

ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
2100 CLARENDON BOULEVARD, SUITE 500  
ARLINGTON, VIRGINIA 22201

NOTICE OF AWARD OF CONTRACT

TO: HAVTECH SERVICE DIVISION LLC  
9505 BERGER ROAD  
Columbia, Maryland 21046

DATE ISSUED: 05/24/2016  
CONTRACT NO: 16-317-SS  
CONTRACT TITLE: Repair And  
Maintenance Of  
Proprietary HVAC  
Systems (HAVTECH)

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE  
VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

Your firm is awarded the above referenced contract. The contract term covered by this  
Notice of Award is effective immediately and expires on May 15, 2018.

This contract may be renewed for three (3) additional one-year periods after the  
expiration date listed above.

The contract documents consist of the terms and conditions of Arlington County Agreement  
No 16-317-SS, including any exhibits, attached or amendments thereto.

ATTACHMENTS:

1. ARLINGTON COUNTY AGREEMENT NO. 16-317-SS

EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT  
AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: Eric Turner

TELEPHONE NO.: 443-283-8864

EMAIL ADDRESS: EricTurner@havtech.com


COUNTY CONTACT: Tsehay Lightfoot

TELEPHONE NO.: (703) 228-7593

EMAIL ADDRESS: tlightfoot@arlingtonva.us

CONTRACT AUTHORIZATION

DISTRIBUTION

  
for Michael Bevis  
Purchasing Agent

5/24/16  
Date

VENDOR: 1  
BID FOLDER: 2

ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
SUITE 500, 2100 CLARENDON BOULEVARD  
ARLINGTON, VA 22201

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AGREEMENT NO. 16-317-SS

THIS AGREEMENT is made, on the date of execution by the County, between Havtech Service Division, LLC, 9505 Berger Road, Columbia MD 21046 ("Contractor") a Maryland Corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The "Contract Documents" consist of:

This Agreement  
Attachment A – Scope of Work  
Attachment B – Contract Pricing

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties' agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the "Contract" or the "Agreement".

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (the "Work"). As detailed in the "Scope of Work" (Attachment A), the primary purpose of the Work is provide preventative maintenance and on-call repair of HVAC equipment from the following manufacturers: Daikin, Greenheck and Annexair. It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County Department of Environmental Services or designee. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its Work under this Agreement.

4. CONTRACT TERM

Time is of the essence. The Work will commence on the date of the execution of the Agreement by the County and must be completed no later than May 15, 2018 ("Initial Contract Term"), subject to any modifications provided in the Contract Documents. Upon satisfactory performance by the Contractor the County may, through issuance of a unilateral Notice of Award, authorize continuation of the Agreement

under the same contract prices for not more than three (3) additional 12-month periods, from May 16, 2018 to May 15, 2021 (each a "Subsequent Contract Term"). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

5. CONTRACT AMOUNT

The County will pay the Contractor in accordance with the terms of the Payment section below and of Attachment B for the Contractor's completion of the Work as required by the Contract Documents. The Contractor will complete the Work for the total amount specified in this section ("Contract Amount").

The County will not compensate the Contractor for any goods or services beyond those included in Attachment A unless those additional goods or services are covered by a fully executed amendment to this Contract. Additional services will be billed at the rates set forth in Attachment B unless otherwise agreed by the parties in writing.

6. CONTRACT PRICE ADJUSTMENTS

The Contract Amount/unit price(s) will remain firm until May 15, 2018 ("Price Adjustment Date"). To request a price adjustment, the Contractor or the County must submit a written request to the other party not less than 60 days before the Price Adjustment Date. Adjustments to the Contract Amount/unit price(s) will not exceed the percentage of change in the U.S. Department of Labor Consumer Price Index, All Items, Unadjusted, Urban Areas ("CPI-U") for the 12-month period ending in December of each year of the Contract.

Any Contract Amount/unit price(s) that result from this provision will become effective the day after the Price Adjustment Date and will be binding for 12 months. The new Price Adjustment Date will be 12 months after the price adjustment.

If the Contractor and the County have not agreed on a requested adjustment by 30 days before the Price Adjustment Date, the County may terminate the Contract, whether or not the County has previously elected to extend the Contract's term.

7. PAYMENT

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within 30 days after receipt of an invoice for completed work that is reasonable and allocable to the Contract and that has been performed to the satisfaction of the Project Officer. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

8. REIMBURSABLE TRAVEL-RELATED EXPENSES

The County will not reimburse the Contractor for travel-related expenses for employees located within the greater Baltimore-Washington Metropolitan Area, as defined by the United States Office of Management and Budget. For employees located outside this area, the County will reimburse for pre-approved travel-related expenses, documented with receipts, as follows:

Meals: The County will reimburse at the U.S. General Services Administration's ("GSA") per diem rates for the destination, current for the date of travel, with the first and last days of travel counted at 75% of the per diem rate.

Lodging: The County will reimburse for actual lodging costs at a reasonably priced commercial facility in the immediate area of where the Work is performed, up to the GSA's daily rates for the destination, current for the date of travel. Receipts for lodging must be itemized. Only room and tax charges will be

reimbursed; no reimbursement will be made for additional expenses, including but not limited to, room service, laundry, telephone and in-room movies. If the Contractor or its employee shares a room with another person who is not connected with the performance of the Work, including a spouse, the County will reimburse for only the cost of a single room.

The applicable GSA per diem rates can be obtained at <http://www.gsa.gov/portal/content/104877>.

Transportation:

General

Reservations must be made in advance whenever possible to take advantage of all available discounts.

Ground Transportation

Use of public transportation is encouraged. The County will reimburse for the business use of personal or company vehicles, if allowed, at the GSA's mileage rates current at the time of travel. The Contractor's request for reimbursement may not include any personal use of the vehicle.

The County may approve reimbursement for rental of vehicles or use of taxicabs if the Contractor can demonstrate that to be the most economical option. Any reimbursement will cover only those rental charges, insurance and/or fuel fees allocable to work on the Contract and will not cover the purchase of liability insurance and/or collision/comprehensive insurance if the Contractor's or the employee's existing insurance coverage provides such protection.

Air Travel

The County will reimburse for air travel at the lowest available fare, typically economy. Tickets must be purchased at least seven days in advance, unless otherwise approved by the County.

Time limit: The County will not honor requests for travel reimbursement that are submitted more than 60 days after completion of the travel.

Non-reimbursable Expenses: The County will never reimburse for the following expenses:

1. Alcoholic beverages
2. Personal phone calls
3. Entertainment (e.g. pay TV, movies, night clubs, health clubs, theaters, bowling)
4. Personal expenses (e.g. laundry, valet, haircuts)
5. Personal travel insurance (e.g. life, medical, or property insurance) for airfare or rental cars
6. Auto repairs, maintenance and insurance costs for personal vehicles

9. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

**10. ASBESTOS AND HAZARDOUS MATERIALS**

The Work expressly exclude any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos polychlorinated biphenyl ("PCB"), or other hazardous materials (collectively, "Hazardous Materials"). County warrants and represents that, except as set forth in a writing signed by Contractor, there are no Hazardous Materials on the Premises that will in any way affect Contractor's Work and County has disclosed to Contractor the existence and location of any Hazardous Materials in all areas within which Contractor will be performing the Work. Should Contractor become aware of or suspect the presence of Hazardous Materials, Contractor may immediately stop work in the affected area and shall notify County. County will be responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. County shall be exclusively responsible for and shall indemnify and hold harmless Contractor (including its employees, agents and subcontractors) from and against any loss, claim, liability, fees, penalties, injury (including death) or liability of any nature, and the payment thereof, arising out of or relating to any Hazardous Materials on or about the premises, not brought onto the premises by Contractor. Contractor shall be required to resume performance of the Work only in the absence of Hazardous Materials or when the affected area has been rendered harmless. In no event shall Contractor be obligated to transport or handle Hazardous Materials, provide any notices to any governmental agency, or examine the premises site for the presence of Hazardous Materials.

**11. NO WAIVER OF RIGHTS**

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

**12. NON-APPROPRIATION**

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

**13. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR**

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; and the County is under no obligation to buy that or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable

requirement in the past. The County may require more goods and/or services than the estimated annual quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

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The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by the resulting Contract. The items or services covered by this Contract may be or become available under other County contract(s), and the County may determine that it is in its best interest to procure the items or services through those contract(s).

**14. COUNTY PURCHASE ORDER REQUIREMENT**

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

**15. REPLACEMENT OF PERSONNEL AND SUBCONTRACTORS**

The County has the right reasonably to reject staff or subcontractors whom the Contractor assigns to the project. The Contractor must then provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's and its subcontractors' employees is the sole responsibility of the Contractor.

The Contractor may not replace key personnel or subcontractors identified in its proposal, including the approved Project Manager, without the County's written approval. The Contractor must submit any request to remove or replace key personnel or subcontractors to the County Project Officer at least 15 calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and his or her qualifications.

If the approved Project Manager must be absent for an extended period, the Contractor must provide an interim Project Manager, subject to the County's written approval.

If the approved Project Manager resigns or is terminated by the Contractor, the Contractor will replace the Project Manager with an individual with similar qualifications and experience, subject to the County's written approval.

**16. \* EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED**

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.

- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

**17. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED**

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

**18. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR**

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

**19. WARRANTY**

Contractor warrants that: (a) for a period of 12 months from the earlier of the date of equipment start-up or replacement the material manufactured by Contractor and furnished hereunder is free from defects in material and manufacture; and (b) the labor portion of the Work is warranted to have been properly performed for a period of 90 days from date of completion (the "Warranty"). Defects must be reported to Contractor within the Warranty period. Contractor's obligation under the Warranty is limited to repairing or replacing the defective part at its option and to correcting any improperly performed labor. No liability whatsoever shall attach to Contractor until the Work have been paid for in full. Exclusions from this Warranty include damage or failure arising from: wear and tear; corrosion, erosion, deterioration; equipment. Contractor shall not be obligated to pay for the cost of lost refrigerant or lost product. Additional terms and conditions of warranty coverage are applicable for refrigeration equipment. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. Equipment, material and/or parts that are not manufactured by Contractor are not warranted by Contractor and have such warranties as may be extended by the respective manufacturer.

THE WARRANTY AND LIABILITY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. UNLESS EXPRESSLY WARRANTED IN WRITING FOR CERTAIN HUSSMANN BRANDED EQUIPMENT, CONTRACTOR MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED REGARDING PREVENTION BY THE SCOPE OF SERVICES, OR ANY COMPONENT THEREOF, OF MOLD/MOULD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER

CONTAMINATES. CONTRACTOR SPECIFICALLY DISCLAIMS ANY LIABILITY IF THE SCOPE OF SERVICES OR ANY COMPONENT THEREOF IS USED TO PREVENT OR INHIBIT THE GROWTH OF SUCH MATERIALS.

20. SAFETY

The Contractor must ensure that it and its employees and subcontractors comply with all applicable local, state and federal policies, regulations and standards relating to safety and health, including the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General Industry and for the Construction Industry and the applicable Federal Environmental Protection Agency and Virginia Department of Environmental Quality standards.

21. TERMINATION

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. Upon such termination, the Contractor may apply for compensation for Contract services that the County previously accepted ("Termination Costs"), unless payment is otherwise barred by the Contract. The Contractor must submit any request for Termination Costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for Termination Costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after



notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

**B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY**

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to Termination Costs, as defined above, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

**22. INDEMNIFICATION**

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

**23. INTELLECTUAL PROPERTY INDEMNIFICATION**

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

#### **24. COPYRIGHT**

By this Contract, the Contractor irrevocably transfers, assigns, sets over and conveys to the County all rights, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor will execute any documents that the County requests to formalize such transfer or assignment.

The rights granted to the County by this section are irrevocable and may not be rescinded or modified, including in connection with or as a result of the termination of or a dispute concerning this Contract.

The Contractor may not use subcontractors or third parties to develop or provide input into any copyrightable materials produced pursuant to this Contract without the County's advance written approval and unless the Contractor includes this Copyright provision in any contract or agreement with such subcontractors or third parties related to this Contract.

#### **25. OWNERSHIP AND RETURN OF RECORDS**

This Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs.

All drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written, oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of this Contract (collectively "Records") are the exclusive property of the County and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or willingly cause or allow such materials to be used for any purpose other than performance of this Contract without the written consent of the County.

The Records are confidential, and the Contractor will neither release the Records nor share their contents. The Contractor will refer all inquiries regarding the status of any Record to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all Records, including hard copies of electronic records, to the Project Officer and will destroy all electronic Records.

The Contractor agrees to include the provisions of this section as part of any contract or agreement related to this Contract into which it enters with subcontractors or other third parties.

The provisions of this section will survive any termination or cancellation of this Contract.

#### **26. ETHICS IN PUBLIC CONTRACTING**

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental

Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**27. COUNTY EMPLOYEES**

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

**28. FORCE MAJEURE**

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

**29. AUTHORITY TO TRANSACT BUSINESS**

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

**30. RELATION TO COUNTY**

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

**31. ANTITRUST**

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

**32. REPORT STANDARDS**

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, proposals must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)
- avoid use of plastic covers or dividers

- avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

**33. AUDIT**

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

**34. ASSIGNMENT**

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County.

**35. AMENDMENTS**

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

**36. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES**

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

**37. DISPUTE RESOLUTION**

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

**38. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION**

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

**39. ARBITRATION**

No claim arising under or related to this Contract may be subject to arbitration.

**40. NONEXCLUSIVITY OF REMEDIES**

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

**41. NO WAIVER**

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

**42. SEVERABILITY**

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

**43. ATTORNEY'S FEES**

The County is entitled to attorney's fees and costs that it incurs to enforce any provision of this Contract.

**44. SURVIVAL OF TERMS**

In addition to any numbered section in this Agreement which specifically state that the term or paragraph survives the expiration or termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; INTELLECTUAL PROPERTY INDEMNIFICATION; WARRANTY; AND CONFIDENTIAL INFORMATION.

**45. HEADINGS**

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

**46. AMBIGUITIES**

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

**47. NOTICES**

Unless otherwise provided in writing, all written notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

**TO THE CONTRACTOR:**

Eric Turner

C/O HAVTECH Service

9505 Berger Road

Columbia, Maryland 21046

**TO THE COUNTY:**

Tsehay Lightfoot, Project Officer

Department of Environmental Services

Facilities Management Bureau

Arlington County, Virginia

1400 N. Uhle Street, Suite 601

Arlington, VA 22201

AND

Michael E. Bevis, Purchasing Agent  
Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201

**48. NON-DISCRIMINATION NOTICE**

Arlington County does not discriminate against faith-based organizations.

**49. LIMITED ENGLISH PROFICIENCY**

The Contractor must comply with Executive Order 13166, Title VI of the Civil Rights Act of 1964 and make reasonable efforts to ensure that as part of the services that it provides, adequate communication services, including interpretation and translation, are available to persons who have limited English proficiency. If such services are not included in the Contract's scope of services and pricing, the Contractor will use a County-contracted service provider, and the County will pay the fees.

**50. INSURANCE REQUIREMENTS**

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- a. Additional Insured - The County and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.
- b. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.

c. Claims-Made Coverage - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.

d. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County's acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for of all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Contract or in connection in any way whatsoever with the Work. The Contractor's insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

HAVTECH SERVICE DIVISION, LLC

AUTHORIZED  
SIGNATURE:



FOR

NAME: MICHAEL E. BEVIS  
TITLE: PURCHASING AGENT

DATE: 5/24/16

AUTHORIZED  
SIGNATURE:

S. Daniel Davis III

Digitally signed by S. Daniel Davis III  
DN: cn=S. Daniel Davis III, o=Havtech Service,  
ou, email=dandavis@havtech.com, c=US  
Date: 2016.05.23 16:48:04-0700

NAME AND  
TITLE: Service Sales Leader

DATE: 5/23/2016

ATTACHMENT A - SCOPE OF SERVICES  
ARLINGTON COUNTY AGREEMENT 16-317-SS

**I. PREVENTATIVE MAINTENANCE**

Contractor will provide professional maintenance services on the air conditioning equipment specified on the "List of Equipment" below:

**Service Location 1:**

2020A Homeless Shelter  
2020A 14<sup>th</sup> Street  
Arlington, Virginia 22201

**Covered equipment list:**

<b>Manufacturer</b>	<b>Location</b>	<b>Model</b>
Daikin	Lower Roof	RMXS48LVJU
Daikin	Upper Roof	REMQ120PBTJ
Daikin	Upper Roof	REMQ96PBTJ
Daikin	Upper Roof	REMQ120PBTJ
Daikin	Upper Roof	REMQ120PBTJ
Daikin	Upper Roof	REMQ120PBTJ
Daikin	Upper Roof	REMQ96PBTJ
Daikin	3 <sup>rd</sup> Fl Mechanical Room	CAH010GVGC
Daikin	Telephone Room	iTouch Manager
Daikin	3 <sup>rd</sup> Floor	CAH010GVGC
Greenheck	2 <sup>nd</sup> Fl Mechanical Room	DGX-109-H12-UB

**Service Location 2:**

Arlington County DES Equipment Division  
2701 S. Taylor Street  
Arlington, Virginia 22206

**Covered equipment list:**

<b>Manufacturer</b>	<b>Location</b>	<b>Model</b>
Daikin	Roof	REMQ96PBYD
Daikin	Roof	REMQ72PBYD
Annexair RTU-1	Roof	ERPE02FPCHRHGAM12TB
Annexair HRV-1	Roof	ERPE02FPCHRHGAM12TB
Annexair HRV-2	Roof	ERPE04FPHGTB
Annexair HRV-3	Roof	ERPE12FPHGTB

Contractor guarantees response time of four (4) hours or the diagnostic time for that placed service call is at no charge.



- Daikin evaporators are not covered under this agreement however if the need arises, CONTRACTOR will perform diagnostics and repairs at the Preferred Customer Rates
- Conduct periodic preventive maintenance visits per year in accordance with manufacturer recommendations, application demands, environmental factors and the experience of Contractor technicians and service managers.
- All work will be performed during normal Contractor working hours; 7:00 A.M. to 4:00 P.M. Monday-Friday.
- Identify defects, failed or doubtful components,
- Inform customers of preventive maintenance progress, inspection findings and applicable maintenance and repair options.
- Recommend cost-effective repairs, applicable retrofit and modification options

**Daikin VRV'S/iTouch Manager**  
**Quarterly Maintenance Inspection**

- Customer is responsible to clean or replace all evaporator air filters before Contractor performs the quarterly inspection
- Check in with customer and review any operating issues
- Check the Daikin iTouch Manager for alarms or errors
- Check the general operation of units
- Check the inverter boards and clean if necessary
- Check that all connectors are securely connected to the outdoor unit Printed Circuit Board (PCB)
- Inspect outdoor fans for cracks and chips
- Check unit cabinet for signs of physical damage
- Ensure the outdoor cabinet drains are clear
- Check the condition of the heat exchanger (outdoor coil)
- The customer is responsible for cleaning the heat exchangers (outdoor coils)
- Check the refrigeration piping insulation is not damaged
- Check for signs of refrigerant leakage, i.e. oil in base of unit and around brazed joints
- Tighten all electrical connections within the outdoor VRV'S
- Ensure all cabinet screws are secure

- While operating, check the system for any abnormal noise or vibration from the condensing unit
- 
- Connect Service Checker (where applicable) to each VRV Heat Pump system
  - Check pressures, temperatures and compare to target pressures and temperatures
  - Record and log up to one (1) hour of operational data per system
  - Diagnose data to determine if any corrective action(s) need to be addressed
  - Check iManager for any loose electrical connections
  - Provide "Service pack" or routine upgrades to Daikin the iTouch manager (Entire revision upgrades will be provided on a charge basis)
  - Submit a written inspection report to the customer which includes the operating parameters, deficiencies, repairs or corrective action required
  - Clean areas of any debris
  - Indoor units will be checked if necessary at the Preferred Customer Rates

#### Daikin Air Handler w/Water Coils

##### Quarterly Maintenance Inspection

- Review general condition of equipment and associated supply & return ductwork and report any anomalies
- Check/lubricate motors and fan (and other) non-sealed bearings
- Check fan belt condition and sheaves alignment; adjust accordingly
- Replace the evaporator fan belt(s) one (1) time per contract year
- All filters will be responsibility of Arlington County staff
- Check condition of evaporator and condensate pan
- Inspect evaporator coil for debris
- Check chill/hot water valves operation
- Inspect fan contactors and connections annually
- Tighten electrical connections (high and low voltage wiring).

- Test all features and functions of the automatic control system including the economizer cycle; verify setup has not been modified and report any defective DDC and/or electronic/electric controls
- Tighten loose mechanical fasteners (especially exterior cabinet enclosure).
- Check condition of the fan vibration isolators
- Check starters/contactors/transformers for operation and wear
- Review the outstanding issues with the resident maintenance or engineering staff prior to leaving the site; recommend additional PM tasks and frequencies which the staff could be performing between the maintenance inspections
- Submit a written inspection report to the customer which includes the operating parameters, deficiencies, repairs or corrective action required

#### **Annexair Package Unit**

##### **Quarterly Maintenance Inspection**

- Review general condition of equipment and associated supply & return ductwork and report any anomalies
- Check/lubricate motors and fan (and other) non-sealed bearings
- Check fan belt condition and sheaves alignment; adjust accordingly
- Replace the evaporator fan belt(s) one (1) time per contract year
- All filters will be responsibility of Arlington County staff
- Check condition of evaporator and condensate pan
- Inspect evaporator coil for debris
- Check chill/hot water valves operation
- Inspect fan contactors and connections annually
- Tighten electrical connections (high and low voltage wiring).
- Test all features and functions of the automatic control system including the economizer cycle; verify setup has not been modified and report any defective DDC and/or electronic/electric controls
- Tighten loose mechanical fasteners (especially exterior cabinet enclosure).

- Check condition of the fan vibration isolators
- Check starters/contactors/transformers for operation and wear
- Review the outstanding issues with the resident maintenance or engineering staff prior to leaving the site; recommend additional PM tasks and frequencies which the staff could be performing between the maintenance inspections
- Submit a written inspection report to the customer which includes the operating parameters, deficiencies, repairs or corrective action required

### Daikin VRV Heat Pump Units

#### Quarterly Maintenance Inspection

- Customer is responsible to clean or replace all evaporator air filters before Contractor performs the quarterly inspection
- Check in with customer and review any operating issues
- Check the general operation of units
- Check the inverter boards and clean if necessary
- Check that all connectors are securely connected to the outdoor unit Printed Circuit Board (PCB)
- Inspect outdoor fans for cracks and chips
- Check unit cabinet for signs of physical damage
- Ensure the outdoor cabinet drains are clear
- Check the condition of the heat exchanger (outdoor coil)
- The customer is responsible for cleaning the heat exchangers (outdoor coils)
- Check the refrigeration piping insulation is not damaged
- Check for signs of refrigerant leakage, i.e. oil in base of unit and around brazed joints
- Tighten all electrical connections
- Ensure all cabinet screws are secure
- While operating, check the system for any abnormal noise or vibration from the condensing unit
- Connect Service Checker (where applicable) to each VRV Heat Pump system
- Check pressures, temperatures and compare to target pressures and temperatures

- Record and log up to one (1) hour of operational data per system
- Diagnose data to determine if any corrective action(s) need to be addressed
- Submit a written inspection report to the customer which includes the operating parameters, deficiencies, repairs or corrective action required
- Clean areas of any debris
- Indoor units will be checked if necessary at the Preferred Customer rates

## II. ON-CALL REPAIR

In the event of a failure of any equipment included under this Contract, the Contractor shall arrive onsite with all tools, repair parts and equipment necessary to perform repairs within four (4) hours of receiving a telephone call or email notification from the County. If the faulty system provides critical HVAC service (such as in an automated data processing area, a laboratory where ventilation and temperature control is critical, or as clearly identified by the County Project Officer and/or designee), the Contractor shall respond by telephone within two (2) hours of receiving a call from the County, identifying such an emergency. (Note: All emergency requests will be specifically identified by the County on work orders, purchase orders, e-mails and/or phone calls). If the Contractor is unable or fails to arrive onsite or communicate within the required time frame, following on-call requests, on two (2) or more occasions during any one month period, the County may terminate the contract for convenience.

For services Not Included under This Agreement and at any other Arlington County Facilities; the Contractor will furnish labor, overtime or emergency labor, repair parts and components, regulated material recovery and disposal services at **PREFERRED CUSTOMER RATES**.

## III. PAYMENT FOR REPAIR AND ON-CALL SERVICES:

The Contractor shall provide itemized invoices, in duplicate, for all repair and on-call services for listed and non-listed equipment performed by the Contractor and accepted by the County Project Officer, with associated Work Ticket attached.

A separate invoice shall be submitted for each occurrence (repair); the invoices shall contain at a minimum the following information:

- (A) Building name and address where equipment is located.
  - (B) Date and time of arrival and completion of repair.
  - (C) Name of County person authorizing the repairs.
  - (D) Complete description of repair.
  - (E) Amount of billing all parts installed and total hours it took to provide the repairs.
- Contractor's invoices for parts and signed work orders and sign-off's shall be attached. Parts shall not be shown as a lump sum. The invoice shall include a breakdown of all materials used.

(F) County's Work Order Number.

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Payments for all labor performed on a time and materials basis shall be for work performed and services rendered on the job site only. No "portal to portal" charges are permitted under this contract.

ATTACHMENT B - PRICING  
ARLINGTON COUNTY AGREEMENT 16-317-SS

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For providing HVAC system preventative maintenance to the equipment listed in Attachment A, County will pay the Contractor the following fees:

**Location 1: Homeless Shelter**

<b>Year</b>	<b>Annual Rate</b>	<b>Quarterly Payment</b>
1	\$7,488.00	\$1,872.00
2	\$7,716.00	\$1,929.00

**Location 2: Equipment Bureau**

<b>Year</b>	<b>Annual Rate</b>	<b>Quarterly Payment</b>
1	\$4,968.00	\$1,242.00
2	\$5,120.00	\$1,280.00

For providing on-call HVAC system repair and maintenance services at all County locations Contractor will furnish labor, overtime or emergency labor, repair parts and components, regulated material recovery and disposal services at the following labor rates:

<b>Type</b>	<b>Rate/per labor hour</b>
Straight Time	\$145.00 per labor hour
Overtime	\$180.00 per labor hour
Sunday's	\$235.00 per labor hour
Holiday	\$260.00 per labor hour

Truck Charges: \$30.00 per service call  
Environmental Impact Fee: \$10.00