

**AGREEMENT FOR PROFESSIONAL SERVICES
UTILITY MASTER PLAN UPDATES AND SYSTEM ASSESSMENTS PROJECT PHASE II (2019)**

STATE OF TEXAS §

COUNTY OF TARRANT §

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

I. **EMPLOYMENT OF FNI:** In accordance with the terms of this Agreement: City agrees to employ FNI; FNI agrees to perform professional services in connection with the Project; City agrees to pay to FNI compensation. The Project is described as follows: **Utility Master Plan Updates and System Assessments Project Phase II (2019).**

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 City which is attached to and made a part of this Agreement.

III. **COMPENSATION:** City agrees to pay FNI for all professional services rendered under this Agreement in accordance with Attachment CO - Compensation which is attached hereto and made a part of this Agreement. FNI shall perform professional services as outlined in the "Scope of Services" for a not to exceed fee of \$245,000. Details concerning the fee are included in Attachment CO.

If FNI's services are delayed or suspended by City, or if FNI's services are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement which is attached to (Attachment TC) and made a part of this Agreement shall govern the relationship between the City and FNI.

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

This Agreement constitutes the entire Agreement between City 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 _____, 2019.

ATTEST:

City of Keller
(City)

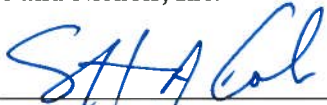
By: _____

Print Name and Title

ATTEST:

Freese and Nichols, Inc.
(FNI)



By: 

Scott A. Cole, P.E., Principal & Vice-President

**SCOPE OF SERVICES AND RESPONSIBILITIES OF CITY
UTILITY MASTER PLAN UPDATES AND SYSTEM ASSESSMENTS PROJECT PHASE II
(2019)**

PROJECT UNDERSTANDING:

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

ARTICLE I

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

Task A: Water Master Plan Update Phase II: Pipeline Risk Based Condition Assessment and Data Assessment (\$100,000)

- A1. Project Kickoff Meeting and Obtain Data: Freese and Nichols, Inc. (FNI) will provide the City with a Data Request Memorandum listing the data needed for this study. FNI will hold an initial meeting with the City that will include discussion of the following:
1. Present and discuss methodology and approach
 2. Scheduling and project coordination
 3. Information and data needs from the City
- A2. Data Assessment: FNI will document existing available information on water distribution system assets, including but not limited to GIS, computerized maintenance management system (CMMS), work order records, main break databases, and hydraulic model. FNI will work with the City to identify information that is currently not available but is desirable for future water system asset management and master planning needs. FNI will perform a gap analysis on available water system asset and maintenance data to identify gaps between existing data and preferred data. FNI will identify any inconsistencies in GIS, CMMS, and hydraulic model data sets.
- A3. Document Age and Material of Pipelines: FNI will utilize GIS shapefiles, as-builts, work orders, and any other available data to determine the age and material of all of the water lines in the existing water distribution system.
- A4. Summarize Historical Repair and Work Order Data: FNI will evaluate and document the City's Lucity work order history and repair history to determine areas to focus renewal efforts.
- A5. Develop Condition and Criticality Scoring Parameters: FNI will develop a draft condition and criticality scoring program for water system pipelines. FNI will meet with City Staff to obtain input on draft parameters. Water pipelines that are scheduled to be replaced using SWIFT funding will be excluded from the condition assessment.
1. Potential condition parameters may include:
 - a. Pipe age
 - b. Pipe material

- c. Maintenance history
- d. Main break history
- e. Soil conditions
- 2. Potential criticality parameters may include:
 - a. Redundancy
 - b. Number of customers served
 - c. Ease of access of repairs
 - d. Fire flow capacity
 - e. Critical facilities
 - f. Alley/street condition/replacement schedule

- A6. Apply Condition and Criticality Scoring System to Pipelines: Based on available data, FNI will utilize the InfoMaster software by Innovyze to apply the condition and criticality scoring system to the distribution pipeline network. Each line segment will receive a condition, criticality, and overall risk score and an overall prioritized ranking of pipelines will be prepared. FNI will develop large scale color-coded mapping of the results of the condition, criticality, and risk scoring analysis. The InfoMaster scoring system is to include a decision tree that develops a preferred rehabilitation recommendation.
- A7. Develop Draft Water Renewal Capital Improvements Plan (CIP) Costs, Phasing Plan & Mapping: FNI will develop a CIP to address renewal needs. FNI will develop costs for each proposed water system project. Costs will be in Year 2019 dollars and will include engineering and contingencies. FNI will develop draft CIP scheduling of projects based on risk prioritization and mapping showing project locations.
- A8. Develop Technical Memorandum: FNI will submit one (1) electronic PDF copy and three (3) hardcopies of the draft *Water System Pipeline Risk Based Condition Assessment TM* to the City for comment and review.
- A9. Review Meeting: FNI will meet with the City Staff to discuss the draft *Water System Pipeline Risk Based Condition Assessment TM*. Following the meeting, FNI will incorporate revisions into the *Water System Pipeline Risk Based Condition Assessment TM*.
- A10. Final Technical Memorandum: Based on the comments by City Staff, FNI will finalize and provide one (1) electronic PDF copy and three (3) hardcopies of the final *Water System Pipeline Risk Based Condition Assessment TM* to the City.

Task B: CCN Modification Assistance (\$35,000)

- B1. Data Collection: FNI will submit a data request summarizing all of the data needs for the CCN amendment application. Data items may include but are not limited to financial information, water and sewer inspection reports, and water and sewer facility information.
- B2. Prepare Mapping Required for the Application to Amend the Water and Sewer CCNs: FNI will prepare digital mapping in accordance with the Texas Public Utilities Commission (PUC) Geographic Information System (GIS) standards. The following maps are needed for the CCN application:
 - 1. General location map.
 - 2. Map showing the proposed area.

3. Map showing all facilities for treatment, collection, production, transmission, and distribution.
 4. Map showing any facilities, customers or area currently being served outside the City's existing CCN.
- B3. Prepare Application to Amend Water and Sewer CCN: FNI will prepare the PUC (formerly TCEQ Application 10362) Application to Obtain or Amend a Water/Sewer Certificate of Convenience and Necessity (CCN). FNI will compile all information and provide the City with electronic PDF version and the digital files to be submitted to PUC. FNI will submit the application to PUC. The City will be responsible for any filing fees.
- B4. Application Review Meeting: FNI will submit the application to the City for review and attend a meeting to discuss comments and next steps in the application process.
- B5. Assist with Notification Requirements: FNI will identify entities and landowners needing notification of the CCN amendment. FNI will prepare the notification language and provide the City with instructions for executing the notification requirements. City will be responsible for mailing individual notifications and publishing public notification.
- B6. Provide mapping for County Submittal: FNI will provide the mapping files of the updated CCN boundary to be submitted to Tarrant County. Water and sewer CCN boundaries are supposed to be kept on file with the county.

Task C: Water Quality Condition Assessment for Knox EST (\$61,000)

This task will utilize the previous water quality analysis completed by FNI summarized in the *2016 Water Model Update and Water Quality Analysis* dated October 19, 2017. FNI will evaluate improvements for maintaining and/or increasing chloramine residual concentrations within the City's Knox Elevated Storage Tank (EST).

Three categories of improvements will be considered:

Category 1 – Methods to Allow Deep-Cycling: The City cannot currently operate the Knox EST below a water level of 16-ft due to distribution system pressure concerns in two subdivisions. This operational limitation prevents the City from procedures to help reduce water age in the EST such as operating at low levels or deep-cycling the tank (i.e. reducing the water level to zero prior to re-filling with fresh water from the distribution system). Alternatives to enable deep-cycling will be addressed as a component of the City's *Utility Master Plan Updates and System Assessments Project* (Master Plan) being conducted by FNI. The results of the Master Plan's alternatives analysis will be summarized and presented in this evaluation.

Category 2 – Methods to Mix the EST: The Knox EST has a unique annular, or "donut", shape and a single water inlet/outlet location. Both factors combine to create water age challenges in the tank's horizontal and vertical dimensions. An active mixing system would help to prevent regions of the tank from becoming stagnant or stratified, thereby improving the overall tank's water age.

Category 3 – Methods to Boost Chloramine Residuals: Although the improvements described in Category 1 and 2 have been used by other utilities to improve chloramine residuals, neither provides the City with direct control of the chloramine residual concentration within the Knox EST. Chloramine concentrations can be controlled within the EST by

directly injecting chlorine and ammonia chemicals, a practice that is often called chloramine boosting.

FNI will develop a technical memorandum (TM) comparing alternatives from each of the three categories based upon capital, operating and life cycle costs as well as non-monetary factors such as safety and ease-of-operation. As described above, effort for the Category 1 alternatives are not included in this scope of work since the Category 1 alternatives evaluation will be performed as part of the Master Plan. Results from the Category 1 evaluation will be summarized and presented in this evaluation.

- C1. Preliminary Evaluation Meeting: A kick-off meeting will be conducted to review the scope of work, schedule, project goals, and data requirements. Additionally, FNI will develop a presentation describing the basics of chloramination, chemical feed options and residual control options. A site visit to the Knox EST will be conducted in conjunction with the meeting.
- C2. CFD Modeling: Due to the tank's unique configuration, FNI will conduct computational fluid dynamics (CFD) modeling to assess the effectiveness of three mixer configurations. The CFD model will be developed using either ANSYS Fluent or Flow Science Flow-3D. The time-dependent simulations will assume a PAX propeller-type unit conducted without inflow/outflow from the tank. The following simulations will be conducted.

Simulation No.	1	2	3	4	5	6
Water Surface Level, ft	10	25	10	25	10	25
Number of Mixers	1	1	2	2	3	3

- C3. Historical Data Evaluation: FNI will evaluate the City's historical water quality data. This data will be used in the development of a design basis.
- C4. Chloramine Boosting Evaluation: FNI will evaluate chloramine boosting strategies that could be used at the Knox EST. The evaluation will include:
 1. The development of a design basis including documentation of minimum, average and maximum chlorine/ammonium dosing rates and chemical storage volumes.
 2. Comparison of two residual control systems.
 3. Comparison of chemical options. For chlorine, chlorine gas, 12.5% bulk (or tote) sodium hypochlorite and 0.8% onsite generated sodium hypochlorite will be evaluated. For ammonia, liquid ammonium sulfate (LAS) and aqua ammonia will be evaluated.

All chloramine boosting options will be based on the mixing configuration recommended in Task D2.

- C5. Draft Technical Memorandum: FNI will develop a draft *Evaluation of Water Quality Improvements at the Knox EST TM* comparing alternatives from each of the following categories of improvements:
 1. Methods to allow deep cycling (performed as part of the ongoing Water and Wastewater Master Plan Update).
 2. Methods to mix the Knox EST (Task C2).
 3. Methods to boost chloramine residuals (Tasks C3 and C4).

FNI will submit one (1) electronic PDF copy and three (3) hardcopies of the draft *Evaluation of Water Quality Improvements at the Knox EST TM* to the City for comment and review.

- C6. Review Meeting: FNI will meet with the City Staff to discuss the draft *Evaluation of Water Quality Improvements at the Knox EST TM*. Following the meeting, FNI will incorporate revisions into the *Evaluation of Water Quality Improvements at the Knox EST TM*.
- C7. Final Technical Memorandum: Based on the comments by City Staff, FNI will finalize and provide one (1) electronic PDF copy and three (3) hardcopies of the final *Evaluation of Water Quality Improvements at the Knox EST TM* to the City.

Summary of Deliverables:

- Technical Memorandum – Water System Pipeline Risk Based Condition Assessment
- Water and Sewer CCN Application
- Technical Memorandum – Evaluation of Water Quality Improvements at the Knox EST

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

Task D: SSES Prioritization Phase I (\$49,000)

City Staff and FNI will jointly identify services for Task D based on flow monitoring results from Task B (Flow Monitoring and Infiltration and Inflow (I/I) Prioritization) of the Utility Master Plan Updates and System Assessments Project Phase I. Field services could include:

1. Targeted flow monitoring
2. Network connectivity verification
3. Smoke testing
4. Manhole inspections
5. CCTV
6. Dye water flooding
7. Acoustic inspections

ARTICLE II

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

- A. This Scope of Services does not include assistance with negotiations or application revisions due to opt-outs or protests of the CCN application. If additional assistance is needed it shall be considered additional services.
- B. If a public hearing is requested and granted by PUC, the professional services for such a hearing shall be considered additional services and are not included in this Scope of Services.
- C. Any meetings or conference calls with PUC in Austin shall be considered additional services.
- D. Field surveying required for the preparation of designs and drawings.
- E. Making property, boundary and right of way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.

- F. Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by City or 2) due to other causes not solely within the control of FNI.
- G. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- H. Preparing Operation and Maintenance Manuals or conducting operator training.
- I. Preparing data and reports for assistance to City in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- J. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
- K. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
- L. 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 City.
- M. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- N. Provide Geotechnical investigations, studies and reports.
- O. Provide design services.

ARTICLE III

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in accordance with the following schedule: FNI will complete Basic Services within twelve (12) months from the Notice to Proceed.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in City 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 CITY: City shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Designate in writing a person to act as City'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 City's policies and decisions with respect to FNI's services for the Project.
- B. Provide all criteria and full information as to City'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 City will require to be included in the drawings and specifications.
- C. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- D. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as City deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.
- F. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project. FNI will assist City in preparing permit applications.
- G. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as City 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 City 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 City may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- H. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article II of this Agreement or other services as required.
- I. Bear all costs incident to compliance with the requirements of this Article V.

ARTICLE V

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

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

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

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

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

COMPENSATION
UTILITY MASTER PLAN UPDATES AND SYSTEM ASSESSMENTS PROJECT PHASE II (2019)

Compensation to FNI for Basic Services in Attachment SC shall be computed on the basis of the Schedule of Charges, but shall not exceed Two Hundred and Forty-Five Thousand Dollars (\$245,000). If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

Schedule of Charges:

<u>Position</u>	<u>Min</u>	<u>Max</u>
Professional 1	77	142
Professional 2	104	192
Professional 3	131	214
Professional 4	146	231
Professional 5	175	292
Professional 6	184	376
Construction Manager 1	96	171
Construction Manager 2	105	180
Construction Manager 3	144	198
Construction Manager 4	181	268
CAD Technician/Designer 1	64	122
CAD Technician/Designer 2	93	146
CAD Technician/Designer 3	121	195
Corporate Project Support 1	47	119
Corporate Project Support 2	70	161
Corporate Project Support 3	92	252
Intern / Coop	41	80

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

\$8.50 per hour

Bulk Printing and Reproduction

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

Travel

Standard IRS Rates

OTHER DIRECT EXPENSES:

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

These ranges and rates will be adjusted annually in February. Last updated February 2019.

350022019

TERMS AND CONDITIONS OF AGREEMENT

- 1. **DEFINITIONS:** The term City 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:** City, without invalidating the Agreement, may order changes within the general scope of the Work required by the Agreement by altering, adding to and/or deducting from the Work to be performed. If any change under this clause causes an increase or decrease in FNI's cost of, or the time required for, the performance of any part of the Services under the Agreement, an equitable adjustment will be made by mutual agreement and the Agreement modified in writing accordingly.
- 3. **TERMINATION:** The obligation to provide services under this Agreement may be terminated by either party upon ten days' written notice. In the event of termination, FNI will be paid for all services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.
- 4. **CONSEQUENTIAL DAMAGES:** In no event shall FNI or its subcontractors be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental or consequential damages, such as loss of product, loss of use of the equipment or system, loss of anticipated profits or revenue, non-operation or increased expense of operation or other equipment or systems.
- 5. **INFORMATION FURNISHED BY 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 and 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.
- 6. **INSURANCE:** FNI shall provide to City certificates of insurance which shall contain the following minimum coverage:

Commercial General Liability		Workers' Compensation
General Aggregate	\$2,000,000	Per State Statute
Automobile Liability (Any Auto)		Professional Liability
CSL	\$1,000,000	\$3,000,000 Annual Aggregate
- 7. **SUBCONTRACTS:** If, for any reason, at any time during the progress of providing Services, City determines that any subcontractor for FNI is incompetent or undesirable, City 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 City.
- 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 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 City's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants, and 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 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 City against defects and deficiencies in the work of Contractors; 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 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 City 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 City and in acceptance of the services as satisfactory by the City. 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 City 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 City, 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:** City and FNI each are hereby bound and the partners, successors, executors, administrators and legal representatives of City 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 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.

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.