

CITY OF CLEARWATER

PROPOSAL FOR

**MEDIA CHANGE OUT SERVICES
FOR THE
CLEARWATER ARSENIC TREATMENT
SYSTEM**

DNWT Proposal P-19484 REV 1
11 JULY 2016

**MEDIA CHANGE OUT SERVICES
FOR
CITY OF CLEARWATER, FL**

1.0 INTRODUCTION

De Nora Water Technologies, Inc. (DNWT) is pleased to offer the City of Clearwater, FL this proposal to supply new Bayoxide® E33 media, and services for media change-out and conditioning of (1) 14' diameter Arsenic Removal Filter and



removal of media, inspection of underdrain, and replacement of media of (1) 14' diameter Arsenic Removal Filter at the Water Treatment Plant in Clearwater, Florida.

2.0 **SCOPE OF WORK**

DNWT will bring its own crew to the site to

- Remove the spent media from the lead vessel and dispose.
- Clean and inspect lead vessel.
- Install 6" gravel on top of underdrain
- Remove the media from the lag vessel by hand and place in sacks for reuse.
- Place the media from the lag vessel into the lead vessel, and put vessel back in service.
- Inspect lag vessel after media is removed to determine cause of lost media.
- Provide proposal to make necessary repairs to lag vessel.
- After repairs are completed the DNWT supplied crew will go back to site.
- Install 6" gravel on top of underdrain.
- Refill the lag vessel with virgin Bayoxide E33.
- Place lag vessel back on line.

Gravel Supply: DNWT will supply 1/8" x 1/16" Filter Gravel to be installed on top of the underdrain. (308) 50# bags will be delivered to the job site.

Media Supply: DNWT will supply virgin granular Bayoxide® E33 750-kg supersacks for the media change out. Ten (10) super sacks (520 cu. ft.) will be delivered to the job site.

Lag Vessel Change-Out Services: DNWT will provide all labor, expertise and equipment required for the removal, and replacement of media at the site listed above. The removal and replacement services include shoveling out the media and placing in sacks. Media will be placed in the lead vessel after that one is empty. DNWT will perform a visual inspection of the vessel to check general condition and to determine the cause of the media loss. DNWT Technician will explain the reason for the media loss to the Clearwater Representative and come up with a repair/rework procedure. Once the vessel is repaired 6" of 1/8" x 1/16" gravel will be placed on top of the filter underdrain prior the filter being refilled with virgin media. Disinfection chemicals (supplied by Clearwater) will be added and media bed will be left to 'soak' for a period of time after which DNWT personnel will perform the initial backwash and the Adsorber will be placed back on-line. Not included in the price is the cost to perform the repairs that is causing the media loss.

Lead Vessel Change-Out Services: DNWT will provide all labor, expertise and equipment required for the removal and replacement of spent media at the site listed above. The removal and replacement services include pumping/sucking spent media out of the vessel(s) and placing into appropriate transportable container(s).

DNWT will perform a visual inspection of the vessel to check general condition, and for any leaks or items of concern. 6" of 1/8" x 1/16" gravel will be placed on top of the filter underdrain prior to the filter being refilled with the media that was removed from the lag vessel, disinfection chemicals (supplied by Clearwater) will be added and media bed will be left to 'soak' for a period of time after which DNWT personnel will perform the initial backwash and the Adsorber will be placed back on-line.

These services will require taking the adsorber out of service for approximately three (3) days. Please note that the backwash water will be discharged to the backwash holding tank or a local sewer, ditch or pond. This will allow the media change out service to be done in the time estimated below. If this is not acceptable it is up to the City to arrange for disposal of backwash water or DNWT will charge for additional time required to wait for the backwash system to recover.

DNWT will transport and dispose of the spent media along with other waste (gravel, pallets and trash) off-site at a DNWT designated landfill.

Total time for this change out service is estimated to be three (3) days on site. See section 3.0 for qualifications on any additional time required to complete these services.

DNWT requires a minimum of four (4) weeks' notice for the proposed service to arrange media delivery and scheduling of a crew to perform the work. Services will be performed at a mutually agreed upon date.

3.0 QUALIFICATIONS AND CLARIFICATIONS

The following items and/or services are to be provided by others and are not considered to be part of DNWT scope of supply.

- Electric power for hand tools and use of restroom facilities for DNWT personnel and/or representative at each site.
- Disinfection chemicals for conditioning and the initial backwash of the filters.
- All permits for personnel access and work activities (i.e.; confined space entry permits) are to be ready upon arrival of DNWT personnel.
- The spent media must have a Toxicity Characteristic Leaching Procedure (TCLP) test done before disposal in order to confirm that it meets the federal guidelines of a non-hazardous material. The City is required to take a composite core sample from the filter and arrange for TCLP (8 RCRA metals) testing to be done. Cost for this testing is the responsibility of the City.

All our test work to date indicates the spent media will meet federal guidelines for non-hazardous material. DNWT assumes the government's criteria for

hazardous and non-hazardous will not be changed. If any governmental authority determines that the spent media must be transported or disposed of as hazardous material any additional costs will be passed on to the City.

- All prices are based on the spent Bayoxide media being free flowing during the removal process. If the spent media is not free flowing and causes delays in the service, additional charges may apply.
- If the number of days on site is extended beyond the time outlined above and is due to Force Majeure, then DNWT will be allowed an appropriate number of day(s) extension. If additional days are required due to delays caused by parties other than DNWT then additional days will be allowed to complete the services and additional charges will be negotiated.
- Additional services can be purchased, if desired, at the rate of \$1,500.00 per day (8 hour/day max.) including travel days. Plus travel and living expenses charged at cost.

When the DNWT field representative and crew arrive on-site for the scheduled service, the vessel should be drained of water and all equipment must be ready for work to begin. If equipment is not ready then our standard per diem rate, plus travel and living expenses, will apply.

Prior to the scheduled service the City will need to provide DNWT with a copy the TCLP test results and the Chain of Custody form for the sample. In addition the City will be required to sign a Waste Profile form confirming that the material has been tested and is acceptable for disposal.

4.0 PRICE AND PAYMENT SCHEDULE

DNWT will deliver the materials and service described herein for a lump sum price of **\$134,615.00** and is broken out as follows:

- Task 1 Price: **\$27,315.00**
Remove and dispose of the spent media in Vessel "B". Add a layer of silica gravel to "B". Move the substantially good media in vessel "A" ("A" has the broken drain) to vessel "B". Place Vessel "B" back in service.
- Task 2 Price: To Be Determined based on results of inspection
Repair the underdrain system of vessel "A"
- Task 3 Price: **\$107,300.00**
Add a layer of silica gravel to vessel "A". Add new media to vessel "A"



Payment Terms are net 30 days after invoice. When possible all invoices will be submitted by the 25th day of the month. Interest will be billed at 1-1/2% per month on invoices unpaid after thirty (30) days or the maximum allowable by law, whichever is less.

Payment shall be made as follows:


100% upon completion of the media change out

5.0 ACCEPTANCE OF PROPOSAL

Acceptance of this proposal is based on the incorporation of any referenced documents including but not limited to an insurance certificate, and the attached Standard Terms and Conditions of Sale are incorporated herein and are agreed to be a material part of this Agreement.

AGREED BY:

De Nora Water Technologies, Inc.

 16-Sep-2016

(Name)

Unit Manager

(Title)

~~17-Aug-2016~~

(Date)

[Clearwater signature block is on the following page.]



City of Clearwater:

George N. Cretekos
Mayor

Approved as to form:

Attest:

Camilo A. Soto
Assistant City Attorney

Rosemarie Call
City Clerk

Effective Date: _____

DE NORA WATER TECHNOLOGIES, INC.

STANDARD TERMS AND CONDITIONS OF SALE

1. APPLICABLE TERMS

- 1.1 The sale of goods and related services (if any) hereunder (collectively, the "Product(s)") is limited to and made expressly conditional on Buyer's acceptance of these terms and conditions of sale.
- 1.2 These terms and conditions shall control over any inconsistent or additional terms or conditions proposed or issued by Buyer or Seller, including any additional or different terms contained in any purchase order, acknowledgement, proposal or other communication, written or otherwise unless specifically agreed to in writing by both parties.
- 1.3 Buyer's acceptance of delivery or the full or partial payment of the purchase price hereunder, shall constitute Buyer's acceptance of all the terms and conditions stated herein, notwithstanding any other inconsistent terms and conditions, prior dealings or usage of trade.
- 1.4 No modification of these terms and conditions (including any special terms and conditions, changes in scope, specifications, price or delivery schedule) shall be of any force or effect unless agreed in writing and signed by both parties.

2. PRICES AND PAYMENT TERMS

- 2.1 All prices and payments shall be in U.S. currency. Seller understands that Buyer is a tax-exempt public entity.
- 2.2 Buyer shall pay the full purchase price as set forth on the face of this document or that certain document to which these terms are attached ("Seller's Documentation"), without any deduction by way of set-off, counterclaim, discount or otherwise.
- 2.3 Unless otherwise stated on the face hereof, payment terms are Net Thirty (30) Days from date of invoice. Payment of retention, if any, shall be made no later than 30 days from Product Acceptance pursuant to the terms hereof or 180 days from date of shipment, whichever occurs first.
- 2.4 Any payments delayed beyond thirty (30) days from the specified due date shall be subject to interest on the unpaid balance at the rate of one and one-half (1-1/2%) percent per month or the maximum rate permitted by applicable law, whichever is less. Seller reserves the right, among other remedies, to suspend further deliveries in the event Buyer fails to pay for any one shipment when payment becomes due. All orders are subject to credit approval. Should Buyer's financial condition become unsatisfactory to Seller, Seller shall have the right, at its option, to payment in advance, to cash payment upon delivery or to satisfactory security.

3. DELIVERY AND RISK OF LOSS – N/A

4. PRODUCT ACCEPTANCE- N/A

5. INSTALLATION AND/OR START UP SERVICES

- 5.1 If Seller's scope of supply includes installation supervision and/or start up services, Buyer will confirm to Seller at least two (2) weeks prior to the date Seller's personnel will be required on site to perform such services that Buyer has fully completed all work necessary for such installation and/or start up services in accordance with Seller's instructions. In the event that the completion of such services is delayed by Buyer for any reason not the fault of Seller following Seller's arrival on site, Buyer shall pay for any additional costs resulting from the delay.
- 5.2 To the extent that Seller's scope of supply includes supervising the installation of the Products, Seller shall not be responsible for the means and methods selected for such installation, nor for the manner in which such installation services are performed, including the efficiency, adequacy and safety of same. Seller makes no warranty, express or implied, with respect to such installation and/or start up services, except that the Seller shall be responsible for any claims or damages resulting from its own negligence.

6. CANCELLATION

- 6.1 Unless otherwise provided in Seller's Documentation, if Buyer cancels or partially cancels an order, Buyer shall promptly pay Seller for all work performed on account of the Products prior to cancellation plus any other reasonable costs incurred by Seller as a result of such cancellation including, if applicable, an appropriate restocking fee.

7. WARRANTY

- 7.1 Subject to the conditions stated below, Seller warrants the Products against defects in materials and workmanship for a period of eighteen (18) months from the date in which title has passed to Buyer or twelve (12) months from the date of installation of the Products, whichever occurs first.
- 7.2 Seller shall re-repair or replace any Service, Products, or components thereof that is/are defective, at the sole discretion of the Buyer. In addition, any part or component that has been repaired or replaced shall be warranted for a period equal to the longer of (i) the remaining warranty period hereunder; or (ii) one year from the date of such repair or replacement.
- 7.3 In the event that Seller fails to initiate a corrective action plan to repair or replace the defective components within ten (10) days following Buyer's notification, Buyer may, at their option, take action to repair or replace such defective product and Seller shall bear the direct and commercially reasonable cost for parts and labor thereof. In such circumstances, Seller has no warranty obligation with regard to the repair or replacement performed by Buyer. Further, if Buyer improperly repairs or replaces the defective Products and/or uses incompatible components, Seller is not responsible for any costs, damages or malfunctions resulting therefrom.
- 7.4 Any alteration, disassembly, storage or use of the Products not in accordance with Seller's instructions shall void the warranty. Buyer assumes full responsibility in the event Buyer uses the Products in combination with other goods or in any manner not stated in Buyer's specifications provided prior to sale.
- 7.5 All costs associated with removing the Products from service and re-installing same following examination, repair or replacement are to be borne by Buyer. Seller may, in its sole discretion, require that the Products be shipped to Seller's facility for examination, repair or replacement. All transportation costs to and from Seller's facility, if required, are to be prepaid by Buyer.
- 7.6 THE WARRANTIES SET FORTH HEREIN, IF ANY, ARE MADE EXPRESSLY IN LIEU OF OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, EVEN IF THAT PURPOSE IS KNOWN TO SELLER, IS HEREBY EXPRESSLY EXCLUDED; PROVIDED, HOWEVER, THAT THE SERVICE OR PRODUCTS IS/ARE WARRANTED TO CONFORM IN ALL MATERIAL RESPECTS TO THE RELEVANT AND KNOWN SPECIFICATIONS, AND PERFORMANCE STANDARDS, INCLUDING ANY MUTUALLY AGREED MODIFICATIONS THERETO.
- 7.7 SELLER'S LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY FAILURE BY SELLER TO SUPPLY SERVICE OR PRODUCTS THAT MEET THE FOREGOING WARRANTY IS EXPRESSLY LIMITED TO, AT SELLER'S OPTION, THE RE-REPAIR OR REPLACEMENT OF THE NON-CONFORMING SERVICE OR PRODUCTS. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, INCOME, PROFIT, CAPITAL OR BUSINESS OPPORTUNITY EVEN IF SELLER HAS BEEN ADVISED OF SUCH POSSIBLE INCOME, PROFIT, CAPITAL OR BUSINESS OPPORTUNITY.

8. INDEMNIFICATION

- 8.1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the services provided by Contractor personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor personnel; and (iii) Contractor or Contractor personnel's failure to comply with or fulfill the obligations established by this Agreement.

- 8.2. Contractor will update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.
- 8.3. The City assumes no liability for actions of Contractor and will not indemnify or hold Contractor or any third party harmless for claims based on this Agreement or use of Contractor-provided supplies or services.

9. INSURANCE

9.1 Seller agrees to maintain the following levels of insurance coverage:

- a. **Commercial General Liability Insurance** coverage, including but not limited to, premises operations, products/completed operations, products liability, contractual liability, advertising injury, personal injury, death, and property damage in the minimum amount of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate.
- b. **Commercial Automobile Liability Insurance** coverage for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$1,000,000 (one million dollars) combined single limit.
- c. Unless waived by the State of Florida, statutory **Workers' Compensation Insurance** coverage in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of \$100,000 (one hundred thousand dollars) each employee each accident, \$100,000 (one hundred thousand dollars) each employee by disease and \$500,000 (five hundred thousand dollars) aggregate by disease with benefits afforded under the laws of the State of Florida. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, contractors, subcontractors, and volunteers, if any.
- d. **Professional Liability Insurance** coverage appropriate for the type of business engaged in by the Contractor with minimum limits of \$1,000,000 (one million dollars) per occurrence. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great a duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.
- e. **Pollution Liability Insurance Coverage**, which covers any and all losses caused by pollution conditions (including sudden and non-sudden pollution conditions) arising from the servicing and operations of Vendor (and any subcontractors, representatives, or agents) involved in the work/transport in the minimum amount of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate.

Other Insurance Provisions.

Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement remains in effect, the Vendor will furnish the City with a Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable endorsements) evidencing all of the coverage set forth above and naming the City as an "Additional Insured" on the Commercial General Liability Insurance and the Commercial Automobile Liability Insurance. In addition when requested in writing from the City, Vendor will provide the City with certified copies of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows:



City of Clearwater
Attn: Purchasing Department, RFP #43-16
P.O. Box 4748
Clearwater, FL 33758-4748

Vendor shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.

Vendor's insurance as outlined above shall be primary and non-contributory coverage for Vendor's negligence.

Vendor reserves the right to appoint legal counsel to provide for the Vendor's defense, for any and all claims that may arise related to Agreement, work performed under this Agreement, or to Vendor's design, equipment, or service. Vendor agrees that the City shall not be liable to reimburse Vendor for any legal fees or costs as a result of Vendor providing its defense as contemplated herein.

The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the City, and City's failure to request evidence of this insurance shall not be construed as a waiver of Vendor's (or any contractors', subcontractors', representatives' or agents') obligation to provide the insurance coverage specified.

10. LIMITATION OF LIABILITY

- 10.1 Seller's total liability to Buyer with respect to any cause of action or claim hereunder shall not exceed 150% the value of the purchase price payable hereunder.
- 10.2 Seller shall not be liable, either directly or as indemnitor of Buyer, for any special, punitive, indirect or consequential damages, including but not limited to damages for loss of use, loss of income or loss of profit.
- 10.3 Notwithstanding the above, this limitation of liability shall not apply to: a) claims brought directly against the Seller by unrelated third parties; and b) claims arising from Seller's gross negligence or willful misconduct.
- 10.4 Nothing contained herein shall be construed as a waiver of any immunity from or limitation of liability the Buyer is entitled to under the doctrine of sovereign immunity or section 768.28, Florida Statutes.

11. FORCE MAJEURE

- 11.1 Seller shall not be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure.
- 11.2 Force Majeure shall mean any act, event or condition that is beyond Seller's reasonable control, that materially and adversely affects Seller's ability to perform its obligations hereunder, and that is not the result of Seller's willful neglect, error, omission or failure to exercise reasonable due diligence.
- 11.3 If Seller is unable to perform any of its obligations hereunder as a result of a Force Majeure event, Seller shall be required to resume performance upon termination of the event and shall have reasonable additional time for performance.
- 11.4 In addition, to the extent that a Force Majeure event increases Seller's cost of performance hereunder, Buyer shall bear all such additional costs of performance, excluding any costs that are covered by Seller's insurance.

12. DEFAULT AND TERMINATION

- 12.1 The substantial failure of either party to comply with the terms of this contract shall constitute default hereunder. Upon default by one party, the other nondefaulting party shall provide written notice clearly specifying the nature of the default. The defaulting party shall have thirty (30) days to cure the default.
- 12.2 The defaulting party shall have thirty (30) days to cure the default. If the default is capable of being cured within thirty (30) days and is not cured within thirty (30) days, this contract may be terminated.
- 12.3 In the case of default that cannot be cured within thirty (30) days, this contract shall not be terminated so long as the defaulting party has given written notice of extension to the other party and the defaulting party has commenced and is diligently pursuing a cure.
- 12.4 In the event of any termination, Seller shall be paid for Products delivered and services rendered (including Products specifically manufactured/assembled or special ordered for the Buyer that have yet to be supplied) through the date of termination.
- 12.5 For purposes of this contract, the failure of Buyer to pay Seller in accordance with the payment terms hereunder shall be considered a substantial default for which no cure period beyond 30 days shall be allowed.
- 12.6 In the event the Buyer's default, Seller may, in addition to the right to terminate set forth in this paragraph, elect to suspend work until the default has been cured.
- 12.7 No delay or omission on the part of the Seller in exercising any right or remedy hereunder shall constitute a waiver of any such right or remedy on any future occasion.

13. INTELLECTUAL PROPERTY

- 13.1 Seller (the Disclosing Party) understands that the Buyer (the Receiving Party) is a public agency subject to Florida's expansive public record laws, which are found in chapter 119, Florida Statutes. Pursuant to Florida Statute section 812.081(1)(c), "trade secret" the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be: (1) secret; (2) of value; (3) for use or in use by the business; and (4) of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the Disclosing Party thereof takes measures to prevent it from becoming available to persons other than those selected by the Disclosing Party to have access thereto for limited purposes. Documents containing trade secrets, as defined herein and as may be amended by Florida Statute, shall be stamped "**confidential**" so as to let the Receiving Party know to exempt from public access. The City of Clearwater, as the Receiving Party, shall retain all documents as required by chapter 119, Florida Statutes. If trade secret information is provided and such documents are marked "confidential," then the City shall exempt such documents from public access and make such documents confidential..
- 13.2 Buyer will not undertake any analyses or "reverse engineering" of the products for the purpose of designing, developing or manufacturing by the Buyer or by any third party of products that compete with the Product(s).
- 13.3 Seller will retain sole ownership of all discoveries, improvements, inventions, patents, trademarks, copyrights, know-how, trade secrets, or other intellectual property rights associated in any way with the Products. The parties specifically agree that all improvements, inventions, discoveries and copyright in works of authorship, including those in formative stages, made by either party hereto (either alone or jointly with others) improving upon or related to the Products shall from the time of conception or, in the case of works of authorship, from the time of creation, be the property of Seller.

14. RELIANCE ON INFORMATION

- 14.1 Buyer acknowledges that Seller has used and relied upon information provided by the Buyer, if any, regarding site conditions, specifications and other technical requirements in the design, installation and start-up of its Product(s). Seller shall not be obligated to establish or verify the accuracy of the information furnished by the Buyer nor shall Seller be responsible for the impact or effect on its Product(s) and any services provided by Seller hereunder of the information furnished by the Buyer in the event that such information is in error.

15. MISCELLANEOUS PROVISIONS

- 15.1 These terms and conditions constitute the entire contract of sale and purchase between Buyer and Seller and supersede all prior or contemporaneous communications, representations, understandings or agreements, whether written or oral, unless such document states that it intends to modify this contract and is signed by both parties.
- 15.2 No modification of this contract (including changes in scope, specifications, price or delivery schedule) shall be of any force or effect unless made pursuant to a writing signed by both parties. No course of dealing or performance or usage of trade may be used to modify this contract.
- 15.3 The failure on the part of either party to enforce its rights as to any provisions herein shall not be construed as a waiver of its rights to enforce such provisions in the future.
- 15.4 Should any provision of this contract for any reason be declared invalid or void, such declaration will not affect the remaining provisions of this contract, which shall remain in full force and effect.
- 15.5 Buyer may not assign or permit any other transfer of this contract without Seller's prior written consent.
- 15.6 Buyer shall strictly comply with and refrain from exporting or re-exporting the Products in violation of, United States' laws regarding trade restrictions and embargoes, as such laws may be amended from time to time.
- 15.7 This contract is entered into solely between, and may be enforced only by, the Buyer and Seller; and this contract shall not be deemed to create any rights in third parties, including customers of the Buyer, or to create any obligations to any such third parties.
- 15.8 These terms and conditions shall be governed by and construed in accordance with the laws of the State of Florida, and proper venue shall lie in Pinellas County, Florida, where applicable
- 15.9 IF THE SELLER/CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, THE CONTRACTORS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT. CONTACT THE CUTODIAN OF PUBLIC RECORDS AT 727-562-4092, Rosemarie.Call@myclearwater.com, 112 S. Osceola Ave., Clearwater, FL 33756

In addition to all other contract requirements as provided by law, the contractor executing this agreement agrees to comply with public records law. The contractor's agreement to comply with public records law applies specifically to:

- a) Keep and maintain public records required by the City of Clearwater (hereinafter "public agency") to perform the service being provided by the contractor hereunder.
- b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, as may be amended from time to time, or as otherwise provided by law.
- c) Ensure that the public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.
- e) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
- f) The contractor hereby acknowledges and agrees that if the contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.
- g) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.

- h) If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
1. The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and
 2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.
- i) A notice complies with subparagraph (h)2. if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
- j) A contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.