

RESOLUTION NO. 2023 – 4103

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, APPROVING AN AGREEMENT WITH THERMAL CONCEPTS, LLC FOR HVAC REPAIR SERVICES UTILIZING THE TERMS AND CONDITIONS OF THE CITY OF PALM BEACH GARDENS CONTRACT NO. RFQ2022-019CS(F) PURSUANT TO SECTION 31-11(E)(5) OF THE CITY CODE; AUTHORIZING THE CITY MANAGER TO ISSUE A PURCHASE ORDER FOR REPAIR AND MAINTENANCE OF CITY AIR CONDITIONING UNITS IN AN AMOUNT NOT TO EXCEED \$70,000.00; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Miami Springs (the “City”) is in need of HVAC repair services for the City’s HVAC systems, including unanticipated repairs to the air conditioning units at the Miami Springs Golf and Country Club and the Adult Community Center (the “Services”); and

WHEREAS, the City of Palm Beach Gardens has an agreement with Thermal Concepts, LLC (the “Vendor”) for the Services which was awarded pursuant to Request for Qualifications (RFQ) No. RFQ2022-019CS (the “Palm Beach Gardens Contract”); and

WHEREAS, Section 31-11(E)(5) of the City’s Code of Ordinances (the “Code”) provides that purchases of supplies, materials, or contractual services under the provisions of state or local government, or private sector cooperative purchasing or not-for-profit companies, bids or contracts shall be exempt from the competitive bid requirements otherwise applicable to such purchases; and

WHEREAS, in accordance with Section 31-11(E)(5) of the City’s Code of Ordinances, the City Council seeks to authorize the City Manager to execute an agreement in substantially the form attached hereto as Exhibit “A” with the Vendor for the Services consistent with the terms and conditions of the Palm Beach Gardens Contract (the “Agreement”); and

WHEREAS, the City Council seeks to further authorize the City Manager to issue a work order to the Vendor for the provision of the Services consistent with the terms and

conditions of the Agreement in an amount not to exceed \$70,000.00 for fiscal year 2022-23; and

WHEREAS, the City Council finds that this Resolution is in the best interest and welfare of the citizens of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That the above recitals are confirmed, adopted, and incorporated herein and made a part hereof by reference.

Section 2. Approval and Authorization of Agreement. That the City Council hereby approves the Agreement with the Vendor for the Services pursuant to Section 31-11(E)(5) of the City Code and authorizes the City Manager to execute the Agreement in substantially the form attached hereto as Exhibit "A," subject to the approval of the City Attorney as to form, content, and legal sufficiency.

Section 3. Authorization. That the City Council hereby authorizes the City Manager to execute any purchase order or required documentation for the purchases described in this Resolution, subject to approval by the City Attorney as to form, content, and legal sufficiency, and to expend funds in an amount not to exceed \$70,000.00 for the Services for fiscal year 2022-23 and budgeted funds in future fiscal years.

Section 4. Effective Date. This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Councilman Fajet who moved its adoption. The motion was seconded by Councilman Vazquez and upon being put to a vote, the vote was as follows:

Vice Mayor Jorge Santin	<u>YES</u>
Councilmember Jacky Bravo	<u>YES</u>
Councilmember Dr. Victor Vazquez, Ph.D.	<u>YES</u>
Councilmember Dr. Walter Fajet, Ph.D.	<u>YES</u>
Mayor Maria Puente Mitchell	<u>YES</u>

PASSED AND ADOPTED this 29th day of June, 2023.



MARIA PUENTE MITCHELL
MAYOR


ATTEST:



ERIKA GONZALEZ, MMC
CITY CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:



WEISS SEROTA HELFMAN COLE & BIERMANN, P.L.
CITY ATTORNEY

EXHIBIT A

**COVER AGREEMENT WITH THERMAL CONCEPTS, LLC
UTILIZING TERMS AND CONDITIONS OF
CITY OF PALM BEACH GARDENS
CONTRACT NO. RFQ2022-019CS(F)**

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MIAMI SPRINGS
AND
THERMAL CONCEPTS, LLC**

THIS AGREEMENT (this “Agreement”) is made effective as of the 30th day of June , 2023 (the “Effective Date”), by and between the **CITY OF MIAMI SPRINGS, FLORIDA**, a Florida municipal corporation, (the “City”), and **THERMAL CONCEPTS, LLC**, a Florida for-profit corporation (hereinafter, the “Contractor”). Collectively, the City and the Contractor are referred to as the “Parties.”

WHEREAS, the City is in need of HVAC repair services for the City’s HVAC systems (the “Services”); and;

WHEREAS, the City of Palm Beach Gardens has an agreement with Thermal Concepts, LLC (the “Vendor”) for the Services pursuant to Request for Qualifications (RFQ) No. RFQ2022-019CS, which agreement is attached hereto as Exhibit “A” (the “Palm Beach Gardens Contract”); and

WHEREAS, the Parties wish to incorporate the terms and conditions of the Palm Beach Gardens Contract in this Agreement, except as otherwise modified or amended herein; and

WHEREAS, Section 31-11(E)(5) of the City Code of Ordinances (the “Code”) provides that “All purchases of supplies, materials, or contractual services under the provisions of state or local government, or private sector Cooperative Purchasing or Not-For-Profit Companies, bids or contracts shall be exempt from the competitive bid requirements otherwise applicable to such purchases, provided that: (a) The terms and conditions of the original bid or contract by the state or local government are satisfactory to the City and that such terms and conditions are expressly extended to the City. (b) The bid or contract by the state or local government is in force prior to the proposed purchase of supplies or services by the City. (c) The purchasing agent has determined that purchasing materials, goods, supplies and contractual services under existing state or local government bids or contracts are in the best interests of the City.”; and

WHEREAS, pursuant to Section 31-11(E)(5) of the City Code, the City desires to engage the Contractor to perform the Services and provide the deliverables as specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the City and the Contractor agree as follows:

- 1. Incorporation of Contract.** The terms and conditions of the Palm Beach Gardens Contract is incorporated as though fully set forth herein. Except as otherwise specifically set forth or modified herein, all terms in the Palm Beach Gardens Contract are hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.

2. **Conflicts; Order of Priority.** This document without exhibits is referred to as the “Base Agreement.” In the event of a conflict between the terms of this Agreement and any exhibits or attachments hereto, or any documents incorporated herein by reference, the conflict shall be resolved in the following order of priorities and the more stringent criteria for performance of the Services shall apply:
 - A. First Priority: Base Agreement;
 - B. Second Priority: E-Verify Affidavit;
 - C. Third Priority: Exhibit A – Palm Beach Gardens Contract.
3. **Defined Terms.** All initial capitalized terms used in this Agreement shall have the same meaning as set forth in the Palm Beach Gardens Contract unless otherwise provided in this Agreement. All references to the City of Palm Beach Gardens shall be replaced with the City of Miami Springs where applicable.
4. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
5. **Amendment to Article 4 of Palm Beach Gardens Contract.** Article 4, “Miscellaneous Provisions,” of the Palm Beach Gardens Contract is hereby amended to read as follows:¹

ARTICLE 4. MISCELLANEOUS PROVISIONS

a. Notice Format. All notices or other written communications required, contemplated, or permitted under this Agreement shall be in writing and shall be hand delivered, telecommunicated, or sent by overnight delivery service to the following address:

As to the City: City of Miami Springs
 Attn: City Manager
 201 Westward Drive
 Miami Springs, FL 33166
 305-805-5011 (telephone)
 tromero@miamisprings-fl.gov (email)

~~City of Palm Beach Gardens~~
~~10500 North Military Trail~~
~~Palm Beach Gardens, Florida 33410~~
 Attn: City Manager
 Email: rferris@pbgfl.com

With a copy to: Weiss Serota Helfman Cole & Bierman, P.L.
 Attn: Haydee Sera, Esq.

¹ Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words.

City of Miami Springs City Attorney
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, FL 33134
hsera@wsh-law.com (email)

City of Palm Beach Gardens
10500 North Military Trail
Palm Beach Gardens, Florida 33410
Attn: City Attorney
Email: mlohman@pbgfl.com

As to the Contractor:

Thermal Concepts, LLC
2201 College Avenue
David, Florida 33317
Attn: Dan Tarafa
Email: dtarafa@thermalconcepts.com

f. Governing Law and Venue. ~~This Agreement and all transactions contemplated by this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida without regard to any contrary conflict of laws principle. Venue for all proceedings in connection herewith shall lie exclusively in Palm Beach County, Florida, and each party hereby waives whatever its respective rights may have been in the selection of venue.~~ This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida. This Agreement shall not be construed against the party who drafted the same as all parties to this Agreement have had legal and business experts review the adequacy of the same.

i. Attorney's Fees and Costs; Waiver of Jury Trial. ~~It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce the terms, conditions, and/or obligations set forth in this Agreement or interpret same, or if any administrative proceeding is brought for the same purposes, each party to this Agreement shall be responsible for its own attorney's fees and costs, including fees and costs on appeal.~~

1. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

2. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

6. **Amendment to Article 9 of Palm Beach Gardens Contract.** Article 9, "Public Records," is hereby deleted in its entirety and replaced as follows:

ARTICLE 9. PUBLIC RECORDS.

- A. Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the City which are conceived, developed or made by Contractor during the term of this Agreement ("Work Product") belong to the City. Contractor shall promptly disclose such Work Product to the City and perform all actions reasonably requested by the City (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).
- B. Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. The City Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the City.
- C. Upon request from the City's custodian of public records, Contractor shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- D. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City.
- E. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the City Manager, at no cost to the City, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the City in a format that is compatible with the City's information technology systems. Once

the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

- F. Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- G. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.
- H. **Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.** IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: ERIKA GONZALEZ, MMC, 201 WESTWARD DRIVE, MIAMI SPRINGS, FL 33166, 305-805-5006, GONZALEZE@MIAMISPRINGS-FL.GOV.

7. **Addition of Article 13.** The Agreement is hereby amended by adding Article 13, "Indemnification," as follows:

ARTICLE 13. INDEMNIFICATION.

- A. Contractor shall indemnify and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Contractor's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Contractor's performance or non-performance of this Agreement.
- B. Nothing herein is intended to serve as a waiver of sovereign immunity by the City nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The City is subject to section 768.28, Florida Statutes, as may be amended from time to time.
- C. The provisions of this section shall survive termination of this Agreement.

8. **Addition of Article 14.** The Agreement is hereby amended by adding Article 14, "Insurance," as follows:

ARTICLE 14. INSURANCE.

A. Contractor shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts not less than those specified below as satisfactory to City, naming the City as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents, and volunteers naming the City as additional insured. Any insurance maintained by the City shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the City as it deems necessary or prudent.

1. Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.

2. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance. In order for this requirement to be waived, Contractor must provide proof of exemption from such laws. Information regarding eligibility for an exemption from the State of Florida Workers' Compensation Law is available at:

<https://www.myfloridacfo.com/Division/wc/PublicationsFormsManualsReports/Brochures/Key-Coverage-and-Eligibility.pdf>.

Exemptions may be applied for online through the Florida Department of Financial Services, Division of Workers' Compensation at:

<https://www.myfloridacfo.com/Division/wc/Employer/Exemptions/default.htm>.

3. Business Automobile Liability with minimum limits of \$1,000,000 per occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

4. Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit. If Professional Liability Insurance is required, the City shall select this box: .

- B. **Certificate of Insurance.** Certificates of Insurance shall be provided to the City, reflecting the City as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by City and prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to City prior to cancellation, termination, or material alteration of said policies or insurance. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the City. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The City reserves the right to inspect and return a certified copy of such policies, upon written request by the City. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the City.

- C. **Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the City is to be specifically included as an Additional Insured for the liability of the City resulting from Services performed by or on behalf of the Contractor in performance of this Agreement. The Contractor's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

- D. **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the City. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

- E. The provisions of this section shall survive termination of this Agreement.

9. **Notices/Authorized Representatives.** Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the

signature page of this Agreement or such other address as the party may have designated by proper notice.

10. E-Verify Affidavit. In accordance with Section 448.095, Florida Statutes, the City requires all contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The City will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.

[Remainder of page intentionally left blank. Signature pages follow.]

EXHIBIT "A"

Palm Beach Gardens
With Thermal Concepts, LLC
Pursuant to ITB 2018-033-ND



City of Palm Beach Gardens
10500 North Military Trail
Palm Beach Gardens, Florida 33410

**AGREEMENT
FOR
FACILITIES MANAGEMENT CONTRACTORS PROGRAM**

AGREEMENT NO. RFQ2022-019CS (F)

THIS AGREEMENT is made and entered into this 3rd day of November, 2022 (the "effective date") by and between the **City of Palm Beach Gardens**, a Florida municipal corporation (the "City"), located at 10500 North Military Trail, Palm Beach Gardens, Florida 33410, and **Thermal Concepts, LLC**, a Florida corporation (the "Contractor"), located at 2201 College Avenue, Davie, Florida 33317.

WHEREAS, the Contractor has represented to the City that it has the qualifications, resources, experience, and abilities to provide certain facilities management support services to the City; and

WHEREAS, the City desires to retain the services of the Contractor to perform facilities management support services, on an as-needed or scheduled basis, in accordance with the City's Request for Qualifications RFQ2022-019CS, Facilities Management Contractors Program, and the Contractor's response thereto, attached hereto and incorporated herein as Exhibit "A."

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, the Contractor and the City agree as follows:

ARTICLE 1. INCORPORATION OF REQUEST FOR QUALIFICATIONS

The terms and conditions of this Agreement shall include and incorporate the terms, conditions, and specifications set forth in the City's Request for Qualifications RFQ2022-019CS and the Contractor's response to the Request for Qualifications, including all addenda, final replies, and documentation required thereunder.

ARTICLE 2. SCOPE OF SERVICES

The Contractor shall provide facilities management support services to the City's Community Services Department.

The services shall be performed on an as-needed basis or based on a schedule to be mutually developed between the City and the Contractor.

The specific services the Contractor shall perform are more fully described and detailed in the Request for Qualifications and any subsequent Purchase Order and shall generally be as follows:

Group D HVAC

ARTICLE 3. PAYMENTS AND CONTRACT VALUE

The City shall pay the Contractor for performing the services according to the terms and conditions in the Request for Qualifications and the rates and prices established therein.

The City's estimated expenditure under this Agreement is Ten Million Dollars (\$10,000,000) for the entire five- (5) year term of this Agreement.

Notwithstanding this estimated expenditure, the City does not guarantee to the Contractor that the estimated Agreement amount will be expended during the Agreement term. However, the City shall pay for all services rendered and accepted under this Agreement and reserves the right to raise or lower the estimated amount each term as it deems is in its best interests.

All payments shall be made in accordance with the Florida Prompt Payment Act, Section 218.74, *Florida Statutes*, on the presentation of a proper invoice by the Contractor.

ARTICLE 4. MISCELLANEOUS PROVISIONS

- a. Notice Format. All notices or other written communications required, contemplated, or permitted under this Agreement shall be in writing and shall be hand delivered, telecommunicated, or sent by overnight delivery service to the following addresses:

As to the City:

City of Palm Beach Gardens
10500 North Military Trail
Palm Beach Gardens, Florida 33410
Attn: City Manager
Email: rferris@pbgfl.com

City of Palm Beach Gardens
RFQ2022-019CS (F)
Facilities Management Contractors Program

With a copy to:

City of Palm Beach Gardens
10500 North Military Trail
Palm Beach Gardens, Florida 33410
Attn: City Attorney
Email: mlohman@pbgfl.com

As to the Contractor:

Thermal Concepts, LLC
2201 College Avenue
Davie, Florida 33317
Attn: Dan Tarafa
Email: dtarafa@thermalconcepts.com

- b. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof.
- c. Binding Effect. All of the terms and provisions of this Agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and permitted assigns.
- d. Assignability. This Agreement may not be assigned without the prior written consent of all parties to this Agreement.
- e. Severability. If any part of this Agreement is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible.
- f. Governing Law and Venue. This Agreement and all transactions contemplated by this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida without regard to any contrary conflict of laws principle. Venue for all proceedings in connection herewith shall lie exclusively in Palm Beach County, Florida, and each party hereby waives whatever its respective rights may have been in the selection of venue. This Agreement shall not be construed against the party who drafted the same as all parties to this Agreement have had legal and business experts review the adequacy of the same.
- g. Headings. The headings contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

- h. Construction. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement, and accordingly, no Court or Administrative Hearing Officer construing this Agreement shall construe it more strictly against one party than the other, and every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning.
- i. Attorney's Fees and Costs. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce the terms, conditions, and/or obligations set forth in this Agreement or interpret same, or if any administrative proceeding is brought for the same purposes, each party to this Agreement shall be responsible for its own attorney's fees and costs, including fees and costs on appeal.
- j. Equal Opportunity. The City and the Contractor agree that no person shall be discriminated against in the performance of this Agreement on the grounds of race, color, gender, national origin, ancestry, marital status, disability, religion, creed, or age.

ARTICLE 5. TERM

The term of this Agreement shall be from the effective date through September 30, 2027, unless terminated beforehand as provided for in Article 6. All open Purchase Orders shall be valid until the work contracted under those Purchase Orders has been completed by the Contractor and accepted by the City, regardless of the expiration date of this Agreement.

ARTICLE 6. TERMINATION

This Agreement may be terminated by the City, with or without cause, upon providing thirty (30) days' prior written notice to the Contractor. This Agreement may be terminated by the Contractor upon thirty (30) days' prior written notice to the City. Upon any such termination, the Contractor waives any claims for damages from such termination, including, but not limited to, loss of anticipated profits.

Unless the Contractor is in breach of this Agreement, the City shall pay the Contractor for work performed and accepted through the date of termination in accordance with the terms of this Agreement.

ARTICLE 7. ACCESS AND AUDIT OF RECORDS

The City reserves the right to require the Contractor to submit to an audit by an auditor of the City's choosing. Subject to reasonable advance notice, the Contractor shall provide, at its place of business during regular business hours, access to all of its records that relate directly or indirectly to this Agreement. The Contractor shall retain all records pertaining to this Agreement and upon request make them available to the City for five (5) years following the expiration of this Agreement. The Contractor agrees to provide such assistance as may be necessary to facilitate the review or audit by the City to ensure compliance with applicable accounting and financial standards.

ARTICLE 8. OFFICE OF THE INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General that is authorized and empowered to review past, present, and proposed City programs, contracts, transactions, accounts, and records. The Inspector General (IG) has the power to subpoena witnesses, administer oaths, require the production of records, and monitor existing projects and programs. The IG may, on a random basis, perform audits on all City agreements.

ARTICLE 9. PUBLIC RECORDS

Pursuant to Chapter 119, *Florida Statutes*, the Contractor shall comply with the public records law by keeping and maintaining public records required by the City of Palm Beach Gardens in order to perform the service. Upon request from the City's custodian of public records, the Contractor shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*, or as otherwise provided by law. The Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement term and following completion of this Agreement. Upon completion of this Agreement, the Contractor shall transfer, at no cost, to the City, all public records in possession of the Contractor or keep and maintain public records required by the City of Palm Beach Gardens in order to perform the service. If the Contractor transfers all public records to the City upon completion of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Palm Beach Gardens, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City of Palm Beach Gardens.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE OFFICE OF THE CITY CLERK LOCATED AT 10500 NORTH MILITARY TRAIL, PALM BEACH GARDENS, FLORIDA 33410, PHONE NUMBER (561) 799-4122, EMAIL ADDRESS: PSNIDER@PBGFL.COM.

ARTICLE 10. SUPERIORITY OF OTHER FORMS OR DOCUMENTS

If the City is required by the Contractor to complete and execute any other forms or documents in relation to this Agreement, the terms, conditions, and requirements in this Agreement shall take precedence to any and all conflicting or modifying terms, conditions, or requirements of the Contractor's forms or documents. Additionally, in the event of a conflict between the terms and conditions set forth in this Agreement and any attachments or exhibits hereto, the terms and conditions set forth herein shall prevail.

ARTICLE 11. LICENSES, PERMITS, AND FEES

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations, and building code requirements applicable to the work to be performed. Damages, penalties, and/or fines imposed on the City or the Contractor for failure to obtain and maintain required licenses, certifications, permits, and/or inspections shall be borne by the Contractor.

ARTICLE 12. FORCE MAJEURE

The City and the Contractor are excused from the performance of their respective obligations under this Agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control, including fire, flood, explosion, strike or other labor dispute, pandemic, natural disaster, public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

The non-performing party gives the other party prompt written notice describing the particulars of the force majeure, including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the force majeure.

The excuse of performance is of no greater scope and of no longer duration than is required by the force majeure.

EXHIBIT A

DocuSign Envelope ID: 39AC0E2E-B43A-4A39-A5E0-61D1F779D28F

City of Palm Beach Gardens
RFQ2022-019CS (F)
Facilities Management Contractors Program

No obligations of either party that arose before the force majeure causing the excuse of performance are excused as a result of the force majeure.

The non-performing party uses its best efforts to remedy its inability to perform.

Notwithstanding the above, performance shall not be excused for a period in excess of two (2) months, provided that in extenuating circumstances the City may excuse performance for a longer term. Economic hardship of the Contractor shall not constitute a force majeure. The term of the Agreement shall be extended by a period equal to that during which either party's performance is suspended under this section.

(The remainder of this page intentionally left blank.)

City of Palm Beach Gardens
RFQ2022-019CS (F)
Facilities Management Contractors Program

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date hereinabove first written.



CITY OF PALM BEACH GARDENS, FLORIDA

By: 
Chelsea Reed, Mayor

By: 
Patricia Snider, CMC, City Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: 
R. Max Lohman, City Attorney

THERMAL CONCEPTS, LLC

DocuSigned by:
Lawrence D. Maurer
By: A94DFC00635D431...
Lawrence D. Maurer, CEO

EXHIBIT A

DocuSign Envelope ID: 39AC0E2E-B43A-4A39-A5E0-61D1F779D28F

City of Palm Beach Gardens
RFQ2022-019CS (F)
Facilities Management Contractors Program

EXHIBIT "A"



Certificate Of Completion

Envelope Id: 39AC0E2EB43A4A39A5E061D1F779D28F
Subject: Complete with DocuSign: Thermal Concepts LLC-RFQ2022-019CS(F)-Agmt.pdf
Source Envelope:
Document Pages: 9 Signatures: 1
Certificate Pages: 5 Initials: 0
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-05:00) Eastern Time (US & Canada)

Status: Completed

Envelope Originator:
Barbara Chabre
10500 N Military Trail
Purchasing Department
Palm Beach Gardens, FL 33410
bchabre@pbgfl.com
IP Address: 151.132.106.163

Record Tracking

Status: Original
10/21/2022 12:01:15 PM

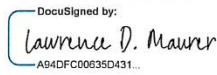
Holder: Barbara Chabre
bchabre@pbgfl.com

Location: DocuSign

Signer Events

Lawrence D. Maurer
ldmaurer@thermalconcepts.com
CEO
Thermal Concepts LLC
Security Level: Email, Account Authentication (None)

Signature



Signature Adoption: Pre-selected Style
Using IP Address: 12.11.101.194

Timestamp

Sent: 10/21/2022 12:04:43 PM
Viewed: 10/21/2022 5:51:36 PM
Signed: 10/21/2022 5:53:41 PM

Electronic Record and Signature Disclosure:
Accepted: 10/21/2022 5:51:36 PM
ID: 74ce805e-6041-4226-be14-a1e308c1fa7f
Company Name: City of Palm Beach Gardens, FL

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Dan Tarafa
dtarafa@thermalconcepts.com
Security Level: Email, Account Authentication (None)



Sent: 10/21/2022 5:53:42 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Km! Ra
kmra@pbgfl.com
Purchasing & Contracts Director
City of Palm Beach Gardens
Security Level: Email, Account Authentication (None)



Sent: 10/21/2022 5:53:43 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Witness Events

Signature

Timestamp

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

Envelope Sent
Certified Delivered
Signing Complete
Completed

Hashed/Encrypted
Security Checked
Security Checked
Security Checked

10/21/2022 12:04:44 PM
10/21/2022 5:51:36 PM
10/21/2022 5:53:41 PM
10/21/2022 5:53:43 PM

Payment Events

Status

Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Palm Beach Gardens, FL (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Palm Beach Gardens, FL:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: kmra@pbgfl.com

To advise City of Palm Beach Gardens, FL of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at kmra@pbgfl.com and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Palm Beach Gardens, FL

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to kmra@pbgfl.com and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Palm Beach Gardens, FL

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

EXHIBIT A

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to kmra@pbgfl.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Palm Beach Gardens, FL as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Palm Beach Gardens, FL during the course of your relationship with City of Palm Beach Gardens, FL.



**City of Palm Beach Gardens
Office of the City Clerk
10500 North Military Trail
Palm Beach Gardens, FL 33410
(561) 799-4122 psnider@pbgfl.com**

Letter of Transmittal

DATE: November 4, 2022

TO: Thermal Concepts, LLC
2201 College Avenue
Davie, FL 33317
Attn: Dan Tarafa

Delivered via FedEx Tracking No. 8170 1584 5236

Re: Agreement for Facilities Management Contractors Program.

For Your Records

For Recording

As Requested

Returned for Corrections

For Review and Signature

Other: _____

Signed 
Patricia Snider, CMC, City Clerk

E-VERIFY AFFIDAVIT

In accordance with Section 448.095, Florida Statutes, the City of Miami Springs requires all contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The City will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity’s participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name: _____

Print Name: _____

Witness #2 Print Name: _____

Title: _____
Entity Name: _____

ACKNOWLEDGMENT

State of Florida
County of _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 20____, by _____ (name of person) as _____ (type of authority) for _____ (name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as Commissioned)

- _____ Personally known to me; or
- _____ Produced identification (Type of Identification: _____)
- _____ Did take an oath; or
- _____ Did not take an oath