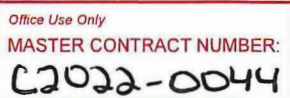


Office Use Only
SUB-CONTRACT NUMBER:
C2024-0005

DocuSigned by:
[Signature]
201AD05D59A4441...
Interim City Attorney

9/1/2023
Date



SERVICES CONTRACT

THIS CONTRACT made and entered into this 23rd day of November, 2021, by and between the City of Branson, Missouri (the "City") and **Specialty Air Conditioning Services, Inc.** ("Service Provider").

WITNESSETH:

THAT, WHEREAS, the City of Branson desires to engage the Service Provider to provide certain services hereafter more particularly described in **Exhibit A**; and

WHEREAS, the Service Provider made certain representations and statements to the City with respect to the provision of such services and the City has accepted said proposal;

NOW, THEREFORE, for the considerations herein expressed, it is agreed by and between the City and the Service Provider as follows:

1. **Scope Of Work.** The City agrees to engage the work of the Service Provider and the Service Provider agrees to provide the services and assume the responsibilities hereinafter set forth in **Exhibit A**.
2. **Addition to Work.** The City and the Service Provider may amend the scope of work set forth in **Exhibit A**, provided that the total cost of such work does not exceed the total cost allowance as specified in Paragraph 7B of this contract. Any amendments shall be in written form and prepared and approved by the appointed City Officials and countersigned by the Service Provider.
3. **Exchange of Data.** All information, data, and reports as are existing, available and necessary for the carrying out of the work, shall be furnished to the requesting party without charge, and the parties shall cooperate with each other in every way possible in carrying out the scope of work.
4. **Payment for Labor and Materials.** The Service Provider agrees and binds itself to secure and pay for all personnel, labor, materials and supplies required to perform the services called for under this contract by Service Provider. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Service Provider. All of the work required hereunder will be performed by the Service Provider or under Service Provider's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such work. None of the work or services covered by this contract shall be subcontracted without the written approval of the City.
5. **Term.** The work of the Service Provider shall commence as soon as practicable after the execution of this contract, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the contract. **The term of the contract will be from a date beginning on January 1, 2022 to a date ending December 31, 2022, with the option to renew the contract for up to three (3) additional successive one-year terms unless Service Provider has notified the City at least ninety (90) days prior to the end of the then contract term or extensions thereto that Service Provider will not renew the contract. Each additional year will require a contract and Board of Aldermen approval. The contract shall not bind,**

nor purport to bind, the City for any contract term beyond the original term of the contract.

6. **Costs not to Exceed.** The City is limited by law with respect to the amount of money it can pay. Therefore, the City has established a fixed sum for this contract which cannot be exceeded unless this contract is amended. The Service Provider providing work hereunder shall be required to keep track of the amount of work performed under this contract at all times; and any work, materials, supplies or expenses in excess of the fixed sum shall not be eligible for payment. The Service Provider shall notify the City if Service Provider anticipates that the contract amount may be exceeded, in order to determine whether or not the City is prepared to increase the total compensation. The Service Provider shall establish a billing system showing the amount of money remaining on the contract which shall be shown in each monthly billing.

7. **Payment.**

A. Conditioned upon acceptable performance. The City agrees to pay the Service Provider in accordance with the terms set forth in **Exhibit B**, which shall constitute complete compensation for all work to be rendered under this contract; provided, that where payments are to be made periodically to Service Provider for work rendered under this contract, the City expressly reserves the right to disapprove in whole or in part a request for payment where the work performed during the period for which payment is claimed are not performed in a timely and satisfactory manner in accordance with the schedule and description of work set forth in **Exhibit A**.

B. **Total compensation not to exceed.** It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Service Provider under the terms of this contract exceed the sum of **Seventy Thousand Dollars (\$70,000.00)**, all of which is dependent upon budget appropriations.

8. **Termination of Contract.**

A. Termination for breach. Failure of the Service Provider to fulfill Service Provider's obligations under this contract in a timely and satisfactory manner in accordance with the schedule and description of work set forth in **Exhibit A** shall constitute a breach of the contract, and the City shall thereupon have the right to immediately terminate the contract. The City shall give written notice of termination to the Service Provider by one of three different means: Facsimile Transmission ("FAX") if Service Provider has a FAX number; U.S. Postal Service Mails; or by hand delivering a copy of the same to the Service Provider; or may give notice by any combination of the above methods. The date of termination shall be the date upon which notice of termination is hand delivered to Service Provider or given by FAX, or the third day following mailing of the notice of termination, whichever first occurs. In the event of termination for breach, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the Service Provider under this contract shall at the option of the City become its property, and the Service Provider shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials; provided, that the Service Provider shall not be relieved of liability to the City for damages sustained by the City by virtue of any such breach of the contract by the Service Provider.

B. Right to terminate in the absence of breach. Either party may terminate this contract for any reason, by serving notice of intent to terminate upon the other party by the means specified in paragraph A of this section. Such notice shall specify the date of termination, but in no event shall either party terminate the contract under this provision upon less than thirty (30)

days' notice to the other party; provided, that the parties may mutually agree to waive the thirty (30) day requirement and to shorten the time for notice of termination, in the event of termination in the absence of breach.

C. **Surviving Terms.** Notwithstanding any provisions to the contrary, provisions pertaining to liability and indemnity shall survive the termination of this contract.

9. **Conflicts.** Any bidder or signee of this contract shall disclose any financial relationship (direct or indirect) to salaried officer, employee of the City or member of the City Board of Aldermen in writing at the time of the execution of this contract. A violation of this provision renders the contract void. Any federal regulations, and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated. Service Provider covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of work to be performed under this contract. The Service Provider further covenants that in the performance of this contract no person having such interest shall be employed.

10. **Assignment.** The Service Provider shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto. Provided, however, that claims for money due or to become due to the Service Provider from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement, though City will attempt to so notify any such assignee.

11. **Performance.** It is understood by the parties that time is of the essence in this contract.

12. **Discrimination.** The Service Provider agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Service Provider or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.

13. **General Independent Service Provider Clause.** This contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Service Provider will be an independent Service Provider and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation and unemployment insurance laws. The Service Provider will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Service Provider's activities and responsibilities hereunder. The Service Provider agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, that this agreement shall not be construed as creating any joint employment relationship between the Service Provider and the City, and the City will not be liable for any obligation incurred by the Service Provider.

14. **City Benefits.** The Service Provider shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

15. **Liability and Indemnity.** The parties mutually agree to the following:

A. In no event shall the City be liable to the Service Provider for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid by the City under this contract. All of the provisions in the agreement are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes.

B. The Service Provider shall defend, indemnify, and hold the City harmless from and against all claims, losses, actions, causes of action, demands and liabilities arising out of personal injuries, including death, and damage or impairment to property or any rights which are caused by the Service Provider arising out of or in any way connected with this contract. Service Provider further agrees to defend, indemnify and hold the City harmless from and against any claims, losses and liabilities arising out of the award of this contract to the Service Provider.

C. The Service Provider shall indemnify and hold the city harmless from all wages or overtime compensation due its employees and from any and all claims by Subcontractors in rendering work pursuant to this agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law.

16. **Bonds and Insurance.** The Service Provider must have and maintain, at the Service Provider's expense, adequate liability insurance and bonds (if applicable) to satisfy statutory bonding requirements, of section 537.610.2 and 537.610.5 of the Missouri Revised Statutes to protect the City and the general public against any loss, damage and/or expense related to the Service Provider's performance under this contract. The insurance coverage shall include, but need not be limited to, the following coverage's in the amounts specified. Such insurance must indemnify the City to the fullest extent possible under the laws of the State of Missouri.

A. General Liability Insurance with a company authorized to do business in the State of Missouri with limits of liability not less than One Million Dollars (\$1,000,000.00) per occurrence for personal injuries (including death) and property damage, and Two Million Dollars (\$2,000,000.00) aggregate. The City of Branson must be named as an additional insured.

B. Automobile Liability Insurance with a company authorized to do business in the State of Missouri having limits of liability not less than One Million Dollars (\$1,000,000.00) per occurrence for personal injuries (including death). The City of Branson must be named as an additional insured.

C. Workers' Compensation Insurance with a company authorized to do business in the State of Missouri having limits not less than One Million Dollars (\$1,000,000.00), including occupational disease provisions for all employees of the Service Provider(s) and Sub-Service Provider(s).

D. The Service Provider will require all Sub-Service Providers to provide and maintain like insurance as set forth above unless the Service Provider's policies extend to claims made against or growing out of operations of the Sub-Service Provider.

E. Written evidence of the required insurance coverage must be submitted before or

upon award of the contract. Such policy(ies) shall name the City of Branson as additionally insured. Failure to maintain required insurance coverage shall be considered a breach of this contract.

F. Service Provider understands and agrees that the insurance required under the terms of the contract in no way precludes the Service Provider from carrying such other insurance as may be deemed necessary by the Service Provider for the operation of the Service Providers business or for the benefit of the Service Provider's employees.

G. Notwithstanding any other provision of the contract to the contrary, no insurance procured by the Service Provider shall be construed to constitute a waiver of any sovereign immunity as set forth in section 537.600 through 537.650 of the Missouri Revised Statutes, or any other governmental or official immunity, which is barred under said doctrines of sovereign, governmental or official immunity available to the City, its Board of Aldermen, salaried officers or employees, nor constitute waiver of any available defense. The Service Provider shall cause all policies of insurance related to the contract to be endorsed in accord to this subparagraph.

H. If this is a multi-year contract then the Service Provider shall further require the upper limits of coverage of such policies to be adjusted on an annual basis to be at least equal to the limits of liability set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes as amended from time to time.

I. Insurance Certificates. It is the sole responsibility of the Service Provider to provide the City with the most up-to-date insurance certificates and to keep them current throughout the term of the contract and for any renewal periods. Any failure to maintain insurance coverage shall not relieve any contractual responsibility, obligation or liability under the contract documents. Insurance Certificates must be faxed or mailed to the address provided.

17. **Notices.** All notices required or permitted herein under and required to be in writing may be given by FAX or by first class mail addressed to City and Service Provider at the addresses provided. The date of delivery of any notice given by mail shall be the date falling on the third day after the day of its mailing. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 4:30 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

18. **Jurisdiction.** This contract and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Taney County, Missouri.

19. **Missouri Immigration Law Affidavit.** After January 1, 2009, the service provider takes note that Section 285.530.2 of the Missouri Revised Statutes requires a political subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation the business entity has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the services provider will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. The service provider will provide with their bid specifications and bonding information a statement that the company has such a program, documentation for the program, and that it will not employ unauthorized aliens in connection with the work.

☐ If this box is checked, then the requirement for an Immigration Law Affidavit does not apply because the dollar value of the contract is less than the \$5,000 minimum.

20. **Entire Agreement.** This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

21. **Compliance with Laws.** Contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder. Contractor affirmatively states that payment of all local, state and federal taxes and assessments owed by Contractor is current.

22. **Safety.** Contractor and subcontractors performing service for the City are required and shall comply with all applicable Occupational Safety and Health Administration (OSHA). All contractors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site.

23. **Contact Information:** City of Branson
Attn: Contract Management
110 W Maddux St., Ste. 205
Branson, MO 65616
417-337-8522

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

SERVICE PROVIDER:

By: TC 11/23/21
(Signature) Date

Name: Tim Carlton
(Printed Name)

Title: General Manager

Company Name: Specialty Air

Address: 2830 Arthur St.
Springfield MO 65802

Phone: 417-831-5980

E-Mail: office@specialtyairconditioning.com

Tax ID: 43-1802105

CITY OF BRANSON, MISSOURI

[Signature] 12/15/2021
Larry D. Milton Date
Mayor

ATTEST:

[Signature] 12/15/2021
Lisa K Westfall Date
City Clerk

APPROVED AS TO FORM:

[Signature] #51831 11/10/21
Chris Lebeck #51831 Date
City Attorney



Exhibit A

Specialty Air Conditioning Services, Inc.
2830 E. Pythian St.
Springfield, MO 65802

SCOPE OF WORK

1. Purpose: Specialty Air Conditioning Services (Specialty Air) agrees to provide HVAC and refrigeration maintenance services including, but not limited to, icemakers and refrigerators at various City facilities located in the City for the period beginning from January 1, 2022 through December 31, 2022 per the following specifications. Specific jobs are not outlined herein. During the contract period the successful bidder will be available for any and all HVAC and refrigeration maintenance jobs required by the City.
2. Minimum Qualifications:
 - 2.1 Specialty Air shall be or employ a Certified HVAC Technician in commercial applications. The person(s) must have experience in installation, maintenance, troubleshooting, repair and other HVAC procedures.
 - 2.2 The following are representative services, which may be required. This is not an all-inclusive list. Other types of repairs and services may be required.
 - a. Planning, installation, maintenance, troubleshooting and repairs of HVAC systems and devices in or about a building or group of buildings.
 - b. Work may require the demolition or alteration of existing systems; in which case all material and debris shall be cleaned up and removed from the site.
3. Response Time:
 - 3.1 Specialty Air shall respond to regular service calls within the same day, or at such an interval or schedule as mutually agreed upon by the contractor and the City. Specialty Air shall submit estimates for service calls in accordance with section 4.1.
 - 3.2 Specialty Air shall respond to requests for emergency calls within four (4) hours after notification. For the purpose of this contract, an emergency is defined as any condition(s), which is a threat to health, welfare or the safety of people and/or property, or a condition that will affect an essential service(s) as determined by the Supervisor or his authorized representative(s). In the event there is not four (4) regular working hours remaining in the day a call is received; Specialty Air will be expected to work overtime if requested or respond within the first working hour of the following work day. Specialty Air shall provide the City with a twenty-four (24) hour emergency contact phone number.
 - 3.3 Regular service shall be made available between the hours of 7:30 a.m. and 4:00 p.m., Monday through Friday, excluding City recognized holidays. All work requested

outside of these times shall be considered EMERGENCY after-hours service and shall be charged at the rate specified in the bid.

3.4 Specialty Air must respond to emergency calls when determined and directed by the requesting Department. Specialty Air must notify the requesting Department when arriving on City property in response to a service call and when work is completed. When completion of a job is delayed for any reason, the requesting Department must be notified as soon as possible.

3.5 Service shall be made available to the City 365 days per year, 24 hours per day.

4. Estimates:

4.1 Specialty Air shall provide written, "not to exceed" estimates on all projects except on emergencies. This estimate shall include the estimated number of hours, hourly rate, number of types of employees required, estimated material cost and number of calendar days required to complete the work. Specialty Air shall respond to requests for estimates for non-emergency work within two (2) days and provide written estimates within five (5) days.

4.2 It shall be Specialty Air's responsibility to ensure they have all information to prepare accurate estimates.

4.3 Work shall only be performed with the City's written authorization by issuance of a Purchase Order. Upon authorization actual work shall not exceed Specialty Air's estimate.

4.4 It is the City's intent to get the best quality work at a competitive price. If, in the City's opinion, an estimate seems unreasonable, the City will inform Specialty Air. If an agreement on a competitive price cannot be reached, the City will use another vendor to complete the work.

4.5 Specialty Air shall be responsible for development of a Preventative Maintenance Program to maintain the air conditioners, heat pumps, and heating units in operational condition for locations on the attached exhibit. The Preventative Maintenance Program shall include, but not be limited to the following:

Semi-annual inspection (spring & fall service) of air and heating units

Air Conditioner

Wash condenser
Check capacitor
Check Freon levels
Check evaporator
Lubricate motors
Check compressor

Heat Pumps

Check electrical components
Check temperature rise
Replace or wash air filter
Lubricate motors
Check defrost operation
Check Freon levels

Check condensate drain
Inspect belt pulleys and bearings
Equipment assessment

Check auxiliary heat
Wash outdoor coil

5. Safety: All contractors and subcontractors performing service for the City are required and shall comply with all Occupational Safety and Health Administration (OSHA), State and County regulations and any other applicable rules and regulations. All contractors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site.

6. Prices:

Parts:

- 6.1 All parts, maintenance items, etc. must be invoiced separately. Please refer to the pricing page. Actual cost may be used plus a percentage markup.

- 6.2 All parts and materials supplied by Specialty Air and used on City equipment shall be new and of equal quality to original equipment manufacturer. No parts, accessories, or supplies shall be used which might void the manufacturer's warranty. When not concerned with the warranty, the maintenance department may authorize use of rebuilt assemblies or sub-assemblies when such is industry standard practice, and the rebuilt item carries the same warranty as a new assembly or sub-assembly. Any part removed is City property and shall be returned or disposed of as directed by the maintenance department unless new parts prices are predicated upon an exchange basis.

Labor:

- 6.3 Prices quoted shall include all labor cost, insurance, overhead, profit, mobilization, travel time, mileage, and exclude taxes. Prices quoted must be firm for the initial twelve-month term of the contract.

- 6.4 Labor, regular and overtime, pertaining to repairs must be invoiced separately.

- 6.5 Labor must have a minimum warranty of 30 days.

7. Invoicing: The City agrees to pay Specialty Air in accordance with the rates set forth on the pricing page. Payments will be paid by the City based upon an itemized statement of services furnished by Specialty Air and subject to approval by the requesting department that the contractor fully performed the work satisfactorily.

8. Subcontracting: Specialty Air must function as the single point of responsibility for the City, regardless of any subcontractor arrangements for all services provided. Specialty Air must submit a list of subcontractors to the Purchasing Department for approval within thirty (30) days from the beginning of this contract. This shall include assuming responsibilities and liabilities for all material, and services provided. None of the work or services covered by the contract shall be subcontracted without the prior approval of the City.

Exhibit B

PRICING PAGE

Specialty Air provided pricing information as specified below to provide HVAC maintenance in accordance with the terms and conditions of this contract.

Item #	Description	Unit Price
001	Labor for Maintenance during regular hours	\$ 90.00 /hr.
002	Labor for Maintenance (emergency, after hours)	\$ 135.00 /hr.
003	Parts (cost plus markup)	\$ 25 %
004	Semi-Annual Preventative Maintenance per Location	
004.1	Fire Station #1	\$ 260.00
004.2	Fire Station #2	\$ 260.00
004.3	Fire Station #3	\$ 200.00
004.4	Meadows Water Treatment Plant	\$ 358.00
004.5	Cliff Drive W/T	\$ 200.00
004.6	Compton Drive WWT	\$ 300.00
004.7	Cooper Creek WWT	\$ 215.00
004.8	Pacific Street Tower	\$ 555.00
004.9	Stockstill FMS	\$ 130.00
004.10	City Hall	\$ 1,021.00
004.11	Branson Community Center	\$ 427.00
004.12	Branson Lake Side RV Park	\$ 300.00
004.13	Rec Plex	\$ 1,470.83