

**TAB 7**



# City of Palmetto Agenda Item

**Meeting Date**

2/6/12

**Presenter:** Jim Freeman

**Department:** City Hall

**Title:** Proposed FDOT Maintenance Agreement

The City was awarded a this Energy grant #17676 totaling \$287,670. This grant was to fund two tasks as follows:  
 HVAC replacement in all City-owned building and the purchase of two electric hybrid vehicles and charging stations. The initial budget for the HVAC project was \$132,600 and a contract was approved by the City Commission on December 19, 2011. Staff is requesting to increase the amount of the contract by \$25,000 based on additional work that was identified at the Police department during subsequent site visits and further exploration by the contractor. This work includes separate one of the existing systems into two systems for better airflow and temperature control. This requires some electrical work which is included and the purchase of an additional high efficiency system as part of the upgrade. It is possible that some of this increase can be funded by grant savings for the other task item, but I want to get approval for the full amount in case the savings are not realized at the completion of the other task. This additional \$25,000 will be funded with budget 2011 CIP dollars in the "City-Wide" facility upgrade line item. The CIP budget for this item is \$40,000. This additional funding by the City will help ensure we meet our matching requirement as a condition of receiving the grant.

**Budgeted Amount:** \$40,000    **Budget Page No(s):**    **Available Amount:** \$40,000    **Expenditure Amount:** \$25,000

**Additional Budgetary Information:** A contract amendment will be required if approved to account for the additiaoal \$25,000.

**Funding Source(s):**    **Sufficient Funds Available:**  Yes  No    **Budget Amendment Required:**  Yes  No    **Source:**

**City Attorney Reviewed:**  Yes  No  N/A    **Advisory Board Recommendation:**  For  Against  N/A    **Consistent With:**  Yes  No  N/A

**Potential Motion/Direction Requested:** Motion to approve expenditures of \$25,000 to Air & Energy, Inc for energy grant upgrades and matching requirements which will be funded from the approved budgeted facility upgrades as part of the adopted CIP.

**Staff Contact:** Jim Freeman

**Attachments:** Initial Contract

Florida Energy Efficient Conservation  
Block Grant Agreement 17676  
(Formerly ARS050)

City of Palmetto and  
Air & Energy, Inc.

***December 12, 2011***

**AGREEMENT  
BETWEEN  
CITY OF PALMETTO  
AND AIR & ENERGY, INC.**

This is an AGREEMENT between the City of Palmetto (OWNER) and Air & Energy, Inc. (CONTRACTOR).

## **SECTION 1- DEFINITIONS**

Wherever used in this Agreement, the following terms have the meaning indicated which are applicable to both the singular and the plural thereof:

### **1.1 Grant**

Grant shall be defined as the Energy Efficient Conservations Block Grant (EECBG) grant number 17676 (formerly ARS050) between the City of Palmetto and State of Florida Executive Office of the Governor, Florida Energy and Climate Commission. A copy of this grant document is on file with the City Clerk for the City of Palmetto.

### **1.2 Additional Services**

Additional Services means the services to be performed or furnished to OWNER by CONTRACTOR as described in Section 4.1 of this Agreement.

### **1.3 Agreement**

Agreement means this contract between the City of Palmetto and Air & Energy, Inc. for the replacement of HVAC equipment throughout City-owned buildings.

### **1.4 Project**

Project means the services to be performed for or furnished to OWNER by CONTRACTOR as described in Section 2.1 of this Agreement.

### **1.5 Contractor**

CONTRACTOR means Air & Energy, Inc. having a contract with OWNER to perform or furnish Basic or Additional Services (as approved) as contained in the Request for Proposal.

### **1.6 Intentionally Blank**

### **1.7 Request for Proposal (RFP)**

Request for Proposal shall mean the document that was issued on October 24, 2011 with a response due date of November 28, 2011. A copy of the RFP and amendments is attached as Exhibit "A".

## **SECTION 2 - CONTRACTOR RESPONSIBILITIES**

### **2.1 Project Scope**

CONTRACTOR shall provide to OWNER the purchase and installation of HVAC units as outlined in the proposal that was submitted by Air & Energy, Inc. and attached hereto as **Exhibit "B"**. Due to the fact that the cost to replace all units exceeds the initial estimated budget, OWNER and CONTRACTOR will prioritize the replacement units to ensure the total costs does not exceed the budget amount as defined in Section 5 of this agreement. The specific units to be replaced will be determined after final discussion with the CONTRACTOR and will be identified within Exhibit "B".

### **2.2 Construction Phase**

CONTRACTOR shall provide all necessary and required duties until completion of the PROJECT. CONTRACTOR shall be the primary responder to the Florida Energy & Climate Commission for all services for the specific line item functions as defined in Section 2.1. CONTRACTOR shall report to Mr. Jim Freeman – Palmetto City Clerk – and shall coordinate all duties through his office.

### **2.3 Notice of Non-Compliance**

CONTRACTOR shall give notice to the OWNER whenever CONTRACTOR becomes aware of any development that would cause non-compliance of the OWNER with respect to the terms of the GRANT or any defect or non-conformance in the work of CONTRACTOR or any sub-contractor.

2.4 CONTRACTOR shall comply with the requirements or any assurances contained in the Request for Proposal (RFP), CONTRACTOR's response to the Request for Proposal (RFP), grant authorization, and any applicable federal, state or local law. This compliance requirement includes the requirements of **Attachment F**, attached hereto and incorporated herein by reference. In the event that Contractor, its employees, subcontractors, agents or assigns fails to comply with the requirements of this Section 2.4, CONTRACTOR shall reimburse the City for any costs, fees, and penalties incurred as a result of such failure.

### **2.5 Federal Law Provisions**

The CONTRACTOR must agree to abide by all Federal Provisions outlined in 10 CFR 600 and ARRA 111-5 upon execution of the contract. If CONTRACTOR does not abide by all Federal and State provisions the City has the right to terminate the contract immediately.

### **2.6 Buy American Requirements**

The CONTRACTOR must agree to abide by all provisions of Section 1605 of the Recovery and Reinvestment Act that requires that all infrastructure projects

involving construction, alteration, maintenance or repair of public buildings or public works must be accomplished using iron, steel and manufactured goods produced in the United States. The Buy American provision is only applied in a manner consistent with United States obligations under international agreements.

## **2.7 Davis Bacon Requirements**

The CONTRACTOR must agree to abide by all provisions of Section 1606 of the Recovery and Reinvestment Act that requires that all laborers and mechanics employed by CONTRACTORS and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

## **SECTION 3 - OWNER'S RESPONSIBILITIES**

- 3.1 OWNER shall designate, in writing, a person to act as OWNER'S representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to OWNER's services for the PROJECT provided that such actions are consistent with City Ordinances and adopted City rules and procedures and the terms of the grant award.**
- 3.2 OWNER shall assist CONTRACTOR by placing at CONTRACTOR's disposal all available information pertinent to the PROJECT including previous reports and any other data relative to design or construction of the PROJECT.**
- 3.3 OWNER shall arrange for access and make all provisions for CONTRACTOR to enter upon public and private property as required for CONTRACTOR to perform services under this Agreement.**
- 3.4 OWNER shall provide accounting and cost estimating as required for the PROJECT; such legal services as OWNER may require or may reasonably request with regard to legal issues pertaining to the PROJECT, including any that may be raised by CONTRACTORS(s); such auditing services as OWNER may require to ascertain how or for what purpose any CONTRACTOR has used the monies paid under the AGREEMENT; and such inspection services as OWNER may require to ascertain that CONTRACTOR(s) are complying with any law, rule, regulation, or ordinance, code or order applicable to their furnishing and performing the work.**
- 3.5 OWNER shall give written notice to CONTRACTOR whenever OWNER becomes aware of any development that affects the scope or timing of the PROJECT or any defect or non-conformance in the work of any Contractor.**

- 3.6 OWNER shall furnish or direct CONTRACTOR to provide ADDITIONAL SERVICES as stipulated under Section 4.1 of this Agreement or other services as required.

## **SECTION 4 – OTHER CLAUSES**

### **4.1 Additional Services**

Additional services shall be defined as anything above and beyond the scope of services as contained in the PROJECT. All additional services must be authorized in writing by OWNER before any work of the CONTRACTOR can commence. Additional Services which exceed the contract amount as described in Section five (5) of this AGREEMENT will require an amendment which must be signed by the OWNER.

### **4.2 Standard of Care**

The standard of care for all construction services performed or furnished by CONTRACTOR under this Agreement will be the care and skill ordinarily used by professionals practicing under similar conditions at the time and in the same locality.

### **4.3 Prohibition Against Contingent Fees**

CONTRACTOR warrants that it has not employed or retained any company or person other than a bona fide employee of CONTRACTOR to solicit or secure this Agreement and that CONTRACTOR has not paid or agreed to pay any person or company other than a bona fide employee of CONTRACTOR any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

### **4.4 Remedies**

This AGREEMENT shall be governed by the laws of the State of Florida. Unless otherwise provided in this AGREEMENT, all claims, counter-claims, disputes and other matters in question between the local government and the CONTRACTOR, arising out of or relating to this AGREEMENT, or the breach thereof shall be filed in the courts in and for Manatee County, Florida.

### **4.5 Access to Records**

The OWNER, the Florida Energy & Climate Commission and any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this AGREEMENT for the purpose of making audit, examination, excerpts, and transcriptions. CONTRACTOR recognizes that such books, documents, papers and records shall be subject to Chapter 119, Florida Statutes.

**4.6 Retention of Records**

CONTRACTOR shall return all records relating to this AGREEMENT to the OWNER after final payment and all other pending matters are closed.

**4.7 Environmental Compliance**

If this AGREEMENT exceeds \$100,000, the CONTRACTOR shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and U.S. Environmental Protection Agency regulations (40 C.F.R. Part 15). The CONTRACTOR shall include this clause in any subcontracts over \$100,000.

**4.8 Energy Efficiency**

The CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

**4.9 Conflicts with Other Clauses**

If this AGREEMENT contains any clauses which conflict with the above clauses, then this AGREEMENT will be governed by the clause(s) in this section.

**4.10 Notices and Contact**

The representative of OWNER responsible for this AGREEMENT is Shirley Groover Bryant, Mayor, City of Palmetto, 516 8<sup>th</sup> Avenue West, Palmetto, FL 34221.

The representative of CONTRACTOR responsible for this AGREEMENT shall be Trudy Moon, Air & Energy, Inc., 3018 Avenue C, Holmes Beach, FL 34217.

**SECTION 5- AMOUNT AND TIMES OF PAYMENT**

5.1 The fee to perform all services related to this AGREEMENT shall not exceed \$132,600 and consistent with the Request for Proposal (RFP) submission from CONTRACTOR which is attached as **Exhibit "B"**. The amount of \$132,600 is less than the proposal amount in Exhibit "B" to replace all HVAC units. As such, CONTRACTOR and OWNER will work to prioritize units so that the total cost does not exceed \$132,600.

5.2 As payment for services in Section 2, OWNER shall pay CONTRACTOR 50% of the AGREEMENT amount at the time materials are ordered and 50% upon completion of the work.



- 5.3 In the event of non-payment of fees for services or costs according to this agreement, CONTRACTOR shall have the right to cease all further services for non-payment, after written notice to the OWNER and shall be relieved of future obligations until payment is received.

## **SECTION 6- Termination Clause**

- 6.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and an opportunity for consultation with the terminating party prior to termination.
- 6.2 This AGREEMENT may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the CONTRACTOR is afforded the same notice and consultation opportunity specified in 6.1 above.
- 6.3 If termination for default is effected by the OWNER, an equitable adjustment in the price for this AGREEMENT shall be made, but no amount shall be allowed for anticipated profit on unperformed services or other work, and any payment due to the CONTRACTOR at the time of termination may be adjusted to cover any additional costs to the OWNER because of the CONTRACTOR's default.
- 6.4 If termination for convenience is effected by the OWNER, the equitable adjustment shall include a reasonable profit for services or other work performed for which profit has not already been included in an invoice. For any termination, the equitable adjustment shall provide for payment to the CONTRACTOR for services rendered and expenses incurred prior to receipt of the notice of intent to terminate, in addition to termination settlement costs reasonably incurred by the CONTRACTOR relating to commitments (e.g., suppliers, subcontractors) which had become firm prior to receipt of the notice of intent to terminate.
- 6.5 Upon receipt of a termination action under paragraphs 6.1 or 6.2 above, the CONTRACTOR shall promptly discontinue all affected work (unless the notice directs otherwise) and deliver or otherwise make available to the OWNER all data, drawings, reports specifications, summaries and other such information, as may have been accumulated by the CONTRACTOR in performing this AGREEMENT, whether completed or in process.
- 6.6 Upon termination, the OWNER may take over the work and may award another party the AGREEMENT to complete the work described in this AGREEMENT.
- 6.7 If, after termination for failure of the contractor to fulfill contractual obligations, it is

determined that the CONTRACTOR had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the AGREEMENT price shall be made as provided in paragraph 6.3 above.

## **SECTION 7- ADDITIONAL TERMS**

- 7.1 CONTRACTOR shall release, indemnify, and hold harmless OWNER from and against any claims, fees, and costs including without limitation, reasonable attorney's fees and costs, which may be incurred by the acts of the party as a result of or related to activities pursuant to this AGREEMENT.
- 7.2 Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 7.3 In the event that either party designates different representatives after execution of this AGREEMENT, notice of the name and address of the new representative will be rendered in writing to the party and said notification attached to the original of this AGREEMENT.
- 7.4 This Agreement constitutes the entire Agreement between OWNER and CONTRACTOR and supersedes all prior written or oral understandings. This AGREEMENT may only be amended, supplemented, modified, or canceled by a duly executed written instrument.
- 7.5 Prior to starting any work, the awarded CONTRACTOR shall provide a copy of a Certificate of Insurance with the City of Palmetto named as an Additional Insured to liability coverage on the certificate, for the duration of the contract.

All contractors performing services for the City of Palmetto are required to provide notification of Certificate of Insurance cancellation 30-60 days prior to cancellation.

It is the responsibility of the CONTRACTOR to insure that all subcontractors comply with all insurance requirements

### **A. Workers' Compensation / Employer's Liability**

1. Worker's Compensation: meets statutory limits in compliance with the workers' compensation laws of the State of Florida.
2. Employer's Liability: \$500,000 each accident, \$500,000 each employee (disease), \$500,000 disease (policy limit).

**B. Commercial General Liability – includes Bodily Injury Liability, Property Damage Liability, Personal Injury Liability and Advertising Injury Liability**

**Coverage Includes:** Premises / Operations  
Products / Completed Operations  
Contractual Liability  
Independent Contractors  
**Limit of Liability:** \$1,000,000 each occurrence  
combined single limit or  
\$1,000,000 each occurrence /  
\$1,000,000 general aggregate.

**C. Business Auto Liability**

**Coverage Includes:** Owned Autos  
Leased Autos  
Hired Autos  
Non-owned Autos  
**Limit of Liability:** \$1,000,000 each occurrence  
combined single limit or  
\$1,000,000 each occurrence /  
\$1,000,000 general aggregate

**Professional Liability/E&O**

**Limit of Liability:** \$1,000,000 minimum

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this 15th Day of the Month of December, 2011.

**OWNER:**

**CONTRACTOR**

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Honorable Shirley Groover Bryant  
Mayor  
City of Palmetto

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Trudy Moon  
President  
Air & Energy, Inc.