

Professional Services Agreement between **The City of Moore, Oklahoma** and Innovative
Emergency Management (IEM)

PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") dated this 29th day of December 2014 is between **The City of Moore, Oklahoma** ("Client"), located at 301 N. Broadway, Suite 142, Moore, Oklahoma 73160-5130 and Innovative Emergency management (IEM) ("Consultant"), located at 2801 Slater Road, Suite 110, Morrisville, North Carolina 27560.

Whereas, Consultant is in the business of providing certain professional services and is willing to provide such services to Client; and

Whereas, Client desires to utilize Consultant's services as provided for herein.

Now, therefore, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. Scope of Work

Consultant shall provide the services set forth in **Appendix B**, attached hereto and incorporated herein by reference. Consultant shall furnish all reports and deliverables as set forth in **Appendix B** in accordance with the terms set forth therein.

2. Period of Performance

The period of this Agreement shall be for the of period January 9, 2015 thru March 30, 2015 which may reasonably be required to complete the work in an orderly and continuous manner and Client may then, at its sole option, extend the this Agreement if applicable. The period of performance shall not exceed one year after execution of this Agreement by both parties.

3. Fees and Payment

In consideration of Services performed hereunder, Client shall pay Consultant in accordance with provisions set forth in **Appendix C**. Payment terms for the Agreement shall be in accordance with Paragraph 7 of **Appendix A**.

4. Notice

Any notice given by either party shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, or Federal Express or DHL courier, shipped prepaid, addressed to the parties at the addresses herein designated for each party or at such other addresses as they may hereafter designate in writing.

To: Jared Jakubowski, Associate Planner/Grants Manager The City of Moore, Oklahoma	To: Bonnie Herring, Contract Administrator Innovative Emergency Management
301 N. Broadway, Suite 142	2801 Slater Road, Suite 110
Moore, Oklahoma 73160-5130	Morrisville, NC 27560
Phone 405-793-5053	Phone 919-237-7540
Fax 405-793-5057	Fax

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5. General Terms and Conditions

The general terms and conditions of this Agreement are set forth in Appendix A, attached hereto and incorporated herein by reference.

6. Entire Agreement

Both parties acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and further agree that it is the entire Agreement between parties hereto which supersedes all prior Agreements, written or oral, relating to the subject matter hereof. No modification or waiver of any provision shall be binding unless in writing signed by the party against whom such modification or waiver is sought to be enforced.

In Witness Whereof, Client and Consultant have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

For: IEM



Signature

Brad Tiffie
Director of Operations

02/04/2015
Date

For: The City of Moore, OK



Signature

Glenn Lewis
Maver, City of Moore
Name (Typed or Printed)

January 5, 2015
Date

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APPENDIX A

TERMS AND CONDITIONS

- 1. CONSULTANT'S RESPONSIBILITIES.** Consultant shall perform the Services utilizing the standard of care normally exercised by professional consulting firms in performing comparable services under similar conditions.
- 2. CLIENT'S RESPONSIBILITIES.** Client shall provide access to facilities at which the Services are to be performed and at such times as may reasonably be required by Consultant, and shall make timely payments in accordance with the terms and conditions of this Agreement.

To the extent Client has access to information relating to the Services to be performed, Client shall provide such information as is reasonably available and appropriate for the efficient performance of the Services. Such information includes, but is not limited to, previous assessments, emergency response plans, local regulatory guidance, past exercise results, and operational commitments (if appropriate). Consultant shall be entitled to rely upon the information provided by the Client, the Client's agents, or from generally accepted sources which Consultant will identify, without independent verification except to the extent set forth herein and shall bear no liability arising from the reasonable reliance.

- 3. COMMENCEMENT AND COMPLETION OF THE SERVICES.** The Services shall commence and shall be completed on the respective dates specified in this Agreement or, in the absence of such specification, as soon as good practice and due diligence reasonably permit. Time is of the essence for the performance of Services.
- 4. PROPRIETARY INFORMATION.** Proprietary confidential information ("Proprietary Information") developed or disclosed by either party under this Agreement shall be clearly labeled and identified as Proprietary Information by the disclosing party at the time of disclosure. When written identification of Proprietary Information is not feasible at the time of such disclosure, the disclosing party shall provide such identification in writing promptly thereafter. Oral communications pertaining to the Services shall be presumed to be Proprietary Information unless otherwise indicated by the disclosing party.

Proprietary Information shall not be disclosed to any other person except to those individuals who need access to such Proprietary Information as needed to ensure proper performance of the Services. Neither party shall be liable for disclosure or use of Proprietary Information which: (1) is generally available to the public without breach of this Agreement; (2) is disclosed with the prior written approval of the disclosing party; or (3) is required to be released by applicable law or court order, each party shall notify the other of what information was or is to be disclosed.

Each party shall return all Proprietary Information relating to this Agreement to the disclosing party upon request of the disclosing party or upon termination of this Agreement, whichever occurs first. Each party shall have the right to retain a copy of the Proprietary Information for its internal records and subject to ongoing compliance with the restrictions set forth in this Section. This Section shall survive termination of this Agreement.

- 5. DELIVERABLES.** Upon payment in full for the Services, and unless otherwise stated herein, deliverables, analyses and reports developed under this Agreement ("Deliverables") shall be the

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property of the Client. The Consultant shall not disclose the Deliverables relating to the Services to a third party without the prior written authorization of the Client. Client shall be solely responsible for any disclosure of the Deliverables, which may be required by law and agrees to indemnify and hold Consultant harmless for any loss resulting from Client's failure to make such disclosure. Where applicable law requires immediate disclosure by the Consultant, Consultant shall make its best efforts to give prior notice to Client, but in any event immediately thereafter. At Client's request and expense, Consultant will assist the Client in making such disclosures as may be required by law.

Notwithstanding the foregoing provisions of this section, the Client acknowledges that in the course of its performance under this Agreement each party may use products, materials and methodologies proprietary to the other, and each party agrees that it shall have or obtain no rights in such proprietary products, materials and methodologies except pursuant to a separate written agreement (if any) executed by the parties, unless otherwise available in the public sector and access.

6. **ACCEPTANCE.** Client shall have five (5) days to reject all or part of each Deliverable. Each Deliverable, to the extent not rejected in writing by Client, shall be deemed accepted.

7. **PAYMENT TERMS.** Invoices will be submitted to Client as follows:

Upon completion of each task, Consultant shall invoice the Client monthly the firm-fixed-price shown in the following table below (Appendix C). Payment to Consultant will be made within 30 days from receipt of Consultant's invoice by Client.

8. **CONTRACT CEILING PRICE.** For time and material or unit price contracts with a contract ceiling, although not anticipated, if at any time Consultant has reason to believe that an increase in such limitation will be necessary, it will give prior notice to that effect providing a written estimate to complete the Services and proposing a new limitation figure and giving appropriate supporting data so that Client may, at its sole discretion, increase such limitation by written modification to this Agreement.

In the event of a dispute relating to the contract-ceiling price, such dispute shall be resolved in accordance with the Disputes clause of this Agreement.

9. **CONFLICT OF INTEREST.** The Client acknowledges that the Consultant provides similar services for a broad range of other clients and agrees that Consultant shall be free to work for other clients in matters that do not involve the use of any Proprietary Information that has been disclosed by the Client under the terms of this Agreement or do not directly relate to the specific Services provided by the Consultant to the Client under this Agreement.

10. **TERMINATION.** This Agreement may be terminated in whole or in part by either party in writing at any time during the period of performance. Consultant shall provide Client with 30 days notice of termination or partial termination. Upon receipt of notice of termination or partial termination from Client, the Consultant shall immediately cease performance of the Services to the extent set forth in the termination notice, and shall take reasonable steps to minimize the costs relating to such termination. Client shall pay for satisfactory Services rendered through the date of termination.

11. **FORCE MAJEURE.** Neither party shall be responsible for any delay or failure in performance, other than the obligation to make payments hereunder for work previously performed, to the extent that such delay or failure was caused by a force majeure event including Act of God, war, civil disturbance, governmental action, labor dispute unrelated to and without fault or negligence of the

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party claiming the force majeure event, computer virus, or denial of access to the site or any other event beyond the reasonable control of the claiming party.

Performance under this Agreement shall resume promptly once the cause of delay or failure ceases and an equitable adjustment shall be made to the price and/or schedule of the Services including any mobilization or demobilization costs of Consultant.

12. CHANGES TO THE SERVICES. The Client may direct changes within the general Scope of Work. Upon notification of such direction, the Consultant shall prepare an estimate of the additional cost and time required, if any, to perform the change. Upon mutual written agreement, Consultant shall perform the change and an equitable adjustment may be made to the price and/or time schedule as appropriate.

13. INDEMNIFICATION. The Client and Consultant shall mutually indemnify, defend and hold the other harmless from and against any and all damages, losses, liabilities and expenses (including reasonable attorney's fees) arising out of or relating to any claims, causes of actions, lawsuits or other proceedings, regardless of legal theory, that result, in whole or in part, of each other's officials, officers, agents, employees and contractors/subcontractors: (1) intentional misconduct, negligence, or fraud, (2) breach of representation, warranty or covenant, made herein, or (3) products or services including, without limitation, any claims that such products or services infringe any United States patent, copyright, trademark, trade secret or any other proprietary right of any third party.

14. DISPUTES. Any dispute relating to this Agreement shall be submitted to a panel consisting of at least one representative of each party who shall have the authority to enter into an agreement to resolve the dispute. The panel shall meet for a maximum of three (3) days. Should this dispute resolution be unsuccessful, or if the panel has failed to meet within two (2) weeks of demand for such a meeting by either party, the matter may be submitted by either party to arbitration and no written or oral representation made during the course of any panel proceeding or other settlement negotiations shall be deemed to be a party admission.

The arbitration shall be conducted in accordance with the Arbitration Rules of the American Arbitration Association. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. The arbitration shall take place in Morrisville, NC or other location mutually acceptable to both parties, and the laws of the State of North Carolina shall apply. Furthermore, in all events, no party shall be liable for indirect, special, consequential or punitive damages.

15. THIRD PARTY LITIGATION. In the event that any litigation, proceeding, or claim (including any investigation which may be preliminary thereto) involving the Services performed by Consultant is commenced by a third party, Consultant shall furnish, if compelled by law or upon the reasonable request of Client, such person or persons from Consultant's organization as are familiar with the matters embraced within the knowledge of Consultant's personnel to testify as witnesses and to provide Consultant's records and such other information and assistance in connection with such litigation, proceeding or claim (or investigation preliminary thereto). To the extent Consultant may be required, either by law or at the request of Client, to provide such testimony, records, information, or assistance, Client shall reimburse Consultant for the reasonable value of its services at its then prevailing rate for comparable work, based on the time expended, and for Consultant's out-of-pocket expenses incurred in connection therewith in accordance with the provisions of this Agreement.

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- 16. INDEPENDENT CONTRACTOR.** The Consultant is an independent contractor and shall not be deemed to be an employee or agent of the Client. Consultant shall indemnify and hold Client harmless against all liability and loss resulting from Consultant's failure to pay all taxes and fees imposed by the government under employment insurance, social security and income tax laws with regard to Consultant's employees engaged in the performance of this Agreement.
- 17. NONWAIVER.** No waiver of any breach of this Agreement shall operate as a waiver of any similar subsequent breach or any breach of any other provision of this Agreement.
- 18. SEVERABILITY.** If a court of competent jurisdiction holds any provision of this Agreement invalid, such provision shall be severed from this Agreement and to the extent possible, this Agreement shall continue without affect to the remaining provisions.
- 19. ASSIGNMENT/SUBCONTRACTS.** Neither party may assign this Agreement without the written consent of the other party, which shall not unreasonably be withheld.
- 20. DRAFTING PARTY.** Each party has reviewed this Agreement and any question of interpretation shall not be resolved by any rule of interpretation providing for interpretation against the drafting party. This Agreement shall be construed as though drafted by both parties.
- 21. GOVERNING LAW.** If applicable, the validity, enforceability and interpretation of this Agreement shall be determined and governed by the laws of the **State of North Carolina** and, where applicable by virtue of preemption, under the laws of the United States of America.
- 22. CAPTIONS.** The captions and headings of this Agreement are intended for convenience and reference only, do not affect the construction or meaning of this Agreement and further do not inform a party of the covenants, terms or conditions of this Agreement or give full notice thereof.
- 23. ADDITIONAL INSTRUMENTS.** The parties agree to provide the other with any and all documents required to carry out any and all obligations in connection with the Agreement as set forth herein.
- 24. NO AGENCY.** Except as specifically set forth otherwise, it is agreed and understood that neither party hereto is, by this Agreement or anything herein contained, constituted or appointed agent or representative of the other for any purpose whatsoever, nor shall anything in this Agreement be deemed or construed as granting either party any right or authority to assume or to create any obligation, warranty or responsibility, express or implied, for or in behalf of the other.
- 25. ORDER OF PRECEDENCE.** In the event of a conflict in the terms and conditions of this Agreement, the following order of precedence shall apply: 1st - This Agreement, 2nd - The Rate Schedule (Appendix C), 3rd - The Scope of Work (Appendix B), and 4th - The General Terms and Conditions (Appendix A).
- 26. ENTIRE AGREEMENT.** The parties acknowledge that they have read this Agreement, understand it and agree to be bound by its terms. This Agreement supersedes all prior Agreements, whether written or oral, relating to the subject matter hereof. No modification or change to this Agreement shall be binding unless such modification or change is in writing and signed by an authorized representative of each party.

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- 27. NON-RECRUITMENT.** Neither party will solicit personnel of the other party during the pursuit of the project for the purpose of inducing them to join their employ during the course of this Agreement and any resultant subcontract hereunder, and for a period of one year after termination of this Agreement, without the express mutual agreement of both parties.

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APPENDIX B

STATEMENT OF WORK

Description

The Consultant will prepare a gap analysis, a draft for public comment, a final draft and a complete application for the National Disaster Resilience Competition (NDRC) between January 5th and March 13th, 2015. The completed application will meet all CDBG and NDRC requirements and represent the City's best effort to effectively compete in the NDRC.

Project Management:

Project Management Schedule:

January 5th: Expected Contract Approval Date
By January 9th: Kick-off Conference Call – Distribution of Current Status
January 19th: Gap Analysis, Proposed Remedies
January 30th: Progress Report
February 12th: Public Comment Draft to the City
February 16th: Public Comment Period Begins
March 2nd: Public Comment Period Ends
March 9th: Final application Draft to City
March 13th: Final Application Delivery
March 16th: Application Upload to HUD
The Consultant will be directly responsible to the City's Associate Planner/Grants Manager

Task 1: Kick-off Call

A team consisting of City Staff, elected officials and key partners will continue to work on elements of the proposed NDRC application during the RFP period. By the expected date of contracting with the successful consultant the City will have completed additional consultations with partners and the public, framed or reframed activities proposed and updated the outline provided in this RFP. The City will provide the consultant with an updated proposed plan upon contract signing.

The kick-off Conference Call will provide the consultant the opportunity to ask questions of key members of the team, to seek clarifications of the proposal scope, or to address specific concerns.

Deliverables: None

Task 2: Analysis of Gaps

The Consultant will analyze the City's proposed plan and provide a gap analysis for the following areas

Project Eligibility:

The Consultant will determine how each of the proposed projects meets CDBG and NDRC eligibility requirements, the category of eligibility, and specific data necessary to support eligibility. Particular attention should be given to meeting the Low-Moderate Income requirements. Where gaps are identified the Consultant will propose remedies which can be reasonably completed within the contract schedule.

Cross Support:

The Consultant will evaluate the existing proposals interaction with the NDRC requirements and propose methodologies for increasing the proposals scoring in Phase 1.

Data Gaps:

The Consultant will identify or define data gaps needed for the application which can be reasonably completed within the contract schedule.

Documentation Gaps:

The Consultant will identify current documentation gaps within the proposed application, including agreements necessary, supporting documentation necessary and any other gaps identified by the Consultant

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Other:

The Consultant may identify other gaps

Deliverables: Provide a written assessment of the gaps identified and the remedies proposed to the City by January 26, 2015.

Task 3: Public Comment Draft

The Consultant will prepare a draft of the overall NDRC proposal for public comment. The public comment draft must include all required elements necessary to meet CDBG and NDRC requirements.

Deliverables: Public Comment Draft by the close of business on February 12, 2015

TASK 4: Final Draft

The Consultant will provide the City with a final draft of the application for review by the City. The final draft will include comments made during the public comment period and any updates or revisions since the Public Comment draft.

Deliverables: Final Draft by the close of business on March 9, 2015.

Task 5: Complete Application

The City will review the application and provide any comments, corrections, additions and deletions by close of business on March 11, 2015.

The Consultant will provide the City with a complete NDRC application package by the close of business March 13, 2015.

Deliverables: Complete Application by the close of business on March 13, 2015.

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APPENDIX C

PAYMENT SCHEDULE

Upon completion of each task, Consultant shall invoice the Client monthly the firm-fixed-price shown in the following table. Payment shall be made within 30 days of receipt of invoice.

Complete Form 4400 for the RFP by defining each Benchmark or Deliverable where a payment is expected, the Target Date for Delivery, the amount of Payment, and the Percent of the Total Bid.			
Benchmark or	Target Date	Amount	Percent of Total Bid
Task 1: Kick-Off Call	January 9, 2015	\$3,695.51	3.8%
Task 2: Gap Analysis	January 23, 2015	\$31,969.25	33.0%
Task 3: Public Comment	February 27, 2015	\$37,535.42	38.8%
Task 4: Final Draft	March 6, 2015	\$12,583.43	13.0%
Task 5: Complete	March 13, 2015	\$10,950.41	11.4%
TOTAL BID		\$96,734.02	100%
Complete Form 4400-B for the RFP by identifying each employee, their position (Employee; Contract Employee; Sub-Contractor); and their hourly rate.			
Name of Employee or Sub Contractor	Position	Hourly Rate	
Lloyd Blanchard	Project Manager	\$198.68	
Christy Jones	Task Lead	\$78.22	
Steven Stage	Atmospheric Scientist	\$139.38	
William Eargle	CDBG Expert	\$162.97	
Qiana Taylor	CDBG Specialist	\$76.78	
Patrick Manley	Performance Analyst	\$68.01	