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FILED FOR RECORD
at 12:00 o'clock P M

PROFESSIONAL SERVICES AGREEMENT

JAN 14 2025

BECKY LANDRUM
County Clerk, Hunt County, Tex.
By 

STATE OF TEXAS §

COUNTY OF HUNT §

This Agreement is entered into by Hunt County, Texas (Client) and Freese and Nichols, Inc. (FNI). In consideration of FNI providing professional services for Client and Client utilizing these services, the parties hereby agree:

- 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 Hunt County Subdivision Pavement and Drainage Analysis.
- II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with the 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 under this Agreement for a lump sum fee of \$14,500 and a not to exceed fee of \$41,200 totaling \$55,700.
- IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement, as set forth in Attachment TC – Terms and Conditions of Agreement, shall govern the relationship between the Client and FNI.
- V. **GOVERNING LAW; VENUE:** This Agreement shall be administered and interpreted under the laws of the State of Texas. Venue of any legal proceeding involving this Agreement shall be in Tarrant County, Texas.
- VI. **EFFECTIVE DATE:** The effective date of this Agreement is December 9, 2024.

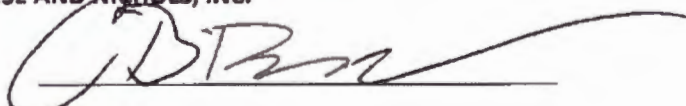
Nothing in this Agreement shall be construed to give any rights or benefits under this Agreement to anyone other than the Client and FNI. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and FNI and not for the benefit of any other party. This Agreement constitutes the entire agreement between the Client and FNI and supersedes all prior written or oral understandings.

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

HUNT COUNTY, TEXAS

FREESE AND NICHOLS, INC.

By: Bobby W. Stovall

By: 

Name: 


Name: Chris Bosco

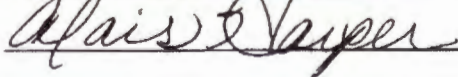
Title: County Judge

Title: Principal/Vice President

Date: January 14, 2025

Date: December 10, 2024

Attest:  Becky Landrum
County Clerk

Attest: 

19,257

SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT

PROJECT UNDERSTANDING

Hunt County (Client) seeks to evaluate existing pavement conditions and pavement surface drainage within the Tucumcari Ranch (Phase 3), Deer Crossing (Phase 2) and Castlerock Oakridge (Phase 2) subdivisions in Hunt County. This includes identifying the causes of cracking, settling, uplifting and overall pavement failure, as well as examining the causes of excessive ponding on subdivision streets.

The scope of work will include geotechnical investigation and laboratory testing of pavement and subsurface conditions on each street within each subdivision along with a geotechnical data report. In addition, FNI will prepare a comprehensive report with a root-cause analysis of pavement failure and excessive ponding. The report will include up to three (3) proposed remediations per issue and high-level cost projections for the implementation of each solution. In Deer Crossing (Phase 2) and Castlerock Oakridge (Phase 2) there will not be a root cause analysis of excessive ponding; only proposed remediations and high-level cost projections for the implementation of each solution. See below for more information:

WORK TO BE PERFORMED

Basic Services	
Task 1.	Data Collection
Task 2.	Pavement and Drainage Analysis Report
Special Services	
Task 3.	Geotechnical Investigation and laboratory testing

ARTICLE I

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

TASK 1. DATA COLLECTION

Task 1 shall include the following:

- A. Collection of as-built plans, geotechnical reports, drainage reports and inspection reports from all parties involved in preparation or implementation of the aforementioned documents.

ASSUMPTIONS

- A. The Client will provide FNI all contact information of the parties involved in preparing the following documents: as-built plans, geotechnical reports, drainage reports and inspection reports as it pertains to the subdivisions listed in the project understanding.

DELIVERABLES

- A. N/A.

TASK 2. PAVEMENT AND DRAINAGE ANALYSIS REPORT

- A. Task 2 Report shall include the following:
 - i) A list of assumptions made during the analysis process
 - ii) A list of observed pavement and drainage defects, along with photos
 - iii) An assessment of pavement and subgrade construction quality and potential deterioration mechanisms
 - iv) An assessment of ponding issues, including contributing factors such as topography, grading, and stormwater infrastructure performance
 - v) A determination of existing pavement and drainage design compliance with Hunt County subdivision regulations at the time of development (Determination of existing drainage design compliance will take place only on the Tucumcari (Phase 3) subdivision).
 - vi) Proposed remediations for observed pavement and drainage defects
 - vii) High level remediation implementation costs
 - viii) FNI's recommended remediations

ASSUMPTIONS

- A. FNI and all associated parties shall be allowed permission to access public and private property as required for FNI to observe and note all pavement and drainage defects.

DELIVERABLES

- A. One (1) electronic PDF copy of the Pavement and Drainage Analysis Report.

ARTICLE II

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

TASK 3. GEOTECHNICAL INVESTIGATION AND LABORATORY TESTING

A geotechnical investigation will be performed to evaluate the existing pavement thicknesses and subsurface conditions at the following locations. Review of aerial imagery from Google Earth indicated the pavements consist of Portland Cement Concrete (PCC).

- A. W Sky Hawk Trail within Tucumcari Ranch (Phase 3), about 0.5 miles (2 boring)
- B. Buck Court and Doe Crossing within Deer Crossing (Phase 2), about 1.5 miles (6 borings)
- C. Oak Ridge Court and Oak Point Circle within Castlerock Oakridge (Phase 2), about 0.5 miles (4 borings)

The geotechnical investigation will include field investigation, laboratory testing and geotechnical data report (GDR).

- A. Field Exploration
 - i) Conduct a site visit prior to exploration activities to determine accessibility to boring locations and coordinate with the County and utility locators. Texas 811 will be notified prior to commencement of the field exploration activities to locate existing underground utilities.
 - ii) Drill 12 exploratory bores to a depth of 10 feet each along the sections of roads listed above. The PCC pavement will be cored with a coring machine and a truck-mounted drilling rig will be utilized to drill the bores through existing PCC pavement. Appropriate traffic control will be provided, and relevant ROW permits will be obtained.
 - iii) Subcontract with a drilling contractor to drill the bores and collect samples of the subgrade soils at the selected locations.
 - 1) Following completion of the coring, the bores will be advanced using standard rotary drilling equipment with hollow stem or continuous flight augers. Cohesive soils will be sampled using thick-walled 3-in OD samples. Cohesionless materials will be sampled using split-spoon samplers in conjunction with Standard Penetration Test (SPT). Rock or rock-like materials will be tested in situ using the Texas Cone Penetration (TCP) test and/or the SPT, as appropriate for the material encountered.
 - 2) Groundwater observations within the bores will be recorded at the time of drilling and at the completion of drilling and sampling.
 - 3) Pavement and subbase thicknesses for each bore will be recorded.
 - 4) The bores will be backfilled with auger cuttings upon completion of drilling and the pavement patched with similar material.

- iv) The bores will be logged in the field by an Engineer or Geologist. Visual classification of the subsurface stratigraphy shall be provided according to ASTM D2488 and the Unified Soil Classification System (USCS) during drilling and sampling.

B. Laboratory Testing

- i) Testing shall be performed on samples obtained from the bores to determine soil classification and pertinent engineering properties of the subsurface materials. FNI will select samples for laboratory testing, assign tests, and review the test results. Testing will be performed by a geotechnical testing subcontractor.
- ii) Laboratory tests will be assigned based on the specific subsurface materials encountered during exploration. Test type and quantity may vary, but are expected to include:
 - 1) Classification tests (liquid and plastic limits and percent passing the no. 200 sieve or gradation)
 - 2) Moisture content
 - 3) Unconfined compressive strength
 - 4) Sulfate content
 - 5) Lime series
 - 6) Swell pressure
 - 7) California Bearing Ratio (CBR)
 - 8) Standard Proctor

C. Geotechnical Data Report (GDR)

- i) Prepare a GDR (technical memorandum):
 - 1) Appendix with bore locations, boring logs, laboratory test results, and a key to the symbols used.
 - 2) Discussion of subsurface conditions and soil properties indicated by the field and laboratory work.

ASSUMPTIONS

- A. FNI and all associated parties shall be allowed permission from the Client and all other governing entities, public or private, to acquire pavement samples along the full length of each subdivision street.

DELIVERABLES

- A. One (1) electronic PDF copy of the Geotechnical Data Report (GDR)

ARTICLE III

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

- A. Assisting Client in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes.
- B. Assisting Client in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
- C. Preparing data and reports for assistance to Client in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- D. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this AGREEMENT.
- E. Visits to the site in excess of the number of trips included for traffic counts, speed study visits, coordination meetings, contract completion activities, geotechnical boring locating and geotechnical field investigation.
- F. Providing basic or additional services on an accelerated time schedule. The scope of this service includes the 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 Client.
- G. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- H. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- I. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
- J. Performing drilling or testing in addition to that proposed in Task 3.

The above-listed Additional Services are not included in the described basic or special services but will be performed by FNI, if authorized by Client. FNI will include a not to exceed allowance to perform Additional Services, and such allowance will only be used if pre-approved and authorized by Client.

ARTICLE IV

TIME OF COMPLETION: FNI is authorized to commence work on the project upon execution of this agreement and agrees to complete the service in accordance with the following schedule:

- A. Project to be completed within 120 days of Notice to Proceed.

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

ARTICLE V

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

- A. Designate in writing a person to act as Client’s representative with respect to the services to be rendered under this agreement. Such a person shall have contract authority to transmit instructions, receive information, interpret, and define the Client’s policies and decisions with respect to FNI’s services for the project.
- B. 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.
- 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 the project.
- D. Arrange for access to and make all provisions for FNI to enter 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 and render any decisions in writing pertaining thereto so as not to delay the services of FNI.
- F. 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.
- G. Give prompt written notice to FNI whenever Client observes or becomes aware of any development that affects the scope or schedule of FNI’s services or any defect or nonconformance of the work of any contractor.
- H. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.
- I. Bear all costs associated with compliance with the requirements of this Article V.

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and Client designate the following representatives:

Client’s Designated Representative -	Judge Bobby W. Stovall 2507 Lee St., 2 nd Floor Greenville, TX 75401 Phone: (903) 408-4146 E-mail:
Client’s Accounting Representative -	Jessica Sims

2507 Lee St., 2nd Floor
Greenville, TX 75401
Phone: (903) 408-4146
E-mail: jsims@huntcounty.net

FNI's Designated Representative -

Sherwin Hilton Jr., P.E.
12770 Merit Drive, Suite 900
Dallas, Texas 75251
Phone: (214) 544-6425
E-mail: sherwin.hilton@freese.com

FNI's Accounting Representative -

Erin Westbrook
801 Cherry Street, Suite 2800
Fort Worth, Texas 76102
Phone: (817)-735-7395
E-mail: erin.westbrook@freese.com

COMPENSATION

Compensation to FNI for Basic Services in Attachment SC shall be the lump sum of Fourteen Thousand Five Hundred Dollars (\$14,500).

Compensation to FNI for Special Services in Attachment SC shall be computed on the basis of the following Schedule of Charges, but shall not exceed Forty One Thousand Two Hundred Dollars (\$41,200).

If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the following Schedule of Charges.

<u>Position</u>	<u>Hourly Rate</u>	
	<u>Min</u>	<u>Max</u>
Professional 1	86	172
Professional 2	116	189
Professional 3	132	288
Professional 4	152	314
Professional 5	225	340
Professional 6	228	423
Construction Manager 1	113	159
Construction Manager 2	116	195
Construction Manager 3	146	195
Construction Manager 4	169	255
Construction Manager 5	202	297
Construction Manager 6	268	354
Construction Representative 1	76	90
Construction Representative 2	90	116
Construction Representative 3	123	185
Construction Representative 4	123	185
CAD Technician/Designer 1	83	119
CAD Technician/Designer 2	99	195
CAD Technician/Designer 3	129	248
Corporate Project Support 1	70	156
Corporate Project Support 2	80	228
Corporate Project Support 3	99	330
Intern / Coop	53	93

Rates for In-House Services and Equipment

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>		<u>Equipment</u>	
Standard IRS Rates		<u>B&W</u>	<u>Color</u>	Valve Crew Vehicle (hour) \$75
	Small Format (per copy)	\$0.10	\$0.25	Pressure Data Logger (each) \$500
<u>Technology Charge</u>	Large Format (per sq. ft.)			Water Quality Meter (per day) \$100
\$8.50 per hour	Bond	\$0.25	\$0.75	Microscope (each) \$150
	Glossy / Mylar	\$0.75	\$1.25	Ultrasonic Thickness Guage (per day) \$275
	Vinyl / Adhesive	\$1.50	\$2.00	Coating Inspection Kit (per day) \$275
				Flushing / Cfactor (each) \$500
	Mounting (per sq. ft.)	\$2.00		Backpack Electrofisher (each) \$1,000
	Binding (per binding)	\$0.25		
				<u>Survey Grade</u> <u>Standard</u>
				Drone (per day) \$200 \$100
				GPS (per day) \$150 \$50

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.15. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multiplier of 1.15. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and/or rates will be adjusted annually in February. Last updated 2024.

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** As used herein: (1) Client refers to the party named as such in the Agreement between the Client and FNI; (2) FNI refers to Freese and Nichols, Inc., its employees and agents, and its subcontractors and their employees and agents; and (3) Services refers to the professional services performed by FNI pursuant to the Agreement.
2. **INFORMATION FURNISHED BY CLIENT:** Client will assist FNI by placing at FNI’s disposal all available information pertinent to the project, including previous reports and any other data relative to design or construction of the project. FNI shall have no liability for defects or negligence in the Services attributable to FNI’s reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by Client. To the fullest extent permitted by law, Client agrees to indemnify and hold FNI harmless from any and all claims and judgments, and all losses, costs, and expenses arising therefrom. FNI shall disclose to Client, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications, or other information furnished by Client to FNI that FNI may reasonably discover in its review and inspection thereof.
3. **STANDARD OF CARE:** FNI will perform all professional services under this Agreement with the professional skill and care ordinarily provided by competent members of the subject profession practicing under the same or similar circumstances and professional license as expeditiously as is prudent considering the ordinary professional skill and care of a competent member of the subject profession. FNI makes no warranties, express or implied, under this Agreement or otherwise, in connection with any Services performed or furnished by FNI.

4. **INSURANCE:** FNI shall provide Client with certificates of insurance with the following minimum coverage:

<u>Commercial General Liability</u>	<u>Workers’ Compensation</u>
\$2,000,000 General Aggregate	As required by Statute
<u>Automobile Liability (Any Auto)</u>	<u>Professional Liability</u>
\$1,000,000 Combined Single Limit	\$3,000,000 Annual Aggregate

5. **CHANGES:** Client, without invalidating the Agreement, may order changes within the general scope of Services required by the Agreement by altering, adding, and/or deducting from the Services to be performed. If any such change under this clause causes an increase or decrease in FNI’s cost or time required for the performance of any part of the Services, an equitable adjustment will be made by mutual agreement and the Agreement will be modified in writing accordingly.

FNI will make changes to the drawings, specifications, reports, documents, or other deliverables as requested by Client. However, when such changes differ from prior comments, directions, instructions, or approvals given by Client or are due to causes not solely within the control of FNI, FNI shall be entitled to additional compensation and time required for performance of such changes to the Services authorized under this Agreement.

6. **OPINION OF PROBABLE CONSTRUCTION COSTS:** No fixed limit of project construction cost shall be established as a condition of the Agreement, unless agreed upon in writing and signed by the parties hereto. If a fixed limit is established, FNI shall be permitted to include contingencies for design, bidding, and price escalation in the construction contract documents to make reasonable adjustments in the scope of the project to adjust the project construction cost to the fixed limit. Such contingencies may include bid allowances, alternate bids, or other methods that allow FNI to

determine what materials, equipment, component systems, and types of construction are to be included in the construction contract documents. Fixed limits, if any, shall be increased by the same amount as any increase in the contract price after execution of the construction contract.

FNI will furnish an opinion of probable construction or program cost based on present day pricing, 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 prices. Accordingly, FNI cannot and does not warrant or represent that bids or cost proposals will not vary from the Client's project budget or from any estimate or opinion of probable construction or program cost prepared by or agreed to by FNI.

7. **PAYMENT:** Progress payments may be requested by FNI based on the amount of Services completed. Payment for Services shall be due and payable upon submission of a statement for Services to Client and in acceptance of Services as satisfactory by Client. Statements for Services shall not be submitted more frequently than monthly. Any applicable taxes imposed upon the Services, expenses, and charges by any governmental body after the execution of this Agreement will be added to FNI's compensation.

If Client fails to make any payment due FNI for Services, expenses, and charges 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 Client, suspend Services under this Agreement until FNI has been paid in full for all amounts due for Services, expenses, and charges.

If FNI's Services are delayed or suspended by Client or 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.

8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports, data, and other project information developed in the execution of Services provided under this Agreement shall be the property of Client upon payment of FNI's fees for Services. FNI may retain copies for record purposes. Client agrees such documents are not intended or represented to be suitable for reuse by Client or others. Any reuse by Client or by those who obtained said documents from Client without written verification or adaptation by FNI, will be at the Client's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants. To the fullest extent permitted by law, Client shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data, and other project information in the execution of Services provided under this Agreement in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to Client, and FNI shall indemnify and hold harmless Client from all claims, damages, losses, and expenses including reasonable attorneys' fees arising out of or resulting therefrom.

9. **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.
10. **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 construction contract documents. In performing these Services, FNI will report any observed deficiencies to Client, however, it is understood that FNI does not guarantee the contractor's performance, nor is FNI responsible for the supervision of the contractor's operation and employees. FNI shall not be responsible for the contractor's means, methods, techniques, sequences, or procedures of construction 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 Client 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.
11. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** Client agrees to include provisions in the general conditions of the construction contract that name FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by the contractor for the project (except workers' compensation and professional liability policies); and (2) as an indemnified party in any indemnification provisions where Client is named as an indemnified party.
12. **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 project 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 Services required by this Agreement, FNI does not take possession or control of the subject site, but acts as an invitee in performing 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.
13. **SUBCONTRACTS:** If, for any reason and at any time during the progress of providing Services, Client determines that any subcontractor for FNI is incompetent or undesirable, Client shall notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the Agreement shall create any contractual relation between any subcontractor and Client.
14. **PURCHASE ORDERS:** If a purchase order is used to authorize FNI's Services, only the terms, conditions, and 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 be determinative of the conflict.

15. **CONSEQUENTIAL DAMAGES:** In no event shall FNI 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 equipment or systems, loss of anticipated profits or revenue, non-operation or increased expense of operation), arising out of, resulting from, or in any way related to this Agreement or the project.
16. **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.
17. **SUCCESSORS AND ASSIGNMENTS:** Client and FNI and the partners, successors, executors, administrators, and legal representatives of each are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

Neither Client nor FNI shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of Services hereunder.