

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §

COUNTY OF TARRANT §

This Agreement is entered into by City of Coppell (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 Lead and Copper Rule Revision Compliance Program.
- 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 \$89,791.00.
- 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 January 31, 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:

CITY OF COPPELL

FREESE AND NICHOLS, INC.

By: _____

By: Trey Shanks

Name: _____

Name: Trey Shanks

Title: _____

Title: Vice President

Date: _____

Date: January 31, 2024

SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT

PROJECT UNDERSTANDING

The U.S. Environmental Protection Agency (EPA) released the long-awaited Lead and Copper Rule Revisions (LCRR) on January 15, 2021, setting new standards to remove harmful levels of lead and copper from drinking water. More recently, the EPA delayed the LCRR's effective date to December 16, 2021, and the compliance date to October 16, 2024. This revision will require cities and other water utilities to take significant action to protect customers from the health risks associated with lead and copper and comply with the LCRR.

On November 30, 2023, the EPA announced the proposed Lead and Copper Rule Improvements (LCRI). The proposed LCRI maintains the requirement to submit an initial Service Line Material (SLM) inventory and begin related annual public communications in October 2024, as well as performing public communications related to compliance monitoring results when the 90th Percentile exceeds the Action Level. FNI has included the scope for these items and proposes to leave the remaining post-October 2024 compliance items to a future phase of work after the EPA and TCEQ develop the LCRI templates and guidance. There are significant new requirements proposed by LCRI, most notably to eliminate all unknowns, perform randomized potholing to inspect inventory entries, and replace all lead and Galvanized Requiring Replacement (GRR) lines to the customer building inlet by 2037.

FNI recommends that the City of Coppell, TX (City) achieve initial compliance with LCRR through a systematic approach as follows:

Basic Services

1. Project Management and Coordination Meetings
2. Initial SLM Inventory and Field Inspections
3. Public Communication Planning and Support
4. LCRR Initial Compliance Documentation and Reporting

ARTICLE I

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

Task 1 - Project Management and Coordination Meetings

1.1 Project Kickoff Meeting

FNI will conduct a kickoff meeting with key stakeholders to discuss the project approach, roles, and deliverables.

1.2 Project Administration

Perform general administrative duties associated with the Project, including planning, progress monitoring and monthly progress reporting, scheduling, quality control/quality assurance, and invoicing for the Project.

These duties include maintaining regular contact with the City to help meet the needs of the City promptly and executing work according to the work plan, budget, and schedule.

1.3 Project Coordination Meetings

Lead up to twelve (12) virtual, one-hour coordination meetings with the City's staff to facilitate the progress and completion of the project. Topics for each meeting will be identified in advance and related to the execution of Tasks 2 – 4 of this project.

At each meeting, FNI will be responsible for:

- Developing and distributing the agenda in advance of the meeting
- Moderating the discussion
- Distributing meeting minutes and action items

The City will be responsible for:

- Reviewing the agenda and securing the participation of relevant staff for each meeting
- Reviewing meeting minutes and providing timely feedback to FNI
- Addressing action items on time

Task 2 - Initial SLM Inventory and Field Inspections

FNI will initiate the development of the SLM Inventory in preparation for submission to the TCEQ by October 16, 2024.

2.1 Records Review for SLM Inventory

FNI will evaluate the availability and quality of records required to complete the Historical Records Review Section of the TCEQ inventory template. Records will be reviewed for information about service line age and materials to support an SLM Inventory. FNI will review a small sample set from the available records to assess the quality of the data and the potential for identifying the SLM and installation date. FNI will present the records evaluation results and options for field inspection for discussion with the City staff at a project coordination meeting.

2.2 GIS-based SLM Inventory

FNI will develop an ESRI ArcGIS Online web map of the initial SLM inventory representing City- and Customer-side SLMs based on the findings of Task 2.1. The web map will include information on each service line's private and City-owned portion, where available. The dataset will also indicate if a connection is a school or registered childcare facility. Information from GIS will be exported and utilized to populate the TCEQ SLM inventory template. During a project coordination meeting, FNI will present the initial SLM inventory to the City. FNI will develop a document explaining the field inspection process for SLM inventory for the City.

2.3 Field Inspection Mobile App

FNI will develop a mobile app based on ESRI GIS technology to support the field inventory efforts. The app will allow the field inspector to document the location, material, and photos of each measured meter box. The mobile app will be available to City staff at the City's discretion and will require an ArcGIS Online account for each user. Data from the mobile app will be directly connected through ArcGIS Online to the SLM Inventory web map described in Task 2.1.

2.4 Field SLM Inspections Pilot

FNI will develop a map identifying general areas with a relatively higher likelihood of finding lead service lines (LSLs). This map will be based on preliminary GIS information rather than the completed initial service line inventory to get the pilot program moving as soon as possible.

FNI will perform 100 meter box inspections on the abovementioned areas. Lead identification methods such as scratch, magnet, and lead swab testing will be used for the field inspections. These tests shall include the removal of sediment from the meter box or excavation of test holes as required to expose incoming/outgoing service lines, wiping service lines clean, and collection/recording of data for each water line (size, material, condition), including pictures, and site cleanup/restoration. FNI will perform additional meter box inspections as an additional service upon the City's request.

FNI will provide the maps and written content to the City for the City's use in public communication of field inspections.

2.5 FNI Ongoing Desktop and Field SLM Inspection Coordination

Through general coordination meetings during field inspections, the FNI will provide updates regarding FNI's progress in populating the inventory, guidance for ongoing desktop and field assessments, and the need to adjust inventory targets as data is available.

Task 2 Deliverables

- Records review for SLM inventory
- GIS-based and spreadsheet version of the initial SLM inventory, with schools and childcare facilities indicated
- Documentation of the process for SLM inventory
- Mobile app for field inspections
- Maps and text for public communication materials to coordinate fieldwork
- 100 meter inspections, including FNI coordination support

Task 3 – Public Communication

FNI will create communication materials for the City's use to meet the public outreach requirements of LCRR and LCRI and to assist the City with communication on LCRR topics. FNI will provide draft communication materials for the City's review. FNI will finalize the communication materials after final review comments from the City are provided.

3.1 FAQs and Website Materials

FNI will provide a series of topics and suggested messages to the City and its public communications team and develop a standard FAQ sheet to unify the City's messaging on key LCRR topics such as:

- Potential lead risks in drinking water related to lead piping
- The City's monitoring and compliance history
- LCRR updates to lead regulations
- SLM inventory
- Potential presence of lead materials in premise plumbing

FNI will identify recommended webpage content from the developed FAQs and provide recommended text for the City to include public-facing inventory to be posted online. Website design and creation is outside the scope of this project. The City will be responsible for the design and creation of a website, and FNI will provide

a review and comments to the City on the website. City must develop the website draft at least four (4) weeks ahead of the compliance deadline and provide it to FNI for review.

3.2 Public-facing SLM Inventory

FNI will develop a web map and MS Excel spreadsheet to serve as the City's public-facing inventory. FNI will provide options to the City for displaying required information and reviewing other suggested information the City may include to the public. FNI will incorporate the City's feedback into a final web map and spreadsheet.

3.3 Community Meeting Materials

FNI will provide a PowerPoint presentation and a 1-page handout to support the City's communication with school boards, community open houses, and other entities.

3.4 Annual SLM Notices

FNI will support the City in preparing the required annual SLM notices for customers served by lead, GRR, and lead-status-unknown SLM. The City will be responsible for delivery of the SLM notices to customers.

- **Standard Operating Procedure (SOP) and Review of SL Notification Requirements** - FNI will review the notice requirements in a progress meeting with the City and discuss methods of delivery and cost estimates. FNI will present a drafted SOP as a checklist for preparing, delivering, and certifying the annual notices to TCEQ. FNI will take up one round of comments and provide a finalized SOP.
- **Develop Notices and Supplemental Messaging** - FNI will draft supplemental messaging for the City to review and consider providing along with the TCEQ template(s) for notices. FNI will review and use the best available information and guidelines from TCEQ to develop the supplemental content. FNI will provide up to three (3) draft letters: one version for lead SL, one for GRR SL, and one for unknown SLM. FNI will provide an electronic draft of notice content to the City. The City will issue the notices to customers within 30 days of the inventory submittal to TCEQ, as LCRR requires.
- **Support to City During Issue and Certification of Notices** - FNI will provide the City with up to 16 hours of support to address City customer questions. The LCRR requires the City to certify that the annual notices were delivered to the State. FNI will prepare a certification form for the 2024 notices for the City to review, sign, and submit as required.

Task 3 Deliverables

- FAQs and website materials
- Public-facing SLM inventory
- Community meeting materials
- SOP for annual SLM notices, provided electronically
- SLM template notice(s): up to three (3) drafted versions, provided electronically.
- Certification form for SLM notices: completed for signature, provided electronically

Task 4 – LCRR Initial Compliance Documentation and Reporting

FNI will perform the final review and preparation of the SLM inventory for submittal to TCEQ by the compliance date of October 16, 2024.

4.1 Final Review and Export

FNI will review the GIS SLM inventory with the City in up to two 1-hour virtual work sessions and walk through the export into the TCEQ template. FNI will perform a final review, present the final draft inventory during a progress meeting before submission to TCEQ, and send it to the City for one round of comments.

4.2 Submittal and Post-Submittal Support

FNI will prepare and present the final SLM Inventory to the City during a virtual progress meeting. During the meeting, FNI will complete the certification section with the City's approval and provide the completed Excel file to the City for submission to TCEQ by the compliance deadline. FNI will provide up to 20 hours of submittal and post-submittal support in answering TCEQ questions on the submitted documents.

Task 4 Deliverables

- Final SLM inventory in TCEQ template (Excel file)

ARTICLE II

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

AS.1 Additional Meter Box Inspections

FNI will coordinate and oversee additional meter box inspections at a unit rate per meter box, not including FNI coordination efforts, to document the lead status of each service line at the meter. The field inspections will consist of an inspection of the public and private portions of the service line. The field inspections will use identification methods such as scratch, magnet, and lead swab testing.

Suppose meter box inspections are conducted at all locations with unknown material. In that case, FNI recommends also conducting randomized profiling to inspect line materials at up to 50 locations. FNI will assist in the randomized selection of locations. Authorization from property owners will be required to conduct potholing.

AS.2 Service Line Excavations away from the Meter Box

FNI will coordinate and oversee field inspections at a rate of \$800 and \$1400 per non-paved and paved location, respectively, to document the lead status of each service line using excavation (potholing) to inspect SL material further away from the meter box. The field inspections will consist of an inspection of the public and private portions of the service line. The field inspections will use identification methods such as scratch, magnet, and lead swab testing.

AS.3 Customer Outreach to Support Field Inspections

FNI will coordinate with the City to identify customer connections for field inspections. FNI will develop template digital materials (e.g., door hangers) for the City to notify property owners and occupants of field inspectors conducting field inspections and as required, to request customer authorization of excavations on private property. FNI will provide materials, including the GIS-based SLM Inventory, door hangers, brochures, media kit for local news, and customer authorization forms—training and Review of Desktop and Field SLM

Inspections by City Staff.

AS.4 Training of City Staff on Field Inspections

LCRR requires continually updating the inventory as line material is observed during routine maintenance activities. FNI will conduct one (1) training session for City staff to conduct field inspections of service lines using the mobile app. The field inspections will consist of a visual inspection of the public and private portions of the service from within the meter box. Lead identification methods such as scratch and lead swab testing will be used for the field inspections. FNI will provide a procedure for the use of the SLM Mobile App.

AS.5 Lead Service Line Replacement Plan – Compliance Date To Be Pushed Back With The Effect of LCRI

Suppose the City discovers the presence of unknown, lead, or GRR SLs during the inspections. FNI can develop a lead service line replacement plan. The major components of the plan per the finalized LCRR are listed below:

- Document the strategy to determine the inventory composition of “lead status unknown” service lines.
- Develop a procedure for conducting total LSL replacements.
- Public communication approaches, including the plan for informing customers before a full or partial LSL replacement.
- Determine the LSL replacement goal rate if the lead level exceeds the Lead Trigger Level (10 µg/L).
- Document the line flushing procedure for customers with LSLs.
- Develop a strategy for prioritizing LSL replacement that targets known LSLs and consider disadvantaged consumers and populations most sensitive to the effects of lead.
- Develop a funding strategy for LSL replacement that accommodates customers who cannot pay for their replacement portion.

AS.6 Distribution System and Site Assessment Procedure Planning

FNI will meet with the City to discuss compliance with the Find and Fix requirements of the LCRR and LCRI. FNI will develop a workflow for the implementation of the “Find and Fix” procedure, including a flow chart and documentation on the following:

- Roles and Internal communication, documentation, and reporting of sample results.
- Public communication.
- Follow-up lead and WQ sampling within the home and neighborhood.
- Tactics for assessing lead sources within the home.
- Interim and final mitigation alternatives.
- Communication with TCEQ.

AS.7 Preliminary Sampling

An approach for preliminary sampling before the compliance deadline will be recommended to observe the lead levels at the updated sites using updated sample methods as recommended in LCRR and LCRI. Lead tap samples will be conducted at up to 60 sites (number of sites required by initial monitoring). Up to 10 sites will also be samples for Water Quality Parameter analysis to assess corrosivity.

FNI will provide public outreach materials to explain the sampling event to customers. FNI will coordinate and provide sampling and analysis through a sub-contractor. (or sampling and analysis will be provided and

coordinated by City staff.) FNI will calculate the 90th percentile results of lead samples and conduct a desktop corrosivity assessment for each site with WQP data. During a progress meeting, FNI will review and present the results to the City.

AS.8 TWDB LCRR Pre-Funding Application Support

The TWDB is expected to release a second round of funding in the spring of 2024. FNI will prepare a TWDB LCRR funding application for the City. FNI will review the methodology and draft application with the City at a project coordination meeting. FNI will finalize the application based on the City’s feedback and coordinate with the City to apply the TWDB by the annual deadline.

AS.9 TWDB Full Application & Closing Process Support

FNI will support the City to develop and submit a full funding application and complete the closing process for TWDB funding. As a part of this Additional Service, FNI will:

- Participate in a pre-application conference with the TWDB and the City
- Assist in the preparation of the application and submittal
- Assist with responses to TWDB requests for information during the TWDB application administrative and technical reviews
- Attend the TWDB board meeting for funding commitment on behalf of the City and
- Provide input and guidance during the closing process, coordinating with the TWDB and the City.

ARTICLE III

TIME OF COMPLETION: FNI recommends implementing the schedule in the table below to execute this Scope of Services.

The Tasks related to the inventory will be completed by September 16, 2024, to allow for submittal of the initial inventory by the October 16, 2024 compliance deadline.

If FNI’s services are delayed through no fault of FNI, FNI shall be entitled to adjust the 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 in 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.

ARTICLE IV

COMPENSATION: The following is the breakdown of the proposed fees.

TASK	FEE	COMPENSATION TYPE
BASIC SERVICES		
1 – Project Management and Coordination Meetings	\$15,531	Lump Sum
2 – Initial SLM Inventory & Field Verifications-100 connections	\$44,713	
3 – Public Communication	\$24,977	
4 – LCRR Initial Compliance Documentation and Reporting	\$4,570	
Total Basic Services Fee	\$89,791	

ARTICLE V

RESPONSIBILITIES OF CLIENT: Client 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 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.
- B. Provide all criteria and full information as to Client's requirements for the Project.
- 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 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 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.
- F. 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.
- G. 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.
- 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 incident to compliance with the requirements of this Article V.

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and Client designate the following representatives:

Client's Designated Representative –

Client's Accounting Representative –

FNI's Designated Representative – Tanu Kulkarni
801 Cherry Street, Suite 2800
Fort Worth, TX 76102
817-735-7402
Tanu.Kulkarni@freese.com

FNI's Accounting Representative – Erin Westbrook
801 Cherry Street, Suite 2800
Fort Worth, Tx 76102
817-735-7395
Erin.Westbrook@freese.com

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** As used herein: (1) City refers to the party named as such in the Agreement between the City 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 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. To the fullest extent permitted by law, 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.
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 City 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:** City, 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 City. However, when such changes differ from prior comments, directions, instructions, or approvals given by City 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 City'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 City and in acceptance of Services as satisfactory by City. 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 City 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 City, 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 City 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 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 the City'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, 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 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 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 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 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 City designates a resident project representative that is not an employee or agent of FNI, the duties, responsibilities, and limitations of authority of such resident project representative will be set forth in writing and made a part of this Agreement before the construction phase of the project begins.
11. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** City 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 City 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, City determines that any subcontractor for FNI is incompetent or undesirable, City 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 City.
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:** City 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 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.