyst (Subconsultant) Support for Task 3:

3.6) Scenario Planning Inputs

Catalyst will coordinate with FNI and City staff to develop and translate Land Use Types into values and densities (FAR) and estimated output (i/e gross annual sales for retail, value for fiscal impact and other factors). Typology shall include office, range of housing, multifamily, hospitality, retail, and light industrial to be used in planning process.

3.7) High Level Market Analysis

Catalyst's approach for Keller's FLUP is focused on the number of new residents that are vital to the City's long-term vitality. In addition, Catalyst (Subconsultant) would quantitatively identify the propensity for new residents and impact on retail and cost of service compared to area municipalities. The results shall outline the current reach of Keller's regional retail and restaurant economy, and identify the capacity of the residential, commercial, and retail, restaurant and entertainment economy over the short-term (one to five years), mid-term (five to 10 years) and long-term (10+ years) to determine Keller's ability to harness additional best-in-class destination uses.

- Catalyst (Subconsultant) shall explore capacity, existing performance, and propensity for missing or infill opportunities within the following sectors using both quantitative and qualitative factors:
 - Housing demand - By neighborhood unit (pricing, age, crime, sales velocity, new home activity, distressed sales, open space, adjacent uses, commercial influences, owner/rental ratios).
 - Retail demand - Review existing retail factors and assimilate findings into FLUP considerations. Include new development potential, redevelopment scenarios with FNI and City input, and potential changes in uses and associated impacts.
 - Additional review shall include estimated Office and Industrial demand and factors which might support Hospitality and Entertainment attraction.

3.8) Build out Analysis

Catalyst (Subconsultant) with FNI inputs, shall model three (3) scenarios, including Scenario #1: baseline - no-build/as is, Scenarios #2 and #3: Infill alternatives (including up to 4 catalyst areas) showing alternative uses reflected in Scenario #1.

Task 4 – Implementation Plan

The Implementation Plan will be structured into a coordinated action program so that City leaders, staff and other decision-makers can easily identify the steps that are necessary to achieve Keller's goals and objectives and vision described within the FLUP (Task 3).

Meetings for Task 4:

- No meetings anticipated.

Work Plan for Task 4:

4.1) Policy Recommendations

FNI will develop implementation strategies that detail responsible parties and estimated timeframes.

Catalyst (Subconsultant) Support for Task 4:

4.2) Economic Development Benchmarks

Catalyst (Subconsultant) will benchmark local factors where Keller has strong factors, both nationally and regionally compared to peer communities in the Dallas/Fort Worth from an economic standpoint.

Task 5 – Proposed UDC Amendments

Using the recommendations identified in the Implementation Plan (Task 4), FNI will prepare a list of proposed text amendments for Keller's Unified Development Code (UDC) that address use standards, bulk standards, and other zoning district standards. This list of proposed amendments will be prepared and submitted to City staff as a separate document. This document will serve as a guide to City staff to initiate and process formal UDC text amendments.

Meetings for Task 5:

- No meetings anticipated.

Task 6 – Report and Adoption

Prepare draft and final report summarizing key input, vision, land use recommendations and mapping.

Meetings for Task 6:

- One (1) Planning and Zoning Commission public hearing
FNI will present the FLUP report at a scheduled meeting of the Planning and Zoning Commission open to public attendance and comment.
- One (1) City Council meeting public hearing
FNI will present the FLUP report at a scheduled meeting of the City Council open to public attendance and comment.

Work Plan for Task 6:

6.1) Draft Report

FNI will prepare a draft FLUP Report that will document the planning process and Tasks 1-4. It will present a clear narrative with accompanying graphics and figures, as necessary, to best describe the intentions of the community. The draft will be provided to City staff and other parties the City wishes to include for review and comments. City staff will provide FNI with a consolidated list of comments from all reviewers. FNI will amend the draft, to address the list of comments, and submit one (1) revised draft back to City staff.

6.2) Final Report and Adoption

City staff will provide FNI with a consolidated list of final comments from all reviewers. FNI will make final revisions to the draft report, to incorporate the final review comments, and prepare the final FLUP Report for consideration by the Planning and Zoning Commission and City Council.

Catalyst (Subconsultant) Support for Task 6:

6.3) Support

Catalyst write up support of existing conditions, regional trends supporting FLUP recommendations.

6.4) Internal Staff Coordination

Staff coordination for internal planning meeting prior to adoption to refine presentation.

6.5) Council Meeting

Prepare for and attend City Council public hearing.

Task 7 – Project Management

Meetings for Task 7:

- Bi-weekly staff coordination calls - FNI will conduct 30-minute calls every two weeks (as needed) with staff to discuss project status, issues, or concerns.

Work Plan for Task 7:

7.1) FNI will provide monthly progress reports to identify status, upcoming meetings, outstanding issues, and upcoming tasks.

7.2) Maintain website with monthly updates.

Meeting Summary

For this plan effort, we have budgeted up to thirteen (13) meetings and bi-weekly staff coordination calls through the duration of the project. Meeting venues will be formally selected by City staff. The City shall procure the venue site, including paying any facility use fees if required.

- Meeting 1 – One (1) City Council Kick-off and Visioning meeting
- Meetings 2 through 6 – Five (5) Community Charrettes at five designated locations
- Meetings 7 through 8 – Two (2) Public Meetings at the five designated locations where the Community Charrettes were conducted
- Meeting 9 – One (1) Planning and Zoning Commission meeting
- Meeting 10 – One (1) City Council meeting

Additional meetings would be provided on a time and expense basis.

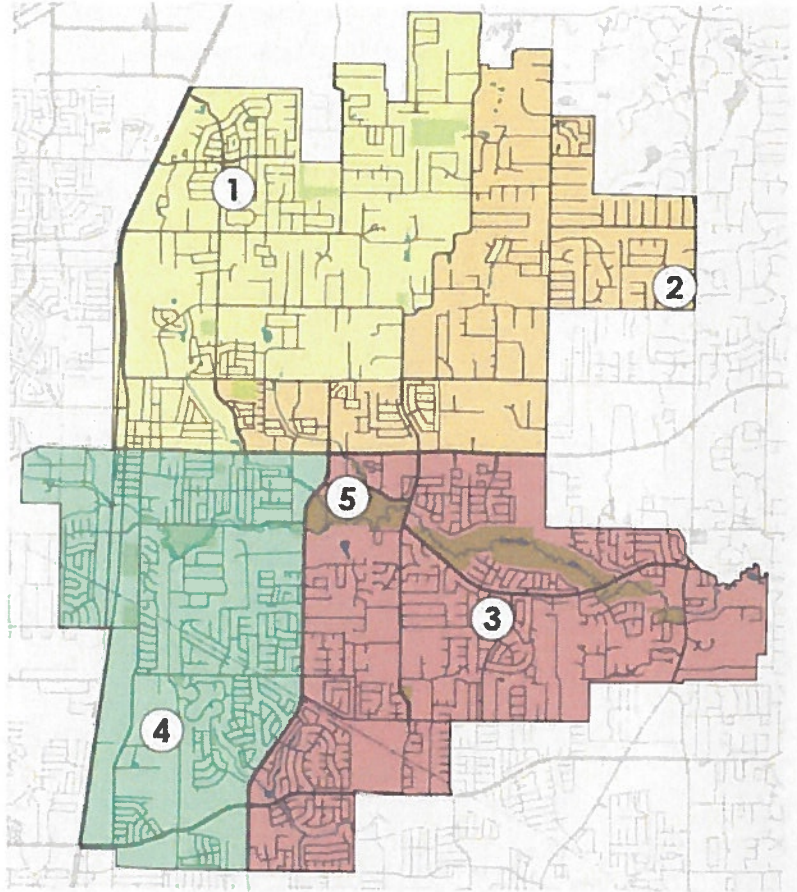
Deliverables

FNI will deliver the Final Future Land Use Plan Update Report in electronic format (digital Word and .PDF format) along with 5 (five) hard copy reports. Any GIS data and mapping will be provided in shapefiles.

EXHIBIT A

Charrettes and General Meetings Map

- ① **Quadrant 1** - Ridgeview Elementary School
- ② **Quadrant 2** - Fellowship Church
- ③ **Quadrant 3** - Hidden Lakes Elementary School
- ④ **Quadrant 4** - Willis Lane Elementary School
- ⑤ **Central Location** - Keller Town Hall



ARTICLE II

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

- A. Providing renderings, model, and mock-ups requested by the Client.
- B. Making revisions to drawings or other report documents when such revisions are 1) not consistent with approvals or instructions previously given by Client or 2) due to other causes not solely within the control of FNI.
- C. Meeting or trips in excess of the number of meetings included in Article I for site visits, coordination meetings, or other activities.
- D. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the Client.
- E. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- F. Providing document revisions in excess of those outlined in Article I.

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 within ten 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 IV

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

- A. Provide meeting space and coordinate equipment needs, room set up, and logistics for meetings outlined in Article 1.
- B. Contact meeting invitees for stakeholder and public meeting. This includes email, mail, newsletter or other forms of notification.
- C. 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.

- 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 and provide prompt feedback on all submittals, draft reports, sketches, drawings, and other documents presented by FNI within a reasonable time so as not to delay the services of FNI.
- F. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article II of this Agreement or other services as required.
- G. Bear all costs incident to compliance with the requirements of this Article IV.

ARTICLE V

DESIGNATED REPRESENTATIVES: FNI and Client designate the following representatives:

Client's Designated Representative

Name: _____
Address: _____
Phone: _____
Email: _____

Client's Accounting Representative

Name: _____
Address: _____
Phone: _____
Email: _____

FNI's Designated Representative –

Tiffany McLeod
2711 North Haskell Avenue, Suite 3300
Dallas, Texas 75204
(214) 217-2256
Tiffany.McLeod@freese.com

FNI's Accounting Representative –

Stephanie Kirchstein
2711 North Haskell Avenue, Suite 3300
Dallas, Texas 75204
(214) 217-2212
Stephanie.Kirchstein@freese.com

COMPENSATION

Compensation to FNI shall be the lump sum fee of One Hundred Ninety-Seven Thousand Six Hundred Fifty Dollars (\$197,650). 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 Client for Client'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	67	111
Professional - 2	95	142
Professional - 3	113	184
Professional - 4	138	201
Professional - 5	168	241
Professional - 6	176	333
Construction Manager - 1	84	108
Construction Manager - 2	98	151
Construction Manager - 3	144	170
Construction Manager - 4	151	222
CAD Technician/Designer - 1	59	104
CAD Technician/Designer - 2	86	130
CAD Technician/Designer - 3	113	167
Corporate Project Support - 1	36	109
Corporate Project Support - 2	66	130
Corporate Project Support - 3	82	264
Intern/ Coop	36	64

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

\$8.50 per hour

Travel

Standard IRS Rates

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	

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 2017.

320022017

CITY OF KELLER FUTURE LAND USE PLAN UPDATE TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** The term Client 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:** 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 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. **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 to Client certificates of insurance which shall contain the following minimum coverage:

Commercial General Liability General Aggregate \$2,000,000	Workers' Compensation Each Accident \$1,000,000
Automobile Liability (Any Auto) CSL \$1,000,000	Professional Liability \$3,000,000 Annual Aggregate
7. **SUBCONTRACTS:** If, for any reason, 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 the 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 endeavor to protect Client against defects and deficiencies in the work of Contractors; 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 his own employees or agent) at the Project site or otherwise performing any of the work of the Project. If Client 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 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 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 CLIENT, 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:** 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.

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.