

CITY OF NORTH MIAMI
A/C REPAIR & MAINTENANCE SERVICES AGREEMENT
(Invitation for Bids No. 81-17-18)

THIS AIR CONDITIONING REPAIR AND MAINTENANCE SERVICES AGREEMENT (“Agreement”) is made and entered into this 1st day of April, 2019, by and between the **City of North Miami**, a Florida municipal corporation, having its principal office at 776 NE 125th Street, North Miami, FL 33161 (“City”) and **APEX-Tech Electrical & Air Conditioning, Inc.**, a for-profit corporation organized and authorized to do business in the State of Florida, having its principal office at 12490 NE 7th Ave Suite 205, North Miami, FL 33161 (“Contractor”). The City and Contractor shall collectively be referred to as the “Parties”, and each may individually be referred to as a “Party”.

RECITALS

WHEREAS, on October 17, 2018, the City of North Miami (“City”) advertised *Invitation for Bids No. 81-17-18 - Air Conditioning Repair & Maintenance Services* (“IFB”), seeking a qualified air conditioning contractor for the preventive maintenance and on-call repair services of all air conditioning systems and central units operating in City buildings, in accordance with the terms, conditions, and specifications contained in the IFB (“Services”); and

WHEREAS, in response to the IFB, Contractor submitted its sealed bid and was subsequently evaluated by City administration as one of the lowest responsive, responsible bidders whose bid, qualifications and references demonstrated to be the most advantageous to the City in the procurement of Services; and

WHEREAS, the Contractor has expressed its capability, expertise and willingness to perform the Services pursuant to the requirements of the Contract Documents; and

WHEREAS, the City Manager has determined that it is in the best interest of the City to enter into this Agreement with Contractor for the provision of prompt, efficient and cost effective Services City-wide.

NOW THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 - RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 The following documents, collectively referred to as the "Contract Documents", are incorporated into and made part of this Agreement:

2.1.1 City’s *Invitation for Bids No. 81-17-18 - Air Conditioning Repair & Maintenance Services*, attached hereto by reference;

2.1.2 Contractor’s response to IFB, including price proposal, Certificate of Insurance, and State of Florida License, attached hereto as “Exhibit A”;

2.1.3 City’s Work Distribution attached hereto as “Exhibit B”;

2.1.4 Any additional documents which are required to be obtained and/or submitted in the provision of Services under this Agreement.

2.2 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

- 2.2.1 Specific written direction from the City Manager or City Manager’s designee.
- 2.2.2 This Agreement.
- 2.2.3 The IFB.

ARTICLE 3 – TERM OF AGREEMENT

3.1 Subject to authorized adjustments, the Initial Term of this Agreement shall be a period of three (3) years commencing April 1, 2019, through March 31, 2022, unless terminated earlier by the City (“Initial Term”). Contractor agrees that the performance of Services shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed time for performance. Failure to achieve timely provision of Services shall be regarded as a material breach of this Agreement and Contractor shall be subject to the appropriate remedies available at law.

3.2 Following the Initial Term, the City shall have the option to renew this Agreement in writing for two (2) additional one (1) year periods.

3.3 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor’s ability to perform Services or any portion thereof, the City may request that the Contractor, within a reasonable time frame set forth in the City’s request, provide adequate assurances to the City in writing, of Contractor’s ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

ARTICLE 4 – COMPENSATION TO CONTRACTOR

4.1 The Contractor shall be compensated an amount not to exceed the rates listed in the City’s Work Distribution. This amount shall remain fixed for the duration of the Initial Term period.

4.2 Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Contractor.

ARTICLE 5 - SCOPE OF SERVICES

5.1 Contractor shall provide all the required labor, supervision, transportation, materials, equipment, supplies, tools and services necessary for the provision of Services, under the terms, conditions and specifications contained in the Contract Documents. Contractor shall provide Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

5.2 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required for the provision of Services, with personnel fully licensed by the State of Florida; (ii) Contractor is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform Services shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner and at such times and locations as described by the City for the budgeted amount; and (v) the person executing this Agreement on behalf of Contractor is duly authorized to execute same and fully bind Contractor as a Party to this Agreement.

ARTICLE 6 - CITY'S TERMINATION RIGHTS

6.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon ten (10) days written notice to Contractor. In such event, the City shall pay Contractor compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Contractor for any additional compensation, or for any consequential or incidental damages.

ARTICLE 7 - NOTICES

7.1 All notices, demands, correspondence and communications between the City and Contractor shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To Contractor: APEX-Tech Electrical & Air Conditioning, Inc.
 Attn: Stephane Lherisson
 12490 NE 7th Ave Suite 205
 North Miami, FL 33161

To City: City of North Miami
 776 N.E. 125th Street
 North Miami, Florida 33161
 Attention: City Manager

With a copy to: City of North Miami
 776 N.E. 125th Street
 North Miami, Florida 33161
 Attention: City Attorney

7.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

7.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

ARTICLE 8 - INDEPENDENT CONTRACTOR

8.1 Contractor, its employees and agents shall be deemed to be independent contractors and not agents or employees of the City and shall not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights generally afforded to classified or unclassified employees. The Contractor shall not be deemed entitled to the Florida Workers' Compensation benefits as an employee of the City.

8.2 Contractor agrees and understands that: (i) any and all Subcontractors or suppliers used by Contractor shall be paid by Contractor and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of Subcontractors or suppliers for any of the services related to this Agreement shall be borne solely by Contractor.

ARTICLE 9 - CONFLICTS OF INTEREST

9.1 The Contractor represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

9.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly with Contractor. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 10 - DEFAULT

10.1 If Contractor fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Contractor shall be in default. The City shall have the right to terminate this Agreement, in the event Contractor fails to cure a default within ten (10) business days after receiving Notice of Default. Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

ARTICLE 11 - PUBLIC RECORDS

11.1 Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

ARTICLE 12 - INDEMNIFICATION

12.1 Contractor shall defend, indemnify and hold harmless the City, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the Contractor, its officers,

directors, agents, partners, subcontractors, employees and managers in the performance of the Services under this Agreement.

12.2 Contractor shall be fully responsible to City for all acts and omissions of the Contractor, its employees, subcontractors, suppliers, or other persons directly or indirectly employed by its subcontractors or suppliers, and any other persons or organizations performing or furnishing supplies under a direct or indirect agreement with Contractor. Nothing in the Contract Documents shall create any contractual relationship between City and any such subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of City to pay or to cause the payment of any money due any subcontractor, supplier, employee or agent except as may otherwise be required by law.

12.3 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 13 - INSURANCE

13.1 Prior to commencing Services, the Contractor shall submit certificates of insurance evidencing the required coverage under the Contract Documents and specifically providing that the City is an additional named insured with respect to the required coverage and the operations of the Contractor under this Agreement. Contractor shall not commence Services under this Agreement until after Contractor has obtained all of the minimum insurance described and the policies of such insurance detailing the provisions of coverage have been received and approved by the City.

ARTICLE 14 - FORCE MAJEURE

14.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Contract Documents by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

ARTICLE 15 - MISCELLANEOUS PROVISIONS

15.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

15.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

15.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

15.4 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

15.5 The City is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

15.6 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.

15.7 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

15.8 The City reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

15.9 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

15.10 The professional Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

15.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

15.12 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

15.13 In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection

with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

15.14 All other terms and conditions set forth in the Contract Documents which have not been modified by this Agreement, shall remain in full force and effect.

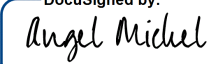
15.15 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

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IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Corporate Secretary or Witness:

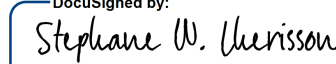
By:  DocuSigned by:
E31CF6B31837454...

Print Name: Angel Michel

Title: witness

Date: 3/28/2019

APEX-Tech Electrical & Air Conditioning, Inc., a Florida for-profit corporation:
“Contractor”

By:  DocuSigned by:
40141622724A479...

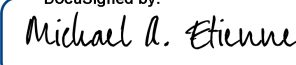
Print Name: Stephane W. Lherisson

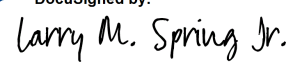
Title: President

Date: 3/28/2019

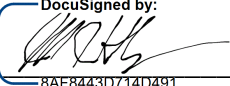
ATTEST:

City of North Miami, a Florida municipal corporation: “City”

By:  DocuSigned by:
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Michael A. Etienne, Esq.
City Clerk

By:  DocuSigned by:
C23984DEA2724CF...
Larry M. Spring, Jr., CPA
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By:  DocuSigned by:
8AF8443D714D491...
Jeff P. H. Cazeau, Esq.
City Attorney