

# EXHIBIT "A"

## AGREEMENT

*between*

**THE CITY OF COCONUT CREEK**

*and*

**MASTER MECHANICAL SERVICES, INC.**

*for*

**Recreation Complex HVAC Replacement Project**

**IFB NO. 01-04-23-11**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, Master Mechanical Services, Inc. and between the City of Coconut Creek, a municipal corporation, with principal offices located at 4800 West Copans Road, Coconut Creek, FL 33063 (the "CITY") and Master Mechanical Services, Inc. a Florida corporation with principal offices located at 15181 NW 33 Place, Miami, FL 33054 (the "Contractor") to provide HVAC removal and installation as specified in IFB No. 01-04-23-11.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Contractor agree as follows:

**1) The Contract Documents**

The contract documents consist of this Agreement, conditions of the contract (General, Supplementary and other Conditions), drawings, specifications of IFB No. 01-04-23-11, all addenda issued prior to, and all modifications issued after execution of this Agreement. These contract documents form the Agreement, and all are as fully a part of the Agreement if attached to this Agreement or repeated therein.

**2) The Work**

The Contractor shall perform all work for the City required by the contract documents and IFB No. 01-04-23-11, as set forth below:

- a) Contractor shall furnish all labor, materials, and equipment necessary as indicated in the specifications herein.
- b) Contractor shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. Contractor shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. Contractor shall at all times have a competent field supervisor on the job site to enforce these policies and procedures at the Contractor's expense.
- c) Contractor shall provide the City with seventy-two (72) hours written notice prior to the beginning of work under this Agreement and prior to any schedule change with the exception of changes caused by inclement weather.

- d) Contractor shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to the Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

**3) Insurance**

Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as required by the City's Risk Manager before beginning work under this Agreement including, but not limited to, Workers' Compensation, Commercial General Liability, and all other insurance as required by the City, including Professional Liability when appropriate. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City's Risk Manager certificates of all insurances required under this section prior to beginning any work under this Agreement. The Contractor shall be responsible for all actions of his subcontractors and shall ensure that all subcontractors comply with the above guidelines, retaining necessary insurance in force, where required, throughout the term of this agreement.

Contractor shall indemnify and hold the City harmless for any damages resulting from failure of the Contractor to take out and maintain such insurance. Contractor's Liability Insurance policies shall be endorsed to add the City as an additional insured. Contractor shall be responsible for payment of all deductibles and self-insurance retentions on Contractor's Liability Insurance policies.

**4) Time of Commencement**

The work to be performed under this Agreement shall be commenced after execution of the Agreement and not later than thirty (30) days after the date that Contractor receives the Notice to Proceed.

**5) Contract Sum**

The City shall pay the Contractor in current funds for the performance of the work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of Five Hundred Eighty Four Thousand and Eight Hundred Dollars.

**6) Payments**

Payments will be made in accordance with contract documents and IFB No. 01-04-23-11. Payment will be made monthly for work that has been completed, inspected and properly invoiced. A retainage of five percent (5%) will be deducted from the monthly payment. Retainage monies will be released upon satisfactory completion and final inspection of the project.

**7) Waiver of Liens**

Prior to final payment of the Contract Sum, a final waiver of lien shall be submitted by all suppliers, subcontractors, and/or Contractors who worked on the project that is the subject of this Agreement.

**8) Warranties**

**Warranty of Title:**

Contractor warrants to the City that all goods and materials furnished under the contract will be new unless otherwise specified and that Contractor possesses good, clear, and marketable title to said goods and there are no pending liens, claims, or encumbrances whatsoever against said goods. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective.

**Warranty of Specifications**

Contractor warrants that all goods, materials and workmanship furnished, whether furnished by the Contractor or its subcontractors and suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted.

**Warranty of Merchantability**

Contractor warrants all material and workmanship for a minimum of one (1) year from date of project completion and acceptance by the City. If within one (1) year after acceptance by the City, or within such larger period of time as may be prescribed by law any of the work is found to be defective or not in accordance with the contract documents, the Contractor shall after receipt of a written notice from the City to do so, promptly correct the work unless the City has previously given the Contractor a written acceptance of such condition.

**9) Indemnification**

The Contractor shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of the Contractor or its officers, employees, agents, subcontractors, or independent Contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. The above provisions shall survive the termination or expiration of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination or expiration hereof.

Nothing contained herein is intended nor shall be construed to waive City's rights and immunities under the common law or Florida Statutes 768.28, as amended from time to time.

**10) Anti-Discrimination**

That Contractor shall for itself, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees, as a part of the consideration hereof, hereby covenant and agree that:

- a) No person on the ground of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, gender identity or expression, or veteran or service member status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of or performance of services described herein; and
- b) Contractor, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, gender identity or expression, or veteran or service member status.

**11) Independent Contractor**

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Contractor is an independent contractor under this Agreement and not the City's employee for any 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, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Contractor, which policies of Contractor shall not conflict with City, State, or United States policies, rules or regulations relating to the use of Contractor's funds provided for herein. The Contractor agrees that it is a separate and independent enterprise from the City, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Contractor and the City and the City will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

**12) Assignment and Subcontracting**

Contractor shall not transfer or assign the performance required by this Agreement without the prior consent of the City. This Agreement, or any portion thereof, shall not be subcontracted without the prior written consent of the City nor shall the Contractor assign any monies due or to become due to him or her, without the previous written consent of the Contract Administrator.

**13) Notice**

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the following addresses.

CITY

City Manager

City of Coconut Creek

4800 West Copans Road

Coconut Creek, FL 33063

With a copy to the City Attorney at the same address.

CONTRACTOR

Tina Pinna-Flowers

Master Mechanical Services, Inc.

15181 NW 33 Place

Miami, FL 33054

Tel: 305 825 3004

Email: info@mastermechanicalservices.com

**14) Agreement Subject to Funding**

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Coconut Creek in the annual budget for each fiscal year of this Agreement, and is subject to termination without any penalty due to lack of funding.

**15) Venue**

The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place exclusively in the Seventeenth Judicial Circuit Court in and for Broward County, Florida and that all litigation between them in the federal courts shall take place exclusively in the United States District Court for the Southern District of Florida.

**16) Signatory Authority**

The Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

**17) Severability; Waiver of Provisions**

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**18) Merger; Amendment**

This Agreement constitutes the entire Agreement between the Contractor and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Contractor and the City.

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IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. City of Coconut Creek, through its City Manager or designee and \_\_\_\_\_ (Name of party with whom Agreement is made), signing by and through its \_\_\_\_\_ (President, Owner, CEO, etc.) duly authorized to execute same.

**CITY OF COCONUT CREEK**

ATTEST:

\_\_\_\_\_  
Karen M. Brooks , City Manager      Date

\_\_\_\_\_  
Joseph J. Kavanagh, City Clerk      Date

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Terrill C. Pyburn, City Attorney      Date

**CONTRACTOR**

ATTEST:

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
(Corporate Secretary)

\_\_\_\_\_  
Signature of President/Owner      Date

\_\_\_\_\_  
Type/Print Name of Corporate Secy.

\_\_\_\_\_  
Type/Print Name of President/Owner

(CORPORATE SEAL)

