

AGREEMENT

THIS IS AN AGREEMENT, dated the ___ day of _____, 2023, between:

CITY OF PAHOKEE, a Florida municipal corporation,
hereinafter "CITY,"

and

ZENERGII LLC D/B/A CLIMATROL QUALITY
ALUMINUM PRODUCTS
a company, authorized to do business in the State of Florida,
hereinafter "CONTRACTOR."

THIS AGREEMENT is dated and will be effective on the ____ day of October in the year 2023, by and between the City of Pahokee, (hereinafter called CITY) and ZENERGII LLC d/b/a CLIMATROL QUALITY ALUMINUM PRODUCTS, (hereinafter called CONTRACTOR).

CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents attached hereto as Exhibit "A". The Work is generally described as follows:
Fence Installation City High School Football Field

ARTICLE 2 - DRAWING

The Project has been designed by the as set forth in Exhibit "A"

- Contractor's Quote dated 8/8/23

ARTICLE 3 - CONTRACT TIMES

3.1 Work will be substantially completed within **10** days from the date of Notice to Proceed, and shall be finally complete within **20** days from the date of Notice to Proceed.

3.2 LIQUIDATED DAMAGES. N/C

ARTICLE 4 - CONTRACT PRICE

4.1 CITY shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents of Exhibit "A", in current funds as follows: Thirty Four Thousand Dollars (\$34,000.00), which is based on the price(s) set forth in Exhibit "A".

ARTICLE 5 - PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by CITY as provided in the General Conditions.

5.1. PAYMENTS. CONTRACT shall submit for payment a printed Schedule of Values on AIA for G703 – Application and Certificate for Payment Continuation Sheet. Partial payments may be made after satisfactory completion 50% of items on the approved Schedule of Values or as a percentage determined by the City Manager after authorization by the City Commission. Partial payments will be made upon submission of an original on AIA Form G702 – Application and Certificate for Payment and AIA G703 – Continuation Sheet.

5.2. FINAL PAYMENT. Upon final completion and acceptance of the Work in accordance with Exhibit “A”.

5.3 AVAILABILITY OF FUNDS. CITY’s performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the City Commission.

ARTICLE 6

(This Article left blank intentionally).

ARTICLE 7 - CONTRACTOR’S REPRESENTATIONS

In order to induce CITY to enter into this Agreement CONTRACTOR makes the following representations:

7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions, Laws, and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.

7.2. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies, if any, which pertain to the subsurface of physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.3. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all examinations, investigations, explorations, tests, reports and studies, if any, which pertain to the physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the

Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.4. CONTRACTOR has given CITY written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by CITY is acceptable to CONTRACTOR.

7.5 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire Agreement between CITY and CONTRACTOR concerning the Work, consist of the following:

8.1 This Agreement.

8.2 ~~Performance Bond and Payment Bond (plus Power of Attorney Forms as applicable).~~

8.3 Notice of Award.

8.4 General Conditions and Supplementary Conditions.

8.5 If applicable, Florida Department of Transportation Standard Specifications for Road and Bridge Construction, latest edition (not attached hereto) and Florida Department of Transportation Design Standards, latest edition (not attached).

8.6 Paragraph Deleted

8.7 Drawings attached hereto and/or referenced in the List of Drawings (which may or may not be attached hereto).

8.8 Addenda Exhibit "A", Exhibit "B" and Exhibit "C", inclusive.

8.9 ~~CONTRACTOR'S Bid and Bid Bond.~~

8.10 ~~Any other documents required by this Agreement, the Bidding Documents or the Contract Documents whether or not the same is attached hereto.~~

8.11 The following which may be delivered or issued after the Effective Date of the Agreement may not be attached hereto: Notice to Proceed, Warranty of Title form, Final Release of Liens form, all written amendments and other documents amending, modifying, or supplementing the Contract Documents.

8.12 The documents listed under Article 8 above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in this Agreement.

ARTICLE 9 - MISCELLANEOUS

9.1 Terms used in this Agreement, which are defined in Article 1 of the General Conditions, will have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 CITY and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained on the Contract Documents.

9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be stricken, and all remaining provisions shall continue to be valid and binding upon CITY and CONTRACTOR, who agree that the Contract Documents 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. Failure of either party to enforce or exercise any right(s) under the Contract Documents shall not be deemed a waiver of either party's right to enforce said right(s) at any time thereafter.

9.5 The CONTRACTOR agrees to be bound by all the terms and conditions set forth in the Contract Documents. To the extent that a conflict exists between this Agreement and the remaining Contract Documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail. To the extent that a conflict exists between the remaining Contract Documents, the terms, conditions, covenants, and/or provisions of the Contract Documents shall prevail in the following order of precedence:

1. Any written Amendments;
2. Technical Specifications, Drawings, and Addenda thereto;
3. Supplemental Conditions;

4. General Conditions;
5. CONTRACTOR's Bid; and
6. All remaining Contract Documents (which shall have equal value in order of precedence).

9.6 This Agreement shall not become binding and effective until approved by the City Commission of the City of Pahokee or its designated representative.

9.7 In accordance with Palm Beach County Ordinance number 2011-009, the CONTRACTOR understands that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance 2011-009 and is aware of its rights and/or obligations under such ordinance.

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

9.9 The CONTRACTOR warrants and represents that all of its employees are treated equally during employment and the provision of all of its services is without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

9.10 The Contract Documents shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

9.11 CONTRACTOR shall comply with Florida's Public Records Laws, and specifically agrees to:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service.
- b) Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- d) Meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR upon termination of the Contract Documents and destroy any duplicate public

records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.

9.12 Governing Law; Consent to Jurisdiction: The Contract Documents shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions, and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for federal actions, the purposes of any suit, action or other proceeding arising out of, or relating to, the Contract Documents; and, (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever.

9.13 Except where specifically provided for in the Contract Documents, the CONTRACTOR shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from the CITY for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising out of or related to delay, disruption, interference or hindrance from any cause whatsoever. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery of damages by the CONTRACTOR for hindrances or delays due solely to fraud, bad faith or active interference on the part of the CITY. Otherwise, the CONTRACTOR shall be entitled only to extensions of the Contract Times as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided in the Contract Documents.

9.14 All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the CONTRACTOR or its subcontractors under the Contract Documents shall be considered a "Work for Hire" and the exclusive property of the CITY. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, the CONTRACTOR and its subcontractors will assign to the CITY all right, title and interest in and to CONTRACTOR's and/or its subcontractors' copyright(s) for such Documents. CONTRACTOR shall execute and deliver to CITY such instruments of transfer and take such other action that CITY may reasonable request, including, without limitation, executing and filing, at CITY's expense, copyright applications, assignments and other documents required for the protection of CITY's right to such Documents. The CONTRACTOR shall retain copies of the Documents for a period of three (3) years from the date of completion of the project. The CITY grants to the CONTRACTOR and its subcontractors the right and/or limited license to use a portion of the Documents

prepared by the CONTRACTOR or its subcontractors in future projects of the CONTRACTOR or its subcontractors with said right and/or limited license to use a portion at CONTRACTOR's or its subcontractor's own risk and without any liability to the CITY. Any modifications made by the CITY to any of the CONTRACTOR's or its subcontractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the CONTRACTOR or its subcontractor(s) will be at the CITY's sole risk and without liability to the CONTRACTOR or its subcontractor(s).

9.15 Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

9.16 To encourage prompt and equitable resolution of any litigation, each party hereby waives its rights to a trial by jury in any litigation related to the contract documents.

~~9.17 This contract is funded by the State of Florida Department of Transportation. In the event FDOT's funding of this contract ceases, for any reason, then this contract shall terminate as of the date Contractor is notified funding is no longer available. In case of termination under this paragraph, Contractor shall be paid for all work to the date contractor is notified to stop work.~~

9.18 It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply due to the joint contribution of both parties.

9.19 This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the CITY and its successors and assigns.

ARTICLE 10 - INDEMNIFICATION

10.1 This space left blank intentionally.

10.2 CONTRACTOR shall indemnify and hold harmless CITY, its appointed and elected officers, engineer and all of their respective officers, agents, and employees, from and against all claims, liabilities, damages, losses, costs and expenses, including, but not limited to, reasonable costs, collection expenses, attorneys' fees, fees and charges of engineers, architects and other professionals, and all court, arbitration or other dispute resolution costs which may arise because of the negligence (whether active or passive), misconduct, or other fault, in whole or in part (whether joint,

concurrent, or contributing), of the CONTRACTOR, its officers, agents or employees in performance or non-performance of its obligations under the Contract Documents. CONTRACTOR recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the CITY when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by CITY in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida. This clause shall survive the termination of the Contract Documents. Compliance with any insurance requirements required elsewhere in the Contract Documents shall not relieve CONTRACTOR of its liability and obligation to defend, hold harmless and indemnify the CITY as set forth in this article of the Contract Documents. Nothing in the Contract Documents shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in §768.28, Florida Statutes.

ARTICLE 11 - SALES TAX INFORMATION

11.1 The CITY is exempt from the payment of Florida State Sales and Use Tax.

ARTICLE 12 - PROJECT SIGNAGE AND BARRICADES; MAINTENANCE OF TRAFFIC; PUBLIC SAFETY AND CONVENIENCE

12.1 CONTRACTOR shall provide signs, barricades and flashing lights reasonably necessary for the protection of the work and the safety of the public, as determined and directed by the CITY, in its sole discretion.

12.2 CONTRACTOR shall, at all times, conduct its work as to insure the least possible obstruction and inconvenience to: normal pedestrian and vehicular traffic; access to all public and private properties during all stages of the Work; and to the general public and the residents in the general vicinity of the Work.

12.3 CONTRACTOR shall be responsible for the proper and efficient maintenance of traffic to the extent applicable. No more than one-half (1/2) of the subject road or street shall be closed and traffic shall be controlled so as to provide minimum hindrance. No road or street shall be closed to the public, except with the permission of the proper governmental authority. Fire hydrants on or adjacent to the Work shall be kept accessible to fire-fighting equipment at all times. Temporary provisions shall be made by the CONTRACTOR to insure the use of sidewalks, public telephones, drainage ditches and irrigation ditches.

12.4 In performing the requirements of this Article, CONTRACTOR shall adhere to the Florida Department of Transportation Standard Specifications for Road and Bridge Construction, latest edition, and Design Standards, latest edition and any applicable ordinances, statutes and regulations to the extent applicable.

12.5 If a conflict exists between a City of Pahokee specification and a FDOT

specification, the City shall determine, in its sole discretion, which specification applies.

ARTICLE 13 - INSURANCE

13.1 The CONTRACTOR shall not commence work under this contract until he has obtained all insurance required under this paragraph or by the City have been satisfied.

5.2 Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the City prior to the commencement of the work. These Certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty days (30) prior written notice has been given to the CITY. Policies shall be issued by companies authorized to do business under the laws of the State of Florida.

5.3 Financial Ratings must be no less than "A" in the latest edition of "Bests Key Rating Guide", published by A.M. Best Guide.

5.4 Insurance shall be in force until all work required to be performed under the terms of the Contract is satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this contract, then in that event, the CONTRACTOR shall furnish, at least five (5) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract and extension thereunder is in effect. The CONTRACTOR shall not continue to work pursuant to this contract unless all required insurance remains in full force and effect.

5.5 Comprehensive General Liability insurance to cover bodily injury liability and property damage liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrences. Exposures to be covered are:

- Premises and Operation
- Products/Completed Operations
- Broad Form Property Damages
- Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.
- Personal Injury Coverage with Employee and Contractual Exclusions removed, with minim limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, and must include:

- Owned vehicles

- Hired and Non-Owned Vehicles
- Employers' Non-Ownership.

5.6 The CONTRACTOR shall hold the CITY, its agents, and employees, harmless on account of claims for damages to persons, property or premises arising out of the operations to complete this Agreement and name the CITY as an additional insured under their policy.

5.7 The CITY reserves the right to require any other insurance coverage it deems necessary depending upon the exposures.

ARTICLE 14 - PROTECTION OF PROPERTY

14.1 At all times during the performance of this Contract, the CONTRACTOR shall protect the CITY's property and properties adjoining the Project site from all damage whatsoever on account of the work being carried on pursuant to this Agreement.

Any damages to CITY'S property (i.e. structures, roads, culverts, fences, trees or other natural resources) caused by the CONTRACTOR while working on this project shall be the responsibility of the CONTRACTOR to remedy, as determined by the CITY. The CONTRACTOR shall be responsible for the conduct of all CONTRACTOR personnel at all times while on the job site.

Should any historical or cultural artifacts be uncovered during construction activities the CONTRACTOR shall immediately halt construction within that area and notify the CITY's Project Manager, City Manager or City's Engineer. Please note: The State's Archeologist also has the power to halt work if he or she believes artifacts are being disturbed and/ or Palm Beach County Water Utility District believes the construction being performed is impeding the existing lines connected to the County's flow of water and/or drainage system.

ARTICLE 15 - INDEPENDENT CONTRACTOR

15.1 This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the CONTRACTOR is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONTRACTOR's activities and responsibilities hereunder provided. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

ARTICLE 16 - E-VERIFY

E-Verify 448.095 Fla Stat (2023) - By entering into this Agreement, the Contractor becomes obligated to comply with the provisions of Section 448.095, Fla . Stat. (2023), "Employment Eligibility", as amended from time to time. This includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Fla Stat. (2023), as amended; and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to City incurred as a result of the termination of this Agreement in accordance with this section.

ARTICLE 17 - NOTICE

Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the CONTRACTOR and the CITY designate the following as the respective places for giving of notice:

CITY: Rodney D. Lucas, City Manager
207 Begonia Drive
Pahokee, FL 33476

Copy To: Burnadette Norris-Weeks, City Attorney
Burnadette Norris-Weeks, P.A.
401 North Avenue of the Arts
Fort Lauderdale, Florida 33311

CONTRACTOR:

David Acevedo, Manager
8451 MCALLISTER WAY
WEST PALM BEACH, FL 33411

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals
_____ day of October 2023.

CITY OF PAHOKEE

ATTEST:

Tijauna Warner, CMC, City Clerk

BY:

Keith W. Babb, Jr., Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Burnadette Norris-Weeks, City Attorney

Rodney D. Lucas, City Manager

CONTRACTOR

WITNESSES:

BY: _____

David Acevedo, President or
Paul Taylor, President
Climatrol Quality Aluminum Products,

Inc

Print Name of Contractor

ATTEST:

SECRETARY

STATE OF FLORIDA)

) SS:

COUNTY OF PALM BEACH)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ as _____, of ___ a Florida corporation, and acknowledged executed the foregoing Agreement as the proper official of _____, for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this __ day of _____, 2023.

NOTARY PUBLIC

My Commission Expires:

EXHIBIT "A"

EXHIBIT "B"
PRICE FOR SERVICES

CONTRACT PAYMENT. The CITY agrees to pay CONTRACTOR for satisfactory performance of CONTRACTOR's Work the sum of **Thirty Four thousand and Zero Dollars (\$34,000.00)**.

EXHIBIT "C"
INSURANCE CERTIFICATE