

**PROFESSIONAL SERVICES AGREEMENT**

STATE OF TEXAS §

COUNTY OF TARRANT §

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

- I. **EMPLOYMENT OF FNI:** In accordance with the terms of this Agreement, Client agrees to employ and compensate FNI to perform professional services in connection with the Project. The Project is described as AWIA Compliance Support.
- II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with Project as set forth in Attachment SC – Scope of Services and Responsibilities of Client which is attached to and made a part of this Agreement.
- III. **COMPENSATION:** Client agrees to pay FNI for all professional services rendered under this Agreement. FNI shall perform professional services as outlined in the "Scope of Services" for a lump sum fee of Sixty-Five Thousand Nine Hundred Dollars, \$65,900.00.

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

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

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

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

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

**Freese and Nichols, Inc.**

**City of Tomball, TX**

By: *Alan C. Hutson*

By: \_\_\_\_\_

ALAN C. HUTSON VICE PRESIDENT  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

Date: 2/10/2021

Date: \_\_\_\_\_

ATTEST: *J. Deffen*

ATTEST: \_\_\_\_\_

## ATTACHMENT SC

### City of Tomball

#### **American Water Infrastructure Act of 2018 (AWIA) Risk and Resilience Assessment (RRA) and Emergency Response Plan (ERP)**

#### **SCOPE OF SERVICES**

##### **Project Understanding:**

America's Water Infrastructure Act (AWIA) of 2018, Section 2013, requires that all community water systems serving populations greater than 3,300 persons will assess the risks to and resilience of its system and then prepare or revise the utility's emergency response plan. Following is a scope of services to conduct a Risk and Resilience Assessment and develop or update an Emergency Response Plan for the City of Tomball water utility system for compliance with the requirements of AWIA Section 2013.

The detailed ERP will be conducted following the protocols detailed in the M19 (Emergency Planning for Water and Wastewater Utilities) guidance developed by the AWWA. The ERP will be finalized and then certified by the City of Tomball to the Administrator of the Environmental Protection Agency (EPA) by December 30, 2021 to comply with the deadline requirements for systems serving a population of 3,300 or more but less than 50,000.

##### Assumptions:

- Data is received in a timely manner.
- Analysis for water system only.

#### **ARTICLE I**

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

**TASK A: RISK AND RESILIENCE ASSESSMENT (RRA):** FNI shall provide professional services in this phase as follows:

The RRA includes up to three workshops with the RRA team. An optional Council briefing is available as an Additional Service. An RRA report will be developed and provided. Due to the sensitive nature of the content, the RRA report is recommended to be protected from public access within applicable law.

Electronic document transfer for this project will be provided to the Client through a secure file-sharing platform. Confidential documents will not be emailed. Hard copies of the RRA report will be hand-delivered.

##### **A1. Project Kickoff, Data Collection and Review (included in Workshop No. 1)**

FNI will conduct a kickoff meeting (as part of Workshop No. 1) with City of Tomball to introduce the FNI project team, review the scope of services and project schedule, and identify communication approaches. The kickoff meeting will also include a discussion of the background/history related to vulnerability and resilience for City of Tomball.

During the kickoff meeting, FNI will meet with the Client to determine the RRA team participants, needs and schedule. The following items will be discussed during the meeting:

- Project goals
- Project schedule
- Data, both provided and outstanding, for review by FNI
- Communication and information flow for the project
- Additional entities to coordinate with in the development of the project

The Client will provide the following documents, if available, to FNI for review ahead of the kickoff-meeting/Workshop No. 1:

- Previous vulnerability and risk assessments
- System diagrams
- Existing security plans and procedures
- Existing security countermeasures
- Business continuity plans / Continuity of operations plans
- SCADA system information
- Source water protection plans
- Interlocal agreements with neighboring utilities
- Local natural hazard mitigation plan(s)
- Emergency response plans
- Other documents that may be related to the vulnerability and resilience of the water system.

#### **A2. Identification of Critical Assets and Threats (and Workshop 1)**

FNI will review the data collected for City of Tomball's water system to identify a preliminary list of assets. A database of the assets will be created for future evaluation through the project. FNI will conduct a preliminary evaluation of identified threats based on available published information from the U.S. EPA, FEMA, USGS, DHS and other relevant agencies. Threats to be evaluated include direct hazards to the water system from malevolent man-made sources and natural events, as well as tangential hazards from impacts to system dependencies or unaffiliated but near-proximity infrastructure.

FNI will conduct one workshop (Kick-off Meeting and Asset-Threat Workshop) with the City of Tomball RRA team to develop a prioritized list of asset-threat pairs to conduct a further risk and resilience evaluation. In the workshop, FNI will lead the RRA team through a review of the assets and an initial screening of consequences of failure to develop a list of critical assets.

FNI will then lead the RRA team through an evaluation of malevolent, natural, and dependency hazards to identify those of most relevance to the water system. Finally, FNI will facilitate the RRA team through a review of asset-threat pairs to prioritize the pairs to focus the risk and resilience evaluation.

The RRA will include a limited review of the operation and maintenance of the water system. FNI will discuss the status of an asset management program and approaches that could be undertaken to improve City of Tomball's resilience. The results of the assessment will be included in the RRA Report.

Up to 5 asset-threat pairs to be evaluated for the water system. Additional asset-threat pairs will be conducted upon request of the Client as an Additional Service.

Deliverable

1. FNI will provide meeting minutes within seven (7) days to summarize major discussion items, decisions, and action items.

**A3. Cybersecurity Evaluation**

Utilizing a cybersecurity framework guide following AWWA’s cybersecurity protocols, FNI will provide a cyber security questionnaire that is generally based upon the AWWA and NIST guidelines. The City of Tomball will utilize the cybersecurity questionnaire to identify key weaknesses and mitigative strategies for the areas where Cybersecurity Practice Guides should be developed. FNI will explain the intent of the questionnaire as part of Workshop 1 or 2 as time permits.

**A4. Risk and Resilience Analysis (and Workshop 2)**

For each of the prioritized asset-threat pairs, FNI will conduct an initial evaluation to estimate the probability of occurrence of the threat (T), the vulnerability (V) of the assets to failure from the threat, and the consequence (C) of asset failure. FNI will initially input existing measures in place that serve to increase the resilience of the critical assets by mitigation of one or more of the risk factors. The risk to each asset is calculated as:

$$\text{Risk} = \text{Consequence} * \text{Vulnerability} * \text{Threat}$$

FNI will facilitate a final Workshop with the RRA team to present, evaluate and adjust the calculated risk for each asset-threat pair assessed based on team feedback. Through the workshop, a risk value for each asset-threat pair will be developed to allow for prioritization of assets for improvements. During the workshop, an initial identification of additional mitigation measures to further reduce risk and improve resilience will be identified. Mitigation measures may include policy and procedure improvements, physical security upgrades, structural improvements, staffing adjustments, and other actions.

Deliverable

1. FNI will provide meeting minutes from the Risk and Resilience Analysis Workshop within seven (7) days of the meeting to summarize major discussion items, decisions, and action items.
2. FNI will provide the list of critical assets ranked by risk to City of Tomball for review and approval.

**A5. Risk and Resilience Management (and Workshop No. 3)**

FNI will evaluate the additional mitigation measures identified in the Risk and Resilience Analysis Workshop, and as appropriate, identify supplemental mitigation measures for consideration. The mitigation measures will be analyzed for risk reduction and resilience improvement, and rough approximation conceptual cost to City of Tomball. FNI will develop a prioritized list of mitigation measures based on benefit-cost ratio.

FNI will document the RRA and the prioritized mitigation measures for implementation in a draft RRA report. FNI will submit the draft RRA report to City of Tomball for review and incorporate any comments received into the final report.

Deliverable:

1. FNI will provide meeting minutes within seven (7) days of the meeting to summarize major discussion items, decisions, and action items.
2. FNI will deliver the draft RRA report to City of Tomball in electronic PDF format for review and comment. Upon request, five (5) hard copies of the draft report will be provided.

**A6. Final RRA Report and Certification of Compliance**

Upon receipt of final comments on the draft RRA report, FNI will finalize the RRA report. FNI will assist City of Tomball to complete and submit the certification of the Risk and Resilience Assessment through the online EPA portal. A copy of the certification will be maintained in the final RRA report.

Deliverable:

1. FNI will deliver one electronic PDF copy of the final RRA report. Upon request, FNI will provide up to five (5) hard copies of the final RRA report.

**TASK B: EMERGENCY RESPONSE PLAN (ERP):** FNI shall provide professional services in this phase as follows:

The ERP includes three workshops with City of Tomball's designated ERP team. An optional Council briefing is available as an Additional Service. An ERP compliant with the requirements of AWIA of 2018 will be provided. Due to the sensitive nature of the content, the ERP report is recommended to be protected from public access within applicable law. The ERP will include documentation applicable to the water utility.

Electronic document transfer for this project will be provided to the Client through a secure file-sharing platform. Confidential documents will not be emailed. Hard copies of the ERP will be hand-delivered.

**B1. Project Coordination Meeting, Data Collection and Review (included in Initial Workshop)**

FNI will conduct a meeting with City of Tomball to review the scope of services and project schedule. The meeting will also include a discussion of the background/history related to emergency response planning for City of Tomball. This meeting will be combined with the Workshop 1 discussed in item B2.

During the meeting, FNI will meet with City of Tomball to determine the ERP team participants, needs and project schedule. The team members should be experts in one or more of the following areas or have a role in the execution of the ERP:

- Utility management
- Emergency management
- Water treatment and operations
- SCADA operations
- Human resources management
- Procurement
- Other representatives include members of local police, fire and the local emergency planning committee

The following items will be discussed during the meeting:

- Additional entities to coordinate with in the preparation of the ERP
- Results of the Risk and Resilience Assessment

The Client will provide the following documents, if available, to FNI for review ahead of the meeting:

- System recovery plans
- System diagrams
- Crisis communications plan
- Other documents that may be related to the preparedness of the water system.

**B2. Review of Existing Plans and Preparation of Initial ERP Outline (and Workshop 1)**

FNI will review the data collected for the City of Tomball's water system to identify gaps and necessary information for an up-to-date ERP. FNI will prepare an initial inventory of available information to review/update and gaps in information where development by the ERP team will be required. The ERP will be developed in general accordance with the outline identified in the AWWA M19 guidance document.

FNI will conduct an initial workshop (ERP Preparation Workshop) with the ERP team. In this workshop, FNI will provide an overview of the proposed ERP contents and approach and the current status of information to fulfill these needs. A schedule of future ERP workshops will be established. Additional personnel necessary for the proper preparation of the ERP will be identified for inclusion in one or more of the future workshops.

**Deliverable**

1. ERP data gap analysis
2. FNI will provide meeting minutes within seven days of the meeting to summarize major discussion items, decisions, and action items.

**B3. Emergency Response Plan Preparation (Workshop 2 and Workshop 3)**

Through one (1) workshop, FNI will facilitate the ERP team to identify the components of the ERP. The critical components of an ERP include the following:

1. Utility overview (Workshop 2)
2. Emergency Operations Plan (Workshop 2)
  - a. Emergency Response/Incident Command System (ICS) roles
3. Communication with Internal Staff, External Entities, Customers, and Media (Workshop 2)
4. Emergency Plan and Procedures (Workshop 3)
  - a. Core Response Procedures to Specific Utility Wide Emergencies
5. Preparedness and Prevention Measures (Workshop 3)
  - a. Alternate Source Water Options
  - b. Mutual Aid Agreements
  - c. RRA Countermeasures
  - d. Detection Strategies

Hazard-specific plans addressing relevant threats identified in the Risk and Resilience Assessment will be developed through Workshop 3. FNI will provide initial content for the hazard-specific plans based on City of Tomball's existing ERP and/or industry-standard guidance.

**Deliverable**

1. FNI will provide meeting minutes within seven (7) days to summarize major discussion items, decisions, and action items.

**B4. Draft Emergency Response Plan**

FNI will compile the information collected and developed in the series of workshops to prepare a draft ERP. FNI will submit the draft ERP to City of Tomball for review and incorporate any comments received into the final report.

Deliverable:

1. FNI will deliver the draft ERP to City of Tomball in electronic PDF format for review and comment. Upon request, five (5) hard copies of the draft ERP will be provided.

**B5. Final ERP and Certification of Compliance**

Upon receipt of final comments on the draft ERP, FNI will finalize the ERP. FNI will assist City of Tomball to complete and submit the certification of the Emergency Response Plan through the online EPA portal. A copy of the certification will be maintained in the City of Tomball ERP.

Deliverable:

1. FNI will deliver one electronic PDF copy of the final ERP. Upon request, FNI will provide up to five (5) hard copies of the final ERP.

**Summary of Schedule**

FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services as follows:

- RRA to be finalized by June 30, 2021
- ERP to be finalized by December 30, 2021

If FNI’s services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in City or regulatory reviews, Texas Water Development Board process delays, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation.

**Summary of Fee**

FNI shall perform the proposed scope of services based on rates set in the Master Agreement. FNI proposes to assist with the AWIA Risk and Resilience Assessment for a lump sum fee of \$29,900 and to assist with the AWIA Emergency Response Plan for a lump sum fee of \$36,000. A breakdown of the fee by task is the following:

City of Tomball AWIA Assistance Summary of Fee by Task	
Task A: AWIA Risk and Resilience Assessment	\$29,900
Task B: AWIA Emergency Response Plan	\$36,000
<b>Project Total</b>	<b>\$65,900</b>

## **ARTICLE II**

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

### **RRA Phase – Council Briefing**

FNI will develop and provide to the Council a summary overview of the AWIA of 2018, Section 2013 Risk and Resilience Assessment requirements and general approach taken for utility compliance. If provided in a secure setting, such as an Executive Session, FNI will be prepared to provide detailed results and prioritized recommendations of the RRA, if requested.

### **ERP Phase – Council Briefing**

FNI will develop and provide to the Council a summary overview of the AWIA of 2018, Section 2013 Risk and Resilience Assessment requirements and general approach taken for utility compliance. If provided in a secure setting, such as an Executive Session, FNI will be prepared to provide detailed results and prioritized recommendations of the RRA, if requested.

### **ERP – Training Exercises**

FNI will develop and provide overview training to personnel with identified roles and responsibilities in the ERP. The training will include a walk-through of the ERP, briefing on each role and responsibility, and available resources for implementation of the ERP. During the training, tabletop exercises will be conducted for a selection of relevant hazards to practice implementation of the ERP.

## **ARTICLE III**

**ADDITIONAL SERVICES:** Any services performed by FNI that are not included in the Basic Services or Special Services described above are Additional Services.

- A. Visits to on-site locations in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
- B. Providing basic or additional services on an accelerated time schedule. The scope of this service would include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the Client.
- C. On-site meetings in addition to those outlined in Article 1.
- D. Preparation of wastewater system RRA or ERP.
- E. Preparation and assistance with emergency response plan training exercise.

**TERMS AND CONDITIONS OF AGREEMENT**

1. **DEFINITIONS:** The term Client as used herein refers to the City of Tomball, TX. The term FNI as used herein refers to Freese and Nichols, Inc., its employees and agents, and its subcontractors and their employees and agents. As used herein, Services refers to the professional services performed by FNI pursuant to the Agreement.
2. **CHANGES:** Client, without invalidating the Agreement, may order changes within the general scope of the work required by the Agreement by altering, adding to and/or deducting from the work to be performed. If any change under this clause causes an increase or decrease in FNI's cost of, or the time required for, the performance of any part of the Services, an equitable adjustment will be made by mutual agreement and the Agreement modified in writing accordingly.
3. **TERMINATION:** The obligation to provide Services under this Agreement may be terminated by either party upon 10 days' written notice. In the event of termination, FNI will be paid for all Services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.
4. **CONSEQUENTIAL DAMAGES:** In no event shall FNI or its subcontractors be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental or consequential damages, such as loss of product, loss of use of the equipment or system, loss of anticipated profits or revenue, non-operation or increased expense of operation or other equipment or systems.
5. **INFORMATION FURNISHED BY 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 and 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.
6. **INSURANCE:** FNI shall provide Client with certificates of insurance with the following minimum coverage:
 

<p><b>Commercial General Liability</b></p> <p>General Aggregate      \$2,000,000</p> <p><b>Automobile Liability (Any Auto)</b></p> <p>CSL                              \$1,000,000</p>	<p><b>Workers' Compensation</b></p> <p>As required by Statute</p> <p><b>Professional Liability</b></p> <p>\$3,000,000 Annual Aggregate</p>
--	--
7. **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 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 Client.
8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports, data and other project information developed in the execution of the Services provided under this Agreement shall be the property of 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 Client's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants, and 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 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 Client, and FNI shall indemnify and hold harmless Client from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.
9. **POLLUTANTS AND HAZARDOUS WASTES:** It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing the Services required by this Agreement, FNI does not take possession or control of the subject site, but acts as an invitee in performing the Services, and is not therefore responsible for the existence of any pollutant present on or migrating from

the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.

10. **OPINION OF PROBABLE COSTS:** FNI will furnish an opinion of probable project development cost based on present day cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices.
11. **CONSTRUCTION REPRESENTATION:** If required by the Agreement, FNI will furnish construction representation according to the defined scope for these services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the Contract Documents. In performing these services, FNI will report any observed deficiencies to 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 means, methods, techniques, sequences or procedures of construction selected by the Contractor, or the safety precautions and programs incident to the work of the Contractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project. If 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.
12. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** Client agrees to include provisions in the General Conditions of the Construction Contract that require Contractor to include FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by Contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the Contractor's indemnification provisions where the Owner is named as an indemnified party.
13. **PAYMENT:** Progress payments may be requested by FNI based on the amount of Services completed. Payment for the Services of FNI shall be due and payable upon submission of a statement for Services to CLIENT and in acceptance of the Services as satisfactory by the Client. 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 Client fails to make any payment due FNI for services and expenses within 30 days after receipt of FNI's statement for services therefore, the amounts due FNI will be increased at the rate of 1 percent per month from said 30th day, and, in addition, FNI may, after giving 7 days' written notice to Client, 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:** Client and FNI each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client 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 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.

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.