



**INCORPORATED COUNTY OF LOS ALAMOS
SERVICES AGREEMENT**

This **SERVICES AGREEMENT** (this "Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Daikin Applied Americas Inc.**, a Delaware corporation ("Contractor"), to be effective for all purposes July 13, 2022.

WHEREAS, the County Purchasing Officer determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 22-32 (the "RFP") on February 3, 2022, requesting proposals for On-Call HVAC Repairs and Maintenance, as described in the RFP; and

WHEREAS, Contractor timely responded to the RFP by submitting a response dated February 24, 2022 ("Contractor's Response"); and

WHEREAS, based on the evaluation factors set out in the RFP, Contractor was one (1) of three (3) successful Offerors for the services listed in the RFP; and

WHEREAS, the County Council, as part of a multiple source award, approved this Agreement, AGR22-32a and AGR22-32c, at a public meeting held on July 12, 2022; and

WHEREAS, the aggregate compensation between this Agreement and Agreements AGR22-32a and AGR22-32c are not to exceed the sum of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00), excluding New Mexico gross receipts taxes ("NMGRT"); and

WHEREAS, Contractor shall provide the Services, as described below, to County.

NOW, THEREFORE, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

SECTION A. SERVICES: Contractor shall perform On-Call Heating, Ventilation and Air Conditioning ("HVAC") maintenance and repair services as well as trouble-shoot issues at the Los Alamos County Golf Course located at 4290 Diamond Drive, Los Alamos, New Mexico as follows (hereafter "Services"):

1. Contractor shall proficiently and effectively maintain Daikin equipment on an as-needed basis at the prices listed in Exhibit "A".
2. Contractor shall proficiently and effectively interface with Daikin Building Automation Systems.
3. As some equipment may be under warranty, Services shall not void any warranties related to the equipment. County shall identify the equipment that is under warranty and notify Contractor.

4. Contractor shall possess or be able to obtain all required equipment, such as lifts, cranes, ladders, power tools, refrigerant and other items needed to complete Services. Contractor shall identify any equipment that must be leased or rented to perform a particular repair and submit in writing the proposed equipment, cost estimate, and administrative invoicing fee to County Project Manager for approval before leasing or renting the equipment. County shall not supply any equipment.
5. Service Reports. Contractor shall furnish a written Service Report to County within fourteen (14) days upon completion of every Service visit, at a minimum. The report shall include, at a minimum, time in and out, area of Service, and Services performed. Contractor shall maintain a copy of each Service Report, per SECTION J. RECORDS.
6. Response times. Contractor shall respond on site initially within a maximum of four (4) hours, seven (7) days per week, three hundred sixty-five (365) days per year, which includes weekends, holidays and after-hours work for emergency work. Non-emergency work shall be scheduled between Contractor and County Project Manager or County Project Manager's designee, during normal business hours (Monday – Friday, 8:00 a.m. – 5:00 p.m.) on a schedule to be determined.
7. Task Orders.
 - a. Project Manager shall request the Services of Contractor for individual or multiple projects through a Request for Quote(s). Each Request for Quote shall identify the work and Services to be performed and a timeline for Project completion. A Request for Quote may be as detailed as County finds necessary to assure appropriate oversight of the services to be performed. A sample task order is provided in Exhibit "B," "Sample Task Order," attached hereto and made a part hereof for all purposes.
 - b. Upon the County's issuance of a Request for Quote, Contractor shall provide a written, itemized Quote for the task(s), work, and/or services requested by Project Manager ("Quote"). The Quote shall provide in writing the proposed labor hours and labor type necessary to complete the Task Order; the cost shall conform to the rates detailed in Exhibit "A." If Contractor has identified any equipment that must be leased or rented in order to perform a particular Service, the Contractor shall identify the equipment to be leased or rented, the cost, and administrative invoicing fee and include such information in the Task Order for County's approval. Any progress billing and payment shall be provided by Contractor in the Quote and is subject to approval by Project Manager. Preparation and work performed to prepare each of the proposals shall be considered as incidental to this Agreement and not compensable.
 - c. If Contractor's Quote is acceptable to County, Project Manager shall provide Contractor with written approval ("Approved Task Order"). Contractor is authorized to begin work only upon receipt of the Approved Task Order.
 - d. If the Contractor is unable to provide, in the determination of the Project Manager, the full scope of the Proposed Task Order work, the Project Manager may alter, change, modify, or cancel the Request for Quote before work commences. After work commences, the Approved Task Order shall be adjusted only upon the written agreement of the County after a finding that a change to the task order is necessary and justifiable. Contractor's failure to reasonably estimate the cost of completing the task in the first instance shall not be a justification for modifying the Approved Task Order. Modifications to the maximum amount for the Approved Task Order shall be agreed upon by County prior to Contractor continuing the performance of

Services. Modifications shall follow the previous nomenclature with letters following (TO1A, TO1B, etc.). In no event shall the total of the maximum amount for all Approved Task Orders exceed the maximum amount of compensation outlined in this agreement unless modified by County. Unanticipated events, such as natural phenomena, shall not form the basis for additional compensation to Contractor.

- e. Contractor must take any and all actions to timely complete the work agreed to in the Approved Task Order, including but not limited to subcontracting the work. Costs for any Subcontractors shall be paid to Contractor at the same rate as Contractor. All subcontractor costs shall be included in the Contractor's invoicing with Subcontractor itemized costs.
 - f. This Agreement does not provide Contractor with a guarantee that County will accept Contractor's Quotes and award Contractor Approved Task Orders. County reserves the right, at its sole discretion, to separately quote or bid any Services pursuant to the provisions of this Agreement. County's issuance of a Request for Quote is not a guarantee of work to Contractor. County, at its sole discretion, shall determine when Contractor's Services are required and shall issue written Request for Quotes as needed.
 - g. Individual Task Orders which exceed the state prevailing wage threshold shall be subject to a Wage Rate Decision. County shall obtain and provide the Wage Rate Decision and issue it to the Contractor prior to the preparation of the Task Order.
8. Contract Performance and Payment Bonds: When an individual Task Order is awarded in excess of the state prevailing wage threshold, the following bonds or security shall be delivered to the County and shall become binding on the parties upon the execution of the individual Task Order:
- a. A performance bond satisfactory to the County, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the County, in an amount equal to 100 percent of the price specified in the individual Task Order; and
 - b. A payment bond satisfactory to the County, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the County, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the individual Task Order. The bond shall be in an amount equal to 100 percent of the price specified in the individual Task Order.
9. Contractor shall provide a ninety (90) day warranty on all repair labor for Contractor's products and shall pass on manufacturer's standard warranty on all new parts and components.
10. In the event Contractor's replacement part fails due to Contractor's faulty installation, Contractor shall make subsequent repairs without additional cost to the County, and the warranty extended from the date of the subsequent successful repair.
11. Contractor may be required to attend Council and other public meetings. County shall identify the meetings and Contractor shall include the costs for attendance in the maximum amount of the Task Order, based on the hourly rates agreed to. If it is determined after issuance of the Task Order that meeting attendance is required, County shall inform Contractor of such, and Contractor shall bill County accordingly, based on the hourly rates agreed to.

SECTION B. TERM: The term of this Agreement shall commence July 13, 2022, and shall continue through July 14, 2029, unless sooner terminated, as provided herein.

SECTION C. COMPENSATION:

1. Amount of Compensation.

- a. County shall pay compensation for performance of the Services in accordance with the Rate Schedule set out in Exhibit "A." Compensation for all Agreements (AGR22-32a, AGR22-32b, and AGR22-32c) and Task Orders under this Agreement, shall not exceed a combined total of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00) over the entire Term of this Agreement and which amount does not include applicable New Mexico Gross Receipts Taxes ("NMGRT").
- b. There shall be no reimbursable expenses (e.g., printing, travel, lodging, food, entertainment, etc.) allowed under this Agreement.
- c. Individual task orders that exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) shall also require County Council approval.

2. Maximum Compensation. Compensation for all Agreements AGR22-32a, AGR22-32b, and AGR22-32c and under this Agreement, shall not exceed a combined total of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00), excluding NMGRT.

3. Invoices. Contractor shall submit one (1) itemized invoice per Task Order to County's Project Manager showing amount of compensation due, amount of any NMGRT, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice. When applicable, itemized invoices shall be paid in conformance to legal requirements for Public Works projects exceeding the prevailing wage threshold.

- a. Materials, parts, and County approved leased or rented equipment, shall be itemized on Contractor's invoice, billed at actual cost with a copy of the invoice from vendor, with the pre-approved administrative invoice processing fee.

SECTION D. TAXES: Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement.

SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and shall not be considered an employee of County for any purpose. Contractor, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times

during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

SECTION F. STANDARD OF PERFORMANCE: Contractor agrees and represents that it has and shall maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

SECTION G. DELIVERABLES AND USE OF DOCUMENTS: All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of County.

SECTION H. EMPLOYEES AND SUB-CONTRACTORS: Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

SECTION I. INSURANCE: Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. The Certificate of Insurance shall show the "Products and Completed Operations" endorsement to Contractor's General Liability Insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per occurrence; ONE MILLION DOLLARS (\$1,000,000.00) aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; ONE MILLION

DOLLARS (\$1,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.

SECTION J. RECORDS: Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

SECTION K. APPLICABLE LAW: Contractor shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

SECTION L. NON-DISCRIMINATION: During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

SECTION M. INDEMNITY: Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all Third-Party liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, of any kind or nature, arising from Contractor's performance hereunder or breach hereof and the performance of Contractor's employees, agents, representatives and subcontractors.

SECTION N. FORCE MAJEURE: Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

SECTION O. NON-ASSIGNMENT: Contractor may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

SECTION P. LICENSES: Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

SECTION Q. PROHIBITED INTERESTS: Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it shall not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

SECTION R. TERMINATION:

- 1. Generally.** County may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.
- 2. Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

SECTION S. NOTICE: Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Facilities Manager
Incorporated County of Los Alamos
101 Camino Entrada, Building 1
Los Alamos, New Mexico 87544

Contractor:

Justin Carpenter, Sales Representative
Daikin Applied Americas, Inc.
Post Office Box 1551
Minneapolis, Minnesota 55440

SECTION T. INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Contractor.

SECTION U. NO IMPLIED WAIVERS: The failure of the County to enforce any provision of this Agreement is not a waiver by the County of the provisions or of the right thereafter to enforce any provision(s).

SECTION V. SEVERABILITY: If any provision of this Agreement is held to be unenforceable for any reason: (i) such provision shall be reformed only to the extent necessary to make the intent of the language enforceable; and (ii) all other provisions of this Agreement shall remain in effect.

SECTION W. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form is attached as Exhibit "C," "Campaign Contribution Disclosure Form," Contractor shall submit this updated form with this Agreement.

SECTION X. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES: Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

SECTION Y. DUPLICATE ORIGINAL DOCUMENTS: This document may be executed in two (2) counterparts, each of which shall be deemed an original.

Exhibit "A"
 Compensation Rate Schedule
 AGR22-32b

<i>Hourly Rate During Normal Business Hours</i>							
COST CATEGORY	YR 1	YR 2	YR 3	YR 4	YR 5	YR 6	YR 7
Non-compressorized – Hourly Rate	\$117.00	\$121.00	\$125.00	\$129.00	\$133.00	\$137.00	\$141.00
Scroll and Reciprocating – Hourly Rate	\$106.00	\$109.00	\$112.00	\$115.00	\$119.00	\$123.00	\$127.00
Centrifugal, Absorber, and Screw – Hourly Rate	\$128.00	\$132.00	\$136.00	\$140.00	\$144.00	\$148.00	\$152.00
<i>Hourly Rate Outside of Normal Business Hours, Including Weekends and Holidays</i>							
COST CATEGORY	YR 1	YR 2	YR 3	YR 4	YR 5	YR 6	YR 7
Non-compressorized Hourly Rate	\$234.00	\$242.00	\$250.00	\$258.00	\$266.00	\$274.00	\$282.00
Scroll and Reciprocating – Hourly Rate	\$212.00	\$218.00	\$224.00	\$230.00	\$238.00	\$246.00	\$254.00
Centrifugal, Absorber, and Screw – Hourly Rate	\$256.00	\$264.00	\$272.00	\$280.00	\$288.00	\$296.00	\$304.00

Materials, parts, and County approved leased or rented equipment, shall be billed at actual cost with a copy of the invoice from vendor.

Exhibit "C"
CAMPAIGN CONTRIBUTION DISCLOSURE FORM
AGR22-32b

Any prospective contractor seeking to enter into a contract with the Incorporated County of Los Alamos must file this form disclosing whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official during the two (2) years prior to the date on which prospective contractor submits a proposal or, in the case of a sole source or small purchase contract, the two (2) years prior to the date prospective contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds TWO HUNDRED FIFTY DOLLARS (\$250.00) over the two (2) year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"Applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other things of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"Contract" means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

"Family member" means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of:
(a) a prospective contractor, if the prospective contractor is a natural person; or
(b) an owner of a prospective contractor.

"Pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"Person" means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS: (Report any applicable contributions made to the following - COUNTY COUNCILORS: Denise Derkacs; Melanee Hand; David Izraelevitz; Keith Lepsch, David Reagor; Randal Ryti; and Sara Scott.)

Contribution Made By:			
Relation to Prospective Contractor:			
Name of Applicable Public Official:		Governor _____	
Contribution(s) Date(s)	Contribution Amount(s):	Nature of Contribution(s):	Purpose of Contribution(s):
	\$		
	\$		
	\$		
	\$		
	\$		

(Attach extra pages if necessary)

Signature Date

Title (position)

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250.00) WERE MADE to an applicable public official by me, a family member or representative.

Signature Date

Title (position)