

CONTRACT

THIS CONTRACT, entered into this day of May, 2026, by and between the CITY OF CLEARWATER (“City”), a Florida municipal corporation, P.O. Box 4748, Clearwater, Florida 33758 and *Olameter DPG, LLC* (“Vendor”), a *Nevada Limited Liability Company, (N8 W22350 Johnson Dr, Ste A10, Waukesha, WI 53186)*.

WHEREAS, the City is securing a contract with fixed pricing, to perform natural gas distribution main and service line locating services.

WHEREAS, (Vendor) agrees to provide natural gas distribution main and service line locating services for Clearwater Gas System Energy (CGS Energy) on an as-needed basis.

WHEREAS, the City selected Vendor based on Request for Proposal (“RFP”) 28-26 and responses by Vendor to RFP 28-26.

NOW THEREFORE, in consideration of the promises stated herein, the City and *Vendor* mutually agree as follows:

1. SCOPE OF PROJECT.

Vendor agrees to provide natural gas distribution main and service line locating services under the terms and conditions set forth in RFP 28-26, and *Vendor’s* response, and described in attached **Exhibit A – Scope of Services and Deliverables**.

2. TIME OF PERFORMANCE.

The initial Contract Term shall commence upon execution and end April 30, 2027. Thereafter, the City retains the option of Three (3), one (1) year renewals with written notification to the Vendor.

3. COMPENSATION.

The City will pay *Vendor* based on **Exhibit B – Pricing Sheet**. During the sixty (60) day period, prior to renewal anniversary, *Vendor* may submit a written request that the City increase the prices in an amount for no more than the twelve month change in the *Consumer Price Index for All Urban Consumers* (CPI-U), US City Average, All Items, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics for Tampa - St. Petersburg - Clearwater, FL (<https://www.bls.gov/cpi/home.htm>).

4. METHOD OF PAYMENT AND ANNUAL APPROPRIATIONS.

Vendor's fees will be invoiced monthly according to the Scope of Services in RFP 28-26 and submitted to the City for approval and payment in accordance with the Florida Local Government Prompt Payment Act, Section 218.70, Florida Statutes. The City's performance and obligation to pay under this contract is contingent upon an annual appropriation of the City's budget.

Vendor invoices must contain necessary detail to process payment. Invoices shall contain a summary of tickets processed with associated hourly charges by category (i.e. normal, short notice, emergency, site visit-no locate, office screened, design locate, unlocatable/non-detectable, etc.). An invoice detail shall also be provided in support of the summary of charges that will list all locate requests received and contain locate request/ticket number, category of locate request (i.e. normal, short notice, etc.), location (no., street, city, county), date received, date worked, locate technician, and hours per

locate (incremental). Number of Tickets processed per hour shall be provided for each category of locate request as an additional metric.

All invoices must align with the Scope of Services outlined in RFP 28-26.

5. NOTICES AND CHANGES OF ADDRESS.

Any notice required or permitted to be given by the provisions of this Contract shall be conclusively deemed to have been received by a party hereto on the date it is hand delivered to such party at the address indicated below (or at such other address as such party shall specify to the other party in writing), or if sent by registered or certified mail (postage prepaid) on the fifth (5th) business day after the day on which such notice is mailed and properly addressed.

6. RFP 28-26, STANDARD TERMS AND CONDITIONS.

All terms and conditions as set forth in RFP 28-26, Standard Terms and Conditions are incorporated by reference and attached hereto as Exhibit C.

7. ___INDEMNIFICATION AND INVESTIGATION OF CLAIMS.

A. ___*Damages*

In the event that an underground facility is damaged by a third party as a result of Vendor errors and omissions to properly mark such underground facilities in accordance with its contractual agreement with the City, all applicable laws and regulations, and state laws governing utility protection, Vendor shall indemnify and hold harmless the City and be liable for the full costs of such damage, unless such damages resulted due to circumstances or factors beyond the control of Vendor. Vendor agrees to pay the City for all applicable repair costs in a timely manner.

B. ___*Investigations*

Vendor shall investigate incidents of damage for accuracy of the locates.

i. Vendor shall respond as soon as possible to the work site where damage occurs following notification by the City.

ii. Vendor shall submit a written report of damage investigations within ten (10) days and maintain a copy of such written reports for a period of two (2) years. Report to include excavator information (name, address, phone number), who damaged the facility, pictures documenting the damage (pictures must include measurements with markers clearly showing the damage and utility marks), locate ticket information, and any other necessary or relevant information. Vendor shall provide all documentation for determining fault to the City.

iii. Vendor and the City shall hold meetings as needed to review completed investigation reports and to assess responsibility.

iv. Should the damage review process by the designated City representative reveal that the City does not find Vendor liable for damage, the City agrees to hold Vendor harmless from any ensuing damages owed to any third party as a result of the damage to the City's underground facilities.

v. Should the damage review process by the designated City representative reveal that the excavator is responsible for the damage, Vendor shall provide testimonial and investigative support for any recovery efforts by the City.

vi. Should the damage review process by the designated the City's representative reveal that Vendor is liable for the damage, Vendor agrees to hold the City harmless from any ensuing damages owed to any third party as a result of any damages.

C. Notwithstanding anything to the contrary in the agreement, in no event, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, shall either party hereto be liable to the other party for any special, indirect, incidental, punitive, or consequential damages whatsoever including loss of profits or revenue.

8. ___ INSURANCE REQUIREMENTS.

Insurance Requirements are set forth in Exhibit D, which is incorporated by reference and attached hereto.

9. ___ PROPRIETARY MATERIALS.

Upon termination of this Contract, Vendor shall transfer, assign and make available to City or its representatives all property and materials in Vendor's possession belonging to or paid for by the City.

10. ___ INTERESTS OF PARTIES.

Vendor covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance and/or provision of services required under the terms and conditions of this Contract.

11. ___ CONFORMANCE WITH LAWS.

Vendor agrees to comply with all applicable federal, state and local laws during the life of this Contract. Vendor shall be responsible for obtaining and maintaining any licenses, permits, documents, or other permissions necessary for Vendor's operation.

12. ___ ATTORNEY FEES.

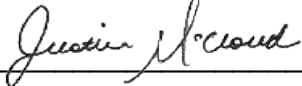
In the event that either party seeks to enforce this Contract through attorneys at law, then the parties agree that each party shall bear its own attorney fees and costs.

13. GOVERNING LAW AND VENUE.

The laws of the State of Florida shall govern this Contract, and any action brought by either party shall lie in Pinellas County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date set forth above.

Olameter DPG, LLC



Name

Justin McCloud
VP - US Operations

Title

N8W22350 Johnson Dr, Suite A10,
Waukesha, WI 53186

Address

817-946-9014

Telephone #

Name

Title

Address

Telephone #

Countersigned:

CITY OF CLEARWATER, FLORIDA

Bruce Rector
Mayor

Jennifer Poirrier
City Manager

Approved as to form:

Attest:

Jerrod Simpson
Assistant City Attorney

Rosemarie Call
City Clerk

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Exhibit A – Scope of Services and Deliverables

The Contractor shall provide the services described herein in accordance with the terms, conditions, and requirements of the solicitation documents and the Contractor's awarded proposal, both of which are incorporated by reference.

The following Scope of Services reflects the requirements of the solicitation as awarded and accepted by the Contractor.

GENERAL SCOPE. The Contractor shall provide comprehensive underground natural gas locating services for Clearwater Gas System Energy ("CGS Energy"), including, but not limited to, the receipt, processing, and response to Sunshine 811 locate requests; field locating and marking of gas mains and service lines; damage investigation; coordination with CGS personnel and excavators; and maintenance of complete and auditable records.

The Contract shall be a fixed-price, unit-cost agreement based on the Contractor's awarded pricing proposal.

SERVICES TO BE PROVIDED. The Contractor shall perform the following services:

- A. Receipt, screening, and processing of Sunshine 811 locate tickets
- B. Field locating and marking of gas mains and service lines
- C. Submission of accurate and timely positive responses
- D. Investigation and documentation of excavation damages
- E. Coordination with CGS personnel and excavators
- F. Maintenance of complete, accurate, and auditable locating records
- G. Preparation and submission of monthly invoices with supporting documentation

SERVICE TYPES AND RESPONSE REQUIREMENTS. The Contractor shall provide the following services on an as-needed basis and within the specified timeframes:

- A. **Normal Locate** – Completed within two (2) full business days
- B. **Short-Notice Locate** – Completed within one (1) full business day
- C. **Office Screen (No Locate)** – Positive response indicating no CGS facilities are present
- D. **Emergency Locate** – Two (2) hour response time and completed the same business day
- E. **Design Locate** – Completed within seven (7) to fifteen (15) calendar days unless otherwise directed; compensated in accordance with the pricing set forth in the Agreement
- F. **Site Visit (No Locate)** – Field confirmation that no CGS facilities are present
- G. **Unlocatable Facilities / Potholing** – Immediate notification to CGS for direction
- H. **Surveillance** – Monitoring of excavation or construction activities near CGS facilities, including high-risk operations such as Horizontal Directional Drilling (HDD), roadway work, or work within the tolerance zone, as scheduled by CGS
- I. **Special Projects** – Non-routine assignments including construction support, GIS verification, damage investigation, audits, or other services as directed by CGS

REGULATORY AND SAFETY COMPLIANCE. All services shall comply with all applicable federal, state, and local laws, regulations, and standards, including but not limited to:

- A. 49 CFR Part 192, Subpart N – Operator Qualification
- B. 49 CFR Part 199 – Drug and Alcohol Testing
- C. Florida Statutes, Chapter 556 – Underground Facility Damage Prevention
- D. CGS Energy Operator Qualification Plan (ASME B31Q equivalent)
- E. Florida Department of Transportation (FDOT) Maintenance of Traffic (MOT) requirements
- F. American Public Works Association (APWA) Uniform Color Code
- G. American National Standards Institute (ANSI) Z535.1 Safety Color Standards

OPERATIONAL REQUIREMENTS.

Exhibit A – Scope of Services and Deliverables

- A. **Sunshine 811 Records.** All Sunshine 811 tickets, responses, documentation, photographs, sketches, and related records produced under this Agreement shall remain the sole property of CGS and shall be made available upon request.
- B. **Hours of Operation and Emergency Work.** Normal business hours are Monday through Friday, excluding City-recognized holidays, from 7:00 a.m. to 5:00 p.m. After-hours, weekend, or holiday work is limited to emergency situations and requires prior CGS authorization unless immediate action is required to protect public safety.
- C. **Record Retention.** The Contractor shall maintain complete, accurate, and auditable records for a minimum of six (6) years, or longer when related to damage claims or pending investigations.
- D. **Unlocatable Facilities and Stop-Work Authority.** If CGS facilities cannot be precisely located, the Contractor shall immediately notify CGS and instruct the excavator to suspend work until further authorization is provided. All notifications and actions shall be documented.
- E. **Personnel Conduct and Safety.** All Contractor personnel shall maintain professional conduct, wear approved uniforms and personal protective equipment (PPE), comply with Occupational Safety and Health Administration (OSHA) standards, and participate in daily safety briefings.
- F. **Equipment Standards.** All vehicles, tools, and locating equipment shall be properly maintained and calibrated. CGS reserves the right to prohibit the use of any equipment deemed unsafe or unsuitable, without entitlement to additional compensation.
- G. **Confidentiality of Facility Records.** All CGS facility maps, Geographic Information System (GIS) data, and related records are confidential and shall be used solely for performance under this Agreement.
- H. **Traffic Control and MOT.** All work within public rights-of-way shall comply with the Manual on Uniform Traffic Control Devices (MUTCD) and FDOT requirements. When required, Maintenance of Traffic (MOT) plans shall be submitted for approval. All MOT-related costs shall be included in the Contractor's pricing.
- I. **Reporting and Performance Review.** The Contractor shall provide periodic performance reports as requested by CGS and meet with designated representatives to review performance and address operational issues. All invoices shall include sufficient documentation to support payment.

6. PRICING AND INVOICING

- A. **Pricing.** Pricing shall be all-inclusive and include all labor, supervision, equipment, traffic control, documentation, and incidental costs necessary to perform the work. No additional compensation shall be permitted unless expressly authorized in this Agreement.
- B. **Sunshine 811 Ticket Definition.** A single Sunshine 811 locate ticket shall include:
 - a. Up to one (1) linear mile along a street
 - b. Up to five (5) addresses within one (1) mile
 - c. Up to one (1) square mile of undeveloped land
- C. **Billing.** Billing shall be based on the Service Types identified in Section 3 and in accordance with the Contractor's pricing incorporated into this Agreement.
- D. **Hourly Services.** Hourly services shall be billed in quarter-hour (¼-hour) increments where applicable.
- E. **Invoice Requirements.** Invoices shall include an itemized breakdown of services performed by service type, with corresponding pricing for each service type.

MINIMUM QUALIFICATIONS.

- A. The Contractor affirms that it meets the following minimum qualifications:
 - a. A minimum of five (5) years of experience providing natural gas utility locating service
 - b. Compliance with Operator Qualification (OQ) requirements
 - c. Compliance with United States Department of Transportation (USDOT) Part 199 Drug and Alcohol Testing requirements
- B. **Operator Qualification Documentation.** The Contractor shall maintain and, upon request, provide:
 - a. An Operator Qualification (OQ) compliance summary matrix
 - b. Supporting documentation for assigned personnel
 - c. Updated training and safety manuals annually or upon revision

Exhibit B - Pricing Sheet

NORMAL LOCATE			Olameter DPG LLC	
Line Item	Description	Unit of Measure	Unit Cost	
1	1 UTILITY	PER HOUR	\$	76.09
2	2 UTILITIES	PER HOUR	\$	76.09
3	3 UTILITIES	PER HOUR	\$	76.09
Total			\$	228.27

SHORT-NOTICE LOCATE			Olameter DPG LLC	
Line Item	Description	Unit of Measure	Unit Cost	
1	1 UTILITY	PER HOUR	\$	76.09
2	2 UTILITIES	PER HOUR	\$	76.09
3	3 UTILITIES	PER HOUR	\$	76.09
Total			\$	228.27

OFFICE SCREEN - NO LOCATE			Olameter DPG LLC	
Line Item	Description	Unit of Measure	Unit Cost	
1	1 UTILITY	PER HOUR	\$	76.09
2	2 UTILITIES	PER HOUR	\$	76.09
3	3 UTILITIES	PER HOUR	\$	76.09
Total			\$	228.27

EMERGENCY LOCATE			Olameter DPG LLC	
Line Item	Description	Unit of Measure	Unit Cost	
1	1 UTILITY	PER HOUR	\$	76.09
2	2 UTILITIES	PER HOUR	\$	76.09
3	3 UTILITIES	PER HOUR	\$	76.09
Total			\$	228.27

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Exhibit B - Pricing Sheet

DESIGN LOCATE			Olameter DPG LLC	
Line Item	Description	Unit of Measure	Unit Cost	
1	1 UTILITY	PER HOUR	\$	76.09
2	2 UTILITIES	PER HOUR	\$	76.09
3	3 UTILITIES	PER HOUR	\$	76.09
Total			\$	228.27

SITE VISIT - NO LOCATE			Olameter DPG LLC	
Line Item	Description	Unit of Measure	Unit Cost	
1	1 UTILITY	PER HOUR	\$	76.09
2	2 UTILITIES	PER HOUR	\$	76.09
3	3 UTILITIES	PER HOUR	\$	76.09
Total			\$	228.27

UNLOCATABLE FACILITIES			Olameter DPG LLC	
Line Item	Description	Unit of Measure	Unit Cost	
1	1 UTILITY	PER HOUR	\$	76.09
2	2 UTILITIES	PER HOUR	\$	76.09
3	3 UTILITIES	PER HOUR	\$	76.09
Total			\$	228.27

SERVEILLANCE			Olameter DPG LLC	
Line Item	Description	Unit of Measure	Unit Cost	
1	1 UTILITY	PER HOUR	\$	76.09
2	2 UTILITIES	PER HOUR	\$	76.09
3	3 UTILITIES	PER HOUR	\$	76.09

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Exhibit B - Pricing Sheet

Total			\$	228.27
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SPECIAL PROJECT			Olameter DPG LLC	
Line Item	Description	Unit of Measure	Unit Cost	
1	1 UTILITY	PER DAY	\$	608.76
2	2 UTILITIES	PER DAY	\$	608.76
3	3 UTILITIES	PER DAY	\$	608.76
	Total		\$	1,826.28

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Exhibit C – Standard Terms and Conditions

STANDARD TERMS AND CONDITIONS

In the event of a conflict between the Standard Terms & Conditions and the Professional Services Agreement, the terms of the Professional Services Agreement shall prevail.

Definitions

Uses of the following terms are interchangeable as referenced: “vendor, contractor, consultant, supplier, proposer, company, persons”, “purchase order, PO, contract, agreement”, “City, Clearwater”, “bid, proposal, response, quote”.

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.

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.

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.

Successor 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.

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.

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.

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.

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Exhibit C – Standard Terms and Conditions

Time of the Essence

Time is of the essence to the performance of the parties' obligations under this Agreement.

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, executive orders, 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 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.
 1. 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").
 2. 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.
 3. 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.
 4. 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.
 5. 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,

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Exhibit C – Standard Terms and Conditions

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.

Sales/Use Tax, Other Taxes

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.

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.

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.

Public Records

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: 727-444-7151 or Email: Rosemarie.Call@myclearwater.com, 600 Cleveland Street, Suite 600, Clearwater, FL 33755.

The Contractor agrees to comply with the following:

- A. Keep and maintain public records required by the City of Clearwater (hereinafter "public agency" in this section) 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

Exhibit C – Standard Terms and Conditions

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 eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

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.

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 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.

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Exhibit C – Standard Terms and Conditions

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.

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 or suspended in accordance with the Clearwater Code of Ordinances Section 2.565 or if Contractor is debarred or suspended by another governmental entity.
- 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.

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.
- 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. The City will not be liable for incidental, special, or consequential damages.

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Breach of contract during emergency recovery periods for natural emergencies

Pursuant to F. S. § 252.505, any vendor who breaches a contract for commodities or services related to an emergency response for a natural emergency during an emergency recovery period shall pay a \$5,000 penalty and damages, which may be either actual and consequential damages or liquidated damages. As used in this section, the term “emergency recovery period” means a 1-year period that begins on the date that the Governor initially declared a state of emergency for a natural emergency.

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.

Termination for Convenience

The City reserves the right to terminate this Agreement at its convenience, in part or in whole, upon thirty (30) calendar days' written notice.

Termination for Conflict of Interest

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.

Termination for Non-Appropriation and Modification for Budgetary Constraints

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, in its sole discretion, 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.

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.

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.

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)

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Contractor or Contractor personnel's failure to comply with or fulfill the obligations established by this Agreement. If applicable, this paragraph shall be construed in harmony with F. S. § 725.06.

- 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.
- D. Nothing contained herein is intended to serve as a waiver by the City of its sovereign immunity, to extend the liability of the City beyond the limits set forth in Section 768.28, Florida Statutes, or be construed as consent by the City to be sued by third parties.

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 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. If applicable, this paragraph shall be construed in harmony with F. S. § 725.06.

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.

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.

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.

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.

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FOB Destination Freight Prepaid and Allowed

All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.

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.

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.

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.

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 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. Nothing contained herein is intended to serve as a waiver by the City of its sovereign immunity, to extend the liability of the City beyond the limits set forth in Section 768.28, Florida Statutes, or be construed as consent by the City to be sued by third parties.

Contract Administration

This Agreement will be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding this Agreement will be referred to the administrator for resolution. Supplements may be written to this Agreement for the addition or deletion of services. Payment will be negotiated and determined by the contract administrator(s).

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.

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Exhibit C – Standard Terms and Conditions

Cooperative Use of Contract

This Agreement may be extended for use by other municipalities, counties, 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.

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.

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 electronic mail; (iv) sent via overnight courier; or (v) 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 electronic mail, overnight courier, or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.

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.

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.

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.

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

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.

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Exhibit D – Insurance Requirements

INSURANCE REQUIREMENTS

A list of Insurance Policies that may be required.

Requirements

The Vendor shall, at its own cost and expense, acquire and maintain (and cause any subcontractors, representatives or agents to acquire and maintain) during the term with the City, sufficient insurance to adequately protect the respective interest of the parties. Coverage shall be obtained with a carrier having an AM Best Rating of A-VII or better. In addition, the City has the right to review the Contractor's deductible or self-insured retention and to require that it be reduced or eliminated.

Specifically the Vendor must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement:

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.

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.

Workers' Compensation Insurance

Unless waived by the State of Florida and proof of waiver is provided to the City, 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 \$1,000,000 (one million dollars) each employee each accident, \$1,000,000 (one million dollars) each employee by disease, and \$1,000,000 (one million dollars) disease policy limit. 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.

Waiver of Subrogation

With regard to any policy of insurance that would pay third party losses, Contractor hereby grants City a waiver of any right to subrogation which any insurer of the Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect such waiver, but this provision shall apply to such policies regardless of whether or not the city has received a waiver of subrogation endorsement from each insurer.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

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: Procurement Division, 28-26
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.