

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §

COUNTY OF TARRANT §

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

- I. EMPLOYMENT OF FNI: In accordance with the terms of this Agreement, Client agrees to employ and compensate FNI to perform professional services in connection with the Project. The Project is described as Southside Elevated Storage Tank.
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. FNI shall perform professional services as outlined in the "Scope of Services" for a lump sum fee of Four Hundred Ninety-Four Thousand Four Hundred Dollars, \$499,000.

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

- IV. TERMS AND CONDITIONS OF AGREEMENT: The Terms and Conditions of Agreement as set forth as Attachment TC – Terms and Conditions of Agreement shall govern the relationship between the Client and FNI.

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

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

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

Freese and Nichols, Inc.

City of Tomball

By: Richard Weatherly

By: _____

Richard Weatherly, Vice President

Print Name and Title

Print Name and Title

Date: 12/14/21

Date: _____

ATTEST: [Signature]

ATTEST: _____

SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT**PROJECT UNDERSTANDING**

The City of Tomball (City) is planning to construct a 1.0 MG Elevated Storage Tank (EST) in the Lovett Industrial Development site. Freese and Nichols, Inc. (FNI) will provide design, bid, and construction phase services for this elevated tank. The EST will include approximately 500 LF of 16-inch water line to connect the EST to the existing 12-inch water line.

ARTICLE I

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

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

1. Project Management

- a. Plan and participate in a PROJECT kick-off meeting with CITY to confirm PROJECT scope, team, lines of communication, and schedule;
- b. Develop a work plan and PROJECT task schedule;
- c. Prepare and provide monthly progress/status reports to the CITY sufficient to support monthly billings. Monthly status reports shall be submitted with monthly invoices and shall include a summary of work performed in the past 30 days, work to be performed in the next 30 days, and project milestones;
- d. Review existing materials and reports, including those obtained from the CITY. The data reviewed will be used in the development of the PROJECT documents, and will include but not be limited to the following:
 - i. Preliminary design reports;
 - ii. CITY standard details, specifications, and design manuals and guidelines;
 - iii. Property ownership and tax plat information;
 - iv. Existing survey data;
 - v. Existing water, wastewater, storm drainage, and paving record drawings;
- e. Contact and coordinate with franchise utility companies to inform them of the PROJECT, update record information, coordinate survey and base mapping information, identify possible conflicts, and establish critical issues for design, PROJECT schedule, and construction. Note areas for potential conflict of lines to be resolved during surveying and design;
- f. Perform project management duties including sub-consultant management and coordination; and

2. Hydraulic Modeling for EST
 - a. Update Existing Demands and Projections – FNI will evaluate recent development data provided by the CITY. Development added to the system will be added to the existing water system model scenario. FNI will update future demand projections for the 5-year and Buildout planning periods. Utilizing selected design criteria and land use assumptions, FNI will update projected average day, maximum day, and peak hour demands for 5-year and Buildout planning periods.
 - b. Evaluate TCEQ Capacity Requirements Compliance – FNI will evaluate the water system for compliance with the TCEQ Chapter 290 water system capacity requirements. FNI will analyze well production capacity, pumping capacity, elevated storage capacity, and total storage capacity to determine if any deficiencies exist.
 - c. Technical Memorandum – Develop a technical memorandum that summarizes the assumptions, analysis, and conclusions of the hydraulic analysis. Deliver one (1) electronic searchable PDF copy of the draft memorandum. Based on the CITY’s review comments, FNI will revise the draft memorandum and deliver one (1) electronic searchable PDF copy and five (5) hard copies of the final technical memorandum.
3. Prepare drawings, specifications, Construction Contract Documents, designs, and layouts of improvements to be constructed (if surveys are to be furnished, they are Special Services, pursuant to Article II, or Additional Services, pursuant to Article III).
4. Provide final layout, elevation, details, and specifications for the proposed elevated storage tank, showing tank and pedestal, inlet and outlet lines, drains, overflow, interior and yard piping, access ladders, valves, man-ways, logos, access roadway, fencing, landscaping, irrigation, and site drainage. Provide adequate detail to enable the tank manufacturer to prepare final design and shop drawings for the tank foundation and complete tank. Tank is assumed to be a composite tank with a concrete pedestal and steel bowl. Additionally, the design will include approximately 500 LF of water line to connect to the existing distribution system.
5. Electrical Design including:
 - a. Electrical and instrumentation for the tank.
 - b. Design with pole mounted lights to illuminate tank logo – assuming there is enough room at the site to accommodate this. If it is determined there is not enough room a lighting study and/or an alternate tank logo lighting design will be an additional service.
 - c. Coordination with the Local Electric and Water Utility and one visit to the site to meet with the local utility.
 - d. Coordination with the City and/or City’s SCADA Integrator on the City’s SCADA system.
6. Submit drawings, specifications, and Construction Contract Documents to the applicable federal, state and/or local agency(s) for approval, where required.
7. Furnish such information necessary to utility companies whose facilities may be affected or services may be required for the Project. Submit to the Federal Aviation Administration (FAA) for permitting and to verify if any special restrictions are required for the tank.

8. Permitting - FNI will prepare a Texas Commission on Environmental Quality (TCEQ) compliance letter and submit required plans and documentation in accordance with the requirements of TAC Chapter 290 to permit the project.
 9. Prepare revised opinion of probable construction cost at each design submittal.
 10. Prepare bidder's proposal forms (project quantities) of the improvements to be constructed.
 11. Provide design submittals at 50%, 90% and 100% design milestones.
 12. Furnish Client three (3) sets of printed copies and one (1) electronic copy (.pdf format) of drawings, specifications, and bid proposals marked "Preliminary" for approval by Client, for each design submittal as described above. Upon final approval by Client, FNI will provide Client one (1) set of reproducible "Final" drawings and one (1) loose set of specifications for reproduction by Client.
- B. BID OR NEGOTIATION PHASE: Upon completion of the design services and approval of "Final" drawings and specifications by Client, FNI shall provide professional services in this phase as follows:
1. Assist Client in securing bids. Issue a Notice to Bidders to prospective contractors and vendors listed in FNI's database of prospective bidders, and to selected plan rooms. Provide a copy of the notice to bidders for Client to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by Client.
 2. Print Bid Documents and distribute to selected plan rooms, and to prospective bidders that respond to the Notice to Bidders.
 3. Maintain information on entities that have been issued a set of bid documents. Distribute information on plan holders to interested contractors and vendors on request.
 4. Assist Client by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents to plan holders if necessary.
 5. At Client request, FNI will assist Client in the opening, tabulating, and analyzing the bids received. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project. Recommend award of contracts or other actions as appropriate to be taken by Client. Pre-qualification of all prospective bidders and issuing a list of eligible bidders prior to the bid opening is an additional service.
 6. Assist the Client in conducting a pre-bid conference for the construction projects and coordinate responses with Client. Response to the pre-bid conference will be in the form of addenda issued after the conference. Attend the tour of the project site after the pre-bid conference.
 7. Assist Client in the preparation of Construction Contract Documents for construction contracts. Provide ten (10) sets of Construction Contract Documents which include information from the apparent low bidders bid documents, legal documents, and addenda bound in the documents for execution by the Client and construction contractor. Distribute five (5) copies of these documents to the contractor with a notice of award that includes directions for the execution of these

documents by the construction contractor. Provide Client with the remaining five (5) copies of these documents for use during construction. Additional sets of documents can be provided as an Additional Service.

8. Furnish contractor copies of the drawings and specifications for construction pursuant to the General Conditions of the Construction Contract.

- D. CONSTRUCTION PHASE GENERAL REPRESENTATION: Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase general representation services as described below.

In performing these services, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for the supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

These services are based on the use of FNI's standard General Conditions for construction projects. Modifications to these services required by use of other general conditions or contract administration procedures are an additional service. If General Conditions other than FNI's standard are used, the Client agrees to include provisions in the General Conditions that require Contractor to include FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by Contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the Contractor's indemnification provisions where the Client is named as an indemnified party.

1. Assist Client in conducting pre-construction conference(s) with the Contractor(s), review construction schedules prepared by the Contractor(s) pursuant to the requirements of the construction contract, and prepare a proposed estimate of monthly cash requirements of the Project from information provided by the Construction Contractor.
2. Establish communication procedures with the Client and contractor. Submit (insert frequency; i.e. monthly, bi-monthly, quarterly, etc.) reports of construction progress. Reports will describe construction progress in general terms and summarize project costs, cash flow, construction schedule and pending and approved contract modifications.
3. Establish and maintain a project documentation system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Produce monthly reports indicating the status of all submittals in the review process. Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
4. Based on FNI's observations as an experienced and qualified design professional and review of the Payment Requests and supporting documentation submitted by Contractor, determine the

amount that FNI recommends Contractor be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract.

5. Make 15 visits to the construction site (as distinguished from the continuous services of a Resident Project Representative) to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort FNI will endeavor to protect the Client against defects and deficiencies in the work of Contractors and will report any observed deficiencies to Client. Visits to the site in excess of the specified number are an Additional Service.
6. Notify the Client of non-conforming work observed on site 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.
7. Coordinate the work of testing laboratories and inspection bureaus required for the testing or inspection of materials, witnessed tests, factory testing, etc. for quality control of the Project. The cost of such quality control shall be paid by Client and is not included in the services to be performed by FNI.
8. Interpret the drawings and specifications for Client and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by Client, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
9. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf of the Client to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the Client. Documentation of field orders, where cost to Client is not impacted, will also be prepared. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the Client are an additional service. Substitutions of materials or equipment or design modifications requested by the Client are an additional service.
10. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the Client on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor on behalf of the Client if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of FNI are an additional service.
11. Conduct, in company with Client's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the City in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor(s). Visiting the site to review completed work in excess of two (2) trips are an Additional Service.

12. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. Furnish Client three (3) sets of printed copies and one (1) electronic copy (.pdf format) of "Record Drawings."

ARTICLE II

SPECIAL SERVICES: FNI shall render the following professional services, which are not included in the Basic Services described above, in connection with the development of the Project:

1. Special Inspection Services

FNI will provide the following critical inspections associated with the elevated tank construction:

- a. Tank reinforced concrete foundation, which may be a spread footing or drilled piers. Up to twelve (12) inspection visits;
- b. Tank reinforced concrete pedestal wall. Up to twenty-four (24) inspection visits;
- c. Tank steel welding inspections. Up to sixteen (16) inspection visits;
- d. Tank coating inspections. Up to sixteen (16) inspection visits;
- e. Tank site work inspections. Up to five (5) inspection visits;
- f. Tank electrical work inspections. Up to five (5) inspection visits;

2. Geotechnical Investigation

- a. Review readily available published and in-house geotechnical literature of the site and the general site area including geologic maps.
- b. Perform a reconnaissance of the project site and mark out proposed boring locations. We will also contact Texas811 prior to exploration.
- c. As requested, drill, log, and sample four exploratory borings at the site. Three borings will be located along the perimeter of the EST and will be drilled to a depth of about 50 feet below ground surface (bgs), and one boring will be located near the center of the EST and will be drilled to a depth of about 75 feet bgs. The borings will be drilled using an all-terrain vehicle (ATV)-mounted drill rig.
- d. Collect geotechnical soil samples using conventional split-spoon and/or thin-wall tube sampling techniques for laboratory testing and analysis.
- e. Perform laboratory testing that will generally consist of moisture content, No. 200 Wash, Atterberg limits, strength testing, and consolidation testing.
- f. Prepare a geotechnical report presenting the results of our evaluation. The report will be sealed by a Professional Engineer licensed in the State of Texas and will include the following:
 - i. Description of work scope, laboratory, and field procedures;
 - ii. Maps and boring plans;
 - iii. Boring logs and laboratory test results;
 - iv. Subsurface soil and groundwater conditions;
 - v. Earthwork considerations;
 - vi. Excavation characteristics of onsite soils;
 - vii. Potential for re-use of onsite soils;
 - viii. Subgrade preparation measures;
 - ix. Suitable foundation types; and
 - x. Allowable bearing pressures and estimated settlements.

3. Materials Testing

A budget will be set for materials testing for site paving and water line backfill. The testing for the EST foundation, pedestal, and welding will be performed at the tank manufacturers expense.

ARTICLE III

ADDITIONAL SERVICES: Any services performed by FNI that are not included in the Basic Services or Special Services described above are Additional Services. Additional Services to be performed by FNI, if authorized by Client, are described as follows:

1. Relocating EST site based on changes to development.
2. Design related to the size and installation of onsite detention, it is assumed this will be included in the larger development.
3. Generator backup power design.
4. Security items such as Surveillance and Access Control.

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 as follows:

- 50% Design - 150 days after Notice to Proceed
- 90% Design – 60 days after receipt of City comments on 60% Submittal
- 100% Design – 45 days after receipt of City comments on 90% Submittal

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Client or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

ARTICLE V

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

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

- B. Designate in writing a person to act as Client's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define Client's policies and decisions with respect to FNI's services for the Project.
- C. Provide all criteria and full information as to Client's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Client will require to be included in the drawings and specifications.
- D. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- E. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- F. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay, or cause rework in, the services of FNI.
- G. Client shall make or arrange to have made all subsurface investigations, including but not limited to borings, test pits, soil resistivity surveys, and other subsurface explorations. Client shall also make or arrange to have made the interpretations of data and reports resulting from such investigations. All costs associated with such investigations shall be paid by Client.
- H. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Client may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as Client may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as Client may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- I. If Client designates a person to serve in the capacity of Resident Project Representative who is not FNI or FNI's agent or employee, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in an Attachment attached to and made a part of this Agreement before the Construction Phase of the Project begins. Said attachment shall also set forth appropriate modifications of the Construction Phase General Representation services as defined in Attachment SC, Article I, D, together with such adjustment of compensation as appropriate.
- J. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job-related meetings and substantial completion inspections and final payment inspections.
- K. Give prompt written notice to FNI whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.

- L. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.
- M. Bear all costs incident to compliance with the requirements of this Article V.

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and Client designate the following representatives:

City's Designated Representative – Beth Jones, PE
501 James St,
Tomball, TX 77375
281-290-1466
BJones@tomballtx.gov

City's Accounting Representative –

FNI's Designated Representative – Jared Barber, PE
11200 Broadway St., Suite 2320
Pearland, TX 77584
832-456-4745
Jared.Barber@freese.com

FNI's Accounting Representative – Kristina Isaac
10497 Town and Country Way, Suite 500
Houston, Texas 77024
Telephone No.: 713-600-6860
E-mail: Kristina.Isaac@freese.com

City of Tomball Southside Elevated Storage Tank Summary of Fee by Task	
Basic Services	
Design Phase	\$ 240,000
Bid Phase	\$ 16,000
Construction Phase	\$ 84,000
Basic Services Subtotal	\$ 340,000
Special Services	
Special Inspections	\$ 101,000
Geotechnical Investigation	\$ 25,000
Materials Testing	\$ 33,000
Special Services Subtotal	\$ 159,000
Project Total	\$ 499,000

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** The term City as used herein refers to the City of Tomball, 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	Per State Statute
\$2,000,000	
Automobile Liability (Any Auto)	Professional Liability
CSL	\$3,000,000 Annual Aggregate
\$1,000,000	

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.