

**PROFESSIONAL SERVICES AGREEMENT**

STATE OF TEXAS           §

COUNTY OF TARRANT   §

This Agreement is entered into by Town of Little Elm, 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 **Lead and Copper Rule Revision Compliance Program-Ph2**.
- 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 Basic Services under this Agreement for a lump sum fee of \$189,521.00 and Special Services for a lump sum fee of \$58,075.00. Grand total under this Agreement shall be \$247,596.00.

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.**By: Trey ShanksTREY SHANKS

Print Name and Title

Date: 9-29-2023ATTEST: [Signature]**Town of Little Elm**

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

Print Name and Title

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

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

## **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 aimed at removing 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. The following program is proposed to support the Town of Little Elm (CLIENT) in their compliance with the recently revised Lead and Copper Rule.

FNI recommends achieving compliance through a systematic approach as follows:

- Initial Data Collection, Risk Analysis, and High-Level Communication Planning (Completed)
- Service Line Material Inventory and Field Verification
- Sampling Plan & Preliminary Sampling
- Lead Service Line Replacement Plan & Find-and-Fix Planning
- Public Communication
- 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**

##### **1.1 Project Kickoff Meeting**

FNI will conduct a kickoff meeting with key project 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 CLIENT to help meet the needs of the CLIENT in a timely manner and executing work in accordance with the work plan, budget, and schedule.

##### **1.3 Project Coordination Meetings**

Lead up to fourteen (14), virtual, one-hour coordination meetings, generally monthly, with the CLIENT'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 – 6 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 CLIENT 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 in a timely manner

## **Task 2 - Initial SLM Inventory**

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

### **2.1 GIS-based SLM Inventory (Required for Compliance)**

FNI will develop an ESRI ArcGIS Online web map of the initial SLM inventory (point features representing CLIENT and Customer-side service line materials) based on the findings of previous LCRR Phase 1. The web map will include information on the private and CLIENT-owned portion of each service line, where available. Information from GIS will be exported and utilized to populate the TCEQ service line material inventory template. FNI will present the initial SLM inventory to the CLIENT as part of a project coordination meeting.

### **2.2 Field Inspection Mobile App**

FNI will develop a mobile app based on ESRI GIS technology to support the CLIENT's field inventory efforts. The app will provide the CLIENT with the ability to document the location, material, and photos of each assessed meter box. The mobile app will be made available to CLIENT staff 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.

### **2.3 Training of City Staff on Field Inspections**

One requirement of LCRR is to continually update the inventory as line material is observed during routine maintenance activities. FNI will conduct one (1) training session for CLIENT 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. FNI will provide a procedure for the use of the SLM Mobile App.

### **2.4 FNI Ongoing Desktop and Field SLM Inspection Support**

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

## **Task 2 Deliverables**

- GIS-based SLM inventory
- Mobile app for SLM inventory field inspections

## **Task 3 – Sample Plan**

FNI will update the CLIENT's water quality sampling plan based on relevant information available regarding known service line materials, EPA's tiered sampling structure and TCEQ instructions.

### **3.1 Sample Plan (Monitoring Plan) Update (Required for Compliance)**

FNI will review the section of the CLIENT's existing sampling plan related to Lead and Copper Rule and update in accordance with LCRR and LCRI requirements.

#### **Update of Lead and Copper Monitoring Section**

Research will be conducted for the sites, as required, to confirm service line material and interior plumbing materials. FNI will recommend new or re-tiered sites based on the EPA's tiered site requirements, historic sample results, water usage, and the CLIENT's initial inventory results at the time of the plan development. One alternative site will be recommended for each draft sample site. The CLIENT will be responsible for field visits and public outreach to confirm interior plumbing materials, and the homeowners' willingness to participate in sampling. FNI will provide public outreach materials for this effort.

FNI will update the utility's sample plan with the new frequency of sampling, and materials to be provided to homeowners and/or sampling procedures.

#### **Update of Water Quality Parameter Tap Monitoring Section**

FNI will review and recommend sites for water quality parameter (WQP) monitoring which are be required in response to treatment changes, lead and copper trigger level and action level exceedances to meet the requirements of LCRR and LCRI, and to represent various sources and residence times within the distribution system.

FNI will update the utility's sampling plan with current frequency of sampling, sampling procedures, as required by the LCRR and LCRI. Instructions for the WQP monitoring required as part of "find and fix" assessments will be included in the plan update.

### **3.2 School and Childcare Sampling Plan (Required for Compliance)**

Based on information available from State of Texas childcare facility and school databases, as well as information provided by the CLIENT, FNI will identify and quantify school and childcare facilities within the CLIENT's jurisdiction. FNI will develop a plan and schedule for sampling facilities.

FNI will develop a School and Childcare Sampling, including sections on the following:

1. Initial outreach to school system officials and other stakeholders

2. Communication with individual locations
3. Sampling responsibility
4. Materials to be provided to schools and/or sampling procedures
5. Laboratory method and reporting requirements
6. Data management
7. Response to elevated concentrations and general recommendations for remedial actions, such as signage, point-of-use filters, and fixture removal.

### **Task 3 Deliverables**

- Updated Sample Plan
- School and Childcare Sampling Plan

### **Task 4 – Lead Service Line Replacement Plan and Mitigation**

The following services will be provided as determined necessary by the results of earlier tasks. A lead service line replacement plan will be developed if lead, galvanized requiring replacement, or “lead status unknown” service lines are identified in the SLM Inventory, and the CLIENT does not anticipate removing them prior to the compliance deadline.

#### **4.1 Lead Service Line Replacement Plan (Required for Compliance)**

FNI will develop a Lead Service Line Replacement Plan that includes the components required by 40 CFR 141.84(b)(1) – (7), as listed below. FNI will coordinate with the CLIENT about approaches to update per requirements in the pending LCRI.

1. Document the strategy to determine the composition of “lead status unknown” service lines in the inventory.
2. Develop a procedure for conducting full LSL replacements.
3. Public communication approaches, including the plan for informing customers before a full or partial LSL replacement.
4. Determine the LSL replacement goal rate in the event that the lead level exceeds the Lead Trigger Level (10 µg/L).
5. Document the line flushing procedure for customers with LSLs.
6. Develop a strategy for prioritizing LSL replacement that targets known LSLs and considering disadvantaged consumers and populations most sensitive to the effects of lead.
7. Develop a funding strategy for LSL replacement that accommodates customers unable to pay for their portion of the replacement.

#### **4.2 “Find and Fix” Procedure Planning**

FNI will meet one (1) time with the CLIENT to discuss compliance with the Find and Fix requirements of the LCRR and LCRI. FNI will develop a workflow for implementation of the “Find and Fix” procedure including a flow chart and documentation on the following:

1. Roles and Internal communication, documentation, and reporting of sample results
2. Public communication
3. Follow-up lead and WQ sampling within the home and neighborhood

4. Tactics for assessing lead sources within the home
5. Interim and final mitigation alternatives
6. Target lead concentration goals (i.e., non-detect vs. below trigger level vs. below action level)
7. Communication with the TCEQ

#### **Task 4 Deliverables**

- EPA-required LSL Replacement Plan
- Find and Fix Procedures

#### **Task 5 – Public Communication**

FNI will coordinate with the CLIENT to develop communication materials to meet the public outreach requirements of LCRR and LCRI, and to assist the City with communication on LCRR topics.

##### **5.1 FAQs and Website Materials**

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

1. Potential lead risks in drinking water related to lead piping,
2. The CLIENT's monitoring and compliance history,
3. LCRR updates to Lead regulations,
4. Service line material inventory,
5. Potential presence of lead materials in premise plumbing, and
6. School and Childcare monitoring.

FNI will recommend webpage content and coordinate with the CLIENT's website developer to create a webpage. The page will provide information from the developed FAQs and will include a placeholder for the public-facing inventory that will be required online by the compliance deadline.

##### **5.2 Public-facing Inventory (Required for Compliance)**

FNI will develop a web-map, and spreadsheet for non-computer users, to service as the public-facing inventory for the CLIENT. FNI present options to the CLIENT for displaying required information and review other suggested information the CLIENT may include to the public. FNI will incorporate CLIENT's feedback into a final web-map and spreadsheet.

##### **5.3 Community Meeting Materials**

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

##### **5.4 Public Communication Reference Table and Templates**

FNI will provide a reference table of public communication requirements within the LCRR and LCRI, including the required method, timing, and frequency of communication

required for each communication. Information will be organized into categories for ease of use, such as:

- Annual communication activities:
  - Service line material notification to connections with lead, GRR, and unknown materials, and
  - Public education materials to pre-2014 schools & childcare facilities.
- Notices of Monitoring Results. Public Educational Materials and Public Notices will be provided in English and, if requested, Spanish. Content will include the topics of:
  - Notification of sampling results to all homeowners participating in tap sampling,
  - Notification required following 90<sup>th</sup> Percentile Trigger Level, Action Level Exceedances, and
  - Notification required following single exceedances of the Action Level.
- Additional Notices for systems that have lead or potentially lead service lines:
  - Notification of disruptions to lead or potentially-lead service lines.
  - When applicable, notification to customers if the LSL replacement rate is not met.
  - Advance notification informing customers before a full or partial LSL replacement.

#### **Task 5 Deliverables**

- FAQs & Website Materials
- Public-facing SLM Inventory
- Community Meeting Materials
- Communication Templates and Summary of Requirements

#### **Task 6 – LCRR Initial Compliance Documentation and Reporting (Required for Compliance)**

FNI will prepare required compliance documentation in the format required by TCEQ for submission by the October 16, 2024, compliance deadline.

##### **6.1 Final TCEQ SLM Inventory**

FNI will populate the TCEQ SLM Inventory template with information developed in Tasks 1 and 2.

##### **6.2 Final Water Quality Sampling Plan**

FNI will document the Water Quality Sampling Plan in accordance with TCEQ requirements, based on information developed in Task 3.

##### **6.3 Final LSL Replacement Plan**

FNI will document the LSL Replacement Program Plan based on information developed in Task 4.

#### **6.4 Draft LCRR Compliance Document Review**

FNI will provide the Draft SLM Inventory, Draft Water Quality Sampling Plan, and Draft LSL Replacement Program Plan to the CLIENT for review and comment. FNI will meet up to two (2) times with the CLIENT to present and walk through each compliance documentation item and receive City feedback.

#### **6.5 Final LCRR Compliance Documents**

Upon receipt of final CLIENT feedback, FNI will prepare the Final SLM Inventory, Final Water Quality Sampling Plan, and Final LSL Replacement Plan for submission to TCEQ by the compliance deadline.

FNI will provide up to 40 hours of post-submittal coordination to respond to TCEQ requests and inquiries about the CLIENT's LCRR compliance submittal.

#### **Task 6 Deliverables**

- Final SLM Inventory (Agency + Public-Facing)
- Final Water Quality Sample Plan
- Final LSL Replacement Plan

### **ARTICLE II**

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

#### **SS.1 Additional Meter Box Inspections**

FNI will coordinate and oversee up to 500-meter box inspections 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. Identification methods such as scratch, magnet, and lead swab testing will be utilized as part of the field inspections.

### **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.

#### **AS.1 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 verify 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. Identification methods such as scratch, magnet, and lead swab testing will be utilized as part of the field inspections.



## **AS.2 Customer Outreach to Support Field Inspections**

FNI will coordinate with the CLIENT to identify customer connections for field inspections. FNI will develop template digital materials (e.g., doorhangers) for the CLIENT to notify property owners and occupants of the presence 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, doorhangers, brochures, media kit for local news, and customer authorization forms. Training and Review of Desktop and Field SLM Inspections by CLIENT.

## **AS.3 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 CLIENT. FNI will review the methodology and draft application with the CLIENT at a project coordination meeting. FNI will finalize the application based on the CLIENT's feedback and coordinate with the CLIENT to submit the application to the TWDB by the annual deadline.

## **AS.4 TWDB Full Application & Closing Process Support**

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

- participate in a pre-application conference with the TWDB and the CLIENT,
- 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 CLIENT, and
- provide input and guidance during the closing process, coordinating with the TWDB and the CLIENT.

## **AS.5 Preliminary Sampling (Optional for Compliance)**

An approach for preliminary sampling ahead of 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. Additionally, up to 10 sites will 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 CLIENT.] FNI will calculate the 90<sup>th</sup> percentile results of lead samples and will conduct a desktop assessment of corrosivity for each site with WQP data. FNI will review and present the results to the CLIENT during a progress meeting.

## ARTICLE IV

**TIME OF COMPLETION:** FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services per the following:

FNI recommends implementing the following schedule for the execution of this Scope of Services. Tasks 2, 3, 4, and 5 will be completed by August 15, 2023, to allow for preparation, review, finalization, and submittal of the compliance documents in Task 6. Task 6 will be completed in two (2) months and by the October 16, 2024 compliance deadline, except for the post-submittal TCEQ coordination assistance.

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 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.

## 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. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to execution of the Project.
- C. 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.
- D. 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.

- E. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- F. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.
- G. 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 – Cody Collier

1600 Mark Tree Ln.  
Little Elm, TX 75068  
ccollier@littleelm.org

FNI's Designated Representative – Steven Rhodes

801 Cherry Street, Suite 2800  
Fort Worth, TX 76102  
210-298-3815  
sdr@freese.com

FNI's Accounting Representative – Erin Westbrook

801 Cherry Street, Suite 2800  
Fort Worth, TX 76102  
817-735-7354  
erin.westbrook@freese.com

### TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** The term City as used herein refers to the Town of Little Elm. 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:** City, without invalidating the Agreement, may order changes within the general scope of the work required by the Agreement by altering, adding to and/or deducting from the work to be performed. If any change under this clause causes an increase or decrease in FNI's cost of, or the time required for, the performance of any part of the Services, 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 CITY:** City will assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project. FNI shall have no liability for defects or negligence in the Services attributable to FNI's reliance upon or use of data, design criteria, drawings, specifications or other information furnished by City and City agrees to indemnify and hold FNI harmless from any and all claims and judgments, and all losses, costs and expenses arising therefrom. FNI shall disclose to City, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications or other information furnished by City to FNI that FNI may reasonably discover in its review and inspection thereof.
6. **INSURANCE:** FNI shall provide City with certificates of insurance with the following minimum coverage:

<b>Commercial General Liability</b> General Aggregate      \$2,000,000  <b>Automobile Liability (Any Auto)</b> CSL                      \$1,000,000	<b>Workers' Compensation</b> As required by Statute  <b>Professional Liability</b> \$3,000,000 Annual Aggregate
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7. **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 will notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the Agreement shall create any contractual relation between any subcontractor and City.
8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports, data and other project information developed in the execution of the Services provided under this Agreement shall be the property of City upon payment of FNI's fees for Services. FNI may retain copies for record purposes. City agrees such documents are not intended or represented to be suitable for reuse by City or others. Any reuse by City or by those who obtained said documents from City without written verification or adaptation by FNI, will be at City's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants, and City shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data and other project information in the execution of the Services provided under this Agreement in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to City, and FNI shall indemnify and hold harmless City from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.
9. **POLLUTANTS AND HAZARDOUS WASTES:** It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing the Services required by this Agreement, FNI does not take possession or control of the subject site, but acts as an invitee in performing the Services, and is not therefore responsible for the existence of any pollutant present on or migrating from the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal

activities.

10. **OPINION OF PROBABLE COSTS:** FNI will furnish an opinion of probable project development cost based on present day cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices.
11. **CONSTRUCTION REPRESENTATION:** If required by the Agreement, FNI will furnish construction representation according to the defined scope for these services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the Contract Documents. In performing these services, FNI will report any observed deficiencies to City, however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for the supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or the safety precautions and programs incident to the work of the Contractor. FNI shall not be responsible for the acts or omissions of any person (except 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.
12. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** City 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 CITY and in acceptance of the Services as satisfactory by the City. Statements for Services shall not be submitted more frequently than monthly. Any applicable new taxes imposed upon Services, expenses and charges by any governmental body after the execution of this Agreement will be added to FNI's compensation.  
  
If City fails to make any payment due FNI for services and expenses within 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, 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:** City and FNI each are hereby bound and the partners, successors, executors, administrators and legal representatives of City and FNI are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.  
  
Neither City nor FNI shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of Services hereunder.
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.