



TO: Mayor and Councilmembers

FROM: Matthew R. Fore, General Services Director

SUBJECT: Cooperative Purchase Agreement of HVAC Equipment and Services

RECOMMENDATION:

- A. Authorize the City Manager or his designee to award purchase orders and execute all required documents using the 791Coop cooperative purchase agreement (Contract No. 202207002A) with Carrier Global Corporation for HVAC Equipment and Services, for a total not-to-exceed amount of \$150,000 through the term of the agreement, subject to Council approval of sufficient budget in future fiscal years; and
- B. Authorize a budget appropriation in the amount of \$73,115 from the Facility Repair and Replacement Reserve to the General Fund Facilities Maintenance account.

BACKGROUND:

In March of 2023, facility condition assessments were conducted to capture and collect data on existing building components and critical building systems, including heating, ventilation, air conditioning (HVAC) systems, at various City facilities. The City maintains approximately 100 pieces of HVAC equipment, with a current replacement value of \$2.5 million.

Maintaining HVAC systems requires routine maintenance and cleaning to ensure optimal performance and condition, including regularly scheduled preventative maintenance of filter changes and duct cleaning. Air travels through ducts and filters, leaving dust, debris, and allergens behind. Cleaning the ducts and changing filters increases HVAC performance, extends useful life, and improves indoor air quality for occupants.

Section 3.05.100 of the Goleta Municipal Code allows the City to obtain equipment and services through a cooperative bidding procedure that is conducted by another local, state, or federal agency, which allows the City to take advantage of the cooperative purchasing award and competitive contract pricing. The proposed agreement with Carrier Global Corporation was awarded through a competitive bidding process by 791Coop, a cooperative purchasing program, of which the City is a member.

DISCUSSION:

Following Council approval of using the cooperative agreement, staff will execute a purchase order for HVAC duct cleaning at City Hall for \$73,115. Additional services, including building automation system upgrades and duct cleaning for other City facilities are anticipated to be performed under the contract through the contract term as maintenance schedules are created.

As additional work is scoped, staff will request purchase orders utilizing the cooperative contract terms and pricing. The current term for the cooperative agreement continues through August 31, 2025, with automatic extensions and one-year term options potentially extending the contract through August 31, 2027. Services under the contract include but are not limited to, maintenance contracts, repairs, certifications, inspections, air conditioning systems, heating systems, boilers, chilled water systems, packaged systems, rooftop units, building automation systems, controls, and building automation.

GOLETA STRATEGIC PLAN:

City-Wide Strategy: Strengthen Infrastructure

Strategic Goal: Protect and maintain our City-owned facilities and critical operational assets (vehicles and computing infrastructure).

Objectives: Implement a maintenance and repair schedule for City facilities.

FISCAL IMPACTS:

Staff requests a budget appropriation of \$73,115 from the Facility Repair and Replacement Reserve to the Facilities Maintenance account 101-18-1810-51064, to fund the City Hall Duct Cleaning Project using the cooperative contract. Staff will allocate future budget appropriations to fund additional contract services up to the not-to-exceed amount. There is approximately \$810,108 available from the Facility Repair and Replacement Reserve account.

Purchases after June 30, 2025 are subject to funding availability in the adopted budget of the applicable fiscal year.

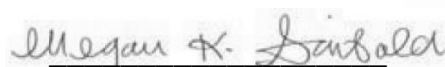
ALTERNATIVES:

The City Council could direct staff to request informal bids as needed for the services instead of approving the use of the competitively bid cooperative contract.

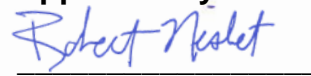
Reviewed By:


Kristine Schmidt
Assistant City Manager

Legal Review By:


Megan Garibaldi
City Attorney

Approved By:


Robert Nisbet
City Manager

ATTACHMENTS:

1. 791Coop Contract No. 202207002A
2. City Hall Duct Cleaning Scope of Work

ATTACHMENT 1

791Coop Contract No. 202207002A



791 Purchasing Cooperative Contract Award

September 14, 2022

Carrier Corporation
Contact: Joe Ison
Address: 13995 Pasteur Blvd
Palm Beach Gardens, FL 33418-7231
Phone: (561) 365-2000
Email: joseph.e.ison@carrier.com
Web Address: carrier.com

RE: 791 Awarded Contract – RFP #791_2022_07_002 HVAC Equipment and Services
Part 1 (non-JOC)

Contract Number – 202207002A

CONTRACT AWARD

Congratulations! This award is for a cooperative purchasing agreement award solicitation. The 791 Purchasing Cooperative (791 Coop) on behalf of The Central Texas Council of Governments with delegated authority to the Executive Director by the Board of Directors has awarded an Agreement to Carrier Corporation. This Agreement will be in effect from 08/31/2022 through 08/31/2025. There are two (2) automatic contract renewals one (1) year term options from 08/31/2025 to 08/31/2026 and 08/31/2026 to 08/31/2027.

ADMINISTRATIVE CONSIDERATIONS

Award of contract in compliance with the bid laws of the State of Texas is recommended.

RECOMMENDATIONS

791 Coop recommends the following contract be awarded based on the Request for Proposal (RFP) process:

791 Awarded Contract–RFP ##791_2022_07_002 HVAC Equipment and Services
Part 1 (non-JOC).

Action Required

- ☒ Approve
- ☐ Disapprove

DocuSigned by:
A handwritten signature in blue ink that reads 'Jim Reed'.
9A28DF68BD25443...
Signature
CTCOG Executive Director

10/12/2022 | 5:50 PM PDT

Date

791 PURCHASING COOPERATIVE AND VENDOR AGREEMENT

Between Carrier Corporation
(Company Name)

with the principal place of business at

13995 Pasteur Blvd, West Palm Beach, FL 33418

and

**791 Purchasing Cooperative
For
RFP #791_2022_07_002 HVAC Equipment and Services
Issued: July 22, 2022.**

General Information

The Vendor Agreement ("Agreement") made and entered into by and between 791 PURCHASING COOPERATIVE (hereinafter referred to as "791COOP") a government cooperative purchasing program authorized by the Central Texas Council of Governments, having its principal place of business at 2180 North Main Street; Belton, TX 76513 and ***Company listed at the top of page one*** (hereinafter referred to as "Vendor") a provider having its principal place of business as listed at the top of page one. This Agreement consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth shall control.

The vendor Agreement shall include and incorporate by reference this Agreement, the terms and conditions, special terms and conditions, any agreed upon amendments, as well as all of the sections of the Solicitation (RFP, RCSP, RFQ) as posted, including any addenda and the awarded vendor's proposal.

The following pages will constitute the Agreement between the successful vendors(s) and 791 PURCHASING COOPERATIVE.

Terms and Conditions

1. Assignment of Vendor Agreement

No assignment of the Vendor Agreement may be made without the prior written approval of 791 PURCHASING COOPERATIVE. A simple change of name agreement will not change the Agreement obligations of the awarded vendor.

2. 791 PURCHASING COOPERATIVE Contract

The 791 PURCHASING COOPERATIVE Contract is the final negotiated version of the Vendor's contract that was submitted as part of the **RFP #791_2022_07_002 HVAC Equipment and Services**. The provider (s) and negotiated with 791 PURCHASING COOPERATIVE. The 791 PURCHASING COOPERATIVE Contract will govern all aspects of a sale for Products and/or Services between the Vendor and a 791 PURCHASING COOPERATIVE Participant. 791 PURCHASING COOPERATIVE recognizes that a 791 PURCHASING COOPERATIVE Participant may, in agreement with Vendor, make modifications to the 791 PURCHASING COOPERATIVE Contract to reflect the specific needs of the 791 PURCHASING COOPERATIVE Participant. This modified form will still be referred to as the 791 PURCHASING COOPERATIVE Contract.

Vendor may only use the 791 PURCHASING COOPERATIVE Contract with 791 PURCHASING COOPERATIVE Participants who have agreed to purchase Roofing maintenance services from Vendor through the 791 PURCHASING COOPERATIVE preferred supplier program. If a 791 PURCHASING COOPERATIVE Participant solicits proposals for Products and/or Services under this agreement from Vendor directly and has specifically provided notice that they will not be using 791 PURCHASING COOPERATIVE as their contract vehicle through the 791 PURCHASING COOPERATIVE preferred supplier program, Vendor cannot use the 791 PURCHASING COOPERATIVE Contract to serve the 791 PURCHASING COOPERATIVE Participant. For the avoidance of doubt, if a vendor and a 791 PURCHASING COOPERATIVE Participant, execute a 791 PURCHASING COOPERATIVE Purchase or Products and/or Services under this agreement, the vendor will be obligated to pay 791 PURCHASING COOPERATIVE the participation fee.

To further clarify, the vendor may sell to a 791 PURCHASING COOPERATIVE participant or potential 791 PURCHASING COOPERATIVE participants, which is any governmental or other public entity in Texas through the 791 PURCHASING COOPERATIVE preferred supplier program. If a potential customer is not currently a 791 PURCHASING COOPERATIVE participant, they may join 791 PURCHASING COOPERATIVE by contacting 791 PURCHASING COOPERATIVE at admin@791COOP.org. Awarded vendors are not restricted from responding to any Texas entity that issued a Request for Proposals and has chosen not to use the 791 PURCHASING COOPERATIVE interlocal cooperative method of procurement.

If you identify a Texas public or governmental entity that wants to make a purchase and use a cooperative or interlocal contract and is not a current 791 PURCHASING COOPERATIVE Participant, please have them call the number provided above or email the address above so 791 PURCHASING COOPERATIVE may contact the entity to provide all applicable information.

791 PURCHASING COOPERATIVE will provide awarded vendors participants packets for this purpose upon request.

ANY AGREEMENT BETWEEN A 791 PURCHASING COOPERATIVE PARTICIPANT AND VENDOR THAT REQUIRES THE 791 PURCHASING COOPERATIVE PARTICIPANT TO INDEMNIFY ANY OTHER PARTY,

EXCEPT TO THE EXTENT PERMITTED BY THE APPLICABLE CONSTITUTION, LAWS, OR REGULATIONS OF THE JURISDICTION OF THE LOCATION OF THE 791 PURCHASING COOPERATIVE PARTICIPANT OR THE LOCATION OF THE PERFORMANCE OF THE CONTRACT UNDER THIS AGREEMENT, IS NOT PERMITTED UNDER THIS AGREEMENT AND RENDERS THE INDEMNITY REQUIREMENT NULL AND VOID AS IT APPLIES TO THE 791 PURCHASING COOPERATIVE PARTICIPANT'S RESPONSIBILITY TO INDEMNIFY ANY PARTY.

3. Disclosures

- a) Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement.
- b) Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with 791 PURCHASING COOPERATIVE under a 791 PURCHASING COOPERATIVE Agreement if Vendor feels that such possible conflicts of interest exist. If you believe there is a conflict of interest as described in the form CIQ instruction sheet contained in this RFP, please complete, and submit the form CIQ provided as instructed.
- c) The vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

4. Renewal of Agreements

The Agreement with 791 PURCHASING COOPERATIVE is for a three (3) year term with two (2), two (2) year extension options. Any extension of the initial term will be agreed to in writing between 791 PURCHASING COOPERATIVE and Vendor. Nothing herein shall require either party to agree to an extension of the initial term.

Automatic Renewal Clauses Incorporated in Awarded Vendor Agreements with 791 PURCHASING COOPERATIVE Participants Resulting from the Solicitation and with the Vendor Named in this Agreement.

NO AGREEMENT FOR GOODS OR SERVICES WITH A 791 PURCHASING COOPERATIVE PARTICIPANT BY THE AWARDED VENDOR NAMED IN THIS AGREEMENT THAT RESULTS FROM THE SOLICITATION AWARD NAMED IN THIS AGREEMENT MAY INCORPORATE AN AUTOMATIC RENEWAL CLAUSE WITH WHICH THE 791 PURCHASING COOPERATIVE PARTICIPANT MUST COMPLY. ALL RENEWAL TERMS INCORPORATED IN AN AGREEMENT BY THE VENDOR WITH THE 791 PURCHASING COOPERATIVE PARTICIPANT SHALL ONLY BE VALID AND ENFORCEABLE WHEN THE VENDOR RECEIVES WRITTEN CONFIRMATION BY PURCHASE ORDER OR EXECUTED AGREEMENT ISSUED BY THE 791 PURCHASING COOPERATIVE PARTICIPANT FOR ANY RENEWAL PERIOD. THE PURPOSE OF THIS CLAUSE IS TO AVOID A 791 PURCHASING COOPERATIVE PARTICIPANT INADVERTENTLY RENEWING AN AGREEMENT DURING A PERIOD IN WHICH THE GOVERNING BODY OF THE 791 PURCHASING COOPERATIVE PARTICIPANT HAS NOT PROPERLY APPROPRIATED AND BUDGETED THE FUNDS TO SATISFY THE AGREEMENT RENEWAL. THIS TERM IS NOT NEGOTIABLE AND ANY AGREEMENT BETWEEN A 791 PURCHASING COOPERATIVE PARTICIPANT AND A 791 PURCHASING COOPERATIVE AWARDED VENDOR WITH AN AUTOMATIC RENEWAL CLAUSE THAT CONFLICTS WITH THESE TERMS IS RENDERED VOID AND UNENFORCEABLE AS TO THE AUTOMATIC RENEWAL CLAUSE.

5. Invoices

The vendor is responsible for the invoicing and collection of all funds due from a 791 PURCHASING COOPERATIVE Participant to the Vendor.

6. Participant Payments

791 PURCHASING COOPERATIVE Participants will make payments directly to the Vendor for all funds owed as provided for in the 791 PURCHASING COOPERATIVE Contract.

7. Pricing

The price Vendor will charge a 791 PURCHASING COOPERATIVE Participant will be defined in the 791 PURCHASING COOPERATIVE Contract and determined at the time Vendor and a 791 PURCHASING COOPERATIVE Participant makes purchases through this 791 PURCHASING COOPERATIVE Contract. The price Vendor charges a 791 PURCHASING COOPERATIVE Participant will include the 791 PURCHASING COOPERATIVE annual participation fee.

At no time during the initial term or extended term of this Agreement shall the price be charged to a 791 PURCHASING COOPERATIVE Participant the contracted price **RFP #791_2022_07_001 Full-Service Construction**.

Language similar to the following will be added to the Representations Section of the Vendor's 791 PURCHASING **RFP #791_2022_07_002 HVAC Equipment and Services**:

"Seller represents that this Agreement, pursuant to the award to (insert vendor's name) as a result of the 791 PURCHASING COOPERATIVE **RFP #791_2022_07_002 HVAC Equipment and Services**, complies with the terms and conditions contained in a separate Purchasing agreement between Seller and 791 PURCHASING COOPERATIVE Participants."

8. Participation Fees

The Vendor agrees to pay 791 PURCHASING COOPERATIVE agrees to pay the participation fee, **1.75%** Sales Admin Fee.

- a) The fee is a **1.75** percent annual participation fee for all Agreement sales to 791 PURCHASING COOPERATIVE Participants utilizing a 791 PURCHASING COOPERATIVE awarded the contract. The participation fee will be the total dollars derived from **1.75** % of total sales volume through this program to 791 PURCHASING COOPERATIVE participants. The participation fee will be included in quotes and invoices between the awarded vendor and 791 PURCHASING COOPERATIVE Participants.
- b) The 791 PURCHASING COOPERATIVE participation fee will not be provided as a separate line item to the 791 PURCHASING COOPERATIVE Participant. The vendor will remit the participation fee to 791 PURCHASING COOPERATIVE within thirty (30) business days of receipt of the payment for Purchases made under this agreement, which includes the annual participation fee, from the 791 PURCHASING COOPERATIVE Participant. Failure to pay the participation fee will result in termination of the Agreement and 791 PURCHASING COOPERATIVE reserves the right to take any action under the law or equity for any breach of contract.
- c) Prior to delivering a quote to a 791 PURCHASING COOPERATIVE Participant, the awarded vendor(s) will calculate the administrative fee for 791 PURCHASING COOPERATIVE to be included in the quote.

Carrier Corp Exception - Purchasing Cooperative members must be made aware by 791 Purchasing Cooperative that there is a participation fee paid by Carrier Corporation to 791 Purchasing Cooperative, in order to avoid any potential liability to Carrier Corporation in being accused of hidden fee pricing. 791 Purchasing Cooperative must provide this assurance to Carrier Corporation in writing.

9. Administrative Participation Fee

791COOP establishes a fee for each solicitation for proposals that are in the best interest of 791COOP and its participants.

10. Sales Reporting Procedures for Vendor

Vendor will report any sale under this contract that is made to a 791 PURCHASING COOPERATIVE Participant with the Vendor on a monthly basis. Thus, any order entered in a particular month shall report with thirty (30) business days of the 791 PURCHASING COOPERATIVE Participant issuing a Purchase Order or otherwise purchasing from the vendor under this contract.

11. Adoption of Agreement by State or Federal Agencies

Awarded Vendors may present this agreement to State agencies for adoption by the State. The vendor may agree to pay an additional fee to the State Agency. The Awarded Vendor shall continue to pay the Participation fee to 791 Purchasing Cooperative and report these sales to 791 Purchasing Cooperative. Failure for the Awarded Vendor to comply with this section of the agreement will result in the in Awarded Vendor being in breach of this agreement and having their agreement with 791 Purchasing Cooperative terminated for cause.

Furthermore, Awarded Vendor may present this agreement to Federal Government Agencies who may adopt this agreement. . Participation fees shall continue to be paid and sales reported to 791 Purchasing Cooperative, even if a fee is paid to the approving Federal Agency. Failure for the Awarded Vendor to comply with this section of the agreement will result in the in Awarded Vendor being in breach of this agreement and having their agreement with 791 Purchasing Cooperative terminated for cause.

12. Indemnity

To the proportional extent Vendor's acts or omissions resulted in the claim, vendor agrees to indemnify and hold harmless and defend 791 PURCHASING COOPERATIVE, 791 PURCHASING COOPERATIVE officers and employees, from and against all third party claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's performance of this Agreement or sales made to 791 PURCHASING COOPERATIVE Participants under this agreement, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, invitees, unless such claims are based in whole upon the negligent acts or omissions of the 791 PURCHASING COOPERATIVE, 791 PURCHASING COOPERATIVE officers, employees, or agents. If based in part upon the negligent acts or omissions of the 791 PURCHASING COOPERATIVE, 791 PURCHASING COOPERATIVE officers, employees, or agents, Vendor shall be responsible for Vendor's proportional share of the claim.

13. State of Texas Franchise Tax

By signature hereon, the bidder hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

14. Miscellaneous:

Nothing in the Agreement or in any other communication between 791 PURCHASING COOPERATIVE and the Vendor may be construed as a guarantee that 791 PURCHASING COOPERATIVE Participants will purchase items and services under this contract from Vendor at any time.

15. Termination:

Contract shall terminate at the end of the agreement or at the end of any contract extensions. Either party may terminate for breach of contract which would include bankruptcy, or due to continued failure to perform the terms in this agreement. Prior to exercising termination for breach, the non-breaching party must provide notice by certified mail to provide the other party 30 days to solve the stated problems. However, if this agreement is terminated prior to the end date of the initial term or the end date of an agreed-to extension term, any 791 PURCHASING COOPERATIVE Purchase Contract entered into between Vendor and a 791 PURCHASING COOPERATIVE Participant shall survive and will not be terminated. Upon termination of this agreement between 791 PURCHASING COOPERATIVE and the Vendor, this agreement shall survive only insofar as to govern all surviving 791 PURCHASING COOPERATIVE Contracts between the Vendor and 791 PURCHASING COOPERATIVE Participants. Termination for convenience is required under 2 CFR part 200.

16. Marketing

Awarded vendor agrees to allow 791 PURCHASING COOPERATIVE to use their name and logo within the 791 PURCHASING COOPERATIVE website, marketing materials, and advertisement. The vendor may use the 791 PURCHASING COOPERATIVE name and logo in marketing the 791 PURCHASING COOPERATIVE Contract to 791 PURCHASING COOPERATIVE Participants or other Texas government or public entities.

17. Legal obligations

It is the responding vendor's responsibility to be aware of and comply with all local, state, and federal laws governing the sale of products/services identified in this RFP and any awarded Agreement thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

18. Audit rights

Awarded Vendors shall, at their sole expense, maintain appropriate due diligence of all purchases made by any 791 PURCHASING COOPERATIVE Participant that utilizes this Agreement. 791 PURCHASING COOPERATIVE reserves the right to audit the accounting for a period of four (4) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of four (4) years from the effective date of termination. 791 PURCHASING COOPERATIVE shall have the ability to conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, the requested materials shall be provided in the format and at the location designated by 791 PURCHASING COOPERATIVE. 791 PURCHASING COOPERATIVE shall bear the cost of such audit requested by 791 PURCHASING COOPERATIVE, but all documents maintained by the vendor shall be produced and made available to 791 PURCHASING COOPERATIVE or its agents at no cost. **Audit rights cover only verification of participation fees.**

19. Force Majeure

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and cause of Force Majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such

inability with all reasonable dispatch. This Clause includes COVID-19 which is a Declared Pandemic and any future Declared Pandemics.

20. Remedies

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the 791 PURCHASING COOPERATIVE to a binding arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may, be subject to mediation at the request of either party. Non-binding mediation shall be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Tom Green County, Texas. Agreements reached in mediation shall be reduced to writing, and signed shall thereafter be enforceable as provided by the laws of the State of Texas.

21. Choice of Law

This agreement and any addenda or other additions and all contracts or awards resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

22. Jurisdiction (Venue) and Service of Process

Any Proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Tom Green County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world.

23. Alternative Dispute Resolution

Prior to filing of litigation, the parties may select non-binding mediation as a method of conflict resolution for issues arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction. The parties agree that if non-binding mediation is chosen as a resolution process, the parties must agree to the chosen mediator(s) and that all mediation venues shall be at a location in Tom Green County, Texas or agreed by the parties. The parties agree to share equally the cost of the mediation process and venue cost.

24. Acts or Omissions

To the proportional extent Vendor's acts or omissions resulted in the claim, the successful vendor will be expected to indemnify and hold harmless 791 PURCHASING COOPERATIVE, its officers, employees, agents, representatives, contractors, assignees and designees from and against any and all liability, actions, claims, demands or suits, and all related costs, attorney's fees and expenses arising out of, or resulting from any acts or omissions of the vendor or its agents, employees, subcontractors, or suppliers in the execution or performance of any agreements ultimately made by 791 PURCHASING COOPERATIVE and the vendor.

25. Contract Governance

Any contract made or entered into by 791 PURCHASING COOPERATIVE is subject to and is to be governed by Section 271.151 et seq, Texas Loc Gov't Code. Otherwise, the Central Texas Council of Governments, as the Lead Agency for 791 PURCHASING COOPERATIVE does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.

26. Supplemental Agreements

The 791 PURCHASING COOPERATIVE Participant entity participating in the 791 PURCHASING COOPERATIVE Agreement and awarded vendor may enter into a separate supplemental agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement i.e., invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement or contract developed as a result of this Agreement is exclusively between the participating entity and awarded vendor. 791 PURCHASING COOPERATIVE, its agents, 791 PURCHASING COOPERATIVE Participants, and employees shall not be made a party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in the agreement. If a vendor submitting a Proposal requires 791 PURCHASING COOPERATIVE and/or 791 PURCHASING COOPERATIVE Participant to sign an additional agreement, those agreements shall comply with the award made by 791 PURCHASING COOPERATIVE to the Vendor. Supplemental Vendor's Agreement documents may not become part of 791 PURCHASING COOPERATIVE's Agreement with the vendor unless and until an authorized representative of 791 PURCHASING COOPERATIVE reviews and approves it. 791 PURCHASING COOPERATIVE permits 791 PURCHASING COOPERATIVE Participants to negotiate additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's 791 PURCHASING COOPERATIVE Agreement.

27. Survival Clause

All applicable agreements, contracts, software license agreements, warranties, or service agreements that were entered into between Vendor and 791 PURCHASING COOPERATIVE or the 791 PURCHASING COOPERATIVE Participant Customer under the terms and conditions of this Agreement shall survive the expiration or termination of this Agreement. All Orders, Purchase Orders issued, or contracts executed by 791 PURCHASING COOPERATIVE or a 791 PURCHASING COOPERATIVE Participant and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.

28. Smoking

Persons working under the Agreement shall adhere to the 791 PURCHASING COOPERATIVE Participant's or local smoking statutes, codes, or policies.

29. Novation

If awarded vendor sells or transfers all assets or the entire portion of the assets used to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of the awarded vendor.

30. Licenses

Awarded vendor shall maintain in current status all federal, state, and local licenses, bonds, and permits required for the operation of the business conducted by awarded vendor. Awarded vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the

lawful provision of goods or services under the Agreement. 791 PURCHASING COOPERATIVE and its Participants reserve the right to stop work and/or cancel the Agreement of any awarded vendor whose license(s) expire, lapse, are suspended, or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

31. 791 PURCHASING COOPERATIVE Participant Purchasing Procedures

Purchase orders or its equal are issued by participating 791 PURCHASING COOPERATIVE Participant to the awarded vendor and should indicate on the order that the purchase is per the applicable 791 PURCHASING COOPERATIVE Agreement number. Orders are typically emailed to 791 PURCHASING COOPERATIVE at admin@791COOP.org

- a) Awarded vendor delivers goods/services directly to the participating participant.
- b) Awarded vendor invoices to the participating 791 PURCHASING COOPERATIVE Participant directly.
- c) Awarded vendor receives payment directly from the participating participant.
- d) Awarded vendor reports sales monthly to 791 PURCHASING COOPERATIVE (unless prior arrangements have been made with 791 PURCHASING COOPERATIVE for an alternative submission schedule).

32. Incorporation of Solicitation

The 791 Purchasing Cooperative Solicitation, whether a Request for Proposals, the Request for Competitive Sealed Proposals or Request for Qualifications solicitation, or other, the Vendor's response to same and all associated documents and forms made part of the solicitation process, including any addenda, that resulted in the execution of this agreement are hereby incorporated by reference into this agreement as if copied verbatim.

33. Registered Felony Convictions and sex offender restrictions

For work to be performed at schools, awarded vendor agrees that no employee of a sub-contractor who has been adjudicated to be a registered sex offender will perform work at any time when students are, or reasonably expected to be, present unless otherwise agreed by the 791Purchasing Cooperative Participant. Awarded vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the 791 Purchasing Cooperative Participant's discretion. Awarded vendor must identify any additional costs associated with compliance with this term. If no costs are specified, compliance with this term will be provided at no additional charge.

34. Safety measures

Awarded vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for the protection of workers and the public. Awarded vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, the general public, and existing structures from injury or damage.

35. Insurance Requirements

- a) **Contractor's Commercial General Liability Insurance**—Contractor shall purchase and maintain such insurance as will protect him from claims for damages because of bodily injury, sickness, or disease, or death of any person including claims insured by standard personal injury liability,

and from claims for injury to or destruction of tangible property, any or all of which may arise out of or result from Contractor's operations under the Contract Documents, whether such operations be by himself or anyone directly or indirectly employed by him or for whose acts they may be legally liable. This insurance shall include the types and specific coverages herein described and be written for not less than any limits of liability specified in these Documents or required by law, whichever is greater. Insurance must include coverage for independent contractors, products/completed operations, contractual liability, broad form property damage, and personal injury.

- b) Contractor's Automobile Liability Insurance**—Contractor shall purchase and maintain such insurance as will protect him from claims for damages because of bodily injury, sickness, disease, or death of any person, including claims insured by standard personal injury coverage; and from claims for injury to or destruction of tangible property, any or all of which may arise out of or result from the use of all owned, non-owned, or hired, automobile, vehicles, and other equipment both on and off work, arising from or in any way related to or as the result of Contractor's operations under the Agreement, whether such operations be by the Contractor or anyone directly or indirectly employed by him or for whose acts any of them may be legally liable.
- c) Contractor's Workers' Compensation and Employer's Liability Coverage**—The Contractor shall comply with the provisions of the Workers' Compensation Act, and the subsequent Injury Act, and the Contractor shall procure and maintain during the life of this Contract Workers' Compensation and Employer's Liability Insurance in accordance with Texas laws and regulations. Such insurance shall include coverage permitted for safety devices. If the Contractor elects to be self-insured, he shall comply with the applicable requirements and laws of Texas. CTCOG, its officers, or employees will not be responsible for any claims or actions occasioned by the failure of the Contractor to comply with the provisions of this paragraph.

If any class of employee is not protected under the Workers' Compensation Statute, the Contractor shall provide adequate employer's liability coverage as will protect him and the University against any claims resulting from injuries to and death of workers engaged in work under this contract.

- d) Coverage limits**—Insurance coverage limits required to be carried by the Contractor under this Section shall be as follows:
1. Commercial General Liability Insurance and Commercial Automobile Liability Insurance limits of coverage shall be the limits established by the Texas Claims Act or **1,000,000 per occurrence and \$2,000,000 in aggregate per project**
 2. Contractor's Workers' Compensation - coverage shall be those established by applicable statutes. Employer's liability coverages shall be the limits established by the State of Texas or \$1,000,000.
 3. Umbrella Liability Insurance: Liability on the following form basis with a limit of \$1,000,000 per occurrence **and in aggregate** in excess of all primary limits.
- e) All proposals shall include a valid Certificate of Liability Insurance showing CTCOG, 791 Purchasing Cooperative, and individual 791 Purchasing Cooperative participants (if requested) as a certificate holders.**

f) Carrier will supply its standard insurance

Carrier Exception - Carrier Corporation shall not be liable for any special, indirect, incidental, consequential, punitive or exemplary damages. Carrier Corporation's maximum liability under this Agreement shall not exceed the order amount of the relevant order

791 PURCHASING COOPERATIVE and VENDOR AGREEMENT

Signature Form

RFP #791_2022_07_002 HVAC Equipment and Services

Vendor:

Company Name - Carrier Corporation_____

Address – 13995 Pasteur Blvd_____

City - Palm Beach Gardens_____State FL_____Zip 33418_____

Phone_561-365-2000_____

Name of Authorized Representative - Joe Ison_____

Title - Strategic Accounts Manager_____ Date __7/21/23_____

Signature of Authorized Representative_____ *Joe Ison* _____(Required)

791 PURCHASING COOPERATIVE:

Authorized Representative Signature: _____ *Jeffrey Shokrian* _____

Name Jeffrey Shokrian_____

Title CEO_____

Email Jeff@791Coop.org_____

Address 115 Natalen Ave_____

City San Antonio_____State TX_____Zip 78209_____

Phone 8327525978_____

July 21, 2023

Date _____

ATTACHMENT 2

City Hall Duct Cleaning Scope of Work



Address 2478 Peck Road
City of Industry CA 90601
Phone (818) 652-2365
Fax (860) 998-7888
E-mail dan.marquez@carrier.com

Contact Name Cassidy Le Air
Account City of Goleta
Phone (805) 562-5557
Site Address 130 Cremona Dr
Goleta, CA 93117-5599

Estimate Date 07/07/2023

Quote Number 00751431

Job Description City of Goleta – **City Hall Duct Cleaning**

Scope of Work

The following is our proposal to clean the HVAC System for Goleta City Hall located at 130 Cremona Dr #B, Goleta, CA 93117 in accordance with the following procedures.

Observations and Notes:

- A. Approximately 300 registers.
- B. Clean all registers and associated duct work.
- C. HEPA (High-Efficiency Particulate Air) vacuums to be used to clean out the corresponding ductwork.
- D. No available plans.
- E. Ceiling height is approximately 10 ft high, with T-Bar ceilings.
- F. The system has not been cleaned.
- G. No accessibility issues.
- H. This is a prevailing Wage Project.
- I. Bring into the facility 8-foot, 10-foot, and 12-foot A-frame ladders.
- J. All desks, chairs, tables, any other furniture, and office equipment shall be covered with clean protective drop cloths.
- K. We are classified as an essential service. Our technicians are all vaccinated, taking every necessary precaution, and are in full Personal Protective Equipment (PPE); gloves, mask, safety glasses, and booties, and they must also come to the office daily to have their temperatures taken before we send them out to our client locations.
- L. Before and after photos will be available on request upon completion of the service.
- M. Contact person to schedule the service will be Cassidy Le Air @ 805-562-5557.

Scheduling:

- 1. The customer will be contacted prior to service and arrangements shall be made as to the best time to come and perform the service.
- 2. The Foreman and Technicians will arrive at the job site approximately thirty (30) minutes prior to the scheduled time to ensure the Foreman and Technicians are fully prepared to start work.
- 3. He will let the customer know that he has arrived and make the necessary arrangements with the customer.
- 4. After viewing the safety video, signing the Good Manufacturing Practices (GMPs) paperwork, and COVID-19 questionnaire, Action Duct personnel will put on their Personal Protective Equipment (PPE) to begin work.
- 5. Action Duct Foreman to obtain contact names and cell phone numbers of all company supervisors prior to beginning work.
- 6. If there is rain or severe weather conditions on the date of service, cleaning may have to be rescheduled for safety reasons.

Cleaning Procedure:

Ductwork:

- 1. All accessible return and supply ductwork will be cleaned using the method necessary to do a thorough job. This would include hand-vacuuming and the use of compressed air. Any inaccessible ductwork shall be cleaned as effectively as possible at the time of service.
- 2. All dirt will be removed from ductwork with vacuums. All vacuums used within the building will be high efficiency filtered (HEPA) vacuums to keep dust from escaping into the building. Ductwork shall be kept under negative pressure during cleaning to prevent any contaminants from entering occupied areas.
- 3. All accessible parts within ductwork (such as fire dampers and turning vanes) will be vacuumed clean. Dampers will be returned to their original positions.
- 4. VAV (Variable Air Volume)/Mixing boxes shall be thoroughly cleaned.
- 5. All removable return and supply registers will be taken down, washed and re-installed.
- 6. Desks, chairs, equipment, etc. in work areas shall be covered with clean protective cloths. All work areas will be left tidy after work is completed. All debris shall be removed from site.
- 7. The system or surrounding areas may have asbestos and if this is identified as such, it will be reported.
- 8. No additional services will be performed without first obtaining the customer's approval in writing and a change order signed by both parties.
- 9. A full written report will be provided at the end of the job.
- 10. Any significant deteriorating fiberglass lining in ductwork or VAV boxes will be reported to the owner. A separate bid will be provided for repairing the liner.

Exclusions / Clarifications

This quote does not include the waste disposal and labor performed outside normal business hours unless otherwise noted.

Any items not specifically listed in the scope of work above.

Total Quoted Price – Pricing per 791 Coop Contract Number: 791202207002

Total Price for Scope of Work including applicable taxes: \$73,115.00

Prevailing wage included

This proposal is valid for 30 days from the date of proposal. Carrier's terms and conditions will govern in lieu of any other terms and conditions contained in any resulting Purchase, Order, Contract, Agreement, etc. Carrier would like to thank you for the continuing opportunity to be of service.

Sincerely,

Dan Marquez

Carrier Commercial Service

Title

Customer Acceptance (signature)

Date

Purchase Order

This quote is valid for 30 days.

The attached Terms & Conditions shall govern.

CARRIER CORPORATION TERMS AND CONDITIONS OF SALE EQUIPMENT AND/OR SERVICE

1. PAYMENT AND TAXES - Payment shall be made net 30 days from date of invoice. Carrier reserves the right to require cash payment or other alternative method of payment prior to shipment or completion of work if Carrier determines, in its sole discretion, that Customer or Customer's assignee's financial condition at any time does not justify continuance of the net 30 days payment term. In addition to the price, Customer shall pay Carrier any taxes or government charges arising from this Agreement. If Customer claims that any such taxes or government charges do not apply to the transactions governed by this Agreement, Customer shall provide Carrier with acceptable tax exemption certificates or other applicable documents. All past due invoices will accrue interest at the lesser of 1% per month or the maximum amount allowable by law.

2. EXTRAS - Equipment, parts or labor in addition to those specified in this Agreement will be provided upon receipt of Customer's written authorization, paid for as an extra at Carrier's prevailing labor rates and equipment/parts charges, and subject to the terms of this Agreement.

3. RETURNS - No items will be accepted for return without prior written authorization. Returned goods may be subject to a restocking charge. Special order and non-stock items cannot be returned.

4. SHIPMENT - All shipments shall be F.O.B. shipping point, freight prepaid and allowed to the job site. Shipment dates quoted are approximate. Carrier does not guarantee a particular date for shipment or delivery.

5. PARTIAL SHIPMENT - Carrier shall have the right to ship any portion of the equipment, goods or other materials included in this Agreement and invoice Customer for such partial shipment.

6. DELAYS - Carrier shall not be liable for delays in manufacturing, shipping or delivery by causes beyond the control and without the fault or negligence of Carrier, including but not restricted to acts of God, acts of a public enemy, acts of government, acts of terrorism, fires, floods, epidemics, quarantine restrictions, freight embargoes, supplier delays, strikes, or labor difficulties (collectively "Force Majeure Events"). Carrier agrees to notify Customer in writing as soon as practicable of the causes of such delay. In the event that any materials or equipment to be provided by Carrier under this Agreement become permanently unavailable as a result of a Force Majeure Event, Carrier shall be excused from furnishing such materials or equipment.

7. WARRANTY - Carrier warrants that all equipment manufactured by Carrier Corporation and all Carrier equipment, parts or components supplied hereunder will be free from defects in material and workmanship. Carrier shall at its option repair or replace, F.O.B. point of sale, any equipment, part or component sold by Carrier and determined to be defective within one (1) year from the date of initial operation or eighteen (18) months from date of shipment, whichever is earlier. Carrier does not warrant products not manufactured by Carrier Corporation, but

it does pass on to Customer any transferrable manufacturer warranties for those products. Carrier warrants that all service provided by Carrier hereunder shall be performed in a workmanlike manner. In the event any such service is determined to be defective within ninety (90) days of completion of that service, Carrier shall at its option re-perform or issue a credit for such service. Carrier's obligation to repair or replace any defective equipment, parts or components during the warranty period shall be Customer's exclusive remedy. Carrier shall not be responsible for labor charges for removal or reinstallation of defective equipment, parts or components, for charges for transportation, handling and shipping or refrigerant loss, or for repairs or replacement of such equipment, parts or components, required as a consequence of faulty installation, misapplication, vandalism, abuse, exposure to chemicals, improper servicing, unauthorized alteration or improper operation by persons other than Carrier. THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. WORKING HOURS - All services performed under this Agreement, including but not limited to, major repairs, are to be provided during Carrier's normal working hours unless otherwise agreed.

9. CUSTOMER RESPONSIBILITIES (Service Contracts only) - Customer shall:

- Provide safe and reasonable equipment access and a safe work environment.
- Permit access to Customer's site, and use of building services including but not limited to: water, elevators, receiving dock facilities, electrical service and local telephone service.
- Keep areas adjacent to equipment free of extraneous material, move any stock, fixtures, walls or partitions that may be necessary to perform the specified service.
- Promptly notify Carrier of any unusual operating conditions.
- Upon agreement of a timely mutual schedule, allow Carrier to stop and start equipment necessary to perform service.
- Provide adequate water treatment.
- Provide the daily routine equipment operation (if not part of this Agreement) including availability of routine equipment log readings.
- Where Carrier's remote monitoring service is provided, provide and maintain a telephone line with long distance direct dial and answer capability.
- Operate the equipment properly and in accordance with instructions.
- Promptly address any issues that arise related to mold, fungi, mildew or bacteria.
- Identify and label any asbestos containing material that may be present. The customer will provide, in writing, prior to the start of a job, a signed statement regarding the absence or presence of asbestos for any job where the building or the equipment to be serviced is older than 1981. Should this document state that no asbestos is present, the customer will also provide in writing the method used to determine the absence of asbestos.

10. EXCLUSIONS - Carrier is not responsible for items not normally subject to mechanical maintenance including but not limited to: duct work, casings, cabinets, fixtures, structural supports, grillage, water piping, steam piping, drain piping, cooling tower fill, boiler tubes, boiler refractory, disconnect switches and circuit breakers. Carrier is not responsible for repairs, replacements, alterations, additions, adjustments, repairs by others, unscheduled calls or emergency calls, any of which may be necessitated by negligent operation, abuse, misuse, prior improper maintenance, vandalism, obsolescence, building system design, damage due to freezing weather, chemical/electrochemical attack, corrosion,

erosion, deterioration due to unusual wear and tear, any damage related to the presence of mold, fungi, mildew, or bacteria, damage caused by power reductions or failures or any other cause beyond Carrier's control. Carrier shall not be required to perform tests, install any items of equipment or make modifications that may be recommended or directed by insurance companies, government, state, municipal or other authority. However, in the event any such recommendations occur, Carrier, at its option, may submit a proposal for Customer's consideration in addition to this Agreement. Carrier shall not be required to repair or replace equipment that has not been properly maintained.

11. EQUIPMENT CONDITION & RECOMMENDED SERVICE (Service Contracts only) - Upon the initial scheduled operating and/or initial annual stop inspection, should Carrier determine the need for repairs or replacement, Carrier will provide Customer in writing an 'equipment condition' report including recommendations for corrections and the price for repairs in addition to this Agreement. In the event Carrier recommends certain services (that are not included herein or upon initial inspection) and if Customer does not elect to have such services properly performed in a timely fashion, Carrier shall not be responsible for any equipment or control failures, operability or any long-term damage that may result. Carrier at its option will either continue to maintain equipment and/or controls to the best of its ability, without any responsibility, or remove such equipment from this Agreement, adjusting the price accordingly.

12. PROPRIETARY RIGHTS - Carrier may elect to install, attach to Customer equipment, or provide portable devices (hardware and/or software) that shall remain the personal proprietary property of Carrier. No devices installed, attached to real property or portable device(s) shall become a fixture of the Customer locations. Customer shall not acquire any interest, title or equity in any hardware, software, processes, and other intellectual or proprietary rights to devices that are used in connection with providing service on Customer equipment.

13. DATA RIGHTS - Customer hereby grants and agrees to grant to Carrier a worldwide, non-exclusive, non-terminable, irrevocable, perpetual, paid-up, royalty free license to any Source Data, with the right to sub-license to its affiliates and suppliers for (i) Carrier's performance of services pursuant to this Agreement, (ii) the improvement of Carrier services, and Carrier's Analytics Platform; (iii) improving product performance, operation, reliability, and maintainability; (iv) to create, compile, and/or use datasets and/or statistics for the purposes of benchmarking, development of best practices, product improvement; (v) the provision of services to third parties, (vi) research, statistical, and marketing purposes, and/or (vii) in support of Carrier agreements.

Source Data – shall mean data that is produced directly from a system, or device and received at a collection point or a central server (e.g. a Carrier database, data lake, or third party cloud service).

Analytics Platform – shall mean server algorithms or web interface systems used to (i) interpret, convert, manipulate, or calculate data, (ii) perform data processing, and/or (iii) the delivery of data to Carrier, affiliates or suppliers of Carrier, and/or Customer.

14. RETURN OF DATA - Customer understands and acknowledges that the portable devices will collect Source Data that will be stored on and/or transmitted to Carrier's servers and to suppliers or affiliates that are contracted by Carrier and used to transmit, process, extract or store such Source Data for purposes of Carrier's performance of the service in accordance with this Agreement. Once such data and information has been stored and/or transmitted to Carrier's servers, Customer agrees that such data and information shall become part of Carrier's database and therefore subject to the license terms under section 13.

15. DATA DELIVERY - During the term of the Agreement Customer shall (i) make reasonable efforts to ensure that the hardware remains powered on, (ii) avoid intentional action to impede, block or throttle collection and transmission of Source Data by Carrier, and (iii) avoid intentional action to disable, turn off, or remove the hardware without Carrier's express written consent, which consent shall not be unreasonably withheld.

16. REVERSE ENGINEERING - Customer shall not extract, decompile or reverse engineer any software included with, incorporated in, or otherwise associated with the hardware and shall not reverse engineer any reports or analytics provided to or received by Customer from Carrier.

17. WAIVER OF DAMAGES - Under no circumstances shall Carrier be liable for any indirect, incidental, special or consequential damages, including loss of revenue or profit, loss of use of equipment or facilities, loss of data, or economic damages howsoever arising.

18. LIMITATION OF LIABILITY - Carrier's maximum liability for any reason (except for personal injuries) arising from this Agreement shall not exceed the value of the payments received by Carrier under this Agreement.

19. CANCELLATION - Customer may cancel this Agreement only with Carrier's prior written consent, and upon payment of reasonable cancellation charges. Such charges shall take into account costs and expenses incurred, and purchases or contract commitments made by Carrier and all other losses due to the cancellation including a reasonable profit.

20. CUSTOMER TERMINATION FOR CARRIER NON-PERFORMANCE - Customer shall have the right to terminate this Agreement for Carrier's non-performance provided Carrier fails to cure such non-performance within thirty (30) days after having been given prior written notice of the non-performance. Upon early termination or expiration of this Agreement, Carrier shall have free access to enter Customer locations to disconnect and remove any Carrier personal proprietary property or devices as well as remove any and all Carrier-owned parts, tools and personal property. Additionally, Customer agrees to pay Carrier for all incurred but unamortized service costs performed by Carrier including overheads and a reasonable profit.

21. CARRIER TERMINATION - Carrier reserves the right to discontinue its service any time payments have not been made as agreed or if alterations, additions or repairs are made to equipment during the term of this Agreement by others without prior agreement between Customer and Carrier.

22. CLAIMS - Any lawsuits arising from the performance or nonperformance of this Agreement, whether based upon contract, negligence, strict liability or otherwise, shall be brought within one (1) year from the date the claim arose.

23. GOVERNMENT PROCUREMENTS - The components, equipment and services provided by Carrier are "commercial items" as defined in Section 2.101 of the Federal Acquisition Regulations ("FAR"), and the prices of such components, equipment and services are based on Carrier's commercial pricing policies and practices (which do not consider any special requirements of U.S. Government cost principles, FAR Part 31, or any similar procurement regulations). As such, Carrier will not agree to provide or certify cost or pricing data, nor will Carrier agree to comply with the Cost Accounting Standards (CAS). In addition, no government procurement regulations, such as FARs or DFARs, shall apply to this Agreement except those regulations expressly accepted in writing by Carrier.

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24. HAZARDOUS MATERIALS - Carrier is not responsible for the identification, detection, abatement, encapsulating or removal of asbestos, products or materials containing asbestos, similar hazardous substances, or mold, fungi, mildew, or bacteria. If Carrier encounters any asbestos or other hazardous material while performing this Agreement, Carrier may suspend its work and remove its employees from the project, until such material and any hazards associated with it are abated. The time for Carrier's performance shall be extended accordingly, and Carrier shall be compensated for the delay.

25. WASTE DISPOSAL - Customer is wholly responsible for the removal and proper disposal of waste oil, refrigerant and any other material generated during the term of this Agreement.

26. SUPERSEDEDURE, ASSIGNMENT and MODIFICATION - This Agreement contains the complete and exclusive statement of the agreement between the parties and supersedes all previous or contemporaneous, oral or written, statements. Customer may assign this Agreement only with Carrier's prior written consent. No modification to this Agreement shall be binding unless in writing and signed by both parties. Orders shall be binding upon Carrier when accepted in writing by an authorized representative of Carrier. CARRIER'S ACCEPTANCE OF CUSTOMER'S ORDER IS CONDITIONED UPON CUSTOMER'S ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH HEREIN (THIS "AGREEMENT") AND CUSTOMER'S AGREEMENT TO BE BOUND BY AND COMPLY WITH THIS AGREEMENT. THIS AGREEMENT AND ALL REFERENCED ATTACHMENTS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN CARRIER AND CUSTOMER, AND NO AMENDMENT OR MODIFICATION SHALL BE BINDING ON CARRIER UNLESS SIGNED BY AN OFFICER OR AUTHORIZED EMPLOYEE OF CARRIER. THE FAILURE OF CARRIER TO OBJECT TO PROVISIONS CONTAINED IN ANY PURCHASE ORDER OR OTHER DOCUMENT OF CUSTOMER SHALL NOT BE CONSTRUED AS A WAIVER BY CARRIER OF THE TERMS IN THIS AGREEMENT OR AN ACCEPTANCE OF ANY OF CUSTOMER'S PROVISIONS. **ANY CONFLICTING OR ADDITIONAL TERMS OR CONDITIONS SET FORTH BY CUSTOMER IN A PURCHASE ORDER OR OTHER DOCUMENT SHALL NOT BE BINDING UPON CARRIER, AND CARRIER HEREBY EXPRESSLY OBJECTS THERETO.**

27. CUSTOMER CONSENT - Customer consents and agrees that Carrier may, from time to time, publicize Carrier related projects with Customer, including the value of such projects, in all forms and media for advertising, trade, and any other lawful purposes.

28. FOR WORK BEING PERFORMED IN CALIFORNIA - Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

29. INTELLECTUAL PROPERTY - Notwithstanding anything to the contrary stated herein, Carrier retains ownership of its intellectual property and no license to Carrier's intellectual property is granted except as necessary for Customer to use any deliverables and/or services provided hereunder.

30. DATA PRIVACY - Carrier processes personal data in accordance with its privacy notice at Carrier.com or via the following link: <https://www.carrier.com/carrier/en/worldwide/legal/privacy-notice>. Each party will comply with applicable data privacy laws governing personal information collected and processed under this Agreement, including the California Consumer Privacy Act and the European General Data Protection Regulation, and take all reasonable commercial and legal steps to protect personal data. If Customer provides Carrier with personal data, Customer will ensure that it has the legal right to do so, including notifying the individuals whose personal data it provides to Carrier. If a party collects or processes personal data from California residents under this Agreement, such party is a "Service Provider" under the CCPA, and will not sell or exchange such personal data for anything of value.

31. FACTORY ACCEPTANCE TESTS AND INSPECTIONS - The nature and extent of factory acceptance tests or factory inspections, including without limitation, the number and identity of participants, locations visited, and activities undertaken, shall be limited to activities directly related to the performance of this Agreement. The tests or inspections will be subject to mutual agreement of the parties, Carrier policy and internal pre-approval requirements, and strictly comply with Customer's policies as well as all applicable laws and regulations including, without limitation, all applicable laws and regulations prohibiting corruption.

32. CHANGE ORDER / ADDITIONAL WORK / PRICE ADJUSTMENTS - Carrier will not perform additional work until such time as Carrier receives a change order, duly executed by each party, setting forth the scope and an agreed upon price for the additional work, as well as any appropriate adjustments to the delivery schedule. Additional work and/or materials supplied under any change order shall be subject to the terms of this Agreement. The price of services performed under this Agreement is subject to change due to increases in material costs related to tariffs, import duties, trade policy, epidemics, commodity or material costs, fuel surcharges, supplier costs, labor costs, or related impacts or market conditions. Such change shall come into effect on thirty (30) days' prior written notice from Carrier to Customer. The price of equipment supplied under this Agreement is subject to increase in accordance with the Producer Price Index (PPI) published by the U.S. Department of Labor Bureau of Labor Statistics (BLS) for commodity: PCU33341-33341 HVAC and Commercial Refrigeration Equipment. Price escalation will be calculated as (i) total Agreement price multiplied by (ii) the PPI on date of equipment delivery to end customer, divided by (iii) PPI on date of execution of the Agreement. Total Agreement price is not subject to decrease.

33. OCCUPATIONAL SAFETY AND HEALTH (Service Contracts Only) - Carrier and Customer agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act ("OSHA") relating in any way to the performance of work under this Agreement, the project or the job site.

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34. ANTI-DISCRIMINATION POLICY – The Carrier Fostering a Respectful and Safe Work Environment policy is incorporated into these terms via this link:

https://www.carrier.com/commercial/en/us/media/carrier-anti-discrimination-harassment-policy-02192021_tcm199-109848.pdf.

35. EQUIPMENT RENTALS – If all or a portion of this Agreement is for equipment rental, the Carrier Rental Systems Master Terms and Conditions – Rental, available at <https://www.carrier.com/rentals/en/us/rental-equipment/rental-forms/>, shall apply to the rental equipment.

36. STATE CONTRACTOR LICENSE NUMBERS – A list of Carrier’s state contractor license, certificate, and registration numbers, which list is incorporated herein, is available via this link: <https://www.carrier.com/commercial/en/us/service/contractor-licenses>.

37. ADDITIONAL TERMS AND CONDITIONS - CANNABIS INDUSTRY - If Customer is involved in the cannabis industry in the US as a manufacturer, distributor, or otherwise, the additional terms and conditions available at <https://www.carrier.com/commercial/en/us/legal/additional-terms>, which are incorporated herein, shall apply.

38. ADDITIONAL TERMS AND CONDITIONS – ABOUND – If this Agreement includes a subscription to the Abound platform, then the additional terms and conditions of the Abound Master SaaS Subscription Agreement available at <https://abound.carrier.com/saas-agreement> which are incorporated herein, shall apply



Over 100 years of innovations

carrier.com/service

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Carrier Corporation

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