

AGREEMENT FOR HVAC EQUIPMENT SERVICES

THIS AGREEMENT is made and entered into on this 21st day of **August 2019**, by and between the Marin/Sonoma Mosquito and Vector Control District, hereinafter referred to as “District” and North Bay Commercial Services, hereinafter referred to as “Contractor.”

Section 1. Description of Project.

District and Contractor agree that the “Project” shall be as described in Exhibit A - Scope of Services, which is attached hereto and incorporated into the terms of this Agreement. If, during the course of the Project, District and Contractor agree to changes in the Project, such changes shall be effective only if incorporated into this Agreement by written amendment pursuant to Section 15 of this Agreement.

Section 2. Scope of Services.

Contractor agrees to perform those services described in Exhibit A, “Scope of Services.” As more fully set forth in Section 15 of this Agreement, Contractor shall not be responsible for and shall not commence any work exceeding the scope of services without prior written authorization from the District.

Section 3. Term of Agreement.

The Agreement shall commence on the date first entered above and end on December 31st, 2019.

Section 4. Compensation.

District agrees to pay Contractor, and Contractor agrees to accept in full satisfaction for the services required by this Agreement the Compensation set forth in Exhibit B. Said Compensation shall constitute reimbursement of Contractor’s fee for the services rendered, which shall include all expenses.

Contractor shall invoice District on a monthly basis for any services rendered. Such invoices shall itemize all charges in such detail as may reasonably be required by District in the usual course of District business. District shall pay Contractor no later than thirty (30) days after approval of the monthly invoice by District’s staff, such approval not to be unreasonably withheld or delayed.

Section 5. Professional Ability; Standard of Quality.

District has relied upon the professional training and ability of Contractor to perform the services described in Exhibit A “Scope of Services” as a material inducement to enter into this Agreement. Contractor shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All

work performed by Contractor under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Contractor's field of expertise.

Section 6. Indemnification.

Contractor agrees to indemnify, hold harmless, and defend District, District Trustees, and every officer, employee, and agent of District from any liability or financial loss (including, without limitation, attorneys' fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors, or omissions of Contractor or any person employed by Contractor in the performance of this Agreement.

Section 7. Insurance.

Without limiting Contractor's indemnification obligations provided for above, Contractor shall obtain and maintain at all times during the term of this Agreement the following policies of insurance with insurers possessing a Best rating of not less than A:VII:

A. Workers' Compensation Coverage. Workers' Compensation insurance is required for this agreement.

B. General Liability Coverage. General liability insurance, including personal injury and property damage insurance for all activities of the Contractor and its subcontractors, if such are authorized by the District, arising out of or in connection with this Agreement. The insurance shall be in an amount of not less than \$1 million combined single limit personal injury and property damage for each occurrence.

C. Automobile Liability Coverage. Automobile liability insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than \$100,000 per person or \$300,000 total combined single limit for each occurrence.

D. Professional Liability Coverage. Professional liability, errors and omissions insurance shall not be required for this agreement.

E. Policy Endorsements. Each general liability, automobile liability and professional liability insurance policy shall contain the following endorsements.

1. Except for professional liability insurance, the District, its Trustees, officials, employees, and agents are included as additional insureds with regards to damages and defenses of claims arising from activities performed by or on behalf of the Contractor, and products and completed operations of the Contractor.

2. The insurance shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after thirty (30) days written notice has been provided to the District by mail.

3. For any claim related to this Agreement, Contractor's insurance coverage shall be primary insurance as respects the District, its Trustees, officials, employees, and agents.

F. Insurance Certificates and Endorsements. Prior to commencing work under this Agreement, Contractor shall submit to the District documentation evidencing the required insurance signed by the insurance agent and the companies named. This Agreement shall not be executed until these insurance documents are submitted to and approved by the District. In addition, current certification of insurance shall be kept on file with the District at all times during the term of this Agreement.

Section 8. Subcontracts.

Contractor may not subcontract any portion of the work to be performed under this Agreement except as expressly authorized herein. If District consents to such subcontract, Contractor shall be fully responsible to District for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between District and subcontractor nor shall it create any obligation on the part of the District to pay or to see to the payment of any monies due to any such subcontractor other than as required by law.

Section 9. Assignment.

The Contractor shall not assign any right or obligation under this Agreement without the District's prior written consent. Any attempted assignment of any right or obligation in violation of this Section shall be void.

Section 10. Jurisdiction and Severability.

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from the Agreement shall be in the courts of the State of California, County of Sonoma. If any part of this Agreement is found in conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with said laws, but the remainder of this Agreement shall remain in full force and effect.

Section 11. Suspension of Work.

Contractor may request that the work be suspended by notifying District, in writing, of circumstances that are interfering with the normal progress of work. District may suspend the work at its sole discretion. Upon written District approval to suspend work, the time for completion of the work shall be extended by the number of days work is suspended.

Section 12. Termination of Work.

District may at any time, at its sole discretion and with or without cause, terminate all or any portion of the work to be performed under this Agreement upon seven (7) days written notice to Contractor. Contractor agrees to cease all work under this Agreement on or before the effective date of such notice. In the event of termination or cancellation of this Agreement by District, due to no fault or failure of performance by Contractor, Contractor shall be paid full compensation for all services performed by Contractor, in an amount to be determined as follows: For work done in accordance with all the terms and provisions of this Agreement, Contractor shall be paid an amount equal to the amount of services performed prior to the effective date of termination; provided, in no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid Contractor for the full performance of the services required by this Agreement. Subject to these conditions, Contractor shall be entitled to compensation for fees and expenses necessary to secure and organize its work product in the event of termination.

Contractor's obligations pursuant to Sections 6, 14 and 17 of this Agreement shall survive termination, and continue in effect for as long as necessary to fulfill the purposes of Sections 6, 14 and 17.

Section 13. Independent Contractor.

Contractor shall in all respects be an independent contractor and not an employee of District. In particular, Contractor shall receive no premium or enhanced pay for work normally understood as overtime; nor shall Contractor receive holiday pay, sick leave, administrative leave or pay for any other time not actually worked. It is intended by the parties that Contractor shall not be eligible for benefits and shall receive no compensation from the District, except as expressly set forth in Exhibit A, "Compensation" to this Agreement.

Section 14. Ownership of Documents.

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of the District upon payment to Contractor for such work. The District may have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party solely for the project. Contractor shall, at District's expense, provide such reports, plans, studies, documents and writings to District or any party the District may designate, upon written request. Contractor may keep file reference copies of all documents prepared for District.

Section 15. Changes and/or Extra Work.

District may authorize extra and/or changed work, modification of the time of completion, or additional compensation for the tasks to be performed by Contractor. Such authorization must be in writing. In the event Contractor and District agree that

extra or changed work is required, or that additional compensation shall be awarded to Contractor for performance of the tasks identified in this Agreement, a supplemental agreement providing for such compensation shall be prepared and executed by both parties.

Section 16. Compliance with Federal, State and Local Laws.

Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations affecting the performance of this Agreement, including without limitation laws requiring licensing and prohibiting discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases. District shall not be responsible or liable for Contractor's failure to comply with applicable laws.

Section 17. Retention of Records.

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this project, and Contractor shall make such documents available for review and/or audit by District and District's representatives at all reasonable times and upon reasonable notice during the contract period and for at least four (4) years from the date of the completion or termination of this Agreement.

Section 18. Entire Agreement; Amendment.

This Agreement, including all exhibits hereto, constitutes the complete and exclusive expression of the understanding and agreement between the parties with respect to the subject matter hereof. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement. This Agreement may not be altered or amended except by written agreement of the parties hereto.

Section 19. Time of the Essence.

It is understood and agreed by District and that Contractor will perform services with due and reasonable diligence consistent with sound professional practice.

Section 20. Interpretation of Agreement.

This Agreement shall be interpreted and enforced in accordance with the laws of the State of California.

Section 21. Written Notification.

Except as otherwise specified in this Agreement, any notice, demand, request, consent, approval or communications that either party desires or is required to give to the

other party shall be in writing and either served personally or sent by prepaid, first class mail or express mail. Any such notice, demand, request, consent, approval or communication shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within two business days from the time of mailing if mailed within the State of California as provided in this Section.

If to District: Philip D. Smith, Manager
Marin Sonoma Mosquito and Vector Control District
595 Helman Lane
Cotati, CA 94931

If to Contractor: Mike MacDonald, Owner
1588 Mystic Point Place
Santa Rosa, CA 95409

Section 22. Execution.

This Agreement may be executed in several original counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 23. No Third Party Rights.

Contractor's services under this agreement are intended for the sole benefit of the District and shall not create any third party rights or benefits.

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IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the day first above written:

DISTRICT

By: Philip D. Smith

Name: Philip D. Smith

Title: District Manager

Date: 8/21/2019

CONTRACTOR

By: Mike MacDonald

Name: Mike MacDonald

Title: Owner

Date: 8/21/2019

Exhibit A – SCOPE OF SERVICES

Tasks

I. TASK 1

Replace existing (malfunctioning) Carrier air cooled chiller unit with compatible OEM unit manufactured by Carrier. Remove and dispose of old chiller unit. Install new unit in the existing location. Disconnect and reconnect electrical supply, all necessary piping and miscellaneous components and fittings. Connect the system to the District's existing energy management and climate control system. Commission the new system and ensure proper operation.

Provide crane, personnel and other services necessary for removal of failed unit and installation of new unit.

File warranty paperwork on District's behalf.

II. OTHER CONSIDERATIONS

Before commencing work, Contractor shall register with the CA Department of Industrial Relations and abide by applicable Public Works Contracting requirements.

Steve Delucchi will be the District's on-site representative for this project.

Factory warranty shall apply to the installed equipment. One year labor guarantee as specified in contractor's proposal P19062601.

Time is of the essence & the District desires the project to proceed without delay.

Exhibit B – COMPENSATION

District shall pay Contractor from Contractor's approved invoices for work performed.

Payment shall be made as specified below:

1. Fifty percent (50%) of contract amount shall be payable to contractor upon execution of agreement by both parties.
2. An additional thirty percent (30%) shall be payable to contractor upon setting of the new chiller unit and commencement of installation work.
3. Final payment of the remaining twenty percent (20%) upon satisfactory completion of the work & system operation to District's satisfaction.

Summary of Compensation

Tasks 1 & 2 – Up to and including	\$76,500
Total	\$76,500

The total maximum amount authorized under this Agreement, including expenses and reimbursable costs, shall not exceed \$76,500 (Seventy six thousand, five hundred dollars), unless amended in accordance with article 15 of this Agreement.