



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement with ICR Refrigeration, Inc., of Lodi, for Citywide Heating, Ventilation and Air Conditioning Maintenance Services on City Facilities (\$75,000) and Authorizing Public Works Director to Execute Extension

MEETING DATE: June 5, 2013

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute Professional Services Agreement with ICR Refrigeration, Inc., of Lodi, for Citywide heating, ventilation and air conditioning maintenance services on City facilities, in the amount of \$75,000, and authorizing Public Works Director to execute extension.

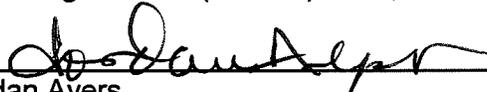
BACKGROUND INFORMATION: In May 2013, staff requested written quotes from three local heating, ventilation and air conditioning (HVAC) service companies (ICR Refrigeration, Lodi Services Heat and Cooling, and ALL Air) for Citywide HVAC on-call maintenance and repair services on City facilities. ICR Refrigeration was the only company to submit a quote.

The City operates 55 HVAC systems on its facilities with a wide range of age and system complexity. Predicting HVAC maintenance and repair needs can be very difficult as the systems are aging and performance is dependent on summer and wintertime temperatures. During Fiscal Year 2012/13, City HVAC systems experienced an unusually high number of system failures requiring the City to spend nearly \$90,000 on HVAC repairs and maintenance activities. Staff does not expect expenditures this fiscal year to be as extensive due to the major repairs performed last year.

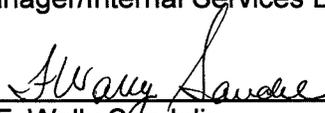
Staff recommends Council adopt a resolution authorizing the City Manager to execute a Professional Services Agreement with ICR Refrigeration, of Lodi, for Citywide HVAC on-call maintenance and repair services on City facilities. Staff also recommends that the Public Works Director be authorized to execute one optional one-year extension of the agreement.

FISCAL IMPACT: Ongoing Citywide HVAC system maintenance and repairs are necessary to maintain a comfortable working environment in City facilities and to avoid more costly system failures.

FUNDING AVAILABLE: Funding for this activity is budgeted in the FY 2013/14 Facilities Services Operating Account (103511): \$75,000



Jordan Ayers
Deputy City Manager/Internal Services Director



F. Wally Sandelin
Public Works Director

Prepared by Charles E. Swimley, Jr., Deputy Public Works Director/City Engineer
FWS/CES/pmf

APPROVED: 

Konradt Bartlam, City Manager

AGREEMENT FOR PROFESSIONAL SERVICES

ARTICLE 1 PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on _____, 2013, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and ICR REFRIGERATION, INC. (hereinafter "CONTRACTOR").

Section 1.2 Purpose

CITY selected the CONTRACTOR to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for Citywide HVAC Maintenance Services on City Facilities (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Scope of Services

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

Section 2.2 Time For Commencement and Completion of Work

CONTRACTOR shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY or on the date set forth in Section 2.6, whichever occurs first, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONTRACTOR shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall

remain in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

CONTRACTOR shall attend meetings as may be set forth in the Scope of Services.

Section 2.4 Staffing

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONTRACTOR of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONTRACTOR of any changes of CONTRACTOR's project staff prior to any change.

CONTRACTOR represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONTRACTOR represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

Section 2.5 Subcontracts

Unless prior written approval of CITY is obtained, CONTRACTOR shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

Section 2.6 Term

The term of this Agreement commences on July 1, 2013 and terminates upon the completion of the Scope of Services or on June 30, 2014, whichever occurs first.

Section 2.7 Option to Extend Term of Agreement

The Public Works Director may exercise an option to extend this Agreement one (1) additional year, provided, City gives Contractor no less than 30-days written notice of

its intent prior to the expiration of the existing term. In the event City exercises any option under this paragraph, all other terms and conditions of this Agreement continue and remain in full force and effect.

ARTICLE 3 **COMPENSATION**

Section 3.1 Compensation

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONTRACTOR shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

CONTRACTOR shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONTRACTOR's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

Section 3.3 Costs

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

Section 3.4 Auditing

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Agreement. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with

this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4
MISCELLANEOUS PROVISIONS

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any sub CONTRACTOR on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 ADA Compliance

In performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Section 4.3 Indemnification and Responsibility for Damage

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

Section 4.4 No Personal Liability

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONTRACTOR meet specific standards without regard to the manner and means of accomplishment thereof.

Section 4.11 Termination

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

Section 4.12 Confidentiality

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by CONTRACTOR as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 City Business License Requirement

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.15 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 4.16 Integration and Modification

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

Section 4.17 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 Severability

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 4.19 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

Section 4.20 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

Section 4.21 Federal Transit Funding Conditions

If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit apply to this contract. In the event of a conflict between the terms of this contract or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation

ATTEST:

RANDI JOHL
City Clerk

KONRADT BARTLAM, City Manager

APPROVED AS TO FORM:
D. STEPHEN SCHWABAUER, City Attorney
JANICE D. MAGDICH, Deputy City Attorney

ICR REFRIGERATION

By: _____



By: _____

Name:
Title:

- Attachments:**
Exhibit A – Scope of Services
Exhibit B – Fee Proposal
Exhibit C – Insurance Requirements

Funding Source:103511
(Business Unit & Account No.)

Doc ID:WP\Projects\PSAs\ICR_CitywideHVACMaintenance

CA:rev.01.2012

SCOPE OF SERVICE

Provide on-call maintenance and repair services for one year (with optional one-year extension) for the 55 City-operated HVAC systems at various locations.

BID FORM



MEMORANDUM, City of Lodi, Public Works Department

To: Prospective Bidder
From: City of Lodi
Date: May 14, 2013
Subject: Citywide HVAC Maintenance Services on City Facilities

Please fully complete the information below:

Company Name: ICR Refrigeration Inc. Date: 05/15/13
Address: 1021 Black Diamond Wj, Lodi, CA 95240

Contractor's License No.: 678 5477

Labor Rate: \$95/hr

Overtime Rate: \$142.50/hr

Parts and materials plus 20 % markup

Truck charge: none

Call out minimum: 2 hrs after 5PM / before 8AM (hours)

Other: 1x fee for addtl City of Lodi (be specific)

insurance requirements - \$1,440 to billed upon

Items required upon award of contract:

contract approval
(Addtl Auto/workers comp/
liab coverage for City)

- 1. Insurance requirements per the attached Exhibit B.
2. Workers' compensation insurance coverage.
3. City of Lodi business license.
4. W-9 form per current IRS requirements.

Customer's Signature: Jeff Mustina

Title:



Insurance Requirements for Contractor The Contractor shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Contractor and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Contractor's operations under this contract, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

- | | |
|--|--|
| <p>1. <u>COMPREHENSIVE GENERAL LIABILITY</u>
 \$1,000,000 Ea. Occurrence

 \$1,000,000 Aggregate</p> | <p>2. <u>COMPREHENSIVE AUTOMOBILE LIABILITY</u>
 \$1,000,000 Bodily Injury - Ea. Person
 \$1,000,000 Bodily Injury - Ea. Occurrence

 \$1,000,000 Property Damage - Ea. Occurrence</p> |
|--|--|

NOTE: Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

NOTE: (1) The street address of the **CITY OF LODI** must be shown along with (a) and (b) above: 221 West Pine Street, Lodi, California, 95241-1910; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

- (a) Additional Named Insured Endorsement
 Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers as additional named insureds.

 (This endorsement shall be on a form furnished to the City and shall be included with Contractor's policies.)
- (b) Primary Insurance Endorsement
 Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.
- (c) Completed Operations Endorsement
 For three years after completion of project, a certificate of insurance with a Completed Operations Endorsement, CG 20 37 070 04, will be provided to the City of Lodi.
- (d) Severability of Interest Clause
 The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.
- (e) Notice of Cancellation or Change in Coverage Endorsement
 This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

Compensation Insurance The Contractor shall take out and maintain during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240. A Waiver of Subrogation against the City of Lodi is required.

NOTE: No contract agreement will be signed nor will **any** work begin on a project until the proper insurance certificate is received by the City.

RESOLUTION NO. 2013-97

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE PROFESSIONAL
SERVICES AGREEMENT WITH ICR REFRIGERATION, INC.,
FOR CITYWIDE HEATING, VENTILATION AND AIR
CONDITIONING MAINTENANCE SERVICES ON CITY
FACILITIES AND FURTHER AUTHORIZING THE PUBLIC
WORKS DIRECTOR TO EXECUTE EXTENSION

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WHEREAS, the City operates 55 heating, ventilation, and air conditioning (HVAC) systems on its facilities with a wide range of age and system complexity; and

WHEREAS, in May 2013, staff requested written quotes from three local HVAC service companies (ICR Refrigeration, Lodi Services Heat and Cooling, and ALL Air) for Citywide HVAC on-call maintenance and repair services on City facilities. ICR Refrigeration was the only company to submit a quote; and

WHEREAS, staff recommends City Council authorize the City Manager to execute a Professional Services Agreement with ICR Refrigeration, of Lodi, for Citywide HVAC on-call maintenance and repair services on City facilities. Staff also recommends that the Public Works Director be authorized to execute one optional one-year extension of the agreement.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a one-year Professional Services Agreement for Citywide heating, ventilation, and air conditioning maintenance services on City facilities with ICR Refrigeration, Inc., of Lodi, in an amount not to exceed \$75,000; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the Public Works Director to execute one optional one-year extension to the Professional Services Agreement.

Dated: June 5, 2013

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I hereby certify that Resolution No. 2013-97 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 5, 2013, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Katzakian, Mounce, and Mayor Nakanishi

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk