

AGREEMENT
Between
Robert M. Doroghazi
And
City of Columbia, Missouri
For
Replacement of 3 Phase A/C Unit and
Elimination of Hazardous Cross Connection

THIS AGREEMENT (hereinafter "Agreement") is made by and between Robert M. Doroghazi, an individual whose address is 115 E. Bingham Rd, Columbia, Missouri 65203 (hereinafter "Dr. Doroghazi"), and the City of Columbia, Missouri, a municipal corporation whose address is 701 E. Broadway, Columbia, Missouri 65201 (hereinafter "City"), and is entered into on the date of the last signatory below (hereinafter "Effective Date"). City and Dr. Doroghazi are each individually referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, Dr. Doroghazi is the owner of real property located at 115 E. Bingham Rd, Columbia, Missouri 65203 (hereinafter "Property"); and

WHEREAS, City provides electric utility service to Property and surrounding neighborhood area; and

WHEREAS, Dr. Doroghazi's air conditioning and furnace units ("3 Phase Units") at Property are 3 phase units which cross connect two separate single-phase electric distribution lines belonging to City; and

WHEREAS, this cross connection presents a dangerous backfeed hazard to the City's employees working on the electric distribution system in this area; and

WHEREAS, Dr. Doroghazi's 3 Phase Units cannot operate without this cross connection and would need to be replaced with new, single phase units in order to eliminate the backfeed hazard; and

WHEREAS, City wishes to eliminate the cross connection at Property for purpose of protecting the Water & Light employees from the backfeed hazard; and

WHEREAS, Dr. Doroghazi agrees to replace his 3 Phase Units and eliminate the cross connection so long as City agrees to reimburse him for his actual costs of replacement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the Parties hereto agree as follows:

1. DEFINITIONS

1.1. *Terms Defined Above.* As used in this Agreement, the terms "Agreement," "Dr. Doroghazi," "City," "Effective Date," and "Property" will have the meanings indicated above.

1.2. *Additional Defined Terms.*

- (a) "3 Phase Units" shall mean the existing three-phase air conditioning unit and three-phase furnace that belongs to Dr. Doroghazi and is currently located at Property.
- (b) "Chapman Bid" shall mean the Customer Choice Agreement bid from Chapman Heating and Air Conditioning dated 12/20/2016, attached hereto as **Exhibit A** and made a part of this Agreement.
- (c) "Director" shall mean the Director of the Utilities Department of the City of Columbia, or his or her designee.
- (d) "Single Phase Units" shall mean a Lennox 5 ton XC25 20 single phase air conditioning unit and SL280V 80% 90,000 BTU 2 stage furnace with variable speed blower motor and wifi control as described in more detail in the Chapman Bid.
- (d) "Withrow Bid" shall mean the Invoice bid from Withrow Electric, Inc., Invoice # 6133, dated 12/12/2016, attached hereto as **Exhibit B** and made a part of this Agreement.
- (e) "Work" shall mean all labor, services, materials, tools, equipment and supplies to replace the 3 Phase Units with the Single Phase Units consistent with the Chapman Bid and the Withrow Bid, and to remove any and all cross connections of the two single phase lines located at Property.

2. PROJECT PERFORMANCE, PAYMENT, TERM

2.1. *Project Performance and Completion Time.* Dr. Doroghazi agrees to be responsible for managing, coordinating and completing the Work within one-hundred twenty (120) days of Effective Date of this Agreement. Upon completion of the Work, Dr. Doroghazi agrees to notify the City and allow City reasonable access to Property to inspect and make final acceptance of the Work. To the extent that any work cannot be completed due to the need for an inspection or permit in accordance with the City's building code, the City agrees to provide the

necessary inspections in a timely manner so that Dr. Doroghazi can feasibly complete the project within the 120 day period called for in this paragraph.

- 2.2. *Payment.* City agrees to pay for the actual costs necessary to complete the Work. The amount currently contemplated is that set forth in the Chapman and Withrow Bids attached hereto as Exhibits A and B. It is expressly understood that in no event will the total amount to be paid by City under the terms of this Agreement exceed **Fifteen Thousand Dollars** (\$15,000), unless otherwise agreed to in writing by the Parties before any costs exceeding \$15,000 are incurred. Any changes to the not to exceed amount as provided herein shall be authorized only as an amendment to this Agreement. Dr. Doroghazi agrees to submit invoices from Chapman and Withrow Electric for all costs necessary to complete the Work to the address listed in Section 7.2. City agrees to pay all uncontested amounts of these invoices to the respective companies within thirty (30) days of receipt. City agrees that it will not contest any amounts listed in the Chapman and Withrow Bids so long as the work and materials contemplated in those bids is actually done.

- 2.3. *Time Extensions or Adjustments to Scope of Work.*

(a) *Time Extension.* Dr. Doroghazi may request a reasonable extension of time to complete the Work by submitting a written request to the City. The Director may grant or deny any such request in his or her discretion, except if the delay is caused by City, in which case all reasonable extensions will be granted. Any time extensions shall be authorized by the Director in writing.

(b) *Adjustments to Scope of Work.* The Parties agree the Work shall be completed consistent with Exhibits A & B. However, Dr. Doroghazi may request a reasonable change in the scope of the work to be performed by submitting a written request to the City. A change in the scope of the work includes minor changes to the air conditioning unit to be installed or services to be performed (including by a different company). The Director may grant or deny any such request in his or her discretion. Any changes in the scope of the work shall be authorized by the Director in writing and be authorized in advance of any costs accruing consistent with the requests. In no event shall the Director authorize a change in scope that exceeds the not to exceed amount provided in subsection 2.2 above. Any changes to the not to exceed amount shall be an authorized amendment as provided for in Subsection 7.3 herein.

- 2.4. *Term.* This Agreement commences upon Effective Date and shall terminate upon completion of the Work and City's final acceptance in writing. The scope of City's final acceptance shall be to ensure that the 3 Phase Units have been replaced and all cross connections of the City's two single phase lines have been removed at Property.

3. TITLE AND RESPONSIBILITY

Dr. Doroghazi shall, at all times, retain full title, ownership, and responsibility for the units involved with the Work. Any warranties or risk of loss associated with the Work shall belong to Dr. Doroghazi. City offers no warranties or guarantees of any kind related to the Work and City shall have no title in the units or responsibility for their utilities, maintenance or repairs, other than the initial installation as provided in this Agreement. CITY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY, LEGAL OR EQUITABLE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE WORK AS DEFINED IN THIS AGREEMENT. Any such warranties shall be between Dr. Doroghazi and the companies being used to complete the Work.

5. GOVERNING LAW AND VENUE

This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

6. TERMINATION FOR DEFAULT

If either Party fails to perform any provisions herein, then that Party shall be in default. The Party not in default may, by written notice, provide notice of the default. If the default is not cured in 10 days, then the non-defaulting party may terminate this Contract in whole or in part for failure to perform. In such event, the defaulting Party shall be liable for damages, as well as all costs and attorney's fees arising out of or related to the default.

7. MISCELLANEOUS

7.1. *Hold Harmless.* To the fullest extent not prohibited by law, Dr. Doroghazi shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, of Dr. Doroghazi or his contractors, in connection with this Agreement. This Agreement does not, however, require Dr. Doroghazi to indemnify, hold harmless, or defend the City from its own negligence.

- 7.2. *Notices.* Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, certified mail, e-mail, or other means of written communication expressly agreed to by both parties, to:

If to City:

City of Columbia
Utilities Department
ATTN: Dan Clark
P.O. Box 6015
Columbia, MO 65205
dan.clark@como.gov

If to Dr. Doroghazi:

Robert Doroghazi
115 E. Bingham Rd
Columbia, MO 65203
rdoroghazi@yahoo.com

- 7.3. *Amendment.* No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer.
- 7.4. *No Assignment.* This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.
- 7.5. *No Third Party Beneficiary.* No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party, so as to constitute any such person a third-party beneficiary under this Agreement.
- 7.6. *No Waiver of Immunities.* In no event shall the language of this Agreement constitute or be construed as a waiver of limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or laws.
- 7.7. *Entire Agreement.* This Agreement represents the entire and integrated Agreement between the Parties relative to the Work herein. All previous or contemporaneous contracts, representations, promises and conditions relating to the Work described herein are superseded.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year written below.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

CERTIFICATION: I, hereby certify that this Agreement is within the purpose of the appropriation to which it is to be charged, Account Number **click here and insert account number in text box**, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

By: _____
Michele Nix, Director of Finance

ROBERT M. DOROGHAZI

By: Robert M. Doroghazi
Date: February 2, 2017

ATTEST:

By: _____

Name: _____

EXHIBIT A

“Chapman Bid”

Chapman Heating and Air Condition Bid
Dated 12/20/2016

CUSTOMER CHOICE AGREEMENT

CHAPMAN

HEATING AND AIR CONDITIONING

4441 I-70 Drive NW
Columbia, MO 65202
Phone: 573.445.4489
Toll Free: 800.695.2259
Fax: 573.445.3607
www.chapmanhvac.com

Customer Name: Robert Doroghazi		Date: 12/20/2016	
Address: 115 Bingham Rd			
City: Columbia	State: MO	Zip: 65203	
Phone #: 573-443-0893	Other #:	Email: rdoroghazi@yahoo.com	

☒ New disconnect	☒ Install refrigerant drier(s)	☐ Provide external combustion air	☐ New humidification system
☐ New electric service	☒ Evacuation refrigerant system	☒ Noise reducing flexible duct connector	☐ New return air filter grill
☒ New low voltage wiring	☒ Charge to manufacturer's specs.	☐ New vent pipe and cap	☒ Meet all code requirements
☒ New reinforced equipment pad	☒ Meet all federal, state, and local laws	☒ Clean work area to customer's satisfaction	☒ Complete system startup
☒ New vibration isolation pad	☒ Remove & recycle existing equips	☒ New condensate drain system	☐
☒ New properly sized refrigerant lines	☒ Install energy saving comfort control	☐ New condensate pump	☐
☒ Clean, dry ACR copper tubing	☒ Make air tight plenum transition	☐ Install aux. condensate drain pan	☐
☒ Insulate refrigerant suction lines	☐ New supply diffuser(s)	☐ New high efficiency air filter	☐
☐	☐	☐	☐
☐	☐	☐	☐

We agree to furnish, install and service the equipment listed below at the price, terms and conditions outlined on both pages of this agreement.

Job Description

Lennox 5 ton XC25 20 seer variable capacity a/c and indoor coil with SL280V 80% 90,000 btu 2 stage gas furnace with variable speed blower motor and wifi control.	\$13,166
Flue liner (if needed at time of install)	\$600
Energy audit (with install)	Free
1 year maintenance (with install)	Free
Taxes, labor and materials included in price	
Special Notes / Exclusions / Terms: 50% Deposit, and 50% due on cor	Job Total:

CUSTOMER CHOICE AGREEMENT

CHAPMAN

HEATING AND AIR CONDITIONING

4441 I-70 Drive NW
Columbia, MO 65202
Phone: 573.445.4489
Toll Free: 800.695.2259
Fax: 573.445.3607
www.chapmanhvac.com

Warranties:

Air conditioner/Heat pump			Furnace/Air Handler		
Compressor:	10	Years	Heat exchanger:	20	Years
Parts:	10	Years	Parts:	10	Years
Labor:	5	Years	Labor:	5	Years

Total investment	\$							
Transaction date:		Credit card type:			Exp:		CID:	
Deposit	-\$	Credit card #:						
Transaction date:		Credit card type:			Exp:		CID:	
Final payment	- \$	Credit card #:						
Balance due	\$							

I accept the proposal and the specifications and conditions above. You are authorized to perform work as specified.
Buyer's right to cancel: you, the buyer, may cancel this transaction without penalty any time prior to midnight of the third business day after this transaction with proper notification.

Customer signature 12/20/2016

Customer signature 12/20/2016

Terry Pritchett

Comfort Advisor 12/20/2016

Notice to owner: Do not sign this contract if blank. You are entitled to two (2) copies of the contract at the time you authorize. Keep it to protect your legal rights. Do not sign any completion certificate or agreement stating that you are satisfied with the entire project before this project is complete. Home repair contractors are prohibited by law from requesting or accepting a certificate of completion signed by the owner prior to the actual completion of the work to be performed under the home repair contract. We own the real property in which the equipment is to be installed and have the authority to order the work outlined above.

Terms: Net due on the day of installation or in accordance with financing agreement. The job must be executed within 30 days or this contract shall be void. The seller retains the title to all materials and property listed herein until payment has been made in full. Accounts not paid within thirty (30) days of notice of invoice are in default and a late payment charge of 1.5% per month will be added. Buyer agrees to any reasonable attorney or collection fees incurred by the seller in securing payment for this contract.

**CUSTOMER CHOICE
AGREEMENT**

CHAPMAN

HEATING AND AIR CONDITIONING

4441 I-70 Drive NW
Columbia, MO 65202
Phone: 573.445.4489
Toll Free: 800.695.2259
Fax: 573.445.3607
www.chapmanhvac.com

EXHIBIT B

"Withrow Bid"

Withrow Electric, Inc. Bid
Dated: 12/12/2016

Withrow Electric, Inc.

610 Big Bear Blvd, Ste 515

Columbia, MO 65202

(573)445-8086

info@withrowelectric.com

www.withrowelectric.com

INVOICE**BILL TO**

DAN CLARK

INVOICE # 6133**DATE 12/12/2016****DUE DATE 12/12/2016****TERMS Net 15****JOB NAME**

115 EAST BINGHAM RD

ELECTRICIAN

ESTIMATE PER STEVE

DESCRIPTION**QTY****RATE****AMOUNT****TIME & MATERIAL**

REPLACED EXISTING 3 PHASE METER BASE WITH
NEW SINGLE PHASE BASE. REMOVE EXTRA
CONDUCTOR BETWEEN METER BASE AND PANEL,
ADD NEW 50 AMP 240 VOLT CIRCUIT FOR NEW
CONDENSING UNIT.

1,074.04

1,074.04

** A 4% LATE FEE WILL BE ASSESSED ON ANY BALANCE
OVER 30 DAYS **

BALANCE DUE**\$1,074.04**

* A 3% charge on all CREDIT CARD transactions over \$500.00 *

NOTICE TO OWNER: FAILURE OF THIS CONTRACTOR TO
PAY THOSE PERSONS SUPPLYING MATERIAL OR
SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN
THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY
WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO
CHAPTER 429, RSMO. TO AVOID THIS RESULT YOU MAY
ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL
PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE
WORK DESCRIBED IN THIS CONTRACT. FAILURE TO
SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR
LABOR AND MATERIAL TWICE.