



## Professional Services Agreement

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THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement"), made effective as of October 1, 2020, is entered into by and between The City of Clearwater, Florida ("Client"), with principal place of business at 1140 Court Street, Clearwater, FL 33756, and Innovative Emergency Management, Inc. ("IEM"), a corporation organized and existing under the laws of the State of Louisiana, with its principal place of business at 2801 Slater Road, Suite 200, Morrisville, North Carolina, 27560-8477. The Client and IEM are hereinafter referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, the Client desires to obtain the professional services of IEM in connection with the services as described in Schedule A of this Agreement; ("Work") and

WHEREAS, IEM has represented to the client that it is qualified and capable of providing such services in a competent and professional manner; and

WHEREAS, the Client desires to contract with IEM to provide such services and IEM desires to provide such services to the Client under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows.

1. Definitions. As used herein, the following terms shall have the meanings set forth below.
  - 1.1. Person. "Person" means any natural person, corporation, limited liability company, association, cooperative, partnership, trust, estate, joint venture, or any other legal entity, including a governmental authority or agency.
  - 1.2. Representative. "Representative" means a Party's employee, officer, director, manager, agent, or professional advisor.
  - 1.3. Third Party. "Third Party" means a Person that is not a Party to this Agreement.
  - 1.4. Deliverables. "Deliverables" shall mean all work products, whether tangible or intangible, in any format and whether or not copyrightable or patentable, that are delivered to the Client by IEM pursuant to this Agreement or in performance of the Work thereunder.
2. Term. This Agreement shall commence as of October 1, 2020 and shall continue until January 30, 2022 (the "Term"), unless sooner terminated in accordance with the provisions of this Agreement. The Term may not be altered, modified, or amended, in whole or in part, except in writing signed by duly authorized Representatives of both Parties.
3. Termination.
  - 3.1. Termination for Default. If either Party materially defaults in the performance of, or materially fails to perform, any of its material obligations under this Agreement, the non-defaulting Party shall have the right to terminate this Agreement fifteen (15) business days after giving written notice to the breaching party reasonably describing the breach, if the breaching party fails to cure the breach to the non-defaulting party's reasonable satisfaction within such fifteen (15) business day period. In the event of termination for default, IEM shall be entitled to payment for Work in progress, to the extent the Work has been performed satisfactorily.
  - 3.2. Termination for Convenience. Either Party may terminate this Agreement for convenience upon the giving of ninety (90) calendar days written notice to the other Party of its intention to terminate. In the event of termination for convenience, IEM shall be entitled to payment for Work in progress, to the extent the Work has been performed satisfactorily.
4. Compensation.
  - 4.1. Fees and Expenses (Firm Fixed Price). The Client shall pay to IEM for services rendered a fixed price of \$131,660 ("Firm Fixed Price") under the payment schedule specified in Schedule A of this Agreement. The Firm Fixed Price shall be considered inclusive of wages; materials; travel; all indirect loadings such as overhead, general, and administrative expenses; taxes; and profit.
  - 4.2. Itemized Statements. IEM shall submit to the Client monthly itemized statements of fees and incurred expenses in a form satisfactory to the Client. Statements shall be submitted to the Client at the following address:

*Via First Class Mail:*  
1140 Court St. Clearwater, Fl. 33756  
727-562-4334 ext 3205

*Via Electronic Communication:*  
jevon.graham@myclearwater.com
  - 4.3. Payment of Fees and Expenses. Fees and incurred expenses shall be paid to IEM within thirty (30) calendar days of delivery of an itemized statement to the Client.
5. Engagement.
  - 5.1. Agreement to Perform Services. IEM agrees to perform the Work for the Client.
  - 5.2. Coordination and Progress Reporting. IEM and the Client shall develop appropriate administrative procedures for coordinating with each other and reporting progress.



- 5.3. Methods and Means of Performing Work. IEM shall perform the Work in an honest, confidential, efficient, prompt, economical, skillful, and careful manner. IEM shall have the right to determine the order, sequence, method, manner, details, and means of performing the services.
- 5.4. Work Location. IEM shall perform the Work primarily at IEM's location or locations, except when such projects or tasks require IEM to travel off-site or to the Client's location or locations.
- 5.5. Tools and Materials. IEM shall provide the tools and materials necessary to perform the Work.
- 5.6. Client Furnished Information or Resources. The Client shall provide appropriate personnel for consultation, as required, and access to relevant facilities and material that are reasonably necessary for IEM's performance under this Agreement. IEM shall be entitled to rely upon any Client furnished information, material, or resources without independent verification, unless otherwise provided for herein. In the event that the performance of IEM under this Agreement is delayed due to the failure of the Client to provide necessary and appropriate information, material, or resources that are reasonably necessary for IEM's performance, appropriate adjustments to the delivery schedule shall be made and such a delay shall not constitute a material breach of this Agreement.
- 5.7. Inspection and Acceptance of Deliverables. The Client's acceptance of a Deliverable shall be deemed to have occurred upon successful completion of testing and acceptance of the same by the Client. Notwithstanding the foregoing, a Deliverable shall be deemed accepted by the Client if not rejected in writing to IEM within ten (10) business days of the delivery of said Deliverable to the Client.
6. Independent Contractor.
  - 6.1. Nature of Relationship. It is the intention of the Parties that IEM be an independent contractor and not an employee, agent, or partner of the Client. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee; co-employee; partnership; principal and agent; or joint venture between the Client and IEM. In addition, the Parties acknowledge that neither Party has, or shall be deemed to have, the authority to bind the other Party in any way.
  - 6.2. Non-exclusivity. IEM shall retain the right to perform the same or similar services for others during the Term of this Agreement.
  - 6.3. Subcontractors. IEM may enter into subcontracts with Third Parties for the performance of any part of the Work. IEM shall remain the Client's sole point of contact for all subcontractor work.
7. Technical Representative. Regarding technical matters relating to this Agreement, the Parties hereby appoint the below-listed representatives. The Client's Technical Representative, or his/her duly authorized designee, is authorized to issue technical direction to IEM. Such direction may include instructions that provide details regarding, or otherwise clarify, the Work. This direction shall not constitute new assignments, or changes, modifications, or amendments, which justify any change to the Agreement terms and conditions, or price.

FOR IEM: Jennifer Pensyl 8550 United Plaza Boulevard, Suite 400 Baton Rouge, LA 70809 225-526-8826 [Voice] Jennifer.pensyl@iem.com [E-mail]	FOR CLIENT: Chief Jevon Graham 1140 Court Street Clearwater, FL 33756 727-562-4334 ext. 3205 [Voice] 727-562-4328 [Fax] jevon.graham@myclearwater.com [E-mail]
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8. Confidential Information.
  - 8.1. Definitions. For the purposes of this Agreement, "Confidential Information" shall mean any information that is treated as confidential by a Party, including without limitation trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing. Confidential Information shall not include information that: (a) is already known to the Party receiving or acquiring it, directly or indirectly, under this Agreement ("Receiving Party") without restriction on use or disclosure prior to receipt of such information from the Party disclosing Confidential Information under this Agreement ("Disclosing Party"); (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; (d) is received by the Receiving Party from a Third Party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information; or (e) is not considered a "trade secret" pursuant to § 815.045, Florida Statutes.
  - 8.2. Obligations of the Parties. The Receiving Party agrees that it: (a) shall treat the Confidential Information as confidential and shall take reasonable precautions to prevent unauthorized disclosure or use of the Confidential Information, such precautions taken being at least as great as the precautions taken to protect its own proprietary information (but in no case less than reasonable care); (b) shall not disclose the Confidential Information to any Third Party without the Disclosing Party's prior written authorization; (c) shall not use the Confidential Information except for the purpose of providing services or fulfilling obligations under this Agreement; (d) shall promptly return the Confidential Information to the Disclosing Party upon request and upon expiration or termination of this Agreement; and (e) shall limit disclosure of Confidential Information to those Persons requiring such disclosure to perform services under this Agreement. The Receiving Party acknowledges that any violation of this Section 8 shall result in irreparable injury to the Disclosing Party and thus if the Receiving Party should breach or threaten to breach any provision of this this Section 8, the Disclosing Party shall be entitled, in addition

to any other remedies it may have at law or in equity, to a restraining order, injunction, specific performance or other similar remedy in order to enforce this Agreement without the posting of bond.

8.3. Required Disclosure.

8.3.1. Notwithstanding the foregoing restrictions on disclosure, this Agreement shall not preclude the disclosure of Confidential Information if:

8.3.1.1. Such disclosure is required by law, such as a public records request (Chapter 119, Florida Statutes) or legal process ("Legal Order");

8.3.1.2. Such disclosure is required by the U.S. Government; or

8.3.1.3. The Proposed Transaction requires such disclosure, and the Disclosing Party consents in writing prior to such disclosure (which consent shall not be unreasonably conditioned, withheld, or delayed).

8.3.2. Regarding a disclosure pursuant to Section 8.3.1.1 of this Agreement, the Receiving Party required to disclose shall give prompt, prior notice to the Disclosing Party (to the extent permitted by the Legal Order) and, at the request and expense of the Disclosing Party, shall reasonably cooperate with the Disclosing Party to obtain a protective order or other form of confidential protection, if available. If, after providing such notice and assistance as required herein, the Receiving Party remains subject to the Legal Order to disclose any Confidential Information, the Receiving Party (or its Representatives or other persons to whom the Legal Order is directed) shall limit the disclosure to only those portions of the Confidential Information required by the Legal Order.

8.3.3. Regarding a disclosure pursuant to Section 8.3.1.2 of this Agreement, the Receiving Party required to disclose shall give prompt, prior notice to the Disclosing Party and the Confidential Information must be disclosed with any original restrictive legends and such other markings as may be required under U.S. Government regulations to preserve its proprietary nature and the Disclosing Party's rights therein.

8.3.4. Regarding a disclosure pursuant to Section 8.3.1.3 of this Agreement, the Receiving Party required to disclose shall give prompt, prior notice to the Disclosing Party of the required disclosure.

8.4. Survival of Obligations. The Parties' obligations under the terms of this Section 8 shall survive the termination or expiration of this Agreement for a period of three (3) years.

9. Indemnification. Each Party shall mutually indemnify, defend, and hold the other harmless from and against any and all damages, losses, liabilities, and expenses arising out of or relating to any claims, causes of actions, lawsuits, or other proceedings, regardless of legal theory, that result solely from each other's officials', officers', agents', employees', contractors', and subcontractors' (a) intentional misconduct, negligence, or fraud; or (b) products or services including, without limitation, any claims that such products or services infringe any United States patent, copyright, trademark, trade secret or any other proprietary right of any Third Party. This indemnification shall not be construed as a waiver of Client's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which Client could be liable under the common law interpreting the limited waiver of sovereign immunity. Any claims against Client must comply with the procedures found in §768.28, Florida Statutes. In order to comply with the requirements of §166.241, Florida Statutes, and Article VII, section 10 of the Florida Constitution, the value of this indemnification is limited to the lesser of the amount payable by either party under the substantive provisions of this Agreement, or the limitations of §768.28, Florida Statutes. In addition, this indemnification shall be construed to limit recovery by the indemnified party against the indemnifier to only those damages caused by the indemnifier's sole negligence, and specifically not include any attorney's fees or costs associated therewith.
10. Non-Solicitation. During the term of this Agreement and for a period of one (1) year thereafter, neither Party shall, directly or indirectly, in any manner solicit or induce for employment any individual who is then in the employment of the other Party. A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the Internet, shall not be construed as a solicitation or inducement for the purposes of this Section 10, and the hiring of any such employees or independent contractors who freely respond thereto shall not be a breach of this Section 10.
11. Works for Hire; Ownership. Upon payment in full of all monies owed to IEM, the Client shall own all rights, title, and interest in and to all Deliverables. Ownership does not extend to copyrighted or proprietary information, or to other data in IEM's lawful possession prior to execution of this Agreement.
12. Costs and Expenses. Except as otherwise provided for in this Agreement, each Party shall bear all costs and expenses incurred by it in complying with this Agreement.
13. Limitation of Liability. IEM's liability to the Client for any cause whatsoever shall be limited to the purchase price paid to IEM for the products and/or services that are the subject of the Client's claim. In no event shall either Party be liable to the other or to any Third Party for any loss of use, revenue or profit or for any consequential, incidental, indirect, exemplary, special or punitive damages whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damage was foreseeable and whether or not such party has been advised of the possibility of such damage. Notwithstanding the foregoing, nothing herein shall limit either party's liability under Sections 8 or 9 of this Agreement.
14. Dispute Resolution.
- 14.1. Except as set forth in Section 14.2 herein, in the event of any dispute, claim, question, or disagreement arising out of or relating to this Agreement, or the interpretation, validity, scope, or breach thereof, the Parties shall use their best efforts to settle such dispute, claim, question, or disagreement. To this effect, the Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both



Parties. If the Parties do not reach such solution within a period of thirty (30) calendar days, then, upon written notice by either Party to the other, all such disputes, claims, questions, or disagreements shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules (including, if applicable, its Procedures for Large, Complex Commercial Disputes), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The location of arbitration shall be Pinellas County, Florida of arbitration shall be English. Any decision by the arbitrator(s) shall be final and binding, and except in the cases of fraud or gross misconduct by the arbitrator(s), the decision rendered shall not be appealable. The prevailing Party, if any, as determined by the arbitrator(s), shall be entitled to recover its costs and fees, including arbitrators' fees, administrative fees, attorney's fees, and other reasonable out-of-pocket costs. The arbitration proceedings and arbitration award shall be maintained by the Parties and arbitrator(s) as strictly confidential, except as is otherwise required by law, an order from a court of competent jurisdiction, or as is necessary to confirm, vacate, or enforce any arbitral award and for disclosure in confidence to the Parties' respective attorneys and tax advisors.

14.2. A Disclosing Party shall not be subjected to the negotiation and arbitration requirements of Section 14.1 in the event of an actual, threatened, or alleged breach by the Receiving Party of the Confidential Information obligations herein. In such event, the Disclosing Party may immediately seek relief in a court proceeding. Any such proceeding must be instituted and maintained in the state courts of Pinellas County, Florida or the United States District Court for the Western District of Florida. The Parties hereby irrevocably consent to jurisdiction and venue in such courts for this purpose, and the Parties waive objection to the jurisdiction and venue being in such courts.

- 15. Choice of Language; Choice of Law. All documentation, correspondence, and communications relating to this Agreement shall be made in the English language. This Agreement, and any dispute or controversy arising out of or relating to this Agreement, shall in all respects be governed by and construed according to the laws of the State of Florida, without giving effect to any principles of conflict of law or choice of law of such State or any other jurisdiction.
- 16. Force Majeure. If at any time during the existence of this Agreement, any Party is unable to perform whole or in part any obligation under this Agreement because of war; hostility; military operations of any character; civil commissions; sabotage; quarantine restrictions; acts of government; fire; floods; explosions; epidemics; strikes or other labor trouble embargoes; and any other matter beyond human control/capability, then the date of any obligation shall be postponed during the time which such circumstances are operative.
- 17. Severability. If any part or provision of this Agreement is, for any reason, held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, then such part or provision shall be severable from this Agreement, shall not affect any other part or provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable part or provision had never been contained herein. The remaining part or provisions hereof shall remain effective and fully enforceable to the maximum extent permitted by law.
- 18. No Waiver. The waiver by any Party hereto of any default hereof or of any breach of any covenant, agreement, or condition contained herein shall not be construed to constitute a waiver of any other default or breach hereof, similar or otherwise. No waiver of this Agreement or any portion thereof shall be binding upon any Party unless made in writing signed by a duly authorized Representative of such Party, and no failure or delay in enforcing any right shall be deemed a waiver.
- 19. Notices. All notices authorized or required to be given pursuant to this Agreement shall be in writing and either delivered by hand; mailed by registered or certified first class mail, postage prepaid; or sent by electronic communication as follows:

TO IEM:  
IEM  
ATTN: Contract Management  
2801 Slater Road, Suite 200  
Morrisville, NC 27560  
(919) 990-8191  
contracts@iem.com

TO CLIENT:  
1140 Court Street  
Clearwater, FL 33756  
727-562-4334 ext. 3205 [Voice]  
727-562-4328 [Fax]  
jevon.graham@myclearwater.com [E-mail]

Any such notice shall be deemed to have been given and received, if delivered or sent by electronic communication, on the day on which it was delivered or sent and, if mailed, on the fifth (5th) business day following the day it was mailed, subject to the provisions of Section 16 of this Agreement. Any electronic communication sent after 3:00 p.m. Eastern Time shall be deemed to have been sent at 9:00 a.m. Eastern Time on the following business day.

- 20. Parties in Interest; No Assignment. This Agreement is solely for the benefit of the Parties, and shall not be deemed to confer upon or give to any Person any remedy, claim of liability or reimbursement; cause of action; or other right. This Agreement shall be binding on the Parties and their respective successors and permitted assigns. No Party may assign, transfer, or delegate its rights or obligations contained herein without the prior written consent of the other Parties, which consent shall not be unreasonably conditioned, withheld, or delayed. Any change of control of a Party shall be deemed an assignment of this Agreement that requires the prior written consent of the other Parties. For the purposes of this Agreement, "change of control" means any merger; consolidation; sale of all or substantially all of the assets; or sale of a substantial block of stock of a Party.
- 21. Headings; Construction. The headings in this Agreement are for convenience of reference only and shall not in any way define, limit, or describe the scope or intent of any provisions or sections of this Agreement. The Parties have negotiated the provisions of this Agreement and this Agreement shall be deemed to have been drafted by all Parties hereto.
- 22. Entire Agreement; Amendments. This Agreement, including all attachments hereto, reflects the complete understanding between the Parties regarding the subject matter hereof and constitutes their entire agreement, superseding all prior negotiations,



representations, agreements, understandings, and statements, whether oral or written, regarding the subject matter hereof. This Agreement may not be altered, modified, or amended, in whole or in part, except in writing signed by duly authorized Representatives of each Party. No statement by any Representative of any Party may be construed as amending this Agreement in any way.

- 23. Method of Execution. This Agreement may be executed in multiple counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by electronic mail delivery of a file in Portable Document Format (PDF), such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

IN WITNESS WHEREOF, each Party represents that it has read this entire Agreement, comprising 29 pages (including Schedule A), and agrees to perform in accordance with the terms and conditions contained herein. Each Signatory to this Agreement warrants by affixing his or her signature below that he or she is duly authorized to bind the Party whom such Signatory represents.

FOR IEM:

\_\_\_\_\_  
Ryan Ausman  
Manager of Contract Administration

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

FOR CLIENT:

Countersigned:

\_\_\_\_\_  
Frank Hibbard  
Mayor

CITY OF CLEARWATER, FL  
By:

\_\_\_\_\_  
William B. Horne II  
City Manager

Approved as to form:

Attest:

\_\_\_\_\_  
Matthew Smith  
Assistant City Attorney

\_\_\_\_\_  
Rosemarie Call  
City Clerk

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

SCHEDULE A: SCOPE OF SERVICES

SCOPE OF SERVICES. In developing the COOP plan, the vendor will be required to:

- a. Review current emergency response plans to identify time-sensitive activities and mission essential functions by department.
- b. Conduct interviews with key City of Clearwater department personnel and other appropriate individuals to gather COOP data to complete this project.
- c. Document mission essential functions (MEFs), dependencies, recovery time objectives (RTOs), supplies and equipment, databases, orders of succession, delegation of authority, devolution, continuity facilities and key personnel for each City department. Included as a part of this process is to document risks, vulnerabilities and capabilities within each department that could affect MEFs, systems and records in the event of a disruption event.
- d. Identify areas of concern and provide the appropriate recommendations that will lead to improved protection of critical systems and records from a disruption event, increase the likelihood of preventing or avoiding a disruption event, and reduce the time required to recover from unavoidable events. Recommendations shall include, but not limited to, specific details of policies, procedures, hardware, software, priorities for recovery of technology, facilities, infrastructure and any other resources required to implement the improvements.
- e. Work with the City Manager or designee to define the appropriate solutions and approaches that would allow the City to assist each department in their efforts to recover from a disruption event. Included in this process is the identification of site(s) with the appropriate resources and infrastructure needed to conduct recovery operations for all critical systems and processes and allow access by essential staff within targeted departments.
- f. Develop a COOP document for the City addressing each department that can be updated as systems and procedures change over time. The vendor must provide a plan format that will allow the City and each department a consistent methodology to use to recover from a disruption event
- g. The COOP document must include a detailed training and testing schedule and methodology to properly test and update the plan as needed.

## DELIVERABLES.

- A. RA/VA/CA report
- B. Draft version of 21 department COOP plans and one citywide COOP plan.
- B. COOP Maturity Matrix
- C. Solutions Document
- D. Testing and Plan Maintenance Schedule
- E. Tabletop Exercise (TTX) documentation with AAR/IP
- F. Twenty-one (21) bound copies and one (1) electronic copy of the final approved COOP plans.

Figure 5: The Six Milestones in Phase 1

## PHASE 1

### MILESTONE 1: PROJECT IMPLEMENTATION/KICKOFF MEETING

Active communication and clear, documented expectations are key components of any project's success. Typically, IEM would hold an **in-person kickoff meeting** between our project team, including the Program Manager, Krista Houk; Project Manager and Sr. Continuity Planner, Dr. Jennifer Pensyl; the City of Clearwater Fire Department and other appropriate city stakeholders within five business days of the contract execution. Given social distancing as a result of COVID-19, the IEM team will work with the City to determine a remote strategy that is appropriate for everyone. This kickoff meeting is an opportunity to review the draft Project Plan that IEM will develop and provide for discussion. The Project Plan will provide an overview of our approach, staff, quality assurance and quality control process, identified risks and mitigative strategies, milestones, and the project timeline. Best practices from the Project Management Institute indicate that a well-developed collaborative Project Plan between customer and vendor reduces the risk to both parties and increases the successful outcomes of the project.

The kick-off meeting will also be a prime opportunity to establish data collection dates and locations for the engagement with city departments. While the initial dates may change, this first step allows everyone to provide input into the decision-making process and increases the likelihood of attendance by avoiding known conflicts.

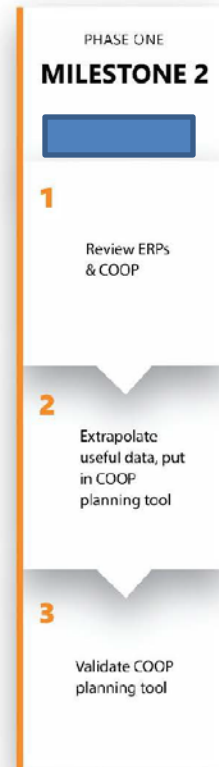
We will also provide the City with a copy of our COOP planning tool, which was developed using FEMA's CGC, ISO 22301, NFPA 1600, CPG 101 and the NIMS. **Dr. Pensyl and our COOP planners have used these documents to develop and deliver over 250 COOP/COG workshops and develop over 275 COOP plans over the past sixteen years.** Because of our familiarity with relevant guidance documents, IEM will be able to begin meaningful work immediately without wasting time and resources.



**MILESTONE 2: REVIEW EMERGENCY RESPONSE PLANS (ERPs) AND COOP PLAN**

During this milestone, the IEM team will work with City stakeholders to review and validate our COOP planning tool which will be used in Milestone III: Develop Draft COOP Plans.

The City has Emergency Response plans and a COOP that may contain current mission essential functions and other appropriate COOP data. In order to create efficiencies, the IEM team will review these plans and use appropriate information as a springboard for developing the City's COOP plans. We will pre-populate the COOP plan tool with any appropriate COOP information to create efficiencies that will be realized in Milestone 3: Develop Draft COOP Plans.





**MILESTONE 3: DEVELOP DRAFT COOP PLANS**

**3.1 CONDUCT A RISK, VULNERABILITY AND CAPABILITY ANALYSIS**

As part of the COOP planning initiative, IEM will conduct a Risk Analysis (RA), a Vulnerability Analysis (VA) and a Capability Analysis (CA) with each City department. These analyses will identify:

- **Risks and hazards** that may affect each department.
- The **vulnerability** of the City to each of these risks and hazards.
- The **potential impacts** of the most likely risks and hazards to the City’s MEFs.
- The **capabilities** the City has, or needs to develop or procure, in order to **mitigate** the effects of those risks and hazards that are most likely to occur and that would cause the most severe impacts.

The IEM team will follow FEMA CGC and Disaster Recovery Institute International (DRII) standards during this phase. The IEM team has used these standards in conducting more than 120 COOP plan assessments and developing more than 275 COOP plans.

**The IEM team will conduct a Risk Assessment (RA), a Vulnerability Assessment (VA), and a Capability Assessment (CA).** If available, we will utilize existing City RA data as a springboard. The RA will identify potential risks to the City of Clearwater’s operations, perceived probability that each risk will occur (high, medium, or low). We will then assess the impact level (VA) if the risk does occur (catastrophic, critical, limited, or negligible). IEM will prioritize these risks, which will give the City a clear picture of which risks need the greatest capabilities. A CA will identify what capabilities and resources currently exist for each risk or the capabilities and resources required for mitigating the effects of the risk. This type of analysis is useful for three reasons:

1. **It helps the City of Clearwater focus time, money, resources and efforts on the right risks by correlating the risks to the City’s MEFs.** Table 1 shows a sample survey instrument that IEM will use. If the RA shows the probability of one of the City’s facilities experiencing, for example, a flood event due to a tropic storm, to be “Medium”, and the impact-level to be “Critical,” the City may want to explore ways to mitigate that risk. If, however, it is determined that the risk **does not** affect any MEFs, the City may decide to accept the risk and not expend resources to mitigate the risk. If the risk **does** affect MEFs, the City can then begin to explore capabilities that will provide redundancies and resiliency around those MEFs. This type of analysis ensures the City focuses capability efforts only on those risks that effect MEFs.
2. **The survey instrument helps the City of Clearwater to identify where additional capabilities would benefit the overall resiliency of business operations.** By aggregating this information in one table, the City can clearly identify existing capabilities as well as capabilities that need to be more robust. This type of analysis helps the City focus resources where they will provide the most benefit.
3. **The City of Clearwater can determine what the negative impacts of certain risks may be.** Negative impacts include system downtime, loss of revenue, loss of public confidence, legal ramifications, and fines or penalties.



Use or disclosure of data contained in this sheet is subject to the restriction set forth at the front of this proposal or quotation.

Table 3: Sample Survey Instrument. This table illustrates how different risks could affect MEFs.

RISK (RISK ASSESSMENT)	LIKELIHOOD OF RISK OCCURRING AT CITY FACILITY	PERCEIVED IMPACT IF RISK WERE TO OCCUR (VULNERABILITY ASSESSMENT)	CURRENT MITIGATION EFFORTS (CAPABILITIES ASSESSMENT)	MEFs IMPACTED
<b>Flooding due to tropical storm</b>	Medium	Critical	None	None
<b>Power Outage</b>	Medium	Limited	Generator	Maintain internal/external communications
<b>Earthquake</b>	Medium	Medium	Hardened facility	Provide arraignment proceedings to prisoners.
<b>Fire</b>	Low	Critical	Facility has fire suppression equipment.	Process payroll

The MEFs identified during this phase of the project will now need to be prioritized, as they will drive the development of the City's COOP plans.

The IEM team has extensive experience assisting customers in distinguishing and prioritizing their truly mission essential functions, which are usually linked to activities that either:

1. generate revenue;
2. help preserve the City of Clearwater's reputation;
3. have legal, administrative, and economic impacts if they are not performed; or
4. have a pre-determined Recovery Time Objective (RTO).

In order to prioritize MEFs, recovery time objectives (RTOs) must be defined. RTOs outline timeframes in which business functions or application systems must be restored to acceptable levels of operational capability to minimize the impact of a disruption event. RTOs define how long MEFs can be idle before compromising business operations.

***These RTOs will determine the recovery priority of each MEF, which will in turn become the City's MEFs and be the bedrock for the City's COOP plans.***

Identifying MEFs is a critical step for two reasons. **First, MEFs drive the identification and quantification of the consequences of not performing the MEFs.** This is "what" the City needs to mitigate. **Second, MEFs will form a significant part of the COOP Plan development.** This is "how" the City will mitigate the consequences.

The IEM team has developed a well-organized, proven methodology for gathering data. Our experience has taught us that the more assistance provided to the stakeholders during the data gathering phase, the more reliable the data. This translates into a more successful, robust, and reliable COOP planning effort.

The IEM team has experience conducting these types of analyses and we understand the challenges of conducting this type of survey/analysis in large entities with competing priorities. Most stakeholders may not understand the RA/VA/CA or COOP development process, so **our goal is to focus stakeholders on essential elements of their jobs,** including identifying MEFs and RTOs. Our strategy for gathering complete, reliable data is to **develop a user-friendly**

**instrument and conduct one-on-one, hands-on meetings** with City departments. Through developing numerous analyses and COOP plans, we have learned the right questions to ask in order to gather reliable data.

In the conduct of this task, IEM will work with the Project Team to develop a RA, VA, CA survey instrument, which will be validated by key stakeholders. The IEM team will conduct an onsite engagement, meeting with representatives from the City's **twenty-one departments, to administer the RA/VA/CA**. The IEM team will develop a draft report, which will be validated by the departments and City stakeholders. After the report has been validated, we will provide a final draft RA/VA/CA report to the Project Team. Once the report has been validated and accepted, The IEM team will make any necessary revisions and then the COOP development task will begin.

### 3.2 CONDUCT INTERVIEWS WITH CITY DEPARTMENTS

Using the information gleaned from the ERPs, the City's current COOP plan and the MEFs from the RA/VA/CA, IEM will populate the COOP planning tool with appropriate data for each respective City department. IEM will conduct one-on-one interviews with department directors and key personnel to gather any additional information needed to develop viable COOP plans for each City department. IEM has an organized, systematic method for developing COOP plans and experience guiding client participation in the process. Our experience has taught us that the more hands on assistance provided to the stakeholders during the data gathering phase, the more reliable that data will be. This translates into a more successful, robust, and reliable COOP/COG planning effort. Most critically, developing this COOP plan will be a matter of documenting how the City currently performs MEFs and capturing or developing mitigation strategies for disruptions to each MEF. **The key to effective COOP/COG planning is adding strategies that make the City resilient to disruption events—giving the City a "Plan B" in case "Plan A" fails.**

In supporting the execution of this task, IEM will conduct on-site COOP data gathering meetings. To provide adequate opportunities for all **twenty-one City Departments** to participate, the IEM team will conduct these meetings on **three separate engagements**. We will work with the City Project Team and the City stakeholders to involve as many departments, in person, as possible to offer specific, targeted COOP assistance, which is the best method for plan development.

**At the conclusion of this task, the COOP plans will contain, at a minimum, the following components listed in Table 4.**



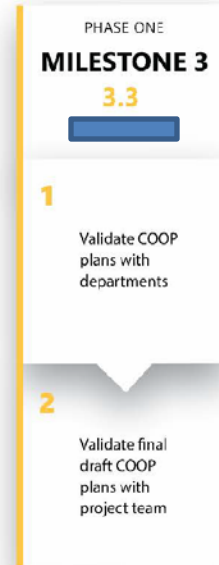
Table 4: COOP Final Components

Key Component	Description
<b>Readiness and Preparedness</b>	Describes COOP activities that occur in the normal operational environment (i.e., plan updates, plan revisions, testing, training, exercises, etc.).
<b>Activation and Relocation</b>	Describes how and when the COOP plan will be activated and the process for relocating to the continuity facility for in-processing.
<b>Reconstitution</b>	Outlines how the department will resume normal operations in a seamless, organized manner once department returns to their original or new facility.
<b>Decision Processes</b>	Describes how the COOP activation decision will be made and who will make it.
<b>Mission Essential Functions (MEFs)</b>	Defines MEFs to maintain during a disruption event, prioritized by Recovery Time Objectives (RTOs).
<b>Mission Essential Records and Databases, Vendors, and Dependencies</b>	Defines vital records and databases that must be available to support MEFs, based on RTOs, and vendor and dependency information.
<b>Supplies, Equipment, and Data</b>	Defines which supplies, equipment, and data must be available to support MEFs, based on RTOs.
<b>Continuity Personnel</b>	Identifies those employees who have responsibilities during COOP activation and their contact information.
<b>COOP Teams and Assignments</b>	Outlines tasks that must be conducted by personnel during a COOP event.
<b>Orders of Succession</b>	Outlines key positions responsible for conducting the MEFs and then identifies at least three successors for each MEF, by title.
<b>Delegation of Authority</b>	Outlines the breadth and depth of authorities granted to successors during a COOP event.
<b>Devolution</b>	Outlines to whom the department MEFs will devolve in the event the department experiences a total dismantlement (loss of all employees and total loss of facility).
<b>Information Systems</b>	Defines which information systems must be available to support MEFs, based on RTOs. This component should inform IT's Disaster Recovery Plan.
<b>Human Resources</b>	Outlines how the department will communicate with and account for employees. It will also include methods to assist employees in preparing their families for disruption events.
<b>Continuity Facilities</b>	Identifies alternate location(s) where departments will relocate in the event their primary location becomes untenable.
<b>Training, Testing, and Exercising (TTE)</b>	Outlines the scope of training, testing, and exercising program and identifies a schedule for each event.
<b>Plan Maintenance</b>	Outlines persons who have responsibility for plan updates, how often the plan will be updated, and conditions requiring interim updates.
<b>Continuity Communications</b>	Identifies alternate methods of communication in the event primary modes become unavailable. It also identifies alternate vendors for communication modalities.

Using a Microsoft® Word platform, the IEM team will develop the draft COOP plans. Once the plans have been completed, the IEM team will provide the City Project Team with the draft COOP plans.

### 3.3 VALIDATE DRAFT COOP PLANS WITH 21 DEPARTMENTS

Using a web-based screen sharing tool and conference calls or through in-person meetings if preferable, the IEM team will validate the COOP plan with each department representative to allow for updates, additions, revisions and clarifications. Upon completion of validation meetings, IEM will provide the City Project Team with the final drafts for approval



### 3.4 DEVELOPMENT OF CITYWIDE COOP PLAN

The **real value** in the continuity planning process happens when aggregating the departmental COOP data into a Citywide plan--**letting the data tell a story**. This type of overarching plan provides a number of invaluable benefits to the City.

1. It can provide a central reference for executive-level decision-making regarding the City of Clearwater's operations during a continuity event.
2. It can help identify single-points-of-failure.
3. It can help identify over/under utilizations of continuity facilities, dependencies and vendors.
4. It can facilitate potential integration with County-level COOP and emergency planning documents, helping to ensure the resilience of services for the community following regional events.

Table 5 below identifies the components of a Citywide COOP plan and provides a brief description of how each component can be used.



Table 5: Components of the Citywide COOP Plan

Key Component	Description
<b>Official Responsible for Activating COOP Plan, by Department</b>	This will list the official within each department who is responsible for activating their COOP plan.
<b>Reconstitution Manager, by Department</b>	This will list the official within each department who will serve as the Reconstitution Manager during a continuity event.
<b>MEFs, by Department</b>	This will provide an overall view of the City's MEFs.
<b>MEFs, by RTO</b>	This will provide an overall view of MEFs, organized by RTOs.
<b>Continuity Facility, by Department</b>	This will provide an overview of each department and their respective continuity facility or facilities.
<b>Continuity Facility, by Facility</b>	This will provide an overview of continuity facilities and departments that have identified them in their COOP plan. With this information, the City can identify over- and under-utilizations of continuity facilities.
<b>Equipment and Supplies, by RTO</b>	This will provide an overview of MEFs, prioritized by RTOs, and associated equipment and supply needs. With this information, the City <b>can pre-position equipment and supplies</b> for use during a continuity event.
<b>Mission Essential Records and Databases, by RTO</b>	This will provide an overview of MEFs, prioritized by RTOs, and their associated mission essential records and database needs. This information <b>helps inform IT's Disaster Recovery plan</b> .
<b>Devolution, by Department</b>	This will identify devolution sites for each department's MEFs.

<b>Dependencies, by Department</b>	This will list departments, their MEFs, and respective dependencies. (MEFs will be prioritized by RTOs).
<b>Dependencies, by RTO</b>	This will list the dependencies by department, sorted by RTOs. This information is useful in determining <b>which departments support the dependencies the City will need after a disruption event, and by when.</b>

The IEM team will develop a Citywide COOP template and provide it to the project team for validation. Once the template has been validated, we will begin developing the Citywide COOP plan.

#### MILESTONE 4: DEVELOP COOP MATURITY DOCUMENT

Continuity planning is not a project where there is a definitive beginning and an end. Rather, it is a continual planning initiative that should be revisited, revised, updated, trained and tested. In order to assist the City of Clearwater, the IEM team will use deliverables from Milestone 3: Develop Draft COOP Plans, to develop a COOP Maturity Document that will help provide a path forward for the City.

As we are developing the City's COOP plans, areas that would benefit from increased capabilities will become evident –especially in the Citywide Plan. The IEM team will develop a COOP Maturation Document for **each department and** for the Citywide plan that will, at a minimum:

- Identify areas where COOP plans may benefit from enhanced detail.
- Identify areas where COOP capabilities either need to be developed or enhanced.
- Identify areas where policy development may support COOP activation efforts.
- Provide a clear picture of departmental dependencies which, based on our experience, are primarily focused on IT systems. This tool, when presented to IT, becomes an invaluable resource that can be used to crosswalk IT's Disaster Recovery Plan (DRP) with departmental needs and expectations.
- Provide the City's purchasing department with an itemized list of supplies and equipment needed during COOP activation. This allows for either the pre-purchasing or pre-positioning of supplies and equipment or the preparation of purchase orders prior to a COOP activation. Either way, the report is designed to shorten the amount of downtime once the COOP plan has been activated.

The IEM team will provide the COOP maturation document to the City Project Team for validation before commencing with Milestone 5: Work with City Managers to identify Solutions.



## MILESTONE 5: WORK WITH CITY MANAGERS TO IDENTIFY SOLUTIONS

Using the specific, actionable items outlined in Milestone 4: COOP Maturity document, the IEM team will work with appropriate City stakeholders to identify potential solutions to address capability issues such as:

- single-points-of-failure,
- over and under utilizations of identified continuity facilities and the feasibility of each continuity facility,
- accessibility of vital records and databases at continuity facilities,
- the ability of IT to support the systems and processes needed by the Departments in order to achieve RTO timeframes, and
- mitigation strategies to address those risks identified in Milestone 3.1: Conduct RA, VA and CA.

The IEM team will develop a written report which will outline the issues discovered in the COOP development phase of this project along with potential solutions. **We will conduct an on-site meeting with City Managers** and appropriate stakeholders to present the findings and discuss solutions.

At the conclusion, the IEM team will provide the City Stakeholder Team with a report that includes resolutions, or potential resolutions for each issue.





## MILESTONE 6: DEVELOP DETAILED TESTING SCHEDULE AND METHODOLOGY AND PLAN MAINTENANCE SCHEDULE

COOP plans should be considered “living” documents. Hence, once they are developed, they should be trained, tested, exercised and updated on an annual basis, at a minimum.

The IEM team will work with City stakeholders to develop a plan for testing and maintaining the City’s COOP plan. This plan will outline:

- The frequency in which the plans should be tested, trained, and exercised.
- Methods of testing that can be employed.
- The components of the plan should be tested.
- The types of training, testing, and exercises that should be conducted (Tabletop, Functional, Full-Scale).
- The individuals that should be involved in the training, testing and exercising initiatives.
- The frequency in which the plans should be updated and maintained and who should be responsible for this task.

### \*\*DELIVERABLES

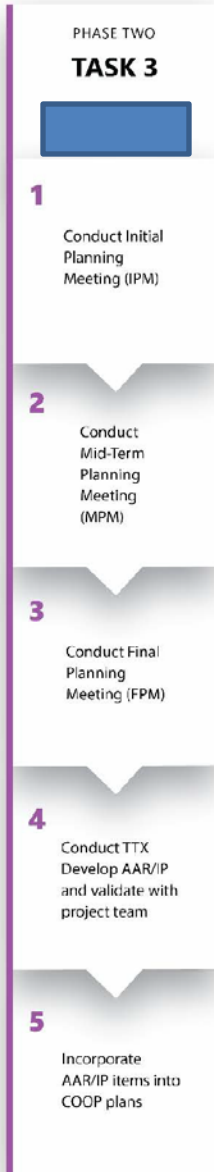
At the conclusion of Phase 1, the IEM team will provide the City of Clearwater’s Emergency Management Office with twenty-one (21) bound copies and one electronic copy of:

1. RA/VA/CA report
2. Departmental COOP plans
3. Citywide COOP plan
4. COOP Maturity document
5. COOP Solutions document
6. Detailed testing schedule and methodology and a plan maintenance schedule

**\*\*If the City of Clearwater elects to continue this project with IEM, this deliverable may be omitted at the end of Phase 1 and conducted at the end of Phase 2.**

Should the City of Clearwater choose to continue the COOP initiative with IEM, we are prepared to conduct the following three tasks in Phase 2.





**TASK 3: CONDUCT TABLETOP EXERCISE (TTX)**

**Testing plans and capabilities before an actual event or disaster is a critical component of effective emergency management.** Testing plans during their development is an efficient way to confirm the accuracy and completeness of finalized plans. Our experience shows that this stage is particularly important for COOP plans, whose key components, such as the identification of continuity facilities, continuation of mission essential functions, and analysis of contract requirements with third-party vendors, benefit greatly from exercises. IEM has built this validation stage into each continuity plan that we have developed. For large jurisdictions, this has typically been a prime opportunity to bring executive-level stakeholders, decision-makers, and varied departments to the table, ensuring integration of the plan into the organizational culture.



The IEM team will use the initial validated draft of the COOP plans as the basis for the Tabletop Exercise (TTX).

Figure 7: The IEM Team’s approach to exercise design and development, rooted in HSEEP guidance, will ensure successful, focused and productive exercises for the City.

As Figure 7 reflects, the IEM team’s approach to exercise design and development is rooted in Homeland Security Exercise and Evaluation Program (HSEEP) guidance and has two main goals. First, our team includes experts from the entire realm of emergency management, **including COOP planning**, who will ensure the exercise focuses on the essential capabilities to be tested. Second, we will leverage the collective knowledge, experience, and expertise of local stakeholders and exercise planning teams in designing, developing, and conducting the City’s COOP exercise. Our experience has shown that actively engaging key stakeholders in providing input into the design and development process leads to more successful, focused, and productive exercises.

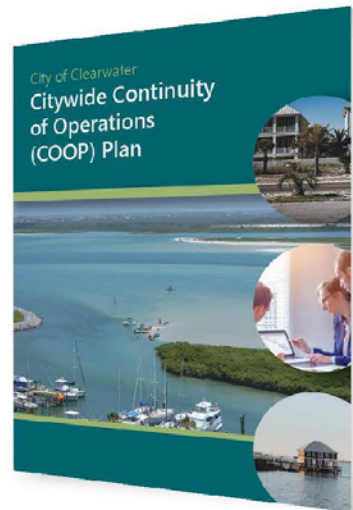
The IEM team will assist the City’s Project Team to design, plan, and conduct a Citywide TTX. This exercise **will be developed using HSEEP guidelines**. Invitees will include personnel who have essential roles during a disruption event. The exercise facilitator will describe the continuity scenario and facilitate discussion with participants to identify staff roles and responsibilities, discuss response to the scenario, and determine if the COOP plans support the Department’s/City’s staff in the resumption or continuation of their essential functions. One exercise controller and two evaluators will be part of the IEM team during the exercise. The IEM team will conduct a hot wash to capture facts and impressions based on the exercise discussion. In addition, we will collect feedback forms from all participants and capture comments, recommended edits, and changes to the draft COOP plan. We will consolidate the hot wash discussion and feedback forms into an After-Action Report (AAR)/Improvement Plan (IP), which we will review with the City’s Project Team for validation and inclusion in the COOP plan.

## DELIVER FINAL COOP PLAN

At the conclusion of this project, the IEM team will provide to Clearwater's Emergency Management Office the following documents in Microsoft® Word format so that the City can easily make future updates to the plan.

1. RA/VA/CA
2. Departmental COOP plans
3. Citywide COOP plan
4. COOP Maturity document
5. COOP Solutions document
6. Detailed testing schedule and methodology and a plan maintenance schedule
7. SVA of Critical Facilities report
8. COOP Training module
9. TTX materials

The IEM team will provide 21 bound copies and one electronic copy.



**PROJECT TIMELINE**
**PHASE 1**

Milestone 1	Project Implementation and Kickoff Meeting	October 2020
Milestone 2	Review ERPs and COOP plan	October 2020
Milestone 3	Develop Draft COOP Plans	
Milestone 3.1	Conduct RA/VA/CA	October 2020-December 2020
Milestone 3.2	Conduct Interviews with 21 City Departments	December 2020--February 2021
Milestone 3.3	Conduct Validation Meetings with Departments	March 2021
Milestone 3.4	Develop Citywide COOP plan	April-June 2021
Milestone 4	Develop COOP Maturity Document	July-August 2021
Milestone 5	Work with City Managers to Identify Solutions	September 2021
Milestone 6	Develop Testing and Plan Maintenance Schedule	October 2021

**PHASE 2**

Task 1	Conduct SVA for Critical Facilities	<b>OMITTED</b>
Task 2	Conduct COOP Training with Departments	<b>OMITTED</b>
Task 3	Conduct Tabletop Exercise (TTX)	October 2021-January 2022

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**TERMS AND CONDITIONS**

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- S.1 **DEFINITIONS.** Uses of the following terms are interchangeable as referenced: "vendor, contractor, supplier, proposer, company, parties, persons", "purchase order, PO, contract, agreement", "city, Clearwater, agency, requestor, parties", "bid, proposal, response, quote".
- S.2 **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees, not City employees. Accordingly, Contractor and Contractor's employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.
- S.3 **SUBCONTRACTING.** Contractor may not subcontract work under this Agreement without the express written permission of the City. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of this Agreement be incorporated therein.
- S.4 **ASSIGNMENT.** This Agreement may not be assigned either in whole or in part without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right at its option to terminate the Agreement. No granting of consent to any assignment will relieve Contractor from any of its obligations and liabilities under the Agreement.
- S.5 **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
- S.6 **NO THIRD PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or will create, any benefits, rights, or responsibilities in any third parties.
- S.7 **NON- EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.
- S.8 **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Contractor.
- S.9 **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.
- S.10 **COMPLIANCE WITH APPLICABLE LAWS.**
- a. **General.** Contractor must procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.
  - b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified

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**TERMS AND CONDITIONS**

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in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel, and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- (i) As applicable to Contractor, under this provision, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees (hereinafter "Contractor Immigration Warranty").
- (ii) A breach of the Contractor Immigration Warranty will constitute as a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
- (iii) The City retains the legal right to inspect the papers of all Contractor personnel who provide services under this Agreement to ensure that Contractor or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.
- (iv) The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.
- (v) Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act.
- d. **Nondiscrimination.** Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. Contractor and Contractor's personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this Agreement.

S.11 **SALES/USE TAX, OTHER TAXES.**

- a. Contractor is responsible for the payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's services under this Agreement, including by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City, or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.
- b. The City is exempt from paying state and local sales/use taxes and certain federal excise taxes and will furnish an exemption certificate upon request.

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**TERMS AND CONDITIONS**

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- S.12 **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.
- S.13 **OPENNESS OF PROCUREMENT PROCESS.** Written competitive proposals, replies, oral presentations, meetings where vendors answer questions, other submissions, correspondence, and all records made thereof, as well as negotiations or meetings where negotiation strategies are discussed, conducted pursuant to this RFP, shall be handled in compliance with Chapters 119 and 286, Florida Statutes.

Proposals or replies received by the City pursuant to this RFP are exempt from public disclosure until such time that the City provides notice of an intended decision or until 30 days after opening the proposals, whichever is earlier. If the City rejects all proposals or replies pursuant to this RFP and provides notice of its intent to reissue the RFP, then the rejected proposals or replies remain exempt from public disclosure until such time that the City provides notice of an intended decision concerning the reissued RFP or until the City withdraws the reissued RFP. A proposal or reply shall not be exempt from public disclosure longer than 12 months after the initial City notice rejecting all proposals or replies.

Oral presentations, meetings where vendors answer questions, or meetings convened by City staff to discuss negotiation strategies, if any, shall be closed to the public (and other proposers) in compliance with Chapter 286 Florida Statutes. A complete recording shall be made of such closed meeting. The recording of, and any records presented at, the exempt meeting shall be available to the public when the City provides notice of an intended decision or until 30 days after opening proposals or final replies, whichever occurs first. If the City rejects all proposals or replies pursuant to this RFP and provides notice of its intent to reissue the RFP, then the recording and any records presented at the exempt meeting remain exempt from public disclosure until such time that the City provides notice of an intended decision concerning the reissued RFP or until the City withdraws the reissued RFP. A recording and any records presented at an exempt meeting shall not be exempt from public disclosure longer than 12 months after the initial City notice rejecting all proposals or replies.

**In addition to all other contract requirements as provided by law, the contractor executing this agreement agrees to comply with public records law.**

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, Rosemarie Call, phone: 727-562-4092 or [Rosemarie.Call@myclearwater.com](mailto:Rosemarie.Call@myclearwater.com), 600 Cleveland Street, Suite 600, Clearwater, FL 33755.**

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.

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**TERMS AND CONDITIONS**

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- 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 eight (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.

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.

- S.14 **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for five (5) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.
- S.15 **BACKGROUND CHECK.** The City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement or who will have access to the City's information, data, or facilities in accordance with the City's current



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**TERMS AND CONDITIONS**

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background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.

- S.16 **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether or not any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.
- S.17 **DEFAULT.**
- a. A party will be in default if that party:
    - (i) Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
    - (ii) Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
    - (iii) Conducts business in an unethical manner or in an illegal manner; or
    - (iv) Fails to carry out any term, promise, or condition of the Agreement.
  - b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Section 27 of the City's Purchasing and Procedures Manual.
  - c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party may, at its option and at any time, provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement.
  - d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event that the demand is made and no written assurance is given within five (5) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement.
- S.18 **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
  - b. The City may purchase the services required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price, the City may recover the excess cost by: (i) requiring immediate reimbursement to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and/or performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement, including, but not limited to, administrative expenses, attorneys' fees, and costs.

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- c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
  - d. Neither party will be liable for incidental, special, or consequential damages.
- S.19 **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.
- S.20 **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement in part or in whole upon thirty (30) calendar days' written notice.
- S.21 **CONFLICT OF INTEREST F.S. Section 112.** Pursuant to F.S. Section 112, the City may cancel this Agreement after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.
- S.22 **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.
- S.23 **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement, Contractor will be entitled only to payment for those services performed up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.
- S.24 **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
- S.25 **INDEMNIFICATION/LIABILITY.**
- a. 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.
  - b. 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.
  - c. 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.
- S.26 **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workman-like and professional manner. The City's acceptance of service or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If any materials or

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services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction.

Unless otherwise agreed, Contractor warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and will perform in accordance with manufacturer's published specifications.

- S.27 **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and will at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.
- S.28 **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees that it is not entitled to deliver any specific amount of materials or services or any materials or services at all under this Agreement and acknowledges and agrees that the materials or services will be requested by the City on an as needed basis at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.
- S.29 **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.
- S.30 **USE OF NAME.** Contractor will not use the name of the City of Clearwater in any advertising or publicity without obtaining the prior written consent of the City.
- S.31 **PROHIBITED ACTS.** Pursuant to Florida Constitution Article II Section 8, a current or former public officer or employee within the last two (2) years shall not represent another organization before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment or over which they had a substantial or material administrative discretion.
- S.32 **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
- S.33 **RISK OF LOSS.** Contractor agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these services and such loss, injury, or destruction will not release Contractor from any obligation hereunder.
- S.34 **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage to City real property or damage or loss of City personal property when such property is the responsibility of or in the custody of Contractor or its employees.
- S.35 **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided and that the City may use same without suit, trouble or hindrance from Contractor or third parties.
- S.36 **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor will without limitation, at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without

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limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five (5) years, plus any additional costs the City may incur to acquire substitute supplies or services.

- S.37 **CONTRACT ADMINISTRATION.** The contract will be administered by the Procurement Division and/or an authorized representative from the using department. All questions regarding the contract will be referred to the Procurement Division for resolution. Supplements may be written to the contract for the addition or deletion of services.
- S.38 **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.
- S.39 **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Florida government agencies, including the Tampa Bay Area Purchasing Cooperative. Under a Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.  
Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City is not responsible for any disputes arising out of transactions made by others.
- S.40 **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Procurement Division.
- S.41 **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or (iv) sent via facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.
- S.42 **GOVERNING LAW, VENUE.** This Agreement is governed by the laws of the State of Florida. The exclusive venue selected for any proceeding or suit in law or equity arising from or incident to this Agreement will be Pinellas County, Florida.
- S.43 **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.
- S.44 **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.
- S.45 **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may

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be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.

- S.46 **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.