

## **Agreement For Services**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of December, 2018 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516 (the "Town"), and **Haynes Mechanical Systems**, an independent contractor with a principal place of business at **300 Lincoln Court, Unit H, Fort Collins, Colorado 80524** ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required services.

NOW THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **I. SCOPE OF SERVICES**

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference know as: **2019 HVAC Maintenance Services (N19-519)** Project.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

### **II. TERM AND TERMINATION**

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

C. This Agreement may be renewed for up to 2 additional 12-month terms by written agreement of the Parties. Any such renewal shall be negotiated and finalized at least 30 days prior to the expiration of the then-current term. If renewed, Contractor agrees to honor its then-current compensation, plus not more than a 2% annual increase. Contractor shall justify any increase in compensation in writing to the Town's satisfaction.

### **III. COMPENSATION**

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor **\$20,900**. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the Town for such fees, costs and expenses. Contractor shall not be paid until the Scope of Services is completed to the satisfaction of the Town.

#### **IV. RESPONSIBILITY**

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and licenses in good standing, required by law.

B. The work performed by Contractor shall be in accordance with generally accepted practices and the level of competency presently maintained by other practicing contractors in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

C. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

#### **V. OWNERSHIP**

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

#### **VI. INDEPENDENT CONTRACTOR**

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

#### **VII. INSURANCE**

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

## **VIII. INDEMNIFICATION**

Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

## **IX. ILLEGAL ALIENS**

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the

subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the “No Employee Affidavit” attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the “Department Program Affidavit” attached hereto.

## **X. MISCELLANEOUS**

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

Notary Public

## **EXHIBIT A**

### **SCOPE OF SERVICES**

#### Contractor's Duties

During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

- Provide three quarterly and one annual preventative maintenance of all Town facilities HVAC units as noted in the Unit Price Bid Form.
- Units are located at all Town Hall – 645 Holbrook Street, Leon A Wurl Service Center – 150 Bonnell Avenue, Erie Community Center – 450 Powers Street, Water Treatment Facility – 2901 N 119th Street, North Water Reclamation Facility – 501 N Highway 52, Erie Police Station – 1000 Telleen Avenue.
- Provide on-call services for maintenance as needed

In providing the services described above, Contractor shall comply with the following:

- Contractor shall maintain hours of operation from 9:00 a.m. till 4:00 p.m. Monday through Friday. Should the Contractor desire to work on Saturdays, Sundays, legal holidays, or at night between the hours of 4:00 p.m. and 9:00 a.m., Contractor shall submit a written request to the Town at least 24 hours in advance. The Town will charge Contractor overtime and other incidental administrative expenses necessary for performing inspections on Saturdays, Sundays, legal holidays, or at night between the hours of 4:00 p.m. and 9:00 a.m.
- Contractor and its employees, and employees of Contractor's suppliers, agents and subcontractors shall at all times treat citizens and the public with respect and courtesy. Contractor shall conduct its work in such a manner as to cause the least inconvenience to local residents and the public.
- The Town may demand dismissal of workers for any of the following, without limitation:
  - Being discourteous or disrespectful to local residents or the public.
  - Abuse or taunting of pets.
  - Disposing of rubbish in locations other than approved receptacles.
  - Use of vulgar, abusive, or harassing language or gestures.
  - Use or possession of alcoholic beverages or drugs.
  - Elimination of body waste in locations other than approved sanitation facilities.
  - Damage or defacement of private property.
  - Trespassing on private property.

Following is a list of all units by brand and model number.

Equipment	Model Number
Aaon Roof top unit	RN-025-3-0-EB09-589
Allied Boiler	AAE-600-N-E-M
Bradford White Boiler	BWCV0500NAIK2BXN
Carmon Unit	38HDF018, 24ACB
Carrier Condensing Unit	38HDC048621, 38AKS008-601
Carrier Condensing Unit	38HDF018, 24ACB
Carrier Elect Room Air Unit	38HDC048621
Carrier FCU	40KMC018, FY4A
Carrier Roof Top Unit	48A2T035EPW07909
Climate Master Heat pumps	HS036GSZSRBGCSB, HS048GSZSLSGCSA, VS090GSZSLTPCSA, VS009GSZSLTPCSA, S0RHR060SCCS0130, HS036GSZSRBGCSB, HS060GSZSLSGCSA, 50RHR024BCC31110, GCH030BGX30CLSA, HS024GSZSRBGCSB, CS019GL0BASS0SC, HS036GSZSRBGCSB, VS060GSZSLTPCSA
Daikin Split System AC Unit	FCQ18PAVJU
Daikin Roof Top Unit	MPS020GG2DV1DYBV-B
Evapco Cooling Tower	LSWA20A
Greenheck Makeup Air unit	DGX-109-H12, IGX-108-H12, IGX-109-H12, DGX-115-H22, DGX-122-H35-11, IGX-112-I22-DB, IGX-112-I22-DN, IGX-118-H32-HZ
Greenheck Exhaust Fan	GB-101-4, GB-101-4, GB-071-4, 33-TCF-9-I, 18-TCF-9-I, CUBE-180HP-7, CUBE-141-3
Grundfoss Water pumps	
Hastings Makeup Air Unit	EC-160
Inaccessible Radiant Heat Unit	
Innovent Condenser Fan	
Innovent Conditioning Unit	E-NDHU-11/SP-30000-AC
Innovent Compressor	
Innovent Fan Motor	
Liebert Condenser Fan Motor	
Liebert Condensing Unit	MMD36E-POODO
Liebert Compressor	
Lochinvar Boiler	CPN1441, ERN252-A, ERN402-A
Reverberay Radiant Heat Unit	ADF300
Reznor Gas Heater	
Reznor Makeup Air Unit	
Trane ACCU	TTA240B400FB, TTA120B400FA
Trane Air Handling Unit	TWE240B400FA, TWE120A300EL
Trane Condensing Unit	YCD480A4KU2B7NF500, YCD330A4KYU2B5CF100, YCD600A4KU2B8NF500
Trane Compressor	
Trane Evaporator Fan Motor	
Trane Gas Unit	GHND012ADG
York Air Handling Unit	ACP018G0451021C, DM120N20P4HAD3
York Roof Top Unit	ZF048T10N4TZZ10001A
York Roof Top Unit	P3URC16N07501B
York Condensing Unit	H2DB030S06A

**EXHIBIT B  
COMPENSATION**

Contractor shall be paid on a quarterly basis for the time spent by Contractor's employees performing the work described in **Exhibit A**, Scope of Services. Contractor shall provide itemized invoices detailing the work performed, and shall bill in increments of not less than 15 minutes. Such invoices shall be submitted to the Town on a quarterly basis.

The rates for Contractor's employees are as follows:

<b>Location</b>	<b>Quarterly Cost</b>
Town Hall	\$ 1,375.00
Leon A Wurl Service Center	\$ 950.00
South Water Reclamation Facility	\$ 185.00
North Water Reclamation Facility	\$ 520.00
Water Treatment Facility	\$ 775.00
Erie Community Center	\$ 1,005.00
Erie Police Station	\$ 415.00
<b>Quarterly Total</b>	<b>\$ 5,225.00</b>
<b>ANNUAL TOTAL</b>	<b>\$ 20,900.00</b>

In addition to the rates established above, Contractor shall be entitled to invoice the Town for additional on-call services at an hourly rate of **\$110.00** during regular business hours and **\$165.00** for after-hours or weekends as needed.



## NO EMPLOYEE AFFIDAVIT

*[To be completed only if Contractor has no employees]*

**1. Check and complete one:**

☐ I, \_\_\_\_\_, am a sole proprietor doing business as \_\_\_\_\_. I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Erie (the “Town”), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

☐ I, \_\_\_\_\_, am the sole owner/member/shareholder of \_\_\_\_\_, a \_\_\_\_\_ [specify type of entity – *i.e.*, corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

**2. Check one.**

☐ I am a United States citizen or legal permanent resident.

*The Town must verify this statement by reviewing one of the following items:*

- *A valid Colorado driver’s license or a Colorado identification card;*
- *A United States military card or a military dependent’s identification card;*
- *A United States Coast Guard Merchant Mariner card;*
- *A Native American tribal document;*
- *In the case of a resident of another state, the driver’s license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or*
- *Any other documents or combination of documents listed in the Town’s “Acceptable Documents for Lawful Presence Verification” chart that prove both Contractor’s citizenship/lawful presence and identity.*

OR

☐ I am otherwise lawfully present in the United States pursuant to federal law.

*Contractor must verify this statement through the federal Systematic Alien Verification of Entitlement (“SAVE”) program, and provide such verification to the Town.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**DEPARTMENT PROGRAM AFFIDAVIT**

***[To be completed only if Contractor participates in the  
Department of Labor Lawful Presence Verification Program]***

I, \_\_\_\_\_, as a public contractor under contract with the Town of Erie (the  
“Town”), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly  
hired for employment to perform work under this public contract for services (“Agreement”) with the Town  
within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a,  
which verify the employment eligibility and identity of newly hired employees who perform work under  
this Agreement; and

3. I have not and will not alter or falsify the identification documents for my newly hired  
employees who perform work under this Agreement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2018, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

My commission expires:

(S E A L)

\_\_\_\_\_  
Notary Public