

**CONSTRUCTION CONTRACT/AGREEMENT
ITB 21-ES-10 – LIFT STATION 2 REHABILITATIONS
CITY OF EDGEWATER
VOLUSIA COUNTY, FLORIDA**

THIS AGREEMENT is made and entered into this _____ day of _____, 2023, by and between Cain Enterprises, LLC dba Clearwater Solutions duly authorized to conduct business in the State of Florida and whose address is 3780 NE 40th Pl, Ocala, FL 34479, hereinafter, called "CONTRACTOR" and the **CITY OF EDGEWATER**, a political subdivision of the State of Florida, whose address is 104 North Riverside Drive, Edgewater, FL 32132, hereinafter called "CITY".

WITNESSETH: The Owner and the Contractor, for the consideration stated herein, agree as follows:

ARTICLE 1. SCOPE OF WORK. The Contractor shall perform all required work and shall provide and furnish all labor, materials, necessary tools, expendable equipment and all utility and transportation services required to complete the construction of and all appurtenant work thereto, as described in the **ITB 23-ES-12 – Lift Station 11 Rehab (22-505-01)** document, including all Attachments and Addenda.

All work shall be in strict compliance with the drawings and specifications, including any and all Addenda, and together with all Contract Documents hereinafter enumerated and made a part thereof.

It is understood and agreed that said labor, materials, tools, equipment and service shall be furnished and said work performed and completed subject to the approval of the Owner.

Contractor shall bear the risk of loss for goods delivered under this Contract from the time of shipping to the City until delivered at the destination specified by the City for delivery.

ARTICLE 2. CONTRACT PRICE. The Owner shall pay the Contractor for performance of the work in accordance with the Contract Documents in current funds as follows:

\$563,209.05

Figures

Five hundred sixty-three thousand two hundred nine dollars and five cents

In Words

Payment will be made at the unit prices listed in the attached ITB for the actual completed quantity of each item, subject to additions and deductions as provided for in the ITB.

RETAINAGE. The City shall have the right to withhold retainage from Compensation paid to a Contractor. Should the City decide that retainage shall be withheld from Compensation, the amount to be retained from each payment to the Contractor shall be:

- A. _____ % of the total contract price.
- B. 5 % of each payment of a milestone payment based on a Project milestone schedule. (Per Florida Statue 218.735
- C. _____ No retainage will be taken.

The City shall have the right to withhold retainage from Compensation paid to a Contractor. Should the City decide that retainage shall be withheld from Compensation; the amount to be retained from each payment to the Contractor shall be stated in the Work Order. The retainage shall be included with the final payment after all Work or Services for the Work Order have been approved and accepted by the City and all disputed invoices have

been resolved by the parties. The City shall never be required to pay an amount that would leave unpaid from the contract price or Compensation an amount less than the amount City would need to have in order to pay another consultant to complete the Work or Services should Contractor fail to complete the Work in a Work Order remaining incomplete as of that date.

ARTICLE 3. CONTRACT TIME. The Contractor agrees to commence work within Thirty (30) DAYS after the date of the Notice to Proceed letter and shall complete the work within One Hundred Fifty (150) DAYS consecutive calendar days thereafter. (NTP to Substantial Completion = 120 days; NTP to Final Completion = 150 days.)

ARTICLE 4. INSPECTION BY CONTRACTOR. The undersigned Contractor agrees that he has carefully inspected all Contract Documents and is familiar with same; the Contractor agrees that he is responsible for having heretofore examined the site, the location and route of all the proposed work and for having satisfied himself as to the character of the route, the location, surface and under-ground obstructions and nature thereof, the nature of the ground water conditions and other physical characteristics of the work and work area in order that he may include in the prices which he has bid and the prices of the Contract, all costs pertaining to the work and thereby provide for the satisfactory completion thereof and determination of the Contract prices herein agreed upon, and that this Contract price is based upon these inspections and examination.

ARTICLE 5. LIQUIDATED DAMAGES. If the work is not completed within the time specified in Article III of this Contract, the Contractor shall pay the Owner, as liquidated damages, the sum of Five Hundred (\$500.00) DOLLARS for each consecutive calendar day thereafter until the work is completed, and as outlined in the Supplemental General Conditions.

ARTICLE 6. COMPONENT PARTS OF THE CONTRACT. This Contract consists of the following Contract Documents, all of which are hereby made a part hereof as if herein set out in full and all of which are familiar to the Contractor:

1. Invitation to Bid – ITB #23-ES-12 (including all Attachments and required forms)
2. Bid Proposal
3. Bid Bond Form
4. Declaration Statement/Document Notification Affidavit
5. Construction Contract
6. Performance/Payment Bond
7. Certificate of Compliance - Insurance
8. Addenda

ARTICLE 7. SEVERABILITY. Should any term, covenant, condition, provision or sentence or part thereof of this Contract, including all Contract Documents which comprise the entire agreement, be held invalid or unenforceable by any court of competent jurisdiction, the remaining terms and provisions shall nevertheless remain in full force and effect.

ARTICLE 8. CONSTRUCTION. The headings and subheadings used throughout the Contract Documents are for convenience only and have no other significance in the interpretation of the body of the Contract Document.

ARTICLE 9. NOTICES. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, return receipts requested, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

For City:

Bonnie Zlotnick, City Clerk
City of Edgewater
104 N. Riverside Drive
Edgewater, FL 32132
(386)424-2400 ext 1101

For Contractor:

Fred Lane, Director of Client Relations (Name, Title)
Cain Enterprises, LLC dba Clearwater Solutions, (Company)
3780 NE 40th Place (Address)
Ocala, FL 34479 (City, State, Zip)
352-390-6555 (Phone)

ARTICLE 10. RIGHTS AT LAW RETAINED. The rights and remedies of City, provided for under this Contract, are in addition and supplemental to any other rights and remedies provided by law.

ARTICLE 11. CONTROLLING LAW, VENUE, ATTORNEY'S FEES. This Contract is to be governed, construed, and interpreted by, through and under the laws of Florida. Venue for any litigation between the parties to this Contract shall be in the County of Volusia, Florida and any trial shall be non-jury. Each party agrees to bear its own costs and attorney's fees relating to any dispute arising under this Contract.

ARTICLE 12. MODIFICATIONS TO AGREEMENT. This Contract and any exhibits, amendments and schedules may only be amended, supplemented, modified or canceled by a written instrument duly executed by the parties hereto of equal dignity herewith.

ARTICLE 13. WAIVER OF JURY TRIAL. THE CITY AND CONTRACTOR HAVE SPECIFICALLY WAIVED THE RIGHT TO A JURY TRIAL CONCERNING ANY DISPUTES WHICH MAY ARISE CONCERNING THIS AGREEMENT.

ARTICLE 14. NON-WAIVER. No indulgence, waiver, election or non-election by City under this Contract shall affect Contractor's duties and obligations hereunder.

ARTICLE 15. ASSIGNMENT. This Contract, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the opposite party and only by a document of equal dignity herewith. However, this Contract shall run to the Edgewater City Government and its successors.

ARTICLE 16. INDEPENDENT CONTRACTOR. It is the intent of the parties hereto that Contractor shall be legally considered an independent contractor and that neither Contractor nor its employees shall under any circumstances be considered employees or agents of the City and that the City shall be at no time legally responsible for any negligence on the part of Contractor, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, Contractor or corporation.

ARTICLE 17. NO THIRD-PARTY BENEFICIARIES. The agreements contained herein are for the sole benefit of the parties hereto and their successors and permitted assigns and no other party shall have the right to enforce any provision of this Contract or to rely upon the provisions of this Contract.

ARTICLE 18. WARRANTY OF TITLE OF CONTRACTOR. Contractor warrants to the City that all goods and materials furnished under the Contract will be new unless otherwise specified and that Contractor possess good, clear, and marketable title to said goods and there are no pending liens, claims or encumbrances whatsoever against said goods. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. If at any time there shall be evidence of any claim for which, if established, the City might become liable, and which may be chargeable to the Contractor, or if the Contractor shall incur any liability to the City, or the City shall have any claim or demand against the Contractor, of any kind or for any reason, whether related to or arising out of this Agreement or any other agreement between the Contractor and the City, and whether or not reduced to judgment or award, the City shall have the right to retain out of any payment due the Contractor, or which may become due to the Contractor, under this Contract or any other Contract between the Contractor and the City, an amount sufficient to indemnify the City against such claim and/or to compensate the City for, and fully satisfy, such liability, claim or demand, and to charge or deduct all cost of defense or collection with respect thereto, including, but not limited to, reasonable

attorneys' fees, expert consultant fees, and expert witness fees. Should any claim develop after final payment has been made, the Contractor shall refund to the City all monies that the latter may be compelled to pay in order to discharge such claims, or that the latter may have incurred in collecting said monies from the Contractor.

ARTICLE 19. TERMINATION FOR CONVENIENCE OF THE CITY. (a) The parties agree that the City may terminate this Contract, or any work or delivery required hereunder, from time to time either in whole or in part, whenever the City Manager of Edgewater shall determine that such termination is in the best interest of the City. (b) Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the City Manager or his designee, mailed or delivered to the Contractor, and specifically setting forth the effective date of termination. (c) Upon receipt of such Notice, the Contractor shall: (i) cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice; (ii) place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to termination; (iii) terminate all subcontracts except those made with respect to contract performance not subject to termination; (iv) settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Finance Director of Edgewater; and (v) use best efforts to mitigate any damages which may be sustained by the Contractor as a consequence of termination under this clause. (d) After complying with the provisions of subparagraph (c), above, the Contractor shall submit a termination claim, in no event later than six (6) months after the effective date of termination, unless one or more extensions of three (3) months each are granted by the Finance Director. (e) The Finance Director, with the approval of the City Manager, shall pay from the using department's budget, reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or work completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the supplies not delivered or the services not provided. This Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. (f) In the event that the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this clause, the Finance Director shall pay the Contractor the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause: (i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of: (1) the cost of work performed or supplies delivered; (2) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above; (3) a sum as profit on (a) determined by the Finance Director to be fair and reasonable. (ii) The total sum to be paid under (i) above shall not exceed the contract price, as further reduced by the contract price of work or supplies not terminated. (g) In the event that the Contractor is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the Contractor may appeal any claim to the City Council in accordance with Paragraph 24 of this contract concerning disputes.

ARTICLE 20. TERMINATION FOR CONVENIENCE OF THE SUBCONTRACTORS. In accordance with the termination for the convenience of the City provision of this contract, the Contractor shall include similar provisions in any subcontract, and shall specifically include a requirement that subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the Contractor from any recovery from the City whatsoever of loss or damage sustained by a subcontractor as a consequence of termination for convenience.

ARTICLE 21. TERMINATION FOR DEFAULT. Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein. In the event of default by the Contractor, the City reserves the right to procure the item(s) bid from other sources and holds the bidder responsible for excess costs incurred as a result.

ARTICLE 22. EXAMINATION OF RECORDS. (a) The Contractor agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after closeout of the FEMA grant, have access to and the right to examine and copy any pertinent books, documents, papers and records of the Contractor, and any subcontract involving transactions related to this Contract. (b) The Contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after closeout of the FEMA grant under the subcontract, have access to and the right to examine and copy any pertinent books;

documents, papers and records of such contractor involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public. (c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

ARTICLE 23. MODIFICATIONS OR CHANGES TO THIS CONTRACT. (a) Change Orders. The Department Head, with the concurrence of the City's signatory as required by the City's Purchasing Policy, shall, without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in the services to be performed or the time of the performance. The City shall not be held liable for any changes which have not been properly authorized and approved in accordance with this Contract. (b) If any change under this clause causes an increase or decrease in Contractor's cost of, or time required for the performance of the work hereunder, Contractor shall receive an equitable adjustment in accordance with subparagraph (d), which shall include all compensation to the Contractor, or the City, of any kind in connection with such change, including all costs and damages related to or incidental to such change. (c) Contractor need not perform any work described in any change order unless it has received a certification from the City that there are funds budgeted and appropriated sufficient to cover the cost of such changes. (d) No claim for changes ordered hereunder shall be considered if made after final payment in accordance with the Contract.

ARTICLE 24. SOVEREIGN IMMUNITY. The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

ARTICLE 25. LIABILITY FOR LOSS OR DAMAGE. (a) Contractor shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Contractor, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death of any person or damage to property other than City property, resulting from the performance of the Contract by Contractor, his/its agents, servants and employees. Contractor shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury. (b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between Contractor's work and any injury, loss, damage, death or property damage, Contractor expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Contractor hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Contractor as long as the claims made could be causally connected to Contractor as reasonable determined by City.

ARTICLE 26. NON-DISCRIMINATION. During the performance of this Contract, Contractor agrees as follows: (a) Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, marital status, age or national origin, except where such is a bona-fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Contractor agrees and fully supports and complies with the Americans with Disabilities Act of 1990. (b) Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of

Contractor that Contractor is an equal opportunity employer. (c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision. Contractor shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

ARTICLE 27. DISPUTES. The City Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to Contractor, shall decide disputes with respect to this Agreement. The decision by the City Manager shall be final and binding unless, within five (5) business days from the date of delivery of the decision of the City Manager, appeal is made to the City Council in writing and delivered to the City Clerk, Robin Matusick. The decision of the City Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, or not to be supported by any evidence.

ARTICLE 28. FORCE MAJEURE. Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

ARTICLE 29. CONTROLLING LAW. This agreement contains important matters affecting legal rights and is accepted and entered into in Florida and any question regarding its validity, construction, enforcement of performance shall be governed by Florida Law. Any legal proceeding arising from or in any way regarding the agreement shall have its venue located exclusively in the Circuit Court of Volusia County, Florida and the parties hereby expressly consent and submit themselves to the personal jurisdiction and venue of the court.

ARTICLE 30. E-VERIFY

The contractor and its subcontractors performing work and providing services under a resulting agreement will utilize the US Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the contractor/subcontractor during the agreement term. All cost incurred to initiate and sustain the aforementioned programs shall be the responsibility of the contractor. Failure to meet this requirement may result in termination of the agreement by the City.

ARTICLE 31. COMPLIANCE WITH OTHER FEDERAL STANDARDS, if Required by Grantor.

- (a) Compliance with Federal Laws, Regulations and Executive Orders. The Contractor will comply with all applicable federal laws, regulations, and Executive Orders, including FEMA policies, procedures, and directives. The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. Contractor shall ensure that all subcontracts comply with FEMA.
- (b) Fraud and False or Fraudulent or Related Acts: The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractors' actions pertaining to this agreement.
- (c) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D). All contractors entering into Federal funded contracts over \$100,000 must comply with Federal Drug-Free workplace requirements as Drug Free Workplace Act of 1988. The Contractor shall comply with this requirement.
- (d) Mandatory Disclosures: The Contractor must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.
- (e) Utilization of Minority and Women Firms (M/WBE): The Contractor must take all necessary affirmative steps to assure that small, minority, and women-owned businesses are utilized when possible, in accordance with 2 CFR 200.321. If subcontracts are to be let, prime contractor will require compliance of this provision by all sub-contractors. Prior to contract award, the Contractor shall document efforts to assure that such businesses are solicited when there are potential sources; that the Contractor made an effort to divide total requirement, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses; and, that the Contractor has established delivery schedules, where permitted, to encourage such businesses to respond.

Contractor and sub-contractor shall utilize service and assistance from such organizations as SBA, Minority Business Development Agency of the Department of Commerce, the Florida Department of Management Services (Office of Supplier Diversity), the Florida Department of Transportation, Minority Business Development Center, and Local Government M/DBE programs, available in many large counties and cities. Documentation, including what firms were solicited as suppliers and/or sub-contractors, as applicable, shall be included with the bid proposal.

(f) Equal Employment Opportunity: (i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. (ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. (iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information. (iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. (vi) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (vii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors

with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such contractor; and refer the case to the Department of Justice for appropriate legal proceedings.

(g) Davis-Bacon Act: If applicable to this contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be required to pay wages not less than once a week. This contract was conditioned upon the acceptance of the Department of Labor Wage Determination.

(h) Copeland Anti Kick Back Act: (i) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3, if applicable, which are incorporated by reference into this contract. (ii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses. (iii) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(i) Contract Work Hours and Safety Standards Act: (i) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. (ii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (i) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (i) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (i) of this section. (iii) Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (ii) of this section. (iv) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (i) through (iv) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (i) through (iv) of this section.

(j) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251– 1387) as amended. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(k) Debarment and Suspension (Executive Orders 12549 and 12689): A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension. SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Contractor agrees to include a provision requiring such compliance in its lower tier covered transactions and subcontracts. The Contractor shall certify compliance.

(l) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency. Contractor agrees to comply with this provision. Contractor shall file the required certification.

(m) Rights to Inventions Made Under a Contract or Agreement: If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Contractor must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(n) Procurement of Recovered Materials: Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the contract performance schedule; (ii) meeting contract performance requirements; or (iii) at a reasonable price. Information about this requirement, along with the list of EPA- designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(o) Access to Records and Reports: The Contractor agrees to provide City, Recipient (if applicable), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(p) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years after closeout of the FEMA grant, beginning on a date as described in 2 C.F.R. §200.333 and retained in compliance with 2 C.F.R. §200.333. This provision is supplemental to other provisions in this Agreement.

(q) Federal Changes: Contractor shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the contract.

(r) Safeguarding Personal Identifiable Information: Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

(s) DHS Seal, LOGO, and Flags: The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

(t) No Obligation by Federal Government The Federal Government is not a party to this agreement and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

ARTICLE 32. AUTHORITY TO SIGN. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date written above for execution by CITY.

WITNESSES:

CITY OF EDGEWATER

Glenn A. Irby, City Manager

Bonnie Zlotnick, City Clerk
Dated: _____

WITNESSES:

Cain Enterprises, LLC dba Clearwater Solutions

By:

(Firm Name)

Catherine Edwards
(Authorized Officer)

Dated: _____

Approved by the City Council of the City of
Edgewater at a meeting held on this _____
day of _____, 2021 under
Agenda Item No. _____