

**GENERAL SERVICES TERM CONTRACT  
HVAC MAINTENANCE & CONTROLS**

**CONTRACT NO. 0117-0390**

**THE PARTIES TO THIS CONTRACT** are the City of Daytona Beach, a Florida municipal corporation (the "CITY"), and Climate Control Mechanical Services, Inc , a Florida Corporation ("CONTRACTOR").

In consideration of the mutual covenants herein contained, the Parties agree as follows:

**Section 1. Scope of Services.** CONTRACTOR will provide HVAC Maintenance and Controls services to the CITY from time to time at the request of the CITY during the Term of this Contract. Exhibit A, attached hereto and incorporated herein by reference, provides a detailed description of the range of services that may be provided under this Contract.

**Section 2. Services Must Be Authorized in Writing.** This Contract, in and of itself, does not require the CONTRACTOR to perform any services or obligate the CITY to pay for any services rendered. No services will be provided under this Contract, and no payment obligation will arise for performance of services, except when specifically authorized by CITY work authorization. A work authorization will generally consist of CONTRACTOR's quote, including itemized pricing based on the Fee Schedule attached hereto as Exhibit B, and the CITY's purchase order issued in response to the Proposal. No work authorization issued may alter the terms and conditions of this Contract. In case of a conflict with a work authorization this Contract will govern. The work authorization will provide sufficient detail to allow for a determination of the basis on which CONTRACTOR will be paid; and may provide more detailed parameters for the services to be provided such as deliverables, deadlines, etc, consistent with the provisions of this Contract. Additional restrictions and conditions regarding work authorizations are set forth in Exhibit A.

No claim for services furnished by the CONTRACTOR not specifically provided for herein will be honored by the CITY.

If CONTRACTOR is providing services under an open work authorization at the time that this Contract expires or terminates for any reason other than CONTRACTOR's material breach, CONTRACTOR will continue to provide such services unless and until the CITY provides CONTRACTOR a notice suspending or terminating such services. If CONTRACTOR is providing services under an open work authorization at the time that the CITY terminates this Contract due to CONTRACTOR's material breach, CONTRACTOR will immediately cease performing all services unless the notice of termination specifically provides otherwise

**Section 3. Fees and Other Payments; Limitations.**

The Fee paid to CONTRACTOR for all services performed under this Contract will be based on the Fee Schedule, attached hereto and incorporated herein as Exhibit B

(a) Except as provided below, each work authorization will set forth a Not-to-Exceed Fee to be paid to CONTRACTOR. The Fee will be based on an estimate of the hours required to perform the task, plus the cost of parts and equipment to be installed, priced in strict conformity

with the Fee Schedule. The not-to-Exceed Fee may only be exceeded with prior approval of the CITY.

(b) A work authorization may provide for a Fixed Fee. The Fixed Fee must be based on a good-faith estimate of the time required by CONTRACTOR to complete the work, and the parts and components to be installed, at rates and markups established in the Fee Schedule. Where a Fixed Fee is used, neither CONTRACTOR's obligation to perform the work nor the fixed Fee will be altered merely based on the need to spend more or less time than shown on the estimate to complete the work.

(c) Subcontractors costs (where subcontracting is approved) will be paid at CONTRACTOR's direct cost, without mark-up.

(d) The Fees to be paid CONTRACTOR herein will be CONTRACTOR's sole compensation. No additional compensation will be due CONTRACTOR for any reason.

**Section 4. Billing and Payment Procedure.** In addition to requirements for payment established by applicable federal, state, or local law including the City of Daytona Beach Code of Ordinances (the "City Code"), or the Exhibits, payment terms and conditions are as follows:

(a) No payment will be due for services performed until CONTRACTOR submits a proper invoice. CONTRACTOR must separately invoice the CITY for each work authorization. CONTRACTOR may invoice the CITY no more frequently than monthly, and no sooner than 30 days after the date of the work authorization.

(b) Payment will be made based on the rates set forth in the Fee Schedule, for hours worked, and the parts and components installed. Additional limitations apply as set forth in Exhibits A and B.

(d) In order to be considered proper, the invoice must include all information and documentation that the CITY may need to verify the accuracy of the invoice and the amount of payment due based on the specific requirements of this Contract.

(e) The CITY will within 30 days after receipt of an invoice notify the CONTRACTOR that the invoice is improper, or pay CONTRACTOR the amount due.

**Section 5. Standard of Performance.** CONTRACTOR's services will at a minimum meet the level care and skill ordinarily used by members of CONTRACTOR's profession performing the type of services provided herein within the State of Florida.

**Section 6. Relationship between Parties.** This Contract does not create an employee-employer relationship between the CITY and CONTRACTOR. CONTRACTOR is an independent contractor of the CITY and will be in control of the means and the method in which the requested work is performed. As an independent contractor, CONTRACTOR will be solely responsible for payment of all federal, state and local income tax, and self-employment taxes, arising from this Contract; and CONTRACTOR agrees to indemnify and hold harmless the CITY from any obligations relating to such taxes. The CITY will not make deductions from payments due, for such taxes, or for social security, unemployment insurance, worker's compensation, or other employment or payroll taxes. CONTRACTOR will also responsible for the performance of CONTRACTOR's sub-contractors.

**Section 7. Documents.** All reports, estimates, logs, original drawings, and other materials furnished, prepared or executed by CONTRACTOR during the term of and in accordance with the provisions of this Contract will be the property of the CITY and delivered to the CITY upon demand or, if no demand has previously been made, upon completion of the particular task for which such materials were prepared, executed, or otherwise required.

**Section 8. Public Records.** Each work authorization will be deemed to incorporate the following provision in substantially final form regarding Public Records:

(a) To the extent applicable, CONTRACTOR will comply with the requirements of Florida Statutes Section 119.0701, which include the following:

(1) Keeping and maintaining public records that the CITY requires for performance of the service provided herein.

(2) Upon the request of the City Clerk of the CITY, (i) providing the City Clerk with a copy of requested public records or (ii) allowing inspection or copying of the records, within a reasonable time after receipt of the City Clerk's request, at a cost that does not exceed the cost provided in Ch. 119, Florida Statutes, or as otherwise provided by law.

(3) Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law until completion of the work required by a work authorization, and following such completion if CONTRACTOR fails to transfer such records to the CITY.

(4) Upon completion of the work required by a work authorization, keep and maintain public records required by the CITY to perform the service. CONTRACTOR will meet all applicable requirements for retaining public records. All records stored electronically must be provide to the CITY upon request from the City Clerk, in a format that is compatible with the CITY's information technology systems.

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, CONTRACTOR MUST CONTACT THE CITY CLERK, WHOSE CONTACT INFORMATION IS AS FOLLOWS:

(Phone)	386 671-8023
(Email)	clerk@codb.us
(Address)	301 S. Ridgewood Avenue Daytona Beach, FL 32114

(b) Nothing herein will be deemed to waive CONTRACTOR's obligation to comply with Section 119.0701(3)(a), Florida Statutes, as amended by Chapter 2016-20, Laws of Florida (2016).

**Section 9. Effective Date and Term.** The Effective Date of this Contract is the date on which the last Party signs it. The Term of this Contract is 1 year, commencing on the Effective Date. The CITY will have the option to renew this Contract for up to 3 Terms of 1 year each, by providing

CONTRACTOR written notice. Unless waived by CONTRACTOR, such notice will be provided at least 60 days before the end of the current Term.

If this Contract specifically provides that some or all of CONTRACTOR's services will be required only after issuance of a CITY work authorization, any work authorizations previously issued by the CITY will remain in effect after the expiration of this Contract unless the CITY terminates this Contract due to CONTRACTOR's material breach after notifying CONTRACTOR to suspend such services as provided below.

#### **Section 10. Termination of Agreement.**

(a) The CITY may by written notice to CONTRACTOR terminate this Contract, in whole or in part, at any time, either for the CITY's convenience or because of the failure of the CONTRACTOR to fulfill its contractual obligations.

(1) Before terminating for convenience, CITY must provide CONTRACTOR at least 30 day's advance notice of termination. This Contract will terminate automatically and without need for further notice upon the expiration of the notice period.

(2) Before terminating due to CONTRACTOR's material breach of its contractual obligations, CITY must provide CONTRACTOR prior written notice, specifying the breach and demanding CONTRACTOR remedy the breach within 10 days of the notice, or within such longer period as may be reasonably required if the nature of the breach is that it cannot be remedied within 10 days of notice. This Contract will terminate automatically and without need for further notice if CONTRACTOR fails to remedy the material breach within the period described in the CITY's notice of breach.

In either instance described above, upon termination CONTRACTOR will immediately discontinue all services affected, unless the notice directs otherwise, and deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and any and all such other information and services of whatever type or nature as may have been accumulated by CONTRACTOR in performing this Contract, whether completed or in process.

(b) If the termination is for convenience, CONTRACTOR will be paid compensation for authorized services performed to the date of termination. If termination is due to CONTRACTOR's material breach, the CITY reserves all rights and remedies it may have under law due to such breach. Among other things, the CITY may take over the work and prosecute the same to completion by other agreements or otherwise; and in such case, the CONTRACTOR will be liable to the CITY for all reasonable additional costs occasioned to the CITY thereby.

(c) If after notice of termination for the CONTRACTOR's failure to fulfill contractual obligations it is judicially determined by a court of law that the CONTRACTOR had not so failed, the termination will be conclusively deemed to have been effected for the CITY's convenience. In such event, adjustment in payment to CONTRACTOR will be made as provided in subsection (b) of this Section for a termination for convenience.

(d) The rights and remedies of CITY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Contract.

**Section 11. Suspension of Services.** If the notice of material breach issued by the CITY pursuant to the preceding Section so directs, CONTRACTOR will suspend services immediately upon receipt thereof, other than the work required to remedy the material breach.

If CONTRACTOR is providing services under an open work authorization at the time that this Contract expires or terminates for any reason other than CONTRACTOR's material breach, CONTRACTOR will continue to provide such services unless and until the CITY provides CONTRACTOR a notice suspending or terminating such services.

**Section 12. Indemnification.** CONTRACTOR will indemnify and hold harmless the CITY, including the CITY's officers, employees, and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CONTRACTOR, or CONTRACTOR's officers, employees, or agents, including subcontractors and other persons employed or use by CONTRACTOR in the performance of this Contract

**Section 13. Insurance.** CONTRACTOR will provide and maintain at CONTRACTOR's own expense, insurance of the kinds of coverage and in the amounts set forth in this Section. All such insurance will be primary and non-contributory with the CITY's own insurance. If any request for the performance of services presents exposures to the CITY not covered by the requirements set forth below, the CITY reserves the right to add insurance requirements that will cover such an exposure.

**(a) Coverage and Amounts.**

**(1) Workers Compensation Insurance** as required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of CONTRACTOR, employed at the site of the service or in any way connected with the work, which is the subject of this service. The insurance required by this provision will comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage. If CONTRACTOR wishes to claim an exemption from worker's compensation insurance requirements, CONTRACTOR will notify the Risk Manager in writing on CONTRACTOR's official letterhead.

**(2) Liability Insurance**, including (i) **Commercial General Liability coverage** for operations, independent contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring CONTRACTOR and any other interests, including but not limited to any associated or subsidiary companies involved in the work; and (ii) **Automobile Liability Insurance**, which will insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the CONTRACTOR in the performance of this Contract.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE CITY AS AN ADDITIONAL INSURED. CONTRACTOR's Commercial General Liability insurance policy will provide coverage to CONTRACTOR, and CITY when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Contractors, Property of CITY in CONTRACTOR's Care, Custody or Control or Property of CITY

on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds). When CITY is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent will be used to provide such Additional Insured status.

The limit of liability for each policy will be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate will be in an amount of no less than \$2,000,000. The Risk Manager for the CITY may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

Unless specifically waived hereafter in writing by the Risk Manager, CONTRACTOR agrees that the insurer will waive its rights of subrogation, if any, against the CITY on each of the foregoing types of required insurance coverage.

**(b) Proof of Insurance.** CONTRACTOR will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Contract. CONTRACTOR will not commence work until all proof of such insurance has been filed with and approved by the CITY. CONTRACTOR will furnish evidence of all required insurance in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates.

**If requested by the CITY, CONTRACTOR will furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the CITY.**

**(c) Cancellation; Replacement Required.** CONTRACTOR will file replacement certificates 30 days prior to expiration or termination of the required insurance occurring prior to the acceptance of the work by the CITY. If a required policy is canceled without CONTRACTOR's prior knowledge CONTRACTOR will immediately notify the CITY immediately upon becoming aware that a required insurance coverage has been canceled for any reason, and promptly replace the canceled policy. The CITY expressly reserves the right to replace the canceled policy at CONTRACTOR's expense if CONTRACTOR fails to do so.

**(d) Termination of Insurance.** CONTRACTOR may not cancel the insurance required by this Contract until the work is completed, accepted by the CITY and CONTRACTOR has received written notification from the Risk Management Division of the CITY that CONTRACTOR may cancel the insurance required by this Contract and the date upon which the insurance may be canceled. The Risk Management Division of the CITY will provide such written notification at the request of CONTRACTOR if the request is made no earlier than two weeks before the work is to be completed.

**(e) Liabilities Unaffected.** CONTRACTOR's liabilities under this Contract will survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Similarly, CONTRACTOR's liabilities under this Contract will not be limited to the extent of by the existence of any exclusions or limitations in insurance coverages, or by CONTRACTOR's failure to obtain insurance coverage.

CONTRACTOR will not be relieved from responsibility to provide required insurance by any failure of the CITY to demand such coverage, or by CITY's approval of a policy submitted by CONTRACTOR that does not meet the requirements of this Contract

**Section 14. Bonds. Reserved**

**Section 15. Notice.** Unless otherwise expressly agreed herein, all notices, requests, and demands to or upon the Parties will be delivered by hand, delivered by a courier service, provided to a nationally recognized delivery service for overnight delivery or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the addresses set forth herein:

To the CITY:

The City of Daytona Beach  
Attn: Frank Van Pelt, Tech Services Dir  
950 Bellevue Avenue  
Daytona Beach, FL 32114

To CONTRACTOR:

Climate Control Mechanical Services, Inc.  
Louie F. Wise III, President  
2695 NW 4th Street  
Ocala, FL 34475

provided, however, that either Party may change the person or address designated for receipt of the Party's notices, by providing written notice to the other Party.

**Section 16. Personnel.** CONTRACTOR represents that CONTRACTOR has or will secure at CONTRACTOR's own expense, all personnel required in performing the services under this Contract. Such personnel will not be employees of or have any contractual relationship with the CITY.

All personnel engaged in the work will be fully qualified and will be authorized under state and local law to perform such services.

The CITY will have the right to approve or reject any subconsultants that CONTRACTOR proposes to use for work assigned in a work authorization.

**Section 17. CITY's Responsibilities.** The CITY agrees to make available for review and use by the CONTRACTOR, reports, studies, and data relating to the services required. The CITY will establish a project manager to meet periodically with the CONTRACTOR to facilitate coordination and ensure expeditious review of work product.

**Section 18. Limitation on Waivers.** Neither the CITY's review, approval, or acceptance of, or payment for, any of the services provided by CONTRACTOR, will be construed to operate as a waiver of the CITY's rights under this Contract. CONTRACTOR will be and always remain liable to the CITY in accordance with applicable law for any and all damages to the CITY caused by the CONTRACTOR's negligent or wrongful provision of any of the services furnished under this Contract

Failure of the CITY to exercise any right or option arising out of a breach of this Contract will not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach. Furthermore, the failure of the CITY at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth herein will not be construed as a waiver or relinquishment of the CITY's right to insist upon strict performance of the same condition, promise, agreement or understanding at a future time.

**Section 19. Dispute Resolution.** If a dispute exists concerning this Contract, the Parties agree to use the following procedure prior to pursuing any judicial remedies.

**(a) Negotiations.** A Party will request in writing that a meeting be held between representatives of each Party within 14 calendar days of the request or such later date that the Parties may agree to. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. The purpose of this meeting is to negotiate in the matters constituting the dispute in good faith. The Parties may mutually agree in writing to waive this step and proceed directly to mediation as described below.

**(b) Non-Binding Mediation.** Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described in Subsection (a) proves unsuccessful or the Parties mutually waive the subsection (a) procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Contract prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

If the Parties fail to reach a resolution of the dispute through mediation, then the Parties are released to pursue any judicial remedies available to them.

## **Section 20. General Terms and Conditions.**

**(a) Amendments.** Except as otherwise provided herein, no change or modification of this Contract will be valid unless the same is in writing and signed by both Parties.

**(b) Assignments and Subcontracting.** No assignment or subcontracting will be permitted without the CITY's written approval.

**(c) Compliance with Laws and Regulations.** In providing all services pursuant to this Contract, CONTRACTOR will abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations will constitute a material breach of this Contract and will entitle the CITY to terminate this Contract immediately upon delivery of written notice of termination to the CONTRACTOR

**(d) Truth in Negotiations Certificate.** CONTRACTOR hereby certifies that the wages and other factual unit costs supporting the compensation herein are accurate, complete, and current at the time of this Contract.

**(e) No Third Party Beneficiaries.** There are no third party beneficiaries of CONTRACTOR's services under this Contract.

**(f) Contingency Fee.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to



solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

**(g) Nondiscrimination.** CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their sex, race, creed, color, or national origin. Further, CONTRACTOR agrees to comply with all local, state, and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, CONTRACTOR agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246.

**(h) Principles in Construing Contract.** This Contract will be governed by and construed in accordance with the laws of the State of Florida. Captions and paragraph headings used herein are for convenience only, are not a part of this Contract and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Contract. The use of any gender herein will be deemed to be or include the other genders, and the use of the singular herein will be deemed to be or include the plural (and vice versa), wherever appropriate. If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding will only effect such word, phrase, clause, sentence or provision, and such finding will not affect the remaining portions of this Contract; this being the intent of the Parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

**(i) Venue.** The exclusive venue for any litigation arising out of this Contract will be Volusia County, Florida if in state court, or the U.S. District Court, Middle District of Florida if in federal court.

**(j) Litigation Costs.** Except where specifically provided herein, in case of litigation between the Parties concerning this Contract, each party will bear all of its litigation costs, including attorney's fees.

**(k) Force Majeure** A force majeure event is an act of God or of the public enemy, riots, civil commotion, war, acts of government or government immobility (whether federal, state, or local) fire, flood, epidemic, quarantine restriction, strike, freight embargo, or unusually severe weather; provided, however, that no event or occurrence will be deemed to be a force majeure event unless the failure to perform is beyond the control and without any fault or negligence of the Party charged with performing or that Party's officers, employees, or agents. Whenever this Contract imposes a deadline for performing upon a Party, the deadline will be extended by one day for each day that a Force Majeure event prevents the Party from performing; provided, however, that the Party charged with performing and claiming delay due to a Force Majeure event will promptly notify the other Party of the Event and will use its best efforts to minimize any resulting delay.

**(l) Jury Trial Waived.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS CONTRACT, OR ANY DEALINGS BETWEEN THE PARTIES. THE SCOPE OF THIS

WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY DISPUTES BETWEEN THE PARTIES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS

**(m) Authority to Bind CONTRACTOR.** The undersigned representative of CONTRACTOR represents and warrants the he or she is fully authorized to bind CONTRACTOR to the terms and conditions of this Contract

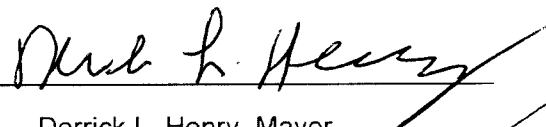
**(n) Incorporation of RFP and Proposal.** The CITY's Request for Proposals 0117-0390, and the CONTRACTOR's responsive proposal are incorporated herein by reference as Composite Exhibit C. Composite Exhibit C is not attached but will remain on file in the Office of the City Clerk. In case of conflicts between the RFP and Proposal, the RFP will govern. In case of conflicts between Composite Exhibit C and other provisions of this Contract, including Exhibits A and B, this Contract will govern

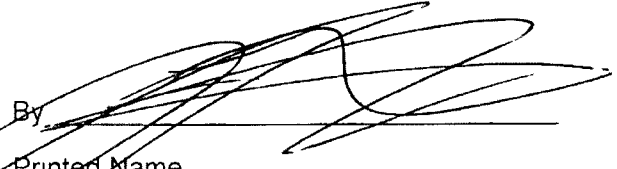
**(o) Integration.** This Contract represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written agreements

IN WITNESS WHEREOF, the Parties through their undersigned representatives have caused this Contract to be executed in duplicate original

CITY

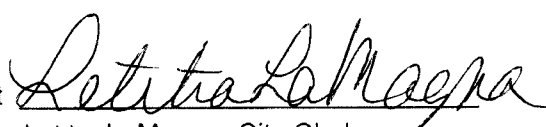
CLIMATE CONTROL MECHANICAL SERVICES, INC.

By   
Derrick L. Henry, Mayor

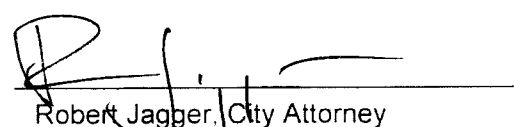
By   
Printed Name \_\_\_\_\_

Date: 9-14-17

Title President  
Date 4/12/17

Attest   
Letitia LaMagna City Clerk

Approved as to legal form:

By   
Robert Jagger, City Attorney

## **EXHIBIT A: Scope of Services**

CONTRACTOR will provide all labor and materials for HVAC and Controls service for all equipment in CITY owned buildings. CONTRACTOR, upon request, will conduct inspections of an HVAC system and supply a written report with repairs that will need to be taken into consideration by CITY Personnel. If the CITY so elects, CONTRACTOR will be instructed to complete repairs by issuance of a work authorization by the CITY.

CONTRACTOR will employ or subcontract personnel qualified to work on Automated Logic Controls.

### **CITY's WORK AUTHORIZATIONS**

1. Except in certain instances involving emergency calls, the CITY will solicit a written proposal from CONTRACTOR prior to issuance of a Work authorization.

Written estimated for emergency calls will be submitted as soon as practical.

2. CONTRACTOR will verbally respond to requests for proposals within 2 business days of the request, and provide written responses within 3 business days thereafter. The CONTRACTOR will ensure that CONTRACTOR has all the information necessary to prepare fair and accurate estimates.
3. CONTRACTOR will submit a written not-to-exceed or firm fixed-price Fee estimate with each proposal, using the unit prices provided in Exhibit B, in accordance with the Contract; and will include an estimate of the number of calendar days required for project completion based on the scope of the work to be performed.
4. While other CITY personnel may ask CONTRACTOR to submit proposals under this Contract, the only persons authorized to issue work authorizations on the CITY's behalf are the Project Managers referenced below. No payment will be due for any services performed by CONTRACTOR except for services performed pursuant to a work authorization issued by the Project Manager. The following persons may act as Project Manager:
  - a. The City Manager or designee (such designation must be in writing);
  - b. The person listed in the Contract as being the required contact person for receipt of CITY notices; and
  - c. Joe Paul, Technical Services Project Manager (671-8743)
  - d. Eric Miller, Renovations & Repair Superintendent (671-8721).
5. In issuing a work authorization the CITY may reserve the right to furnish necessary materials and parts, or may require CONTRACTOR to furnish some or all of the materials and parts.
6. No payment will be due on any Work authorization until the CITY has inspected and

accepted the work.

**CONTRACTOR'S RESPONSIBILITIES:**

**1. General Responsibilities.**

**1.1 Scope of Work.** CONTRACTOR will provide, perform, and complete all necessary work, labor, services, transportation, equipment, materials, apparatus, machinery, tools, fuels, gas, electric, water, waste disposal, information, data and other means and items necessary to accomplish the work at the Work Site, including measures waste disposal, in compliance with this Contract. CONTRACTOR is required to perform all Work specified in the Contract Documents and reasonably inferable from these Documents as being necessary to produce the intended results.

**1.2 Quality.** All materials and Work will be of good quality for the intended use and consistent with the quality of surrounding Work, and will conform to the requirements of the Contract Documents and to the standards for construction of the Project generally. All materials will be new.

**1.3 Construction Means and Methods.** CONTRACTOR will provide continuous on-site supervision and direction of the Work using CONTRACTOR's best efforts. CONTRACTOR will have control over construction means, methods, techniques, sequences, and procedures, unless the Contract Documents give other specific instructions concerning these matters, and is solely responsible therefore.

**1.4 Discipline at the Project Site.** CONTRACTOR will enforce strict discipline and good order among CONTRACTOR's employees and other persons for whose Work CONTRACTOR is responsible, including CONTRACTOR's employees, subcontractors, sub-subcontractors, and suppliers, and the agents and employees of any of them.

**1.5 Responsibility for Subordinates.** CONTRACTOR is responsible for the acts and omissions of all persons performing portions of the Work at the Project Site, including but not limited to CONTRACTOR's employees, subcontractors, sub-subcontractors, and suppliers, and the agents and employees of any of them.

**1.6 Personnel:** All CONTRACTOR personnel providing services to the CITY under the terms of this contract will be full-time, permanent employees of the CONTRACTOR, unless the CITY provides express written permission, in advance, for CONTRACTOR's use of temporary employees or to subcontract a portion of the work. The CONTRACTOR will only use tradesmen 18 years or older.

**1.7 Obligations Not Relieved.** CONTRACTOR is not relieved of its obligations to perform the Work in accordance with the Contract Documents, by the activities or duties of the CITY or the E/A in the administration of the Contract or of construction, or by tests, inspections, or approvals required or performed by persons other than CONTRACTOR.

**1.8 Ongoing Duty to Report Problems with Contract Documents.** If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between any Contract Document and any

Legal Requirement or of any such standard, specification, manual, or code or instructions of any manufacturer or supplier, CONTRACTOR will within three days of such discovery report it to the OWNER in writing, and CONTRACTOR will not proceed with the Work affected thereby until a Change Order has been issued. CONTRACTOR will be liable to the OWNER for failure to report any such conflict, error, ambiguity, or discrepancy of which CONTRACTOR knew or reasonably should have known. CONTRACTOR will be liable to the OWNER for CONTRACTOR's failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents within said three-day period.

**1.9 Inspection of Work.** CONTRACTOR will make frequent inspections during the progress of the Work to confirm that work previously performed by CONTRACTOR is in compliance with the requirements of this Contract, and that any portion of Work previously performed by CONTRACTOR or by others is in proper condition to receive subsequent Work.

**2. Diligent Prosecution.** CONTRACTOR will at all times be responsible for the diligent prosecution of the Work so as to complete the Work within the completion Time.

**3. Supervision and Superintendence.**

**3.1** CONTRACTOR will supervise the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

**3.2** CONTRACTOR will have an English-speaking, competent Superintendent on the Work at all times that work is in progress. The Superintendent will be CONTRACTOR's representative on the Work and will have the authority to act on the behalf of CONTRACTOR. All communications given to the Superintendent will be as binding as if given to CONTRACTOR, even where written notice is otherwise required. Either CONTRACTOR or the Superintendent will provide a cellular telephone number and an emergency and home telephone number at which one or the other may be reached if necessary when Work is not in progress. The Superintendent will be an employee of CONTRACTOR, unless waived in writing by the OWNER. If CONTRACTOR proposes a management structure with a Project Manager supervising, directing, and managing construction of the work in addition to or in substitution of a Superintendent, the requirements of these Construction Documents with respect to the Superintendent will likewise apply to any such Project Manager.

**3.2.1** CONTRACTOR will not replace the Superintendent without written notice to the OWNER. If CONTRACTOR deems it necessary to replace the Superintendent, CONTRACTOR will provide the necessary information for approval, as stated above, on the proposed new Superintendent.

**3.2.2** CONTRACTOR may designate a qualified substitute Superintendent if the designated Superintendent is temporarily away from the Work, subject to OWNER approval

**3.2.3** CONTRACTOR will replace the Superintendent upon the OWNER's request, if the Superintendent is unable to perform to the OWNER's satisfaction.

**3.2.4** CONTRACTOR will employ only orderly and competent workers, skillful in performance of the type of Work required under this Contract. CONTRACTOR will prohibit the use and possession of any alcoholic or other intoxicating beverages, illegal drugs, or controlled substances while on the job or on the OWNER's property. Subject to the applicable provisions of Florida law, neither CONTRACTOR, nor subcontractors, suppliers, or other agents of CONTRACTOR, may use or possess any firearms or other weapons while on the job or on the OWNER's property. If the OWNER notifies CONTRACTOR that any officer, employee, subcontractor, supplier, or other agent is incompetent, disorderly, abusive, or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms in contravention of the applicable provisions of Florida law, or has possessed or was under the influence of alcohol or drugs on the job, CONTRACTOR will immediately remove that person from performing Contract Work, and may not employ that person again on the Work without the OWNER's prior written consent. CONTRACTOR will at all times maintain good discipline and order on- and off-Project Site in all matters pertaining to the Project. CONTRACTOR will pay workers no less than the wage rates established by law, and maintain weekly payroll reports as evidence thereof

**4. Site Visits:** Prior to performance of any work, CONTRACTOR will visit the site, become familiar with the conditions under which the work is to be performed, and correlate personal observation with the job requirements as communicated by the Technical Services Project Manager. Failure to familiarize themselves with the site will not excuse CONTRACTOR from performing the work in strict accordance with the terms and conditions of the Contract. Further, if CONTRACTOR, in the course of site inspection or during performance of the work, finds any discrepancy between actual site conditions and the scope of work, it will be his duty to immediately inform the CITY's designated personnel. Any work done after such discovery, without authorization, will be done at CONTRACTOR's risk.

**5. Attire and ID:** All CONTRACTOR personnel will wear clothing identifying CONTRACTOR by either name or logo, and to have in possession and present upon request, by CITY designated personnel, a form of picture identification (i.e.- driver's license, ID card). Failure of CONTRACTOR's personnel to adhere to CITY requirements described herein will result in removal of the individual(s) from the job site.

**6. Permits:** CONTRACTOR is responsible for obtaining *all* applicable permits and scheduling applicable inspections with the CITY's Permit & Licensing Department.

**7. Tools and Equipment:** CONTRACTOR will own/lease/rent keep in good repair, and have readily available for CONTRACTOR's use at all times while providing the services herein, all tools and equipment necessary to perform the described services in particular and the equipment necessary to complete related tasks.

**8. Response Time:** CONTRACTOR will start all non-emergency projects within 7 calendar days of the CITY's issuance of the Work authorization. CONTRACTOR will complete each non-emergency job within the time specified in the Work authorization. CONTRACTOR will respond to calls for emergency service and be onsite working within 3 hours after verbal

notification from the CITY. For the purpose of this proposal, an "emergency" is defined as any condition which is a threat to the health, welfare or safety of citizens and/or property or a condition that will adversely affect an essential public service, as determined solely by the CITY. **CONTRACTOR will provide a 24-hour call answering service.**

9. **Work Standards:** All work will be performed according to the industry standards and to the complete satisfaction of the CITY. All work will fully conform with the City Code. CONTRACTOR will be licensed by the State of Florida. All Contractors and subcontractors will comply with all Occupational Safety and Health Administration (OSHA) standards, State and County Safety and Occupational Health Standards and any other applicable rules and regulations. CONTRACTOR (and subcontractors) will be held totally responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site.
10. **Material and Parts:** The CONTRACTOR will report to a service call with all standard parts, fittings, filters and accessories required to service air conditioning systems. All materials and parts to be utilized will conform to standards of the trade, manufacturers' recommendations, and be acceptable by the CITY. All equipment, material and parts that the City desires to salvage will be removed and stored in an area selected by the City.
11. **Photos Required:** CONTRACTOR will take a picture of the work to be done with date and time stamp upon arrival to a service call. Upon completion CONTRACTOR will take a second picture with date and time stamp. This verifies how long CONTRACTOR was on-site. Both pictures must accompany invoice. Time charged on the invoice must reflect that of the pictures attached. If pictures are not presented with invoice the invoice will not be processed and the 30 days will not begin until verified pictures are presented.
12. **Service Hours:** Except for emergency conditions with the CITY's prior approval, service calls will be made only between the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, and will exclude CITY recognized holidays. Work requested outside of these times will be considered "after hours" service and may be charged at the rates specified in Exhibit B. Holidays will be considered "after hours".
13. **Clean-Up:** CONTRACTOR will be responsible for removing all debris from the site and cleaning affected areas. CONTRACTOR will keep the premises free of debris and unusable materials resulting from their work and as work progresses; or upon request by the CITY's representative, will remove such debris and materials from the property. CONTRACTOR will leave all affected areas as they were prior to beginning work. The fee for any clean-up will be factored into the hourly labor rate.
14. **Protection of Property:** CONTRACTOR will make necessary repairs in such a manner that does not damage property. If damage occurs to property by reason of any repairs or installations performed under this Contract, CONTRACTOR will replace or repair the same at no cost to the CITY. If damage caused by CONTRACTOR has to be repaired or replaced to its previous condition or better by the CITY, the cost of such work will be deducted from the monies due CONTRACTOR.
15. **Protection Of Materials:** CONTRACTOR will be solely responsible for safeguarding CONTRACTOR's materials, tools, and equipment. The CITY will not assume any responsibility for vandalism and/or theft of materials, tools and/or equipment. CONTRACTOR will obtain the permission of the CITY's representative regarding any

needed storage of materials, parts and equipment. Such storage will be done in such a manner as not to interfere with the CITY's daily operations. CONTRACTOR will be held responsible for any and all accidents caused by negligence from this source. The CITY does not accept responsibility for losses of material or equipment regardless of approval to store in any of the using institution's facilities or grounds. CONTRACTOR's responsibility for materials to be incorporated into the work, will end only when the CITY has accepted the work as complete.

## **16. WARRANTIES**

**16.1 General Warranty.** CONTRACTOR warrants that the Work and all of its components will be free from defects and flaws in design, workmanship, and materials for the duration of the General Warranty Period described below; will strictly conform to the requirements of the Contract; and will be fit, sufficient and suitable for the purposes expressed in, or reasonably inferred from, the Contract. This general warranty is in addition to any other warranties expressed or implied by law, which are hereby reserved unto the OWNER

**16.1.1 General Warranty Period.** The General Warranty Period will be one year from completed date, except for those items of equipment or those aspects of work placed in service or approved by the OWNER after the completion date, in which instance the warranty for the particular equipment or aspect of work will be one year from the date of OWNER approval; provided, however, that the General Warranty Period for particular equipment placed in continuous service before the completion date may start to run from an earlier date, if expressly provided in this Contract.

**16.1.2 Duty to Correct.** CONTRACTOR will correct any and all defects that defects in material or workmanship which may appear during the General Warranty Period, even if discovered after the General Warranty Period, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to the OWNER, within a reasonable period of time, and to the OWNER's satisfaction.

**16.1.3 General Warranty is Absolute.** The only exceptions to the General Warranty will be defects or damage caused by abuse, modification or improper maintenance or operation by persons other than CONTRACTOR or CONTRACTOR's subcontractors, sub-subcontractors or suppliers; or normal wear and tear under normal usage. In all other respects the General Warranty will be absolute.

**16.2 Special Warranties.** CONTRACTOR will furnish all additional special warranties required by this Contract no later than the completion date. The OWNER may require special warranties in connection with the approval of accepted equals and other substitute materials, equipment, methods, and procedures, and in connection with Work which is defective or nonconforming.

**16.3. Limitation as to Certain Equipment.** As to any equipment which the OWNER has reserved the sole right to have installed, the Warranties under this Article will extend to ensure that the equipment is installed according to the manufacturers' specifications, and that any manufacturer or product warranties are conveyed to the OWNER; but in such instance CONTRACTOR will not be held liable for the operating performance of such equipment.



**16.4 Relation to Specific Correction Provisions and Other Remedies.** CONTRACTOR's general warranty and any additional or special warranties are not limited by CONTRACTOR's obligations to specifically correct Defective/Nonconforming Work, nor are they limited by any other remedies provided in the Contract Documents. CONTRACTOR will also be liable for any damage to property or persons (including death), including consequential and direct damages, relating to any breach of the General Warranty or any additional or special warranties required.

**16.5 Third Party Warranties** CONTRACTOR will obtain and assign or transfer to the OWNER, all product warranties available from manufacturers or suppliers of materials to be used in the Project. CONTRACTOR will also obtain and assign or transfer to OWNER, any additional third party warranties as to materials or methods as specified in the Contract Documents. The OWNER's acceptance of any assigned warranties or guaranties will be a precondition to final payment and will not relieve CONTRACTOR of any of CONTRACTOR's guaranty or warranty obligations under this Contract.

## **17. SERVICE HOURS AND BILLING**

**17.1 Prior Written Approval Required for Overtime:** In the event that overtime work is required to complete the work, prior written approval will be obtained from the City's representative.

**17.2 Prior Written Approval Required for Non-Regular Service Hours:** Except for emergencies with prior written approval service calls will be made between the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, excluding City recognized holidays. Work requested outside of these times will be considered "after hours" service and may be charged at the rates specified in Exhibit B. Holidays will be considered "after hours".

**17.3 Charges:** Billable hours paid under this Contract will be only for productive hours at the job site. No compensation will be provided herein for time spent for transportation of workers, material acquisition, handling and delivery, or for movement of CONTRACTOR owned or rental equipment.

**EXHIBIT B  
FEE SCHEDULE**

<i>Description</i>	<i>Hourly Rate</i>
One HVAC Technician Regular hours 7a—7p	\$67.00
One HVAC Technician plus Helper Regular hours 7a—7p	\$105.00
One HVAC Technician After hours 7p – 7a	\$75.00
One HVAC Technician plus Helper After hours 7a—7p	\$115.00
One Controls Technician Regular hours 7a—7p	\$90.00
One Controls Technician plus Helper Regular hours 7a—7p	\$135.00
One Controls Technician After hours 7p – 7a	\$115.00
One Controls Technician plus Helper After hours 7p – 7a	\$175.00
Markup on Repair Parts and Componets	15%
Markup on new Hardware and S stems	15%

**Composite Exhibit C, consisting of the RFP and Proposal,  
is on file in the Office of the City Clerk**