

EXHIBIT A

PUBLIC WORKS MAINTENANCE CONTRACT

This Contract is entered into between Renton Regional Fire Authority, a municipal corporation, referred to as "Owner", and [REDACTED], referred to as "Contractor."

In consideration of the following terms and conditions and those contained in the documents incorporated by reference and made a part of this Contract, the parties agree as follows:

1. THE PROJECT

- 1.1. The Contractor shall perform all work and furnish all tools, materials, labor and equipment for the Owner and all work associated with the project entitled: Annual PM Services.
- 1.2. The Project shall be performed in accordance with this Public Works Contract and the following Contract Documents: **Exhibit A – Renton RFA Request For Proposal; Exhibit B – Scope of Work, Exhibit C. Contractor’s Proposal.** and all other forms and documents referenced in such documents which are hereby referred to as the Contract Documents and by this reference are made a part of this Contract.
- 1.3. The Contract Documents, shall be read together. Unless otherwise specified in this Agreement, in the event that any of the terms of Contract Documents conflict with each other, he conflict shall be brought to the attention of the Owner and the following shall be the order of precedence:
 - 1.3.1. The terms of this Document entitled “Public Works Contract” shall take precedence over the terms of Exhibits A, B and C. **The terms of Exhibit A shall take precedence over the terms of Exhibit B and C. The terms of Exhibit B shall take precedence of the terms of Exhibit C.**
- 1.4. The Contractor shall provide and bear all expense of all equipment, work, and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the Project provided for in the Contract Documents and every part thereof, except as mentioned in the specifications to be furnished by the Owner.
- 1.5. The Contractor is responsible for complying with all Federal, State, and local regulations affecting the Project including but not limited to Chapter 70.86 RCW, Chapter 296-305 WAC and Chapter 294-24WAC.

2. COMPENSATION

- 2.1. The Owner shall pay the Contractor for the full performance of the Contract the sum of \$ [REDACTED] per month in accordance with the provisions below.
- 2.2. The Contractor shall provide quarterly statements which shall indicate the work performed as of the end of the period covered by the statement.
- 2.3. Statements received by the 10th day of the month and approved by the Owner will be processed for payment the same month.
- 2.4. The Owner shall determine the amounts owing to the Contractor based on compliance with the work requirements and on evaluations of Contractor's statements.
- 2.5. Washington State Sales Tax shall be included on each statement submitted by the Contractor.

2.6. Monthly payments shall be subject to the withholding of retained percentage as provided in Section 13.

3. BOND

3.1. Contractor shall provide a performance and payment bond to the Owner in accordance with RCW 39.08.010. Such bonds shall be issued by surety licensed to business in the State of Washington acceptable to Owner in a form substantially in compliance with the form included in the Contract Documents. If this Contract is for less than \$150,000, Contractor may authorize the Owner in writing, in lieu of the bond, to retain 10% of the Contract amount in accordance with RCW 39.08.010 to be held and managed consistent with the requirements specified in Section 13

4. INDEMNIFICATION AND HOLD HARMLESS

4.1. The Contractor shall indemnify, defend and save the Owner and its commissioners, officers, employees and agents harmless from any and all claims and risks and losses, damages, demands, suits, judgments and attorney's fees or other expenses of any kind on account of or relating to injury to or death of any and all persons or on account of all property damage of any kind, or in any manner connected with the work performed under this Contract, or caused in whole or in part by the Contractor, a subcontractor or their property, employees or agents during performance of the work or at any time before final acceptance, except only for those losses resulting from the sole negligence of the Owner with regard to activities within the Contractor's scope of work

4.2. Should a court of competent jurisdiction determine that this Contract 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 Owner, its members, officers, employees and agents, 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 Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

4.3. In an arbitration or lawsuit with respect to this hold harmless provision, the Contractor shall prepare and defend that lawsuit at its own cost and expense. If judgment is rendered or settlement made requiring payment of damages by the Owner, its officers, agents, employees and volunteers, the Contractor shall pay the same.

5. INSURANCE

5.1. The Contractor shall obtain the insurance described in this section from insurers approved by the State Insurance Commissioner pursuant to RCW Title 48. The Owner reserves the right to approve or reject the insurance provided, based on the insurer (including financial condition), terms and coverage, the Certificate of Insurance, and/or endorsements.

5.2. The Contractor's and all sub contractors' insurance coverage shall be primary and non-contributory insurance as respects the Owner's insurance, self-insurance, or insurance pool coverage. The Contractor shall provide the Owner and all Additional Insureds with written notice of any policy cancellation, within two business days of their receipt of such notice. The Contractor shall not begin work under the Contract until the required insurance has been obtained and approved by the Owner. All costs for insurance shall be incidental to and included in the unit or lump sum prices of the contract and no additional payment will be made.

5.3. All insurance policies, with the exception of Professional Liability and Workers Compensation, shall name the following listed entities as additional insured(s):

- 5.3.1. The Owner and its officers, elected officials, employees, agents, and volunteers;
- 5.3.2. The above-listed entities shall be additional insured(s) for the full available limits of liability maintained by the Contractor, whether primary, excess, contingent or otherwise, irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract, and irrespective of whether the Certificate of Insurance provided by the Contractor describes limits lower than those maintained by the Contractor. Additional insured status shall include Products Completed Operations.
- 5.4. The Contractor shall deliver to the Owner a Certificate(s) of Insurance and endorsements for each policy of insurance meeting the requirements set forth herein when the Contractor delivers the signed Contract for the Project.
- 5.5. The insurance shall provide the minimum coverage and limits set forth below. Providing coverage in these stated minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits. All deductibles and self-insured retentions must be disclosed and are subject to approval by the Owner. The cost of any claim payments falling within the deductible shall be the responsibility of the Contractor.

6. TYPES AND LIMITS OF INSURANCE REQUIREMENTS

6.1. The Contractor shall maintain Workers' Compensation Insurance and/or Longshore and Harbor Workers Insurance as required by State or Federal statute, for all of Contractor's employees to be engaged in work on the Project under this contract and, in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance and/or Longshore and Harbor Workers' Insurance for all of the latter's employees engaged in such work. The Contractor's Labor & Industries account number shall be noted on the Certificate of Insurance.

- 6.1.1. A policy of Commercial General Liability Insurance, including:
 - Per project aggregate
 - Premises/Operations Liability
 - Products/Completed Operations – for a period of three years following final acceptance of the Project.
 - Personal/Advertising Injury
 - Contractual Liability
 - Independent Contractors Liability
 - Stop Gap / Employers' Liability
 - Explosion, Collapse, or Underground Property Damage (XCU)

- 6.1.2. Such policy must provide the following minimum limits:
 - \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products & Completed Operations Aggregate
 - \$1,000,000 Personal & Advertising Injury, each offence
 - \$2,000,000 Personal & Advertising Injury, Aggregate

- 6.1.3. Stop Gap / Employers' Liability
 - \$1,000,000 Each Accident
 - \$1,000,000 Disease - Policy Limit
 - \$1,000,000 Disease - Each Employee

- 6.1.4. Automobile Liability for owned, non-owned, hired, and leased vehicles, with an MCS 90 endorsement and a CA 9948 endorsement attached if “pollutants” are to be transported. Such policy(ies) must provide the following minimum limit:
\$1,000,000 combined single limit

7. CHANGE ORDERS

- 7.1. The Owner reserves the right to make, at any time during the Project, such changes in quantities and such alterations in the Project as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered. The Contractor shall proceed with the work upon receiving a written change order approved by the Owner. In spite of any protest or claim, the Contractor shall proceed promptly with the work as the Owner orders.

8. CLAIMS

- 8.1. The Contractor shall give written notice to the Owner of all claims other than change orders within five (5) calendar days of the occurrence of events giving rise to the claim. Any claim for damages, additional payment for any reason, or extension of time, 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. 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 EVENTS SURROUNDING THAT CLAIM. THE CONTRACTOR’S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY THE CONTRACTOR AS UNSETTLED AT THE TIME REQUEST FOR FINAL PAYMENT IS MADE.

9. TERM, TERMINATION AND RENEWAL:

- 9.1. This Contract shall be effective January 1st, 2020 and shall remain in effect until December 31, 2024 unless terminated earlier in accordance with the early termination provisions herein.
- 9.2. If Contractor breaches any of it's obligations under this Contract, and fails to cure the same within five (5) days of written notice to do so, the Owner may terminate this Contract, in which case the Owner shall pay the Contractor cost incurred to date of written notice.
- 9.3. The Owner may terminate this Contract upon ten (10) days written notice to the Contractor for any reason and without cause in which case the Owner shall pay the Contractor for costs incurred to the date of written notice.
- 9.4. The Owner may, in Owner’s sole discretion, grant a renewal of this Contract for up to an additional three years subject to mutual agreement on the adjustment of any Compensation under Section 2.
- 9.5. In the event the Owner substantially changes the scope of the Work identified in Section 1, Contractor shall have the right to terminate this Contract upon thirty (30) days written notice to the Owner.

10. CONTRACTOR RECORDS

- 10.1. Contractor agrees to make all project related books and records available to the Owner for inspection, review, photocopying and audit in the event of a Contract related dispute, claim, modification or other Contract related action at reasonable times and at places designated by the Owner.

11. DEFECTIVE OR UNAUTHORIZED WORK

11.1. The Owner reserves the right to withhold payment from the 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 contract, and extra work and materials furnished without the Owner's written approval. If the Contractor is unable, for any reason, to satisfactorily complete any portion of the Project, the Owner may complete the Project by contract or otherwise, and the Contractor shall be liable to the Owner for any additional costs incurred by the Owner. "Additional costs" means all reasonable costs incurred by the Owner, including legal costs and attorneys' fees, beyond the maximum contract price under this Agreement. The Owner further reserves the right to deduct the cost to complete the Project, including any additional costs, from any amounts due or to become due to the Contractor

12. PREVAILING WAGES

12.1. The Contractor represents under penalty of perjury of the laws of the state of Washington, that the only individuals providing services under this contract are exempt from prevailing wages pursuant to WAC 296-127-026 as either the sole owner or spouse of the owner of Contractor's company, a partner owning at least thirty percent of Contractor's Company or the president, vice president or treasurer of the Contractor's corporation if such officer owns at least thirty percent of the corporation.

Signature of Contractor

If not signed by Contractor, the following paragraph shall control.

12.2. The Contractor shall pay prevailing wages and shall comply with chapter RCW 39.12 and chapter 49.28 RCW. A Notice of Intent to Pay Prevailing Wages and prevailing wage rates for the Project must be posted on the Project site. At the conclusion of the Contract, the Contractor and its subcontractors shall submit Affidavits of Wages Paid to the Department of Labor and Industries for certification by the director. Final payment on the Contract shall be withheld until certification by the director has been received by the Owner that the prevailing wage requirements of the statute have been satisfied. The Contractor certifies that it has not been cited for two violations within the last five (5) years, and is not prohibited from bidding on public works contract. The Contractor further certifies that it will use no sub-contractor who is prohibited.

12.3. The Contractor shall execute the Certification of Compliance with Wage Payment Statutes attached hereto as Exhibit A.

12.4. Prevailing Wages for the county in which the Project is located can be found at:
<http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/IsPrevWageJob/default.asp>

13. RETAINAGE

13.1. Pursuant to RCW 60.28, a sum of 5 percent (or 10 percent if the Contract Sum is less than \$150,000 and Contractor has requested a waiver of the performance bond requirement under Section 3) of the monies earned by the Contractor will be retained from each monthly payment. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to Title 82 RCW, and (2) the claims of any person arising under the Contract.

13.2. Monies retained under this Section shall be retained in a fund by the Owner unless Contractor elects for an alternative method of holding the retainage as provided under RCW 60.28.

13.3. The Contractor agrees to notify Owner within five (5) days of the receipt of any of the following:

13.3.1. Notification that a lien may be claimed by any person, firm or corporation furnishing materials, supplies or equipment to any subcontractor for work on the project in accordance with RCW 60.28.015.

13.3.2. Notification by the Department of Labor and Industries of any proceedings, complaint or investigation conducted under the provisions of RCW 39.12.065.

13.3.3. The retained percentage may be held by Owner until all claims and proceedings referred to above have been resolved to the satisfaction of Owner.

13.3.4. In the event the retainage is insufficient to cover payment of the items set forth in Section 13.1, Contractor shall be liable for all such insufficiencies and all costs incurred by Owner, including attorney fees, to recover such insufficiencies.

13.4. For purposes of releasing the retainage, the Owner shall close out each contract year and at the end of December and shall release the retainage in accordance with RCW 60.28.051-.080.

14. PROJECT SAFETY.

14.1. The Contractor shall be solely and completely responsible for safety conditions on the job site, including the safety of all persons and property during performance of the work to complete the Project. The services of Owner's employees or the Owner's agents or Consultant's personnel in conducting construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's work methods, equipment, bracing, scaffolding or trenching, or safety measures in, on or near the construction site. The Contractor shall provide safe access for the Owner and its inspectors to adequately inspect the quality of work and the conformance with project specifications.

14.2. Contractor is responsible for locating any underground utilities affected by the Project and is deemed to be an excavator for purposed of chapter 19.122 RCW. Contractor shall be responsible for compliance with chapter 19.122 RCW, including utilization of the "one call" locator system before commencing any excavation activities. Contractor is also responsible for ensuring adequate trench safety and compliance as required by the Washington State Industrial and Health Act. The Contractor shall be responsible to notify, pay for and coordinate Contractor's work with One Call service at 456-8000.

15. DISPUTE RESOLUTION

15.1. If the parties are unable to resolve a dispute regarding this Agreement through negotiation, any party may request mediation through a process to be mutually agreed to in good faith between the parties within 30 days of a party notifying the other parties in writing that a dispute exists "Dispute Notice." The participating parties shall share equally the costs of mediation and each participating party shall be responsible for its own costs in preparation and participation in the mediation, including expert witness fees and reasonable attorney's fees.

15.2. If a mediation process cannot be agreed upon or if the mediation fails to resolve the dispute then, within 45 calendar days of the Dispute Notice or within 30 days of end of the mediation, either party may submit the dispute to binding arbitration according to the procedures of the Superior Court Rules for Mandatory Arbitration, including the Local Mandatory Arbitration Rules of the Superior Court as amended, located in the county in which the Project is located, unless the parties agree in writing to an alternative dispute resolution process. The arbitration shall be before a disinterested arbitrator selected pursuant to the Mandatory Arbitration Rules with all participating parties sharing equally in the cost of the

arbitrator. The location of the arbitration shall be mutually agreed or established by the assigned Arbitrator, and the laws of Washington will govern its proceedings. The prevailing party, in addition to costs, shall be entitled to reasonable attorney's fees as determined by the arbitrator.

15.3. Following the arbitrator's issuance of a ruling/award, either party shall have 30 calendar days from the date of the ruling/award to file and serve a demand for a bench trial de novo in the Superior Court of the County in which the Project is located. The court shall determine all questions of law and fact without empanelling a jury for any purpose.

15.4. Unless otherwise agreed in writing, this dispute resolution process shall be the sole, exclusive and final remedy to or for either party for any dispute regarding this Agreement, and its interpretation, application or breach, regardless of whether the dispute is based in contract, tort, any violation of federal law, state statute or local ordinance or for any breach of administrative rule or regulation and regardless of the amount or type of relief demanded.

15.5. The prevailing party in any action to enforce the terms of this contract, in addition to costs, shall be entitled to reasonable attorney's fees and expenses of arbitration including expert witness fees, paralegal costs and copying costs as determined by the arbitrator or court including costs and fees incurred on appeal.

16. LIMITATION OF ACTIONS

16.1. **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.**

17. MISCELLANEOUS PROVISIONS

17.1. Independent Contractor. The parties intend that the Contract Document will create an independent contractor relationship.

17.2. Nondiscrimination. In the hiring of employees for the performance of work under the Contract Documents the Contractor, its subcontractors, or any person acting on behalf of 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.

17.3. Nonwaiver of Breach. The failure of the Owner to insist upon strict performance of any of the terms and rights contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of those terms and rights and they shall remain in full force and effect.

17.4. Governing Law. The Contract Documents shall be governed and construed in accordance with the laws of the State of Washington. If any dispute arises between the Owner and Contractor under any of the provisions of the Contract Documents, resolution of that dispute shall be available only through the jurisdiction, venue, and rules of the Superior Court of the County in which the Project is located.

17.5. Written Notice. All communications regarding the contract shall be sent to the parties at the addresses listed on the signature page of the contract, unless otherwise notified. Any written notice shall become effective upon delivery, but in any event three (3) calendar 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 the contract.

17.6. Assignment. Any assignment of this contract by the Contractor without the written consent of the Owner shall be void.

17.7. Modification. No waiver, alteration, or modification of any of the provisions of the Contract Documents shall be binding unless in writing and signed by a duly authorized representative of the Owner and Contractor.

17.8. Severability. If any one or more sections, sub-sections, or sentences of the contract are held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of the contract and the remainder shall remain in full force and effect.

17.9. Entire Agreement. The written provisions and terms of the Contract Documents, supersede all prior verbal statements by any representative of the Owner, and those statements shall not be construed as forming a part of or altering in any manner the Contract Documents. The Contract Documents and any attached Exhibits contain the entire agreement between the parties.

Owner

Contractor

By: _____
Rick Marshall, Fire Chief

By: _____

Contractor Reg. No. _____

UBI Number: _____

Dated: _____

Dated: _____

EXHIBIT A

The terms of the Renton RFA Request For Proposal for 2020 – 2025 Contract HVAC Preventative Maintenance & Repair Services For Renton Regional Fire Authority RFA Worksites are incorporated herein by this reference.

EXHIBIT B – SCOPE OF WORK