

1 discretion of the City Manager.

2 4. The City may terminate this Contract by giving thirty (30) days prior
3 notice of termination to Contractor.

4 5. Notice shall be in writing and personally delivered or deposited in the
5 U.S. Postal Service, first class, registered or certified, return receipt, postage prepaid, to
6 Contractor at the address first stated above, and to City at 411 West Ocean Boulevard,
7 Long Beach, California 90802 Attn: City Manager. Notice shall be deemed given on the
8 date of personal deliver or on the date shown on the return receipt, whichever first occurs.
9 Notice of change of address shall be given as other notices.

10 6. Contractor shall not, except for moneys due and payable hereunder,
11 assign its rights or delegate its duties hereunder, or any interest herein, or any portion
12 hereof, without the prior written approval of City. Any attempted assignment or delegation
13 shall be void, and any assignee or delegate shall acquire no right or interest by reason of
14 such attempted assignment or delegation. Furthermore, Contractor shall not subcontract
15 any portion of the performance required hereunder without the prior written approval of
16 City.

17 7. Contractor warrants that the HVAC chiller is in good working order and
18 free from defect at the time of delivery.

19 8. Contractor shall furnish all labor and supervision, supplies, materials,
20 tools, machinery, equipment, appliances, transportation and services necessary to or used
21 in the performance of Contractor's obligations under this Agreement

22 9. Miscellaneous.

23 A. In connection with performance of this Agreement and federal
24 laws, rules and regulations, Contractor shall not discriminate in employment or in
25 the performance of this Agreement on the basis of race, religion, national origin,
26 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
27 disability.

28 B. This Agreement was created as a joint effort of both parties and

1 neither it nor any part of it shall be construed against one party as the drafter.

2 C. This Agreement, including Exhibits, shall not be amended, nor
3 any provision or breach hereof waived except in a writing signed by the parties which
4 expressly refers to this Agreement.

5 D. This Agreement shall be governed by and construed pursuant
6 to the laws of the State of California (except those provisions of California law
7 pertaining to conflicts of laws). Any action involving this Agreement shall be brought
8 in the Los Angeles County Superior Court, Long Beach Judicial District.

9 E. This Agreement, including Exhibits, constitutes the entire
10 understanding between the parties and supersedes all other agreements, oral or
11 written, or preprinted terms and conditions of the Purchase Order to the extent they
12 are inconsistent with this Agreement, with respect to the subject matter herein.

13 F. In the event of any conflict or ambiguity between this
14 Agreement and any Exhibit, the provisions of this Agreement shall govern.

15 G. If there is any legal proceeding between the parties to enforce
16 or interpret this Agreement or to protect or establish any rights or remedies
17 hereunder, the prevailing party shall be entitled to its costs and expenses, including
18 reasonable attorney's fees.

19 H. The acceptance of any services or the payment of any money
20 by City shall not operate as a waiver of any provision of this Agreement, or of any
21 right to damages or indemnity stated herein. The waiver of any breach of this
22 Agreement shall not constitute a waiver of any other or subsequent breach of this
23 Agreement.

24 I. Termination of this Agreement shall not affect rights or liabilities
25 of the parties which accrued prior to termination and shall not extinguish any
26 warranties.

27 J. Contractor shall not use the name of City, its officials or
28 employees in any advertising or solicitation for business nor as a reference without

1 the prior written approval of City's City Manager.

2 K. This Agreement is intended by the parties to benefit themselves
3 only and is not in any way intended or designed to or entered for the purpose of
4 creating any benefit or right for any person or entity of any kind that is not a party to
5 this Agreement.

6 L. In performing hereunder, Contractor is and shall act as an
7 independent contractor and neither Contractor nor its employees, agents, suppliers
8 or subcontractors shall act as or be deemed employees, representatives or agents
9 of City.

10 M. Contractor shall comply with all applicable federal, state and
11 local laws and regulations during performance hereunder.

12 N. The terms and conditions of this Agreement are severable. If
13 any term or condition is held invalid, void or unenforceable, the remaining terms and
14 conditions shall be given effect.

15 O. The division of provisions hereof into sections and the captions
16 on those sections is for convenience only and shall not be considered in construing
17 this Agreement.

18 P. If any party fails to perform its obligations because of strikes,
19 lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or
20 materials or reasonable substitutes for labor materials, governmental restrictions,
21 governmental regulations, governmental controls, judicial orders, enemy or hostile
22 governmental action, pandemic, civil commotion, fire or other casualty, or other
23 causes beyond the reasonable control of the party obligated to perform, then that
24 party's performance will be excused for a period equal to the period of such cause
25 for failure to perform.

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IN WITNESS WHEREOF, the parties have signed this document with all the formalities required by law as of the date first stated above.

ENGINEERED MECHANICAL SERVICES INC., a California corporation

_____, 2022

By *[Signature]*
Name Thomas G. Reichert
Title President

_____, 2022

By *[Signature]*
Name JULS. McGREW
Title VP, FINANCE

"Contractor"

CITY OF LONG BEACH, a municipal corporation

1/31, 2022

By *[Signature]*
City Manager

"City"

This Contract is approved as to form on 1-25, 2022.

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

CHARLES PARKIN, City Attorney

By *[Signature]*
Deputy

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

EXHIBIT "A"

Engineered Mechanical Services, Inc. (EMSI)

A Small Business and DVBE Company

DUNS # 12-942-3294 CAGE/SAM # 3CRQ4

May 1, 2020
Revised 12-21-21 for extension of service

QS-21090

Brian Lam
Brian.Lam@longbeach.gov
Long Beach Gas
2400 E Spring St.
Long Beach, Ca

RE: Temporary Rental Chiller

Dear Brian,

I am sending this per a request from Kristy Aguilera to provide a revised quote to extend the service of the chiller we have on site until September 2022. As I stated in the original quote to Mike Davis, who I've been told has retired, we here at EMSI thank you for considering EMSI for your HVAC and mechanical system needs.

This proposal is to extend the contract for EMSI to provide the use of the existing chiller as is. The unit is currently providing cooling to the building on 2400 E Spring St. This building has the meter shop and other offices. This rental is needed due to the issues with getting parts for the existing cooling tower, which was originally made in China, and the gas fired absorption chiller which is undergoing operational issues related to age, lack of parts due to no longer made and the chiller has exceeded its operational life.

EMSI has provided:

1. One (1) rental chiller on Trailer, 30TR nominal capacity.
2. Necessary quantity of supply and return chilled water hose approximately (100ft).
3. Necessary quantity of UL rated temporary power cable approximately (100ft).
4. Two (2) Flanged/Victaulic hose adapters, size to be determined.

The following has been done, note the additional coverage we will provide:

- Stage/deliver equipment and material to jobsite.
- Park chiller trailer in designated location.
- Provide and install temporary header/manifolds to point of connections within the mechanical room at the connections above the existing chilled water pump.
 - NOTE: Existing pipe, flanges and bolts are old and rusty; we may have to use oxy acetylene equipment to remove. This has been overcome.
- Furnish and install temporary flexible hose from temp chiller to headers/manifolds.

2180 Chablis Ct. Suite 111
Escondido, Ca. 92029
760-233-5055 fax 760-233-5015
info@emsi-socal.com

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- Provide and install Type W UL Rated temporary power cable from temporary chiller to customer provided power source. NOTE: If opening thru wall is not adequate, we may have to core.
- Furnish and install temporary flexible make up water hose to run from temp chiller to chilled water pipe within the customer mechanical room.
- During the rental period, EMSI will provide routine maintenance inspections.
 - Inspections will be scheduled with our service department and your office.
 - **NOTE:**
 - *Due to the length of time this unit has been in service, based on run hours a service greater than the typical routine is coming due. This will require a shutdown of the unit for approximately 2 to 4 hours. EMSI will work with your office on scheduling such that the shutdown will not interrupt critical areas that require cooling.*
- At the conclusion of the project, EMSI will remove all furnished equipment.
- After completion of installation, EMSI in conjunction with the chiller manufacturer will fill the system, start the system and provide operator instruction. (This has been done)

The following items are specifically excluded.

1. Any permits, fees, etc. that may be require
2. Security for equipment.
3. Water containment/treatment/reclamation.
4. Certified Payroll / Prevailing Wage
5. EMSI is not responsible for loss or downtime during the duration of this project.
6. This proposal is good for 30 days.
7. Cost is based on all work being done during normal business hours.

NOTE:

TOTAL PRICE IS BASED ON TWO COMPONENTS, ONE FOR LABOR AND THE OTHER FOR THE RENTAL

Labor

Round trip transportation, installation, startup, instruction & removal labor, based upon straight time labor rates \$10,200.00

Rental:

Equipment rental, weekly (1 week minimum) \$3,120.00
Equipment rental, monthly (calendar month) \$9,320.00

EXTENDED contract request:

Even though we have had substantial increases in insurance fees, fuel cost, and wages since the original contract started prior to these increases, EMSI will hold the cost as is. In addition, for the additional maintenance required due to continuous run time EMSI will do this at no added cost, we just ask that you work with us on scheduling.

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EMSI defines a rental month based upon the calendar, i.e. 30 or 31 days. Rental started on day of delivery.

Terms:

I. Payment:

All invoices are net 15 days. If any invoice payment goes beyond 30 days, and services to be done are not complete such as design, retrofits, or ongoing service, EMSI may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the services performed. Accounts unpaid beyond the 30 days may be subject to a monthly service charge of 1.5% on the unpaid balance, at the sole discretion of EMSI. In the event any portion or all of an account remains unpaid 90 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

If you have any questions or concerns, do not hesitate to contact me. If the above meets your approval, sign below or notify my office and attach a purchase order so we can get this scheduled and processed. Thank you for thinking of EMSI, we look forward to being of service to you.

Sincerely

Tom Reichert

Tom Reichert
President

Approved by: _____ Signature: _____

Title: _____ Purchase order #: _____

Please indicate which option for rental: Weekly _____ Monthly _____

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NOTE: THE FOLLOWING GENERAL CONDITIONS ARE A PART OF THIS AGREEMENT

- A. SCHEDULE & RATES: ALL SERVICES OUTLINED IN THIS PROPOSAL WILL BE PERFORMED DURING REGULAR WORKING HOURS, 7:00 A.M. TO 3:30 P.M. MONDAY THRU FRIDAY. SITE CONDITIONS OR CUSTOMER CONDITIONS REQUIRING OVERTIME NOT INCLUDED IN CONTRACT AND APPROVED BY OWNERS AGENT WILL BE REIMBURSED AT ENGINEERED MECHANICAL SERVICES INC. (EMSI) OVERTIME RATES.
- B. ADDITIONAL WORK: EMSI AGREES TO SUPPLY THE MATERIAL, LABOR AND TRUCK CHARGES AS SPECIFICALLY LISTED HEREIN. IF ADDITIONAL WORK IS REQUIRED TO MEET EQUIPMENT MANUFACTURER'S SPECIFICATION(S), REQUIRED DESIGN CRITERIA, OR TO PREVENT DAMAGE TO THE STRUCTURE, PERSON(S) OR CONTENTS, INCLUDING THE WORK PROVIDED BY THIS PROPOSAL AND CONTRACT, SATISFY GOVERNMENTAL HEALTH, SAFETY AND BUILDING CODES, RULES AND LAWS OF AQMD AND/OR EPA, SUCH WORK WILL BE AT ADDITIONAL COST.
- C. WARRANTY: EMSI AGREES TO WARRANT LABOR AND MATERIALS FOR A PERIOD OF 1 YEAR FROM DATE OF STARTUP, AND THAT ALL PARTS REPLACED, MATERIALS FURNISHED, AND WORK ACCOMPLISHED, IS FREE FROM DEFECT IN MATERIAL AND WORKMANSHIP.
- D. ACCEPTANCE: THIS PROPOSAL IS SUBJECT TO ACCEPTANCE WITHIN 30 DAYS FROM DATE OF QUOTATION AS LISTED ABOVE.
- E. PAYMENT TERMS: 100% DUE UPON FINAL INVOICE. SERVICE CHARGE OF 1.5% PER MONTH ON PAST DUE ACCOUNTS. CUSTOMER SHALL BE RESPONSIBLE FOR COLLECTION COSTS AND REASONABLE ATTORNEY'S FEES INCURRED IN COLLECTING. CREDIT CARDS ARE ACCEPTED. THERE WILL BE A 4% CONVENIENCE FEE FOR CREDIT CARD TRANSACTIONS.
- F. ATTORNEY'S FEES: IF EITHER PARTY HERETO COMMENCES AN ACTION AGAINST THE OTHER ARISING OUT OF, OR IN CONNECTION WITH THIS PROPOSAL AND CONTRACT, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER FROM THE LOSING PARTY, REASONABLE ATTORNEY'S FEES AND COSTS OF SUIT (INCLUDING REASONABLE EXPERT WITNESSES FEES). ANY LEGAL ACTION RELATING TO THIS CONTRACT OR BREACH THEREOF SHALL BE COMMENCED WITHIN ONE (1) YEAR FROM THE DATE OF WORK.
- G. PRICING: THE PRICES SET FORTH IN THE PROPOSAL ARE BASED ON THE SPECIFICATIONS AND DIMENSIONS FURNISHED BY CUSTOMER. CUSTOMER HEREBY ASSUMES FULL RESPONSIBILITY AND LIABILITY FOR THE ACCURACY AND COMPLETENESS OF SAME. EMSI ASSUMES NO LIABILITY FOR ERRORS IN PRICING.
- H. SAFETY: CUSTOMER TO MAKE AVAILABLE TO CONTRACTOR'S PERSONNEL ALL PERTINENT MATERIAL SAFETY DATA SHEETS (MSDS) AS SPECIFIED BY OSHA'S HAZARD COMMUNICATIONS STANDARD REGULATIONS.
- I. HAZARDOUS SUBSTANCES: EMSI'S IMPLIED OBLIGATION UNDER THIS PROPOSAL AND AGREEMENT DOES NOT INCLUDE IDENTIFICATION OF, REMOVAL OR ABATEMENT OF ANY ASBESTOS PRODUCT(S) OR OTHER HAZARDOUS SUBSTANCE(S). UPON DISCOVERY OF ANY SAID PRODUCT(S) AND/OR SUBSTANCES(S), CONTRACTOR RESERVES THE RIGHT TO SUSPEND ITS WORK UNTIL SAID MATERIALS OR PRODUCT(S) ARE REMOVED.
- J. DIFFERING SITE CONDITIONS: IF EMSI ENCOUNTERS SUBSURFACE OR LATENT PHYSICAL CONDITIONS AT THE SITE, DIFFERING MATERIALLY FROM THOSE INDICATED IN THE PLANS OR SPECIFICATIONS OR JOB WALK, OR UNKNOWN PHYSICAL CONDITIONS OF AN UNUSUAL NATURE DIFFERING MATERIALLY FROM THE CONDITIONS IN THIS PROPOSAL AND CONTRACT, EMSI WILL PROMPTLY NOTIFY THE CUSTOMER IF SUCH CONDITIONS CAUSE A CHANGE IN THE COST, TIME OR MATERIAL OF THE CONTRACT. AN EQUITABLE ADJUSTMENT WILL BE MADE IN ACCORDANCE WITH SUCH FINDINGS.
- K. EXCLUDED REPAIRS: UNLESS SPECIFICALLY LISTED IN THIS PROPOSAL, INSTALLATION OR REPAIR OF BUILDING, ROOFING, VIEW SCREENS,, STRUCTURAL MODIFICATIONS OR ENGINEERING, REPAIR OR INSTALLATION OF ACCESS LADDERS, OR ROOF HATCHES, ROOF PATHWAYS, PATCHING, PAINTING, LAWN REPAIRS, SIDEWALK DAMAGE, CONCRETE STRUCTURAL DAMAGE, CEILING TILE DAMAGE, WATER SPOTS OR WATER DAMAGE TO CARPETS OR FLOORING ARE EXCLUDED.
- L. CONTRACTOR LICENSE: CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTOR'S STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD WHOSE ADDRESS IS CONTRACTOR'S STATE LICENSE BOARD, 9821 BUSINESS PARK DRIVE, SACRAMENTO, CALIFORNIA 95827.
- M. COMPRESSOR REPLACEMENTS: OUR WARRANTY COVERS FAILURE DUE TO MANUFACTURER DEFECTS OR POOR WORKMANSHIP, HOWEVER A NEW COMPRESSOR THAT FAILS DUE TO A CONTROL OR SYSTEM MALFUNCTION WHICH IS EXTRANEIOUS TO THE COMPRESSOR IS NOT COVERED. SHOULD A FAILURE OCCUR, EMSI RESERVES THE RIGHT TO INSPECT THE SYSTEM TO DETERMINE THE CAUSE OF THE FAILURE, AND WILL ADVISE THE CUSTOMER AS TO THE CAUSE OF THE FAILURE SHOULD BE WARRANTY BE REJECTED.
- N. NON-CANCELLABLE: ONCE THE ORDER FOR MATERIALS IS PLACED, THIS ACCEPTED PROPOSAL BECOMES NON-CANCELLABLE.
- O. LIMITATION OF LIABILITY: NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, (I) IN NO EVENT SHALL EMSI BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND IN CONNECTION WITH THE PROPOSAL, EVEN IF EMSI HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) IN NO EVENT SHALL THE LIABILITY OF EMSI ARISING IN CONNECTION WITH THE GOODS AND SERVICES PROVIDED HEREUNDER (WHETHER SUCH LIABILITY ARISES FROM A CLAIM BASED ON CONTRACT, WARRANTY, TORT OR OTHERWISE) EXCEED THE ACTUAL AMOUNT OF COMPENSATION PAID TO EMSI FOR THE GOODS AND SERVICES INVOLVED IN SUCH CLAIM.

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