

# CITY OF NAPLES, FLORIDA

## AGREEMENT (PROFESSIONAL SERVICES)

**Bid/Proposal No. 012-12**

**Contract No.** 12-00046

**Project Name** **Naples City Hall HVAC Replacement**

THIS AGREEMENT (the "Agreement") is made and entered into this 5<sup>th</sup> day of September, 2012, by and between the City of Naples, a Florida municipal corporation, (the "CITY") and **Matern Professional Engineering**, a Florida corporation, **130 Candace Drive, Suite 101, Maitland, FL 32751-3331**, (the "CONTRACTOR").

### WITNESSETH:

WHEREAS, the CITY desires to obtain the services of the CONTRACTOR concerning certain services specified in this Agreement (referred to as the "Project"); and

WHEREAS, the CONTRACTOR has submitted a proposal for provision of those services; and

WHEREAS, the CONTRACTOR represents that it has expertise in the type of professional services that will be required for the Project.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

### ARTICLE ONE CONTRACTOR'S RESPONSIBILITY

1.1. The Services to be performed by CONTRACTOR are generally described as to **design the replacement HVAC system at the main City Hall building, excluding City Council Chambers**, and may be more fully described in the Scope of Services, attached as Exhibit A and made a part of this Agreement.

1.2. The CONTRACTOR agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida, the City of Naples, and in Collier County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the CONTRACTOR pursuant to this Agreement.

1.3. The CONTRACTOR agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ or retain only qualified personnel to provide such services.

1.4. CONTRACTOR agrees to employ and designate, in writing, within 5 calendar days after receiving its Notice to Proceed, or other directive from the CITY, a qualified licensed professional to serve as the

CONTRACTOR's project manager (the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONTRACTOR with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement.

1.5. The CONTRACTOR has represented to the CITY that it has expertise in the type of professional services that will be required for the Project. The CONTRACTOR agrees that all services to be provided by CONTRACTOR pursuant to this Agreement shall be subject to the CITY's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as may be applied to the type of services to be rendered, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by CONTRACTOR. In the event of any conflicts in these requirements, the CONTRACTOR shall notify the CITY of such conflict and utilize its best professional judgment to advise CITY regarding resolution of the conflict.

1.6. The CONTRACTOR agrees not to divulge, furnish or make available to any third person, firm or organization, without CITY's prior written consent, or unless incident to the proper performance of the CONTRACTOR's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONTRACTOR hereunder, and CONTRACTOR shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph. However, the CONTRACTOR shall comply with the Florida Public Records laws.

1.7. The CONTRACTOR agrees not to employ or offer to employ any Elected Officer or City Managerial Employee of the CITY who in any way deals with, coordinates on, or assists with, the professional services provided in this Agreement, for a period of 2 years after termination of all provisions of this Agreement. For purposes of this paragraph, the term "Elected Officer" shall mean any member of the City Council. For purposes of this paragraph, the term "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director. If the CONTRACTOR violates the provisions of this paragraph, the CONTRACTOR shall be required to pay damages to the CITY in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee of the CITY from or on behalf of the contracting person or entity, or an amount equal to the former Elected Officer's or City Managerial Employee's last 2 years of gross compensation from the CITY, whichever is greater.

1.8. The CONTRACTOR agrees not to provide services for compensation to any other party other than the CITY on the same subject matter, same project, or scope of services as set forth in this Agreement without approval from the City Council of the CITY.

1.9. Except as otherwise provided in this Agreement, the CONTRACTOR agrees not to disclose or use any information not available to members of the general public and gained by reason of the CONTRACTOR's contractual relationship with the CITY for the special gain or benefit of the CONTRACTOR or for the special gain or benefit of any other person or entity.

## **ARTICLE TWO CITY'S RESPONSIBILITIES**

2.1. The CITY shall designate in writing a project coordinator to act as the CITY's representative with respect to the services to be rendered under this Agreement (the "Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define the CITY's policies and decisions with respect to the CONTRACTOR's services for the Project. However, the Project

Coordinator is not authorized to issue any verbal or written orders or instructions to the CONTRACTOR that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- (a) The scope of services to be provided and performed by the CONTRACTOR;
- (b) The time the CONTRACTOR is obligated to commence and complete all such services; or
- (c) The amount of compensation the CITY is obligated or committed to pay the CONTRACTOR.

**Any such modifications or changes ((a) (b) or (c)) shall only be made by or upon the authorization of the CITY's city manager as authorized by city council in the enabling legislation or in the CITY's procurement policies.**

2.2. The Project Coordinator shall:

(a) Review and make appropriate recommendations on all requests submitted by the CONTRACTOR for payment for services and work provided and performed in accordance with this Agreement;

(b) Arrange for access to and make all provisions for the CONTRACTOR to enter the Project site to perform the services to be provided by the CONTRACTOR under this Agreement; and

(c) Provide notice to the CONTRACTOR of any deficiencies or defects discovered by the CITY with respect to the services to be rendered by the CONTRACTOR hereunder.

2.3. The CONTRACTOR acknowledges that access to the Project Site, to be arranged by the CITY for the CONTRACTOR, may be provided during times that are not the normal business hours of the CONTRACTOR.

### **ARTICLE THREE TIME**

3.1. Services to be rendered by the CONTRACTOR shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from the CITY for all or any designated portion of the Project and shall be performed and completed by **May 31, 2013**. Time is of the essence with respect to the performance of this Agreement.

3.2. Should the CONTRACTOR be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of the CONTRACTOR, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of the CITY, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then the CONTRACTOR shall notify the CITY in writing within 5 working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which the CONTRACTOR may have had to request a time extension.

3.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the CONTRACTOR's services from any cause whatsoever, including those for which the CITY may be responsible in whole or in part, shall relieve the CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from the CITY. The CONTRACTOR's sole remedy against the CITY will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.



3.4. Should the CONTRACTOR fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the CITY hereunder, the CITY at its sole discretion and option may withhold any and all payments due and owing to the CONTRACTOR until such time as the CONTRACTOR resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the CITY's satisfaction that the CONTRACTOR's performance is or will shortly be back on schedule.

#### **ARTICLE FOUR COMPENSATION**

4.1. The total compensation to be paid the CONTRACTOR by the CITY for all Services shall not exceed **\$110,605.00** and shall be paid in the manner set forth in the "Basis of Compensation", which is attached as **Exhibit B** and made a part of this Agreement.

#### **ARTICLE FIVE MAINTENANCE OF RECORDS**

5.1. The CONTRACTOR will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by the CONTRACTOR for a minimum of five 5 years from the date of termination of this Agreement or the date the Project is completed, whichever is later. the CITY, or any duly authorized agents or representatives of the CITY, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the 5 year period noted above; provided, however, such activity shall be conducted only during normal business hours. If the CONTRACTOR desires to destroy records prior to the minimum period, it shall first obtain permission from the CITY in accordance with the Florida Public Records laws.

#### **ARTICLE SIX INDEMNIFICATION**

6.1. The CONTRACTOR agrees to indemnify and hold harmless the City from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employer or utilized by the CONTRACTOR in the performance of the Contract.

#### **ARTICLE SEVEN INSURANCE**

7.1. CONTRACTOR shall obtain and carry, at all times during its performance under this Agreement, insurance of the types and in the amounts set forth in the document titled General Insurance Requirements, which is attached as **Exhibit C** and made a part of this Agreement.

#### **ARTICLE EIGHT SERVICES BY CONTRACTOR'S OWN STAFF**

8.1. The services to be performed hereunder shall be performed by the CONTRACTOR's own staff, unless otherwise authorized in writing by the CITY. The employment of, contract with, or use of the services of any other person or firm by the CONTRACTOR, as independent contractor or otherwise, shall be subject to the prior written approval of the CITY. No provision of this Agreement shall, however, be construed as constituting

an agreement between the CITY and any such other person or firm. Nor shall anything contained in this Agreement be deemed to give any such party or any third party any claim or right of action against the CITY beyond such as may otherwise exist without regard to this Agreement.

#### **ARTICLE NINE WAIVER OF CLAIMS**

9.1. The CONTRACTOR's acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against the CITY arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by the CONTRACTOR as unsettled at the time of the final payment. Neither the acceptance of the CONTRACTOR's services nor payment by the CITY shall be deemed to be a waiver of any of the CITY's rights against the CONTRACTOR.

#### **ARTICLE TEN TERMINATION OR SUSPENSION**

10.1. The CONTRACTOR shall be considered in material default of this Agreement and such default will be considered cause for the CITY to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice(s) to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as directed by the CITY, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by the CONTRACTOR or by any of the CONTRACTOR's principals, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. The CITY may so terminate this Agreement, in whole or in part, by giving the CONTRACTOR at least **3** calendar days' written notice.

10.2. If, after notice of termination of this Agreement as provided for in paragraph 10.1 above, it is determined for any reason that the CONTRACTOR was not in default, or that its default was excusable, or that the CITY otherwise was not entitled to the remedy against the CONTRACTOR provided for in paragraph 10.1, then the notice of termination given pursuant to paragraph 10.1 shall be deemed to be the notice of termination provided for in paragraph 10.3 below and the CONTRACTOR's remedies against the CITY shall be the same as and limited to those afforded the CONTRACTOR under paragraph 10.3 below.

10.3. The CITY shall have the right to terminate this Agreement, in whole or in part, without cause upon 7 calendar day's written notice to the CONTRACTOR. In the event of such termination for convenience, the CONTRACTOR's recovery against the CITY shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by the CONTRACTOR that are directly attributable to the termination, but the CONTRACTOR shall not be entitled to any other or further recovery against the CITY, including, but not limited to, anticipated fees or profits on work not required to be performed.

#### **ARTICLE ELEVEN CONFLICT OF INTEREST**

11.1. The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The CONTRACTOR further represents that no persons having any such interest shall be employed to perform those services.

**ARTICLE TWELVE  
MODIFICATION**

12.1. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

**ARTICLE THIRTEEN  
NOTICES AND ADDRESS OF RECORD**

13.1. All notices required or made pursuant to this Agreement to be given by the CONTRACTOR to the CITY shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CITY's address of record:

City of Naples  
735 Eighth Street South  
Naples, Florida 34102-3796  
Attention: **A. William Moss**, City Manager

13.2. All notices required or made pursuant to this Agreement to be given by the CITY to the CONTRACTOR shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CONTRACTOR's address of record:

Matern Professional Engineering, Inc  
130 Candace Drive, Suite 101  
Maitland FL 32751-3331  
(407) 740-5020  
Attention: **Todd Griffith**, P.E., Director SW Florida Division  
[tgriffith@matern.net](mailto:tgriffith@matern.net)

13.3. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

**ARTICLE FOURTEEN  
MISCELLANEOUS**

14.1. The CONTRACTOR, in representing the CITY, shall promote the best interest of the CITY and assume towards the CITY a duty of the highest trust, confidence, and fair dealing.

14.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

14.3. This Agreement is not assignable, in whole or in part, by the CONTRACTOR without the prior written consent of the CITY.

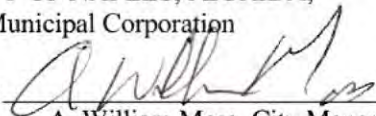
14.4. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for the day and year first written above.

ATTEST:

**CITY:**

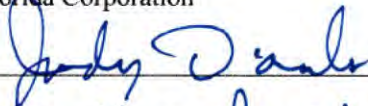
By:   
Patricia L. Rambosk, City Clerk

CITY OF NAPLES, FLORIDA,  
A Municipal Corporation  
By:   
A. William Moss, City Manager

Approved as to form  
and legal sufficiency:

By:   
Robert D. Pritt, City Attorney

**CONTRACTOR:**

Matern Professional Engineering, Inc  
A Florida Corporation  
By:   
Its Vice President

  
Witness

(CORPORATE SEAL)

General Contract (not Architects/Engineers)

**EXHIBIT A**  
**SCOPE OF SERVICES**

1. General Description of Project Scope

1.1 New HVAC system for the existing two-story Naples City Hall Building.

**SCOPE OF SERVICES**

Design the replacement of the HVAC system at the main city hall building (excluding the City Council Chambers building) located at 735 8th Street South; Naples, Florida. The City is seeking to replace the current system with a new energy efficient system. The existing system is roughly thirty (30) years old. The original HVAC system was designed to use only one air-handling unit designed to provide 26,000 cubic feet per minute (cfm) high pressure service to the building. Over the years, three (3) additional independent air conditioning units have been added to the building to supplement cooling from the single HVAC system. These systems are direct expansion (DX) Split systems. Each of these systems has a remote condensing unit mounted on the city hall roof. The two story building has characteristics that make it a challenge to manage air temperature control. There are areas impacted by radiant heat, areas that need additional cooling due to computer equipment, and areas impacted by the internal lighting itself. Additionally the building has been reconfigured internally several times, and will most likely see internal reconfigurations in the future as well.

The replacement of the system will include all ductwork, condensers, thermostats, units etc. The new design services of a HVAC system will account for the following:

1. Remove the existing system.
2. Determine the cooling load for each space and air volume required.
3. Determine the best location for HVAC unit(s). Take into consideration functionality, maintenance, and aesthetics.
4. Review HVAC systems at other City owned buildings recognizing the value of ongoing preventative maintenance and staff training as part of the design.
5. Provide return-on-investment calculations based upon design options.
  - a. Compare investment of new alternative system options: capital investment and annual energy cost.
  - b. Compare new alternative systems (capital investment and annual energy cost against existing system.
6. Design a building energy management system so that the system performs all temperature control functions automatically to save energy costs.

Participation in pre-construction activities, review of proposed engineering changes during construction, and inspections is included.

1.2. Design of associated electrical, architectural, structural, and plumbing aspects of the project as it relates to the new HVAC system.

1.3. It is understood that the owner will solicit the services of a construction manager to manage the work of the subcontractors with regard to phasing, time of work, areas of work, etc.



1.4. Square Feet (approx.):

1.4.1. Renovation construction sq. ft. (approx.): 26,000 sq. ft.

2. Engineering Services

2.1. Electrical: Power as required for the HVAC system improvements.

2.2. Mechanical: HVAC, Plumbing (as required for HVAC system improvements), and Life Cycle Analysis of alternate systems as described above.

2.3. Commissioning: See attached proposal from ACSSI.

2.4. Structural: As required to evaluate existing building structural capacity, etc. See attached proposal from TKW.

2.5. Architectural: Drafting of existing floor plans in AutoCAD for engineering backgrounds, establishing the current life safety plan of the building, partition wall relocation, etc. See attached proposal from ADG.

3. Deliverables

3.1. Schematic Phase: Outline specification and narrative description of systems.

3.2. Design Development Phase: Preliminary layout of systems including location of devices, single line HVAC layout and sizing of mechanical and electrical rooms. Meet with local code and building officials to coordinate any specific design requirements

3.3. Construction Document Phase: 30%, 90%, 95%, and 100% complete construction document submittals.

3.4. Permit Phase: Answering any Building Department permit questions and/or comments.

3.5. Bidding Phase: Answering contractor questions during bid and issuing addenda.

3.5.1. Pre-bid Meeting: Attend pre-bid meeting.

3.6. Construction Phase:

3.6.1. Conformed Set of Documents: Issue conforming set of documents to incorporate addenda, change orders, and RFI responses into final documents. This is different than "as-builts" that should be provided by the contractor.

3.6.2. Shop Drawing Review: Review Contractor provided shop drawings. Only one review period is included in basic fee. Additional reviews due to substitutions, contractors' failure to comply with specifications, etc., shall be considered extra service and should be paid by the submitting contractor.

- 3.6.3. Answering Contractor questions during construction.
- 3.6.4. Pre-Construction Conference: Attend pre-construction conference
- 3.6.5. Observation of the Work:
  - 3.6.5.1. Periodic Visits: Periodic site visits to observe elements of the work relative to discipline of Engineer.
  - 3.6.5.2. Substantial: One (1) visit at time project is substantially complete.
  - 3.6.5.3. Final: One (1) visit at time project is to be complete.
  - 3.6.5.4. Verification of Final: One visit for verification of final is included in proposal.
  - 3.6.5.5. One-Year Warranty Walk Thru: One year warranty Walk Thru to generally observe condition of project's applicable systems for possible corrective action under the Contractor's warrantee is included in proposal.
  - 3.6.5.6. Based on: Six (6) months of construction.

3.7. Post Construction Phase:

- 3.7.1. Close Out Documents: Review of Contractor close out documents for general conformance with intent of specifications.
- 3.7.2. Record Drawings:
  - 3.7.2.1. Contractor to provide final CAD as-built drawings
- 3.7.3. Operation and Maintenance Manual Review: Engineer will review O & M Manuals for completeness and advise of any discrepancies noted.

4. Clarifications/Assumptions/Exclusions

4.1. General:

4.1.1. Unless specifically noted herein, services include only engineering for basic building and/or site. Special systems or studies not included.

4.2. Meetings (during design phase): Unless Specifically stated, meetings once a week are not included. If required, they will be billed based on hourly rates for extra services. Periodic short coordination meetings via telephone or video conference are included.

4.2.1. Meetings: As required and to be determined.

4.2.2. Job site visits: As required and to be determined.

4.3. Reimbursables: Engineer will be reimbursed for the following direct expenses:

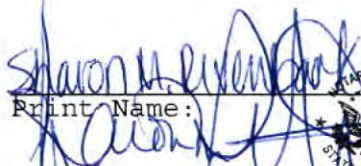

**ACKNOWLEDGMENT**

STATE OF Florida

COUNTY OF Seminole

SWORN TO AND SUBSCRIBED before me this 8th day of June, 2012.

The Affiant, Judy D'Angelo, is [  ] personally known to me or [ ] has produced \_\_\_\_\_ as identification, which is current or has been issued within the past five years and bears a serial number of other identifying number.

  
Print Name: SHARON MARTHA RIVENBARK  
 SHARON MARTHA RIVENBARK  
MY COMMISSION # DD 822272  
EXPIRES: September 16, 2012  
Bonded Thru Budget Notary Services  
NOTARY PUBLIC - STATE  
OF Florida  
Commission Number: DD 822272  
My Commission Expires: Sept. 16, 2012  
(Notary Seal)