

PUBLIC WORKS AGREEMENT

THIS AGREEMENT is made by and between the **City of BURLINGTON**, a Washington municipal corporation (hereinafter the "City"), and Nordic Temperature Control, Inc. (hereinafter the "Contractor"), organized under the laws of the State of Washington, located and doing business at 380 Pease Rd, Burlington, WA 98223.

AGREEMENT

The Parties agree as follows:

I. DESCRIPTION OF WORK. Contractor shall perform the following services for the City in accordance with the following described plans and/or specifications:

Scope of work to be performed:

Scope of work to be performed consists of: the contractor shall supply and install ductless heat pumps, piping, training, and all work to make units operational, per the attached quote.

The City will provide an electrician.

*** Prevailing Wage**

Contractor further represents that the services furnished under this Agreement will be performed in accordance with generally accepted professional practices within Skagit County in effect at the time such services are performed.

II. TIME OF COMPLETION. The Parties agree that work will begin on the Scope of Work described in Section I above immediately upon execution of this Agreement. Upon the effective date of this Agreement, the Contractor shall complete the work described in Section I within **sixty (60) days**.

III. COMPENSATION. The City shall pay the Contractor on a **\$14,666.00** basis for the services performed under this Agreement plus any applicable Washington State sales tax, for the work and services contemplated in this Agreement. The Contractor may invoice the City for work completed during the previous month.

A. Performance Bond. **If** this Agreement, including applicable sales tax, is more than \$35,000, a performance bond is required.

- B. **Defective or Unauthorized Work.** The City reserves its right to withhold payment from Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Agreement; and extra work and materials furnished without the City's written approval. If Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the City may complete the work by contract or otherwise, and Contractor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Agreement price specified above. The City further reserves its right to deduct the cost to complete the Agreement, including any additional costs, from any and all amounts due or to become due the Contractor.
- C. **Final Payment: Waiver of Claims.** THE CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CONTRACTOR'S CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY CONTRACTOR AS UNSETTLED AT THE TIME FINAL PAYMENT IS MADE AND ACCEPTED.

IV. INDEPENDENT CONTRACTOR. The Parties intend that an Independent Contractor-Employer Relationship will be created by this Agreement and that the Contractor has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement.

V. TERMINATION. The City may terminate this Agreement for good cause. "Good cause" shall include, without limitation, any one or more of the following events:

- A. The Contractor's refusal or failure to supply a sufficient number of properly skilled workers or proper materials for completion of the Scope of work.
- B. The Contractor's failure to complete the work within the time specified in this Agreement.
- C. The Contractor's failure to make full and prompt payment to subcontractors or for material or labor.
- D. The Contractor's persistent disregard of federal, state or local laws, rules or regulations.
- E. The Contractor's filing for bankruptcy or becoming adjudged bankrupt.
- F. The Contractor's breach of any portion of this Agreement.

If the City terminates this Agreement for good cause, the Contractor shall not receive any further money due under this Agreement until the work is completed. After

termination, the City may take possession of all records and data within the Contractor's possession pertaining to this project which may be used by the City without restriction.

VI. PREVAILING WAGES. Contractor shall file a "Statement of Intent to Pay Prevailing Wages," with the State of Washington Department of Labor & Industries prior to commencing the Scope of work. Contractor shall pay prevailing wages in effect on the date the bid is accepted or executed by Contractor, and comply with Chapter 39.12 of the Revised Code of Washington, as well as any other applicable prevailing wage rate provisions. The latest prevailing wage rate revision issued by the Department of Labor and Industries is attached.

VII. CHANGES. The City may issue a written change order for any change in the Scope of work during the performance of this Agreement. If the Contractor determines, for any reason, that a change order is necessary, Contractor must submit a written change order request to the person listed in the notice provision section of this Agreement, Section XV (D), within fourteen (14) calendar days of the date Contractor knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the Parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Contractor fails to require a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the Scope of work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided in subsections A through E of Section VIII, Claims, below.

The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Contractor as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

VIII. CLAIMS. If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Contractor may file a claim as provided in this section. The Contractor shall give written notice to the City of all claims within fourteen (14) calendar days of the occurrence of the events giving rise to the claims, or within fourteen (14) calendar days of the date the Contractor knew or should have known of the facts or events giving rise to the claim, whichever occurs first. Any claim for damages, additional payment for any reason, or extension of time, whether under

this Agreement or otherwise, shall be conclusively deemed to have been waived by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Agreement.

At a minimum, a Contractor's written claim shall include the information set forth in subsections A, items 1 through 5 below. **FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENT SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.**

- A. Notice of Claim. Provide a signed written notice of claim that provides the following information:
 - 1. The date of the Contractor's claim;
 - 2. The nature and circumstances that caused the claim;
 - 3. The provisions in this Agreement that support the claim;
 - 4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and
 - 5. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

- B. Records. The Contractor shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The City shall have access to any of the Contractor's records needed for evaluating the protest. The City will evaluate all claims, provided the procedures in this section are followed. If the City determines that a claim is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

- C. Contractor's Duty to Complete Protested Work. In spite of any claim, the Contractor shall proceed promptly to provide the goods, materials and services required by the City under this Agreement.

- D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Contractor also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

- E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Contractor completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

IX. LIMITATION OF ACTIONS. CONTRACTOR MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS AGREEMENT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR

CONTRACTOR'S ABILITY TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

X. WARRANTY. Upon acceptance of the Scope of work, Contractor must provide the City a one-year warranty bond in a form and amount acceptable to the City. The Contractor shall correct all defects in workmanship and materials within one (1) year from the date of the City's acceptance of the Contract work. In the event any parts are repaired or replaced, only original replacement parts shall be used—rebuilt or used parts will not be acceptable. When defects are corrected, the warranty for that portion of the work shall extend for one (1) year from the date such correction is completed and accepted by the City. The Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.

XI. DISCRIMINATION. In the hiring of employees for the performance of work under this Agreement or any sub-contract, the Contractor, its sub-contractors, or any person acting on behalf of the Contractor or sub-contractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

XII. INDEMNIFICATION. Contractor shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the Contractor's performance of this Agreement, except for that portion of the injuries and damages caused by the City's sole negligence.

The City's inspection or acceptance of any of Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, agents and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONTRACTOR'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this section shall survive the expiration or termination of this Agreement.

XIII. INSURANCE. The Contractor shall provide proof of insurance for general comprehensive liability in the amount of \$1,000,000 per occurrence and \$2,000,000 in general aggregate to cover Contractor's activities during the term of this Agreement. Proof of insurance shall be in a form acceptable and approved by the City. The Contractor shall provide a Certificate of Liability Insurance and an Endorsement Policy naming the City, its elected officers, and employees as additional insureds and naming the City as a certificate holder. Contractor shall deliver a copy of the Certificate of Insurance and a copy of the Endorsement Policy to the City prior to the commencement of the term of this Agreement, and immediately provide copies of any renewals thereafter if policy expires during the term of this Agreement. Thirty (30) days' written notice to the City of cancellation of the insurance policy is required. No Agreement shall form until and unless a copy of the Certificate of Liability Insurance and Endorsement Policy, in the amount required, is attached hereto.

The Contractor shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices.

XIV. WORK PERFORMED AT CONTRACTOR'S RISK. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

XV. MISCELLANEOUS PROVISIONS.

- A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.
- B. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the Parties are unable to settle any dispute, difference or claim arising from the Parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the Skagit County Superior Court, Skagit County, Washington, unless the Parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each Party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, including

all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section XII of this Agreement.

- C. **Written Notice.** All communications regarding this Agreement shall be sent to the Parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.
- D. **Assignment.** Any assignment of this Agreement by either Party without the written consent of the non-assigning Party shall be void. If the non-assigning Party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.
- E. **Modification.** No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Contractor.
- F. **Entire Agreement.** The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the above documents are hereby made a part of this Agreement. However, should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.
- G. **Compliance with Laws.** The Contractor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Contractor's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those operations.
- H. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement

IN WITNESS HEREOF, the parties below execute this Agreement, which shall become effective on the last date entered below.

CONTRACTOR:

By: _____
(signature)

Print Name:

Its _____
(title)

DATE: October 22, 2020

CITY OF BURLINGTON:

By: _____
(signature)

Its: Public Works Director

DATE: August 15, 2019

NOTICES TO BE SENT TO:

CONTRACTOR:
Nordic Temperature Control, Inc.
David Wright
380 Pease Road
Burlington, WA 98223
360.873.8163

NOTICES TO BE SENT TO:

CITY OF BURLINGTON:
Marv Pulst, P.E.
Public Works Director
City of Burlington
833 South Spruce Street
Burlington, WA 98233
(360) 755-9715



Commercial•Residential•Maintenance•Sales•Service
Heating•Air Conditioning•Refrigeration•Controls

To: City of Burlington

Regarding: Public Safety building server room air conditioning upgrade

1. Provide and install 2 Daikin RK36 36,000 BTU ductless heat pumps, includes 10 year manufacturers warranty. Units shall be located in the south east corner of the building, units to be wall mounted with a listed wall mount bracket at or above code clearance for public walk ways.
2. Provide and install 2 Daikin FTX36 36,000 BTU ductless wall mount indoor units, includes 10 year manufacturer warranty.
3. Provide and install refrigerant piping from indoor to outdoor units, includes any required line cover track materials.
4. Provide and install condensate drain lines and pumps (if required), drains to terminate in adjacent gutter near outdoor unit location.
5. Provide and install interlock control to enable automatic change-over operation from the existing system to the new ductless system in the event of redundant back up. Control will provide means of isolation of line power to each system to accommodate integration to the emergency power system.
6. Provide on site customer training upon completion of installation and commissioning.
7. Provide documentation of intent for prevailing wage work, provide permitting with the City of Burlington.
8. Provide complete factory trained start up of new equipment and product warranty registration with manufacturer.
9. Provide first year preventative maintenance of new equipment for manufacturer’s warranty contract compliance.
10. Provide first year full parts and labor warranty, and lifetime craftsmanship warranty of all installations by Nordic Temperature Control.

Price for all the work as listed above \$ 14,666.00

Items not included in bid: (unless in inclusions)

- 1) Washington State sales tax
- 2) Electrical wiring
- 3) Framing, trim, drywall work, painting
- 4) Concrete work, coring or sealing
- 5) Smoke fire dampers or fire alarm systems
- 6) Roofing, roof patching or sealing

Approved by:

Authorized Signature

Date

10/5/2020

THIS QUOTATION IS VALID FOR 30 DAYS

Thank you for the opportunity to quote to you on this project. Please feel free to call me if you have questions or need additional information.

Sincerely,

David Wright

Office: 360-873-8163

Cell: 360-853-6001

380 Pease Rd. Burlington, WA. 98233

Office (360) 873-8163 Fax (360) 873-8208

License# NORDITC935LA