

**LENOIR CITY COUNCIL
TUESDAY, SEPTEMBER 4, 2018
6:00 P.M.**

PRESENT: Mayor Gibbons presiding. Councilmembers present were Beal, Perdue, Perkins, Rohr, Stevens, Thomas and Willis. Also in attendance were City Manager Hildebran, City Attorney Blair and City Clerk Cannon.

I. CALL TO ORDER

- A. The meeting was opened by a moment of silence followed by the Pledge of Allegiance led by Mayor Gibbons.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

III. CONSENT AGENDA ITEMS

- A. Upon a recommendation by City Manager Hildebran, the following Consent Agenda items were submitted for approval:
1. Minutes: Approval of City Council Meeting minutes of Tuesday, August 21, 2018, as submitted.
 2. Professional Services Agreement; Freese and Nichols, Inc.: Staff recommends City Council approval to enter into a contract for professional services for stormwater evaluation with Freese and Nichols, Inc., as detailed in the attached proposed services agreement. (A copy of the agreement is hereby incorporated into these minutes by reference. Refer to pages 231-240).

Upon a motion by Mayor Pro-Tem Willis, Council voted 7 to 0 to approve the Consent Agenda items as listed above and as recommended by City Manager Hildebran.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

- A. Items of Information

SCULPTURE UNVEILING

EVENT: 1. The unveiling ceremony for the sculpture at Lenoir Fire Station No. 1 will be held on Friday, September 7 at 10:00 a.m.

CITY/COUNTY SERVICES

COMMITTEE: 2. The City/County Services Committee will meet on Monday, September 10 at 11:45 a.m.

CALDWELL COUNTY ECONOMIC

DEV. COMM.: 3. The Caldwell County Economic Development Commission will meet on Tuesday, September 11 at 8:00 a.m.

LENOIR BUSINESS ADVISORY

BOARD: 4. The Lenoir Business Advisory Board will meet on Thursday, September 13 at 6:00 p.m. at City Hall, Third Floor, former Council Chambers.

NCDOT'S FALL LITTER

SWEEP: 5. The NCDOT's Fall Litter Sweep begins on Saturday, September 15 through Saturday, September 29. Additional information is online at www.ncdot.gov.

**SANITATION DIVISION'S ANNUAL
TRASH BASH WEEK:**

6. The Sanitation Division's Annual Trash Bash Week is scheduled for Monday, September 17 through Friday, September 21. Additional information is available on the City's website at www.cityoflenoir.com. The public is encouraged to participate in this event.

**NCLM'S ANNUAL FALL
CONFERENCE:**

7. The North Carolina League of Municipalities (NCLM) annual Fall Conference will be held at the Hickory Metro Convention Center from Wednesday, September 19 through Saturday, September 22. Representing the City of Lenoir will be Mayor Joe Gibbons, Mayor Pro-Tem Ben Willis, Councilmembers Todd Perdue and Ike Perkins along with City Manager Scott Hildebran.

B. ITEMS FOR COUNCIL ACTION

**PUBLIC HEARING REQUEST; APPALACHIAN
REGIONAL COMMISSION GRANT (ARC); WATER
IMPROVEMENT PROJECT:**

1. City Staff recommends that Council call for a public hearing to be held on Tuesday, September 18 to receive public comments regarding the closeout of an Appalachian Regional Commission Grant (ARC) Water Treatment Project. The purpose of this \$273,000 ARC grant was to replace sewer lines located near the City of Lenoir's downtown district.

Upon a motion by Councilmember Perdue, Council voted 7 to 0 to schedule a public hearing on Tuesday, September 18 for the closeout of an Appalachian Regional Commission Grant (ARC) for the Water Treatment Project as described above and as recommended by City Staff.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

**ANNOUNCEMENT, BOARD RE-APPOINTMENT;
LENOIR ABC BOARD:**

- A. Mayor Gibbons recommended that Elizabeth “Betsy” Wilson be re-appointed to serve a three-year term on the Lenoir ABC Board. This re-appointment will be presented for Council consideration at the September 18 City Council meeting.

IX. REPORT AND RECOMMENDATIONS OF COUNCILMEMBERS

CLOSED SESSION:

- A. Pursuant to N.C.G.S. §143-318.11(a), (3), (5), and upon a motion by Councilmember Stevens which carried unanimously, City Council entered into closed session to discuss attorney-client privilege and property acquisition.

OPEN SESSION:

- B. Upon a motion by Councilmember Thomas, Council voted 7 to 0 to re-enter into open session.

X. ADJOURNMENT

- A. There being no further business, the meeting was adjourned at 6:35 p.m.

Shirley M. Cannon, City Clerk

Joseph L. Gibbons, Mayor

AGREEMENT FOR PROFESSIONAL SERVICES

STATE OF NORTH CAROLINA

COUNTY OF CALDWELL

This Agreement is entered into by the City of Lenoir, North Carolina, hereinafter called "Owner" 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: Owner agrees to employ FNI; FNI agrees to perform professional services in connection with the Project; Owner agrees to pay to FNI compensation. The Project is described as follows: Stormwater Study Services for the City of Lenoir, North Carolina.
- 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 Owner which is attached to and made a part of this Agreement.
- III. **COMPENSATION:** Owner 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 as Basic Services in the "Scope of Services" for a lump sum fee of \$102,943.00. Details concerning the fee are included in Attachment CO.

If FNI's services are delayed or suspended by Owner, 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 Owner and FNI.

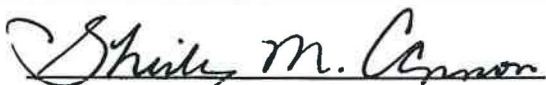
Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Owner and FNI, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and FNI and not for the benefit of any other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

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

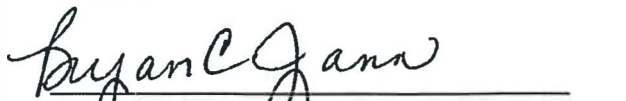
This contract is executed in two counterparts.

IN TESTIMONY HEREOF, they have executed this Agreement, the 4th day of September 2018.

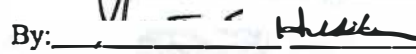
ATTEST:


Shirley M. Cannon
City Clerk

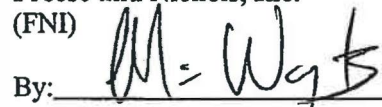
ATTEST:


BRYAN JANN, VICE PRESIDENT

City of Lenoir, North Carolina
(Owner)

By: 
Scott E. Hildebrand City
Manager
Print Name and Title

Freese and Nichols, Inc.
(FNI)

By: 
MIKE WAYTS Principal / VP
Print Name and Title

ATTACHMENT SC

SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNER

The following is a scope of services for Freese and Nichols, Inc. (FNI) to perform stormwater study services for the City of Lenoir, NC. Following the scope is a fee breakdown and schedule for completion:

ARTICLE I

BASIC SERVICES: FNI will provide the following basic services:

1. Kickoff Meeting

- a. FNI will meet with City staff to kickoff the project, review scope and schedule and coordinate on other items necessary for FNI to proceed on the project.

2. Background Data Collection and Organization

- a. FNI will collect relevant background data from the Owner and other sources and compile and organize this information into a single location. This will help to identify data gaps and will assist with development of the database, ranking system and initial field assessments. It is expected that this data may include but is not limited to:
 - Past studies and stormwater reports for the Owner
 - Past models including water quality, H&H (HEC-RAS, HEC-HMS) and other stormwater models
 - Known problem areas and hot-spots including citizen complaint reports or records
 - Existing GIS data of stormwater infrastructure, roads, hydrography, topography, planimetric, and other relevant physical features.
 - Existing condition assessments of stormwater infrastructure to the extent it is available

3. Develop Stormwater CIP Ranking System

- a. FNI will work with staff to identify Owner appropriate criteria for ranking Stormwater CIP projects for implementation. This will include one meeting with the Owner.
- b. FNI will develop a scoring system for each selected criteria and submit to Owner for review and revise per comments. This will include one teleconference with the Owner to discuss.
- c. FNI will utilize pair-wise methodology to obtain City staff input on the importance of each criteria.
- d. Utilizing existing information provided by the Owner for known stormwater repair needs, FNI will score up to 10 projects against criteria. If any or some information is missing on project(s), FNI will request this information from the Owner. Scoring for projects not related to stormwater are excluded from this scope.

- e. FNI will incorporate the approved ranking system into a Stormwater Concern Tracking database and perform the draft ranking. FNI will obtain staff input on the project rankings and revise as necessary to finalize the ranking system.

4. Develop Database for Stormwater Concern Tracking and Projects

- a. FNI will work with the Owner to develop a stormwater database for tracking problem areas and citizens' complaints. This database will incorporate a work flow tracking function for repairs and project status.
- b. Database will include functionality to create stormwater projects from concerns. Ranking system agreed upon in Item 3 of this scope will be incorporated into the projects interface.
- c. FNI will develop a mock-up (conceptual layout) of the database graphical interface (GUI) for each of the listed functions for Owner review and comment.
- d. FNI will revise GUI as needed for approval and create Microsoft Access database for Owner review.
- e. FNI will conduct teleconference with Owner to receive comments on database and revise per comments.
- f. FNI will prepare written documentation on database use and maintenance.
- g. FNI will meet with Owner to submit final database electronically along with written documentation on the use and maintenance of the database. FNI will test database on Owner's servers and troubleshoot as necessary.
- h. FNI will provide up to two hours of training to City staff on the use of the database.

5. Conduct Stormwater Systems Inventory

- a. Based on conversations with City staff, the Owner is currently mapping stormwater outfalls but does not have mapping completed for the Owner's stormwater systems network. FNI will conduct a basic systems inventory of the Owner's stormwater infrastructure within the Owner's municipal limits. FNI with types of stormwater infrastructure to be inventoried include but are not limited to:

- a. Stormwater conduit and pipe networks including inlets, manholes,
- b. Stormwater BMPs (both above and below-ground)

It is assumed that this inventory will not include stream networks, agricultural drainage ditches, wetlands, or pond features unless they are a component of the Owner's stormwater network (e.g. a daylighted stream section between two stormwater pipes).

It is assumed that the endpoint of the survey will be where the drainage network discharges into natural systems such as stream, wetlands or a pond/lake.

- b. This inventory is not intended to provide a detailed survey of the stormwater infrastructure, but a basic approximate mapping using mapping-grade (sub-meter accuracy) GPS to indicate the locations of key nodes in the drainage network such as inlets, outfalls, and BMPs. Basic information on the infrastructure will include:

- Pipe or drainage conduit size and material
 - Approximate depth as measured from tape, laser level or some other type of depth-finding instrument
 - General qualification as to condition of the pipe/conduit. CCTV inspection is excluded from this scope.
 - Notes as to the type of BMP that is surveyed
 - Other pertinent information
- c. As deliverables, FNI will provide the following:
- A geodatabase of the stormwater systems map
 - Large format (24" x 36") hardcopy maps depicting the stormwater infrastructure
6. Review Stormwater Problem Areas and Develop High-Level Concept
- a. FNI will spend one day in the field with City staff to review stormwater problem areas.
- b. Based on the review, FNI will develop a high-level planning concept for one project, to include:
- Order of magnitude costs of implementation including an estimate of construction costs and professional service fees to implement project
 - Identification of potential permitting and regulatory constraints and requirements
 - Calculation of potential project cost/benefit
7. Stormwater Utility Fee Conceptual Evaluation
- a. FNI will conduct a high-level evaluation of the development of a stormwater utility fee to generate a reliable and stable funding source for stormwater management in the City.
1. Engineering staff coordination for high level identification of current stormwater services and known needed stormwater services and improvements.
 2. Finance staff coordination for high level identification of options available and effort required for billing implementation.
 3. Rough approximation of non-residential impervious area in the City by parcel using GIS based on currently available parcel data and aerial imagery. This evaluation is not intended to provide accurate property-specific data but to provide a city-wide projection. Property-specific data can be provided as part of a separate comprehensive stormwater utility development and implementation study.
 4. Memorandum report documenting the following:
 - Rough projection of potential annual stormwater utility revenue for current development using impervious area as the basis for fee determination,

- Examples of typical fee structures,
- Identification of available uses of funds, and
- Key steps for consideration in the development, adoption, and implementation of a stormwater utility fee.

ARTICLE II

ADDITIONAL SERVICES: Additional Services not included in Basic Services as described above will be negotiated as a lump sum. Additional Services will not be performed until authorized by the Owner.

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:

Task/Milestone	Duration (Calendar Days)	Scheduled Completion (Calendar Days from Notice to Proceed)
Meeting #1: Kickoff meeting and Discuss Ranking Criteria and Database Features	1	1
Background Data Collection	21	21
Develop Ranking and Prioritization System Criteria	21	42
Develop Stormwater CIP Database mock-up	18	60
Develop draft scoring system	14	35
Meeting #2: Meet with Owner to review mock-up of database functions and graphical user interface and draft scoring system	1	40
Revise mock-up of database and scoring system	16	56
Meeting #3: Review final mock-up of database, conduct pairwise ranking and review updated scoring system with the Owner	1	60
FNI programs and submits draft database	40	100
Owner reviews database	20	120
FNI finalizes database based on Owner's feedback	24	144

Task/Milestone	Duration (Calendar Days)	Scheduled Completion (Calendar Days from Notice to Proceed)
Meeting #4: Meet with Owner to test database on their server and troubleshoot any issues	1	130
Conduct one day assessment of stormwater problem areas	1	90
Rank and Prioritize Identified Stormwater Areas/" Hot Spots" into Potential Projects	10	100
Develop Planning Level Concept for One Project	20	120
Technical Memorandum of Stormwater Fee Conceptual Evaluation	30	75
Meeting #5: Review results of stormwater utility fee conceptual memo	1	90
Owner reviews memo	20	110
FNI revises memo based on Owner's comments and submits final stormwater utility fee memo	20	130

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 Owner 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 OWNER: Owner 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 Owner'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 Owner's policies and decisions with respect to FNI's services for the Project.
- B. Provide all criteria and full information as to Owner'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 Owner 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 Owner 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.

ARTICLE V

DESIGNATED REPRESENTATIVES: FNI and Owner designate the following representatives:

Owner's Designated Representative – Jared Wright
City of Lenoir
Public Works Director
P.O. Box 958
801 West Ave. NW
Lenoir, NC 28645
(827) 757-2183
Email: jwright@ci.lenoir.nc.us

FNI's Designated Representative – Bryan Dick, PE
717 Green Valley Road, Suite 200
Greensboro, NC 27408
(864) 506-1465
bryan.dick@freese.com

FNI's Accounting Representative – Stephanie Kirchstein
2711 N. Haskell Ave., Suite 300
Dallas, TX 75204
(214) 217-2200
stephanie.kirchstein@freese.com

FEE BREAKDOWN

BASIC SERVICES

Task	Description	Fee
1, 2	Background Data Collection and Organization	\$4,971
3	Develop Stormwater CIP Ranking System	\$12,425
4	Develop Database for Stormwater Concern Tracking and Projects	\$18,090
5	Conduct Stormwater Systems Inventory	\$37,417
6	Review of Stormwater Problem Areas and Develop Planning Concept for One Project	\$15,148
7	Stormwater Utility Fee Conceptual Evaluation	\$14,892

Project Total (Lump Sum)

\$102,943

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** The term Owner as used herein refers to the City of Lenoir, North Carolina. 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:** Owner, 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. **LIMITATION OF LIABILITY.** OWNER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF FNI TO THE OWNER FOR ANY AND ALL CLAIMS, LOSSES, COSTS, EXPENSES, OR DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S AND EXPERT-WITNESS' FEES AND COSTS, FROM ANY CAUSE OR CAUSES, SO THAT THE TOTAL AGGREGATE LIABILITY OF FNI TO OWNER SHALL NOT EXCEED FNI'S TOTAL FEE RECEIVED FOR SERVICES RENDERED ON THIS PROJECT. IT IS INTENDED THAT THIS LIMITATION APPLY TO ANY AND ALL LIABILITY OR CAUSES OF ACTION HOWEVER ALLEGED OR ARISING, UNLESS SPECIFICALLY PROHIBITED BY LAW.
5. **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.
6. **INFORMATION FURNISHED BY OWNER:** Owner 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 Owner and Owner 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 Owner, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications or other information furnished by Owner to FNI that FNI may reasonably discover in its review and inspection thereof.
7. **INSURANCE:** FNI shall provide to Owner certificates of insurance which shall contain the following minimum coverage:

Commercial General Liability General Aggregate \$2,000,000 Automobile Liability (Any Auto) CSL \$1,000,000	Workers' Compensation Each Accident \$1,000,000 Professional Liability \$3,000,000 Annual Aggregate
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8. **SUBCONTRACTS:** If, for any reason, at any time during the progress of providing Services, Owner determines that any subcontractor for FNI is incompetent or undesirable, Owner 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 Owner.
9. **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 Owner upon payment of FNI's fees for services. FNI may retain copies for record purposes. Owner agrees such documents are not intended or represented to be suitable for reuse by Owner or others. Any reuse by Owner or by those who obtained said documents from Owner without written verification or adaptation by FNI will be at Owner's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants, and Owner 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 Owner, and FNI shall indemnify and hold harmless Owner from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.

10. **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.
11. **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.
12. **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 Owner against defects and deficiencies in the work of Contractors; FNI will report any observed deficiencies to Owner, 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 Owner 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.
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 OWNER and in acceptance of the services as satisfactory by the OWNER. 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 OWNER 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 OWNER, 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:** OWNER and FNI each are hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER 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 OWNER 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.