

STATE OF TEXAS §
 §
COUNTY OF COLLIN § **AGREEMENT FOR SECONDARY VENDOR
HVAC MAINTENANCE AND REPAIRS**

This agreement (“Agreement”) is made by and between the City of Allen, Texas (“City”) and CEC Facilities Group, LLC (“Company”) acting by and through their authorized representatives.

Recitals:

WHEREAS, the City desires to engage Company as the secondary vendor for HVAC Maintenance and Repairs in accordance with the bid specifications and Company’s response to RFP No. 2018-9-102 both of which are attached hereto and incorporated herein as Exhibit “A” (“Specifications”); and

WHEREAS, the parties understand and agree that City has executed an agreement with a primary vendor for HVAC Maintenance and Repairs and the City intends to use Company solely as a secondary vendor for HVAC Maintenance and Repairs on an as needed basis at the City’s sole discretion, and

WHEREAS, Company agrees to perform all services necessary to deliver HVAC Maintenance and Repairs as a secondary vendor upon request by the City on an as needed basis in accordance with this Agreement and the Specifications.

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

**Article I
Term**

The term of this Agreement shall be for a period of twelve (12) months commencing on the last date of execution hereof (the “Effective Date”), unless earlier terminated as provided herein (the “Initial Term”). Thereafter, City maintains the right to renew this Agreement for up to two (2) additional renewal terms of twelve (12) months at the City’s sole discretion. The City may exercise its right to renew this Agreement by providing Company written notice thereof thirty (30) days prior to the expiration of the Initial Term or renewal term, as the case may be.

**Article II
Contract Documents**

Every provision of the documents below is incorporated into this Agreement by reference. The documents referenced below are in descending order of precedence. Any conflict between or among any of the documents shall be resolved in favor of the document with higher precedence.

- A. This Agreement;
- B. Exhibit "A"
 - 1. City's Request #2018-9-102 HVAC Maintenance and Repairs ("Specifications"); and
 - 2. Company's Response to City's Request #2018-9-102 HVAC Maintenance and Repairs ("Response").

Article III Scope of Services

Company shall, upon City's written request, provide the HVAC Maintenance and Repairs specifically set forth in this Agreement and the Specifications and Response, as contained in Exhibit "A." Company shall service and repair to the City at the location(s) specified by the City on an as needed basis solely upon written request by the City. Company agrees and understands that City already has a primary vendor for HVAC Maintenance and Repairs and that City is not obligated to request Company to provide services or repairs under this Agreement. Company further agrees not to terminate this agreement solely based on the City contracting with and/or using the primary vendor to provide any or all of the City's HVAC Maintenance and Repairs.

Article IV Schedule of Work

Company agrees to commence Services only upon written request by the City and to perform the required HVAC Maintenance and Repairs in accordance with the schedules and at the times and locations provided by the City.

Article V Compensation and Method of Payment

City shall compensate Company for the products and services in accordance with the rates and charges provided in Specifications and Response attached at Exhibit "A." The total compensation to Company, after adding the amount of compensation paid to the primary vendor, if any, shall not exceed \$300,000 during the Initial Term or any renewal term under this Agreement (\$100,000 for Preventative Maintenance and \$200,000 for Repairs). If City engages Company to perform services under this Agreement, Company shall provide the City with written invoices to accountspayable@cityoffallen.org on a monthly basis describing the products delivered and services performed as provided in Exhibit "A." Upon approval, City shall compensate Company with the payment term being net 30 days after the date the City is delivered a written invoice for the products and services completed.

Article VI Notice to Proceed

Company shall not proceed with delivery of any products or performance of any services required under this Agreement without a written Notice to Proceed from City. Any products delivered, services performed or expenses incurred by Company prior to Company's receipt of a written Notice to Proceed from City shall be entirely at Company's own risk. Products delivered, services performed and expenses incurred after Company has received a written Notice to Proceed from City will be eligible for reimbursement under the terms of this Agreement, subject to an approved task order.

Article VII Suspension of Work

City shall have the right to immediately suspend performance by Company if City determines in its sole discretion that Company has, or will fail to perform, in accordance with this Agreement. In such event, any payments due Company shall be suspended until Company has taken satisfactory corrective action.

Article VIII Devotion of Time; Personnel; and Equipment

8.1 The Company shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should the City require additional products or services not included under this Agreement, the Company shall make reasonable effort to provide such additional products and services at mutually agreed charges or rates, and within the time schedule prescribed by the City; and without decreasing the effectiveness of the performance of services required under this Agreement.

8.2 To the extent reasonably necessary for the Company to perform the services under this Agreement, the Company shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Company may deem proper to aid or assist in the performance of the services under this Agreement. The cost of such personnel and assistance shall be borne exclusively by the Company.

8.3 The Company shall furnish the facilities, trucks, equipment, telephones, facsimile machines, email facilities, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

8.4 Time is and shall be of the essence in the performance of this Agreement as written.

Article IX Availability of Funds

If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, this Agreement shall be canceled and Company may only be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of services delivered under this Agreement or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations for such purposes.

Article X Termination

This Agreement may be terminated by:

- (a) by mutual written agreement of the parties;
- (b) immediately by City, if Company defaults or breaches any of the terms or conditions of this Agreement;
- (c) by either party, upon thirty (30) days prior to written notice. Should Company terminate this Agreement under this provision, Company shall further state the reason(s) for termination in its written notice;
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency; or “Event of Bankruptcy” shall mean the dissolution or termination (other than a dissolution or termination by reason of Company merging with an affiliate of Company) of Company’s existence as a going business, insolvency, appointment of receiver for any part of Company’s property and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Company and in the event such proceeding is not voluntarily commenced by the Company, such proceeding is not dismissed within ninety (90) business days after the filing thereof;
- (e) by City, if City fails to budget and appropriate funds for payment of the obligations hereunder for the then ensuing fiscal year; or

Article XI Insurance

11.1 Company shall during the term hereof maintain in full force and effect insurance with complies with the Specifications and contains, at a minimum: (1) a policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Company's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000 per occurrence for injury to persons (including death), and for property damage; (2) policy of automobile liability insurance covering any vehicles owned and/or operated by Company, its officers, agents, and employees, and used in the performance of this Agreement; and (3) statutory Worker's Compensation Insurance covering all of Company's employees involved in the provision of services under this Agreement.

11.2 All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

11.3 All insurance companies providing the required insurance shall either be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service, or approved by the City Risk Manager. (d) A certificate of insurance evidencing the required insurance shall be submitted to the City prior to commencement of services.

Article XII Miscellaneous

12.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings written or oral agreements between the parties with respect to this subject matter.

12.2 Assignment. Company may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by Company to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

12.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

12.4 Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

12.5 Amendments. This Agreement may be amended by the mutual written agreement of the parties.

12.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

12.7 Independent Company. It is understood and agreed by and between the parties that Company, in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Company pursuant to this Agreement shall be in the capacity of an independent Company, and not as an agent or employee of City. Company shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

12.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

City of Allen, Texas
Attn: Peter H. Vargas,
City Manager
Allen Civic Plaza
305 Century Parkway
Allen, Texas 75013
Facsimile: 214-509-4118

with copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager &
Smith, L.L.P.
500 N. Akard, 1800 Lincoln Plaza
Dallas, Texas 75201
Facsimile: 214-965-0010

If intended for Company:

CEC Facilities Group, LLC
Attn: Travis Rowe
1275 Valley View Lane
Irving, Texas 75061
Phone: 817-945-9593

12.9 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

12.10 Exhibits and Recitals. The exhibits attached hereto and the Recitals are incorporated herein and made a part hereof for all purposes.

12.11 Indemnification. Company shall release, defend, indemnify and hold harmless City and its officers, agents and employees from and against all damages, injuries (including death), claims, property damages, (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the performance of the work or caused by the negligent act or omission of Company, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Company is legally responsible (hereinafter "Claims"). Company is expressly required to defend City against all such Claims.

In its sole discretion, City shall have the right to select or to approve defense counsel to be retained by Company in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Company's obligation to defend City or as a waiver of Company's obligation to indemnify City pursuant to this Contract. Company shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Company fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Company shall be liable for all costs incurred by City.

12.12 Audits and Records. Company agrees that during the term hereof, City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of the Company's records relating to the services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by City or date of termination if sooner.

12.13 Conflicts of Interests. The Company represents that no official or employee of City has any direct or indirect pecuniary interest in this Agreement.

12.14 Warranty. The Company warrants to the City that all labor furnished to perform the work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that the work will be performed in a good and workmanlike manner and at least in accordance with industry standards, and that the work will be of good quality, free from faults and defects and in strict conformance with this contract. All work not conforming to these requirements may be considered defective.

12.16 Uniforms. Company shall provide and require its employees to wear a uniform that bears the Company name, logo, and the employee's name. Uniforms are not to be dirty, stained, or torn. Uniforms shall be worn at all times while on the job. Company shall provide and ensure the wearing of protective clothing, masks, eye protection, etc., as required by laws, regulation, ordinances, and/or manufacturer's instruction for material and equipment.

12.16 Warning Devices and Barricades. The Company shall furnish and maintain such warning devices, barricades, lights, signs, and other devices as may be necessary or appropriate or required by the City to protect persons or property in, near or adjacent to the jobsite. The Company shall comply with all applicable Federal, State, and Local Laws regarding occupational safety and health as well as providing protection of the environment. This shall include but not be limited to compliance with U.S. Department of Labor-Occupational Safety and Health Administration (OSHA), and U.S. Environmental Protection Agency (EPA) guidelines and regulations. No separate compensation shall be paid to the Company for such measures.

12.17 Protection of Utilities. The Company shall use best efforts to leave undisturbed and uninterrupted all irrigation systems, utilities, and utility services provided to the job site or which presently exist at, above, or beneath the location where the work is to be performed. In the event that any irrigation system, utility, or utility service is disturbed or damaged during the progress of the work, the Company shall forthwith repair, remedy or restore the utility at Company's sole expense. The Company is responsible for an inspection of the site prior to commencing work on site to ensure that no damage is existing or will not occur when maintenance begins. If damage is noted or if probable damage will occur then it is the Company's responsibility to notify the City of Allen representative so that the City of Allen can take action to correct and document the problem(s).

(signature page to follow)

EXECUTED this _____ day of _____, 2019.

CITY OF ALLEN

By: _____
PETER H. VARGAS, CITY MANAGER

Allen Civic Plaza
305 Century Parkway
Allen, Texas 75013

ATTEST

SHELLEY B. GEORGE, CITY SECRETARY

EXECUTED this _____ day of _____, 2019.

CEC Facilities Group, LLC.
COMPANY

By: _____
Signature of Authorized Officer

Name: _____
Travis Rowe

Title: _____
CEC Facilities Group, LLC

Attn: Travis Rowe
1275 Valley View Lane
Irving, Texas 75061

EXHIBIT “A”
SPECIFICATIONS AND RESPONSE

1. City’s Request for Bid #2018-9-102 HVAC Maintenance and Repairs.
2. CEC Facilities Group, LLC. Response to City’s Request for Bid #2018-9-102 HVAC Maintenance and Repairs.