

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this ____ day of _____ 2021 by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and Carrier Corporation, Inc., herein after referred to as ("CONTRACTOR").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove City Council authorization dated _____.
2. CITY desires to utilize the services of CONTRACTOR to furnish all labor, materials, and equipment for on-call service to repair HVAC systems for the City of Garden Grove at various locations.
3. CONTRACTOR is qualified by virtue of experience, training, education and expertise to accomplish services.
4. The services, equipment and prices provided by CONTRACTOR to CITY are in accordance with the services, equipment and the prices provided by CONTRACTOR in its successful public bid to Sourcewell. CONTRACTOR agrees to honor the same pricing schedule that was originally submitted to Sourcewell, for the services outlined in this Agreement. A copy of the Sourcewell bid, Contract Number #030817-CAR is attached as Attachment "A" and incorporated herein by reference (Sourcewell Bid).

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement:** This Agreement shall cover services rendered from the date of full execution of the Agreement until May 8, 2022, whereby the CITY will have the option to extend said Agreement for an additional (4) one-year option years, for a total of five years. Options years will be contingent upon Carrier's contract extensions with Sourcewell and shall increase the total compensation by an additional \$75,000 per option year. Option years shall be exercised one (1) year at a time, at the sole discretion of the CITY.
2. **Services to be Provided:** The services to be performed by CONTRACTOR shall consist of the services as further specified in CONTRACTOR'S proposal attached hereto as Attachment "A" and incorporated herein by reference. CONTRACTOR agrees that its provision of Services under this agreement shall be within accepted accordance with customary and usual practices in CONTRACTOR'S profession. By executing this Agreement, CONTRACTOR warrants that it has

carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this agreement.

3. **Compensation.** CONTRACTOR shall be compensated as follows:

- 3.1 Amount. Total compensation under this Agreement shall not exceed (NTE) the amount of Seventy Five Thousand Dollars and 00/100 (\$75,000) per year payable in arrears and in accordance with proposal in Attachment "A".
- 3.2 Payment. For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, a written authorization by CITY will be required and payment shall be based on schedule included in Proposal (Attachment "A").
- 3.3 Records of Expenses. CONTRACTOR shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. These records will be made available at reasonable times to CITY.
- 3.4 Termination. CITY and CONTRACTOR shall each have the right to terminate this Agreement, without cause, by giving thirty-(30) days written notice of termination to the other party. If CITY terminates the agreement, then the provisions of paragraph 3 shall apply to that portion of the work completed.

4. **Insurance Requirements**

- 4.1 Commencement of Work CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance.
- 4.2 Workers Compensation Insurance For the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable. The insurer shall waive its rights of subrogation against the CITY, its officers, officials, agents, employees, and volunteers.
- 4.3 Insurance Amounts CONTRACTOR shall maintain the following insurance for the duration of this Agreement:
 - a) Commercial general liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are

not acceptable); Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY;

- b) Automobile liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable) Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.3 (a) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to city's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, lease, hired, or borrowed by CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects to CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONTRACTOR in the event of any default or breach by CITY, or for any amount, which may become due to CONTRACTOR.
6. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry, in any activity pursuant to this Agreement.

7. **Independent Contractor.** It is agreed to that CONTRACTOR shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance With Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government. CONTRACTOR shall comply with, and shall be responsible for causing all contractors and subcontractors performing any of the work pursuant to this Agreement to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The City makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.
9. **Disclosure of Documents.** All documents or other information developed or received by CONTRACTOR are confidential and shall not be disclosed without authorization by CITY, unless disclosure is required by law.
10. **Ownership of Work Product.** All documents or other information developed or received by CONTRACTOR shall be the property of CITY. CONTRACTOR shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
11. **Conflict of Interest and Reporting.** CONTRACTOR shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
12. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.

(a) Address of CONTRACTOR is as follows:

(Contractor)
 Carrier Corporation
 Attn: Joel Martinez
 2478 Peck Road
 City of industry, CA 90601

(b) Address of CITY is as follows (with a copy to):

(Address of City)
 Joseph Flores
 City of Garden Grove
 13802 Newhope Street
 Garden Grove, CA 92843

(with a copy to)
 Garden Grove City Attorney
 11222 Acacia Parkway
 Garden Grove, CA 92840

13. **CONTRACTOR'S Proposal.** CONTRACTOR shall be bound by all the terms, conditions and specifications set forth in CONTRACTOR's submittal in the Sourcewell Bid and Quote, Contract No. 030817-CAR. In the event of any inconsistency between the documents, this Agreement shall govern, then the Sourcewell Bid, then the Quote.
14. **Licenses, Permits and Fees.** At its sole expense, CONTRACTOR shall obtain a Garden Grove Business License, all permits and licenses as may be required by this Agreement.
15. **Familiarity With Work.** By executing this Agreement, CONTRACTOR warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties and restrictions of the work under this Agreement. Should CONTRACTOR discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONTRACTOR'S risk, until written instructions are received from CITY.
16. **Time of Essence.** Time is of the essence in the performance of this Agreement.
17. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability and reputation of CONTRACTOR, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONTRACTOR shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONTRACTOR is permitted to subcontract any part of this Agreement, CONTRACTOR shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONTRACTOR. CITY will deal directly with and will make all payments to CONTRACTOR.
18. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
19. **Prevailing Wages.** The City has been advised that the Prevailing Wages Law applies to the work CONTRACTOR and its subcontractors must be registered with the California Department of Industrial Relations pursuant to Labor Code Section 1725.5. This Agreement shall not be effective until CONTRACTOR provides proof of registration to the CITY. CONTRACTOR shall be responsible for CONTRACTOR's compliance in all respects with the Prevailing Wage Law, including the payment of the prevailing wage rates to all the laborers involved,

and with California Labor Code Section 1770 et seq., including keeping of all records required by the provisions of Labor Code Section 1776 and the implementing administrative regulations. CONTRACTOR shall submit payroll records to the Labor Commissioner pursuant to Labor Code section 1771.4 (a)(3) and shall comply with the job site notices posting requirements established by the Labor Commissioner pursuant to Title 8, California Code of Regulations Section 16461(e) or other regulation promulgated pursuant to Labor Code Section 1771.4(a)(2). Pursuant to Labor Code Section 1771.4, this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations. The CITY shall be a third party beneficiary of the forgoing covenant with rights to enforce the same as against the CONTRACTOR.

20. **Indemnification.** To the fullest extent permitted by law, CONTRACTOR agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR in the performance of the Agreement. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless CITY, is due to the negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

20. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by CITY and CONTRACTOR.
21. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY and CONTRACTOR.
22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.
23. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties

24. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS THEREOF, these parties hereto have caused this Agreement to be executed as of the date set forth opposite the respective signatures.

**"CITY"
CITY OF GARDEN GROVE**


Dated: _____, 2021

By: _____
City Manager

ATTEST

**"CONTRACTOR"
Carrier Corporation, Inc.**

City Clerk

By:  Joel Martinez
Title: Market Manager

Dated: _____, 2021

Dated: July 29, 2021

APPROVED AS TO FORM:

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY

Garden Grove City Attorney

Dated: _____, 2021