

AGREEMENT FOR PROFESSIONAL SERVICES

STATE OF TEXAS §

COUNTY OF ERATH §

This Agreement is entered into by City of Stephenville, Texas, hereinafter called "City" 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: 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: West Long Street Reconstruction – Alexander Rd. to Graham Ave.
- 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 lump sum fee of \$490,400 and for Special Services a not to exceed fee of \$104,300. 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 as set forth as Attachment TC 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 _____, 2021.

ATTEST:

City of Stephenville, Texas
(City)

By: _____

Print Name and Title

ATTEST:

Freese and Nichols, Inc.
(FNI)

By: _____

Print Name and Title

SCOPE OF SERVICES AND RESPONSIBILITIES OF CITY

PROJECT DESCRIPTION

Freese and Nichols, Inc. (FNI) will render professional engineering design services for the City of Stephenville (City). The project includes the reconstruction of W. Long Street from Alexander Rd. to Graham Ave. The existing pavement and curb will be replaced, and sidewalks and curb ramps will be replaced or added on both sides of the street to meet accessibility requirements. Existing water and wastewater lines will be replaced. All improvements will be contained within existing right-of-way.

Existing brick pavers within the project limits will be salvaged and palletized. Bricks will be re-used as the final roadway surface from Race St. to Graham Ave. Concrete pavement and an asphalt bid alternate will be specified for the portion of the project from Alexander Rd. to Race St. Drainage capacity improvements are not included in this project, and existing drainage patterns will be maintained. No work will be performed within the TxDOT-owned right-of-way at the S. Graham Ave. intersection.

Existing water and sanitary sewer lines within the project area will be replaced. Based on City GIS data, the following utilities will be replaced: approximately 3,680 LF of 6" waterline, 110 LF of 8" waterline, and 3,400 LF of 6" sanitary sewer. All 4" waterlines parallel to Long Street shall be upsized to a 6" waterline. Sewer and water service lines along Long Street will be replaced and reconnected. This scope does not include replacement or modifications to the existing 21" or 24" sewer interceptors within the project limits.

Subsurface Utility Engineering (SUE) services are not included in this scope. Locations of existing utilities will be estimated from record drawings, GIS data, and field markings. Detailed utility location will be the responsibility of the Contractor.

ARTICLE I

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

- A. DESIGN MANAGEMENT: FNI shall provide professional services for management of the project design as follows:
1. Allocate staffing resources and direct design team activities.
 2. Ensure quality control is practiced in performance of the work.
 3. Attend pre-design project kickoff meeting with City.
 4. Conduct review meetings with the City at the end of each design phase.
 5. Prepare invoices and submit monthly.
 6. Prepare and submit a project schedule and update the schedule monthly.
- B. PRELIMINARY DESIGN PHASE: Once the City has issued written authorization to proceed with the Preliminary Design Phase, FNI shall provide professional services as follows:
1. Perform one site visit with City staff to review topographic survey and discuss project objectives and constraints.
 2. Prepare schematic horizontal and vertical roadway reconstruction design.

3. Prepare preliminary layout of drainage, water, and wastewater improvements.
 4. Identify existing franchise utilities in conflict with the proposed improvements. Utility coordination will be conducted by City staff.
 5. Based on the information contained in the preliminary design documents, submit a revised opinion of probable project costs.
 6. Provide design submittal at 30% design milestone. This will include the following:
 - Schematic roadway improvements design
 - Plan layouts of water and sanitary sewer lines
 7. Furnish three (3) printed copies and one (1) electronic copy (.pdf format) of the above preliminary design documents and present and review them with City.
- C. FINAL DESIGN PHASE: Upon receipt of City review comments from the preliminary design milestone, FNI shall provide professional services in this phase as follows:
1. Prepare drawings, specifications, and Construction Contract Documents of improvements to be constructed.
 2. Furnish such information necessary to utility companies whose facilities may be affected, or services may be required.
 3. Prepare revised opinion of probable construction cost.
 4. Prepare bidder's proposal forms (project quantities) of the improvements to be constructed.
 5. Provide design submittals at 60%, 90%, and 100% design milestones of project improvements. Each submittal will include a specifications manual for construction and a plan set with the following plan sheets:
 - Cover
 - Index
 - General Construction Notes (90% and 100% submittals only)
 - Survey Control
 - Project Layout
 - Demolition Plan
 - Typical Paving Sections
 - Construction Phasing Plan
 - Paving Plan and Profile
 - Intersection Paving Layouts (90% and 100% submittals only)
 - Paving Cross Sections
 - Waterline Plan (8" waterline will include profiles at 90% and 100% submittals; only plan view will be provided for the 6" waterline)
 - Sanitary Sewer Plan and Profile
 - Erosion Control Layout
 - Paving, Traffic, and Utility Details (90% and 100% submittals only)

6. It is assumed no special details will be required to complete the design.
7. Furnish City three (3) sets of printed copies and one (1) electronic copy (.pdf format) of drawings, specifications, and bid proposals marked "Preliminary" for approval by City, for each design submittal as described above. Upon final approval by City, FNI will provide City one (1) set of reproducible "Final" drawings and one (1) loose set of specifications for reproduction by City.

D. BID PHASE SERVICES: FNI will support the bid phase of the project as follows:

1. Assist City in securing bids. Issue electronically a Notice to Bidders to prospective contractors and vendors listed in FNI's database of prospective bidders, and to selected plan rooms. Publish bid documents to Civcast.
2. 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.
3. Assist City by responding to questions and interpreting bid documents.
4. Prepare addenda, if required, during the bid phase.
5. Assist City in reviewing the Contractor's bids and providing a Bid Tabulation and a recommendation to the City for award of contract.
6. Incorporate all addenda into the contract documents and issue conformed sets.

E. CONSTRUCTION PHASE SERVICES: FNI will support the construction phase of the project by providing General Representation services. Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase services as described below. FNI will endeavor to protect City in providing these services, however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for 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 standards are used, the City agrees to include provisions in the construction contract documents that will require the construction contractor to include FNI and their sub-consultants on this project to be listed as an additional insured on contractor's insurance policies.

1. Assist City in conducting a pre-construction conference with the Contractor and review construction schedules prepared by the Contractor pursuant to the requirements of the construction contract.
2. Review up to twelve (12) contractor submittals, including modification requests, shop drawings,

schedules, initial SW3P plan, and other submittals in accordance with the requirements of the construction contract documents for the project. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules. Requests for information required to clarify FNI's drawings or intent will be addressed as required and are not included in the 12 contractor submittals.

3. 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.
4. Conduct up to nine (9) site visits (1 per month for 9 months) appropriate to the stage of construction to the 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 City against defects and deficiencies in the work of Contractors and will report any observed deficiencies to the City. Visits to the site in excess of the specified number are an additional service.
5. Notify the Contractor of non-conforming work observed on site visits. Review quality-related documents provided by the Contractor such as test reports, equipment installation reports or other documentation required by the construction contract documents.
6. Interpret the drawings and specifications for City and Contractor. Investigations, analyses, and studies, requested by the Contractor(s) and approved by City, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
7. Process up to three (3) contract modifications and negotiate with the contractor on behalf of the City to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the City. Documentation of field orders, where cost to City 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 City are an additional service. Substitutions of materials or equipment or design modifications requested by the City are an additional service. Errors and omissions by FNI will be addressed as required for no additional compensation.
8. Conduct, in company with City staff, 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, operator's manuals, 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 two trips are an additional service.
9. Prepare record drawings by revising the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction.

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:

A. Survey

1. Perform field survey of the project area to identify property boundaries, spot elevations, surface features, trees 6" or greater in diameter, and visible and marked utilities. City shall secure right-of-entry for survey on private property.
2. Provide vertical control benchmark and horizontal control points.

B. Geotechnical Investigation

1. The purpose of the geotechnical investigation will be to determine pavement thickness calculations and subgrade treatment/preparation requirements.
2. Perform eight (8) borings at a depth of 10'. Samples will be collected intermittently using continuous flight augers and either split-spoon or tube samplers. Rock and rock-like materials will be tested in situ using a TxDOT Cone Penetration Test, as appropriate for the material. At completion, the boreholes will be backfilled with auger cuttings and the pavement surface patched. The borings will be drilled through the brick pavers.
3. 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).
4. This scope assumes that City crews will provide temporary traffic control for geotechnical borings.
5. Perform laboratory tests on the collected samples including the following:
 - 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. pH Lime Series (if applicable due to clay soils)
 - f. Soluble sulfate content
6. Prepare a technical memorandum including the following:
 - a. Discussion of subsurface conditions and soil properties indicated by the field and laboratory work, and the implications for design.
 - b. Pavement thickness calculations for concrete and asphalt pavement sections. The results of the thickness calculations will be compared with Table III-9, Standard Street and Thoroughfare Minimum Pavement Thickness (Engineering Standards Manual). Design traffic volumes will be provided by the City or estimated by FNI traffic engineers.
 - c. Earthwork-related recommendations for use during development of the plans and specifications.
 - d. Appendix with boring locations, boring logs, and laboratory test results.

C. Culvert Structural Assessment and Rehab Design

1. Perform one site visit to assess the existing culvert at Town Creek for structural deficiencies and signs of failure.
2. Review findings with City and discuss rehabilitation options. A single option will be selected for implementation based on this discussion. Neither research of rehabilitation methods nor a formal alternatives analysis comparing options will be provided.
3. Develop details to implement the recommended rehabilitation. The level of effort involves developing one sheet of details and associated specifications.

D. Miscellaneous Contingency

1. This task serves as a contingency for additional miscellaneous engineering efforts that may be identified during the course of the project. These services may be authorized in writing by City staff. Potential anticipated miscellaneous services include: franchise utility coordination, property owner coordination, property acquisition or document preparation, culvert design or other Additional Services.

ARTICLE III

ADDITIONAL SERVICES: Any services performed by FNI that are not explicitly stated in the Basic Services or Special Services will be considered Additional Services. FNI will notify City when additional services are required and notify City of additional cost associated. The following tasks are specifically identified as Additional Services:

- A. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- B. Preparation of boundary surveys and negotiation of property acquisition or temporary construction access.
- C. Subsurface Utility Engineering (SUE) services to identify and locate underground utilities.
- D. Coordination of franchise utility relocations.
- E. Furnishing the services of a Resident Project Representative to act as City's on-site representative during the Construction Phase.
- F. 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.

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 following:

- 30% Submittal – 120 calendar days after notice to proceed
- 60% Submittal – 90 calendar days after receipt of 30% review comments
- 90% Submittal – 30 calendar days months after receipt of 60% review comments
- 100% Submittal – 30 calendar days after receipt of 90% review comments

Failure to complete the project in accordance with the schedule will result in liquidated damages of \$50.00 per consecutive calendar day until the final deliverables are submitted.

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 V

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

- A. City recognizes and expects that certain Change Orders may be required. Unless noted otherwise, the City should budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.

Further, City recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omission, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change Orders"). Accordingly, City agrees to pay for Change Orders and otherwise to make no claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the aggregate costs of all such approved Covered Change Orders exceed 2% of construction costs for new construction and 4% of construction costs for reconstruction. Any responsibility of Engineer for the costs of Covered Changed Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include:

- any costs that City would have incurred if the Covered Change Order work had been included originally in the Contract Documents and without any other error or omission of Engineer related thereto,
- Any costs that are due to unforeseen site conditions, or
- Any costs that are due to changes made by the City.
- Any costs that are due to the Contractor

Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percent of Construction Cost stated above or for any other Change Order. Wherever used in this document, the

- term Engineer includes Engineer's officers, directors, partners, employees, agents, and Engineers Consultants.
- B. 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.
 - C. 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.
 - D. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
 - E. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
 - F. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as City 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. 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.
 - I. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.
 - J. Give prompt written notice to FNI whenever City observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
 - K. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.
 - L. Bear all costs incident to compliance with the requirements of this Article V.

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and City designate the following representatives:

Nick Williams, PE
298 West Washington Street
Stephenville, Texas 76401
nwilliams@stephenvilletx.gov
254-918-1223

City’s Accounting Representative

Monica D. Harris, CPA
298 West Washington Street
Stephenville, Texas 76401
mharris@stephenvilletx.gov
254-918-1211

FNI’s Designated Representative

Spencer Maxwell, PE, PTOE, PMP
4055 International Plaza, Suite 200
Fort Worth, TX 76109
sbm@freese.com
817-735-7523

FNI’s Accounting Representative

Erin Westbrook
4055 International Plaza, Suite 200
Fort Worth, TX 76109
Erin.Westbrook@freese.com
817-735-7395

Fee Summary

Basic Services (Lump Sum)	Fee
Design Management	\$ 9,700
Preliminary Design Phase	\$ 90,200
Final Design Phase	\$ 311,700
Bid Phase Services	\$ 27,400
Construction Phase Services	\$ 51,400
Basic Services Lump Sum Subtotal	\$ 490,400
Special Services (Not-to-Exceed)	Fee
Survey	\$ 36,000
Geotechnical Investigation	\$ 29,300
Culvert Rehabilitation Investigation	\$ 19,000
Project Contingency	\$ 20,000
Special Services Not-to-Exceed Subtotal	\$ 104,300
Total Project Fee	\$ 594,700

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** The term City as used herein refers to the City of Stephenville, Texas. The term FNI as used herein refers to Freese and Nichols, Inc., its employees and agents, and its subcontractors and their employees and agents. As used herein, Services refers to the professional services performed by FNI pursuant to the Agreement.
2. **CHANGES:** 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, an equitable adjustment will be made by mutual agreement and the Agreement modified in writing accordingly.
3. **TERMINATION:** The obligation to provide Services under this Agreement may be terminated by either party upon 10 days' written notice. In the event of termination, FNI will be paid for all Services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.
4. **CONSEQUENTIAL DAMAGES:** In no event shall FNI or its subcontractors be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental or consequential damages, such as loss of product, loss of use of the equipment or system, loss of anticipated profits or revenue, non-operation or increased expense of operation or other equipment or systems.
5. **INFORMATION FURNISHED BY 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 City with certificates of insurance with the following minimum coverage:

Commercial General Liability		Workers' Compensation
General Aggregate	\$2,000,000	As required by Statute
Automobile Liability (Any Auto)		Professional Liability
CSL	\$1,000,000	\$3,000,000 Annual Aggregate
7. **SUBCONTRACTS:** If, for any reason and at any time during the progress of providing Services, 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 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 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 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.
- 12. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** City agrees to include provisions in the General Conditions of the Construction Contract that require Contractor to include FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by Contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the Contractor's indemnification provisions where the Owner is named as an indemnified party.
- 13. **PAYMENT:** Progress payments may be requested by FNI based on the amount of Services completed. Payment for the Services of FNI shall be due and payable upon submission of a statement for Services to 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 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, all amounts due for services, expenses and charges.

- 14. **ARBITRATION:** No arbitration, arising out of or relating to this Agreement, involving one party to this Agreement may include the other party to this Agreement without their approval.
- 15. **SUCCESSORS AND ASSIGNMENTS:** 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.

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