

SERVICES AGREEMENT (INDEPENDENT CONTRACTOR)

This Services Agreement ("Agreement"), effective August 5 , 2022 ("Effective Date") is hereby entered into by the City of Clearwater d/b/a Clearwater Gas System, ("Client") and Heath Consultants Incorporated ("Contractor").

1) SCOPE OF WORK/ORDER OF PRECEDENCE:

The work to be performed by Contractor will be as set forth in the "Contract Documents" (defined below). The Contract Documents are complementary, what is required by one is as binding as if required by all; however, in case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in Order of Precedence as follows: (a) any Modification to this Agreement, (b) this Agreement, (c) Purchase Order(s), (d) Contractor's Bid Response/Bid Tab, (e) the Invitation to Bid, (f) Standard Terms and Conditions, (g) any other documents specifically enumerated in the Agreement as part of the Contract Documents, all of which are incorporated herein by reference. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency. Any exception(s) submitted by Contractor in its Bid Response which are rejected/not incorporated into the Agreement with consent of Client shall have no binding effect.

2) PRICE/PAYMENT:

Client will pay Contractor for work performed as set forth in Exhibit "B", Price Schedule. Terms: Net 30.

3) RELATIONSHIP OF PARTIES:

The parties intend that an independent contractor relationship will be created by this Agreement. Performance and control of the work will lie solely with Contractor. The Contractor is not to be considered an agent or employee of Client for any purpose.

4) CONTRACTOR'S EMPLOYEES QUALIFIED TO PERFORM THE WORK REQUIRED UNDER THIS AGREEMENT UNDER SUBPART N OF SECTION 192 OF THE FEDERAL PIPELINE SAFETY REGULATIONS /WARRANTIES

Contractor warrants and represents that it has an Operator Qualification Program as required by Subpart N of Section 192 of the Federal Pipeline Safety Regulations and that the employees who will perform the Work required under this Agreement have been evaluated and are qualified to perform the tasks required under this Agreement.

5) INSURANCE TO BE SECURED:

Contractor agrees to maintain such insurance acceptable to Client as set forth in the bid documents and below:

1. **INSURANCE 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:

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

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

Other Insurance Provisions.

- a. 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 Auto Liability policies. 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, ITB #15-22
P.O. Box 4748
Clearwater, FL 33758-4748

- b. Vendor shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
- c. Vendor's insurance as outlined above shall be primary and non-contributory coverage for Vendor's negligence.
- d. 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.

6) INDEMNIFICATION

- 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, except as same may be caused by the City's negligence..
- b. Contractor will update the City during the course of the litigation to timely notify the City of any issues that may involve the negligence of the City for which Contractor has not indemnified City hereunder.
- 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 Contractor's negligence under this Agreement or use of Contractor-provided supplies or services.

Client's liability for torts shall be governed by Section 768.28, Florida Statutes. Contractor agrees that nothing contained herein shall be construed as a waiver of any sovereign immunity from or limitation of liability the Client may be entitled to under the doctrine of

sovereign immunity, or Section 768.28, Florida Statutes. Furthermore, this provision is not intended to, nor shall it be interpreted as, limiting or in any way affecting any defenses the Client may have under Section 768.28, Florida Statutes or as consent to be sued by third parties.

Contractor agrees that the Client reserves the right to appoint legal counsel for any and all claims against the Client that may arise related to this Agreement or work performed under this Agreement/Contract.

This indemnification obligation shall survive the expiration or termination of the Agreement.

Subject to Section 768.28, Florida Statutes, this indemnification obligation shall extend to all costs, expenses and damages arising from any infringement, misappropriation or claim of infringement or misappropriation of any process, product, apparatus or combination patent resulting from the use of any designs or other information furnished by the other party and incorporated in the Work or Ancillary Work.

7) COMPLIANCE WITH LAW AND SAFETY REQUIREMENTS:

All Work will be performed in accordance with the Federal Pipeline Safety Regulations, NFPA 58 and all applicable propane and pipeline industry safety practices and standards, and in accordance with federal, state and local statutes, rules regulations and ordinances.

8) DURATION/RENEWAL/CANCELLATION:

This Agreement shall be effective upon execution by both parties hereto and the initial term shall expire on August 4, 2023 (“Term”), unless a renewal is agreed upon by both parties, as provided for in the associated bid documents (two (2) one-year renewal options), or unless terminated as otherwise provided for herein. Client or Contractor may cancel the Agreement upon thirty (30) days advance written notice. In the event this Agreement is terminated under the foregoing provision, Client shall pay Contractor any amounts due for Work performed by Contractor and/or materials or supplies ordered, delivered, and accepted by client prior to the date that the termination notice is provided to the non-terminating party.

9) CONFIDENTIALITY:

Subject to applicable law, including but not limited to Chapter 119, Florida Statutes, Contractor will not disclose to third parties any information concerning its work for Client, including , but not limited to, confidential or trade secret information or information regarding Client's customers or potential customers, business and marketing plans , customer lists, credit information , gas usage patterns, pricing and marketing policies and practices, financial information and other operating policies and procedures. Contractor understands that if it violates this Agreement, Client will suffer irreparable harm. Therefore, in addition to any other remedies available to it, Client will be entitled to seek and obtain injunctive or equitable relief, including orders prohibiting violations of this Agreement.

Subject to applicable law, including but not limited to Chapter 119, Florida Statutes, Client will not disclose to third parties any information concerning its work with Contractor, including, but not limited to, confidential or trade secret information or information, business and marketing plans, customer lists, credit information, pricing and marketing policies and practices, financial information and other operating policies and procedures. Client understands that if it

violates this Agreement, Contractor will suffer irreparable harm. Therefore, in addition to any other remedies available to it, Contractor will be entitled to seek and obtain injunctive or equitable relief, including orders prohibiting violations of this agreement.

Contractor understands that Florida has very broad public records law, therefore, notwithstanding the above, agrees to release any and all records as required by law.

10) MISCELLANEOUS:

- (a) Waiver. Neither the failure nor any delay on the part of either party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.
- (b) Binding Nature of Agreement. This Agreement shall be binding upon and inure to the benefit of Client and its successors and assigns and shall be binding upon and inure to the benefit of Contractor, its successors and assigns.
- (c) Provisions Separable. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.
- (d) Entire Agreement. This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing.
- (e) Paragraph Headings – The paragraph headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.
- (f) Gender, Etc. – Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context indicates is appropriate.
- (g) Number of Days – In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday on which federal banks are or may elect to be closed, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.
- (h) This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which shall be deemed collectively to

be one agreement. The parties agree that execution of this Agreement by a party and the delivery of such party's signature by mail, facsimile transmission, or electronic (e-mail) transmission shall be fully effective as the original signature of such party to the fullest extent as if it were the original copy thereof.

- (i) This Agreement shall be governed and interpreted in accordance with the laws of the State of Florida. Venue of any dispute shall lie in Pinellas County, Florida.

11) FORCE MAJEURE

Neither party hereto shall be liable for any failure to perform the terms of this Agreement when such a failure is due to "force majeure" as hereinafter defined. The term "force majeure" as used in this Agreement shall mean any delay or default in performance due to any cause beyond the control of the party claiming force majeure and without such party's fault or negligence, including but not restricted to acts of God or the public, civil disturbances, arrests and restraints by rulers and people; acts of the public enemy, wars, riots, insurrections, sabotage; acts, requests or interruptions of the federal, state or local government or any agency thereof; court orders, present and future valid orders of any governmental authority, or any officer, agency or any instrumentality thereof; floods, fires, storms, epidemics, landslides, lightning, earthquakes, washouts, explosions, quarantine, strikes, lockouts, or industrial disturbances; interruption of transportation, freight embargos or delays in delivery of equipment or service necessary to the performance of any provision of this Agreement; inability to secure right of way, labor shortages, breakage or accident to machinery or lines of pipe, or any other cause, whether of the kind herein enumerated or otherwise, not reasonable within the control of the party claiming force majeure. Nothing contained in this section, however, shall be construed to require either party to settle a labor dispute against its will.

If as a result of force majeure wither party is unable, wholly or in part, to carry out its obligation under this Agreement, other than the obligation to make payment of money due, then, upon such party's giving notice and a description of such cause in writing to the other party as soon as possible after the occurrence of the cause, the obligation of the party giving such notice, so far as it is affected by the cause specified in such notice, shall be suspended for the duration of the cause. Such cause shall, as far as possible, be remedied with all reasonable dispatch.

12) NOTICES

All notices , except verbal or email notices with respect to minor questions, shall be in writing and shall be delivered by United States first class mail, postage prepaid, personal delivery, facsimile (with printed confirmation) , electronic transmission (e-mail) or nationally recognized overnight carrier to the appropriate party using the following respective addresses:

For Client: Clearwater Gas System:
400 N. Myrtle Ave Clearwater,
FL 33755
Attention: Alex Leon, Engineering Manager
727-562-4945
Email: Alex.leon@myclearwater.com

For Contractor: Heath Consultants Incorporated
9030 Monroe Road
Houston, Texas 77061
Attention: Ken Cowher, Vice President-SBU
Operations Phone: 724-640-0655
Email: K.Cowher@heathus.com

All notices shall be effective on the party addressee from the time received by such party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year shown beneath their signatures.

HEATH CONSULTANTS INCORPORATED

By:

WITNESS : _____

Name: Ken Cowher _____(Print)

Title: VP of Operations
_____ (Print)

t) Thereunto duly authorized

Date: _____

Countersigned:

CITY OF CLEARWATER, FLORIDA

Frank Hibbard
Mayor

By: _____
Jon Jennings
City Manager

Approved as to form:

Attest:

Laura Mahony
Senior Assistant City Attorney

Rosemarie Call
City Clerk

EXHIBIT A SCOPE OF WORK

Conduct a Gas System Leak Survey, an Atmospheric Corrosion Survey, and Atmospheric Corrosion Prevention Coating Services.

Additional documents pertaining to details attached herein.

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