

Multiple Award Contract

Vendor 1

CONTRACT MA-080-22010321

FOR

**MAINTENANCE, REPAIRS, AND REPLACEMENT OF EXISTING
HEATING VENTILATING AIR CONDITIONING AND REFRIGERATION
EQUIPMENT**

BETWEEN

OC PUBLIC WORKS

AND

ABM BUILDING SOLUTIONS, LLC



**CONTRACT MA-080-22010321
WITH
ABM BUILDING SOLUTIONS, LLC
FOR
MAINTENANCE, REPAIRS, AND REPLACEMENT OF EXISTING HEATING
VENTILATING AIR CONDITIONING AND REFRIGERATION EQUIPMENT**

THIS CONTRACT MA-080-22010321 for Maintenance, Repairs, and Replacement of Existing Heating Ventilating Air Conditioning and Refrigeration Equipment ("Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, ("County") and ABM Building Solutions, LLC, with a place of business at 14201 Franklin Ave., Tustin, CA 92780 ("Contractor"), with a County and Contractor sometimes referred to as "Party" or collectively as "Parties."

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference in this Contract:

Attachment A – Scope of Work

Attachment B – Payment/Compensation

Attachment C – Vendor Clearance Process

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Maintenance, Repairs, and Replacement of Existing Heating Ventilating Air Conditioning and Refrigeration Equipment under a firm fixed fee Contract; and,

WHEREAS, County solicited Contract for Maintenance, Repairs, and Replacement of Existing Heating Ventilating Air Conditioning and Refrigeration Equipment as set forth herein, and Contractor represented that it is qualified to provide Maintenance, Repairs, and Replacement of Existing Heating Ventilating and Air Conditioning Equipment to the County as further set forth here; and,

WHEREAS, Contractor agrees to provide Maintenance, Repairs, and Replacement of Existing Heating Ventilating Air Conditioning and Refrigeration Equipment to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and,

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Payment/Compensation, attached hereto as Attachment B; and,

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DPA shall mean the Deputy Purchasing Agent assigned to this Contract.

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. **Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Procurement Officer or designee.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County; 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in **article "Z"** below, and as more fully described in **article "Z,"** harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work

performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in **article "Z"** below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.
- I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall

at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

- O. **Insurance Requirements:** Contractor will need to comply with the following insurance requirements if making the deliveries to the County of Orange. No insurance is required if a common carrier makes deliveries to the County of Orange.

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1. In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
2. Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the **County of Orange its elected and appointed officials, officers, agents and employees** as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**
2. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, agents and employees** or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

The Commercial General Liability policy shall contain a "Severability of Interests" clause also known as a "Separation of Insureds" clause (standard in the ISO CG 0001 policy). Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Procurement or the agency/department procurement division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract, and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a

change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of **article "Z,"** below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **Freight:** Prior to the County's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section

1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the parties and this Contract.

- Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.

BB. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

CC. **Expenditure Limit:** The Contractor shall notify the County of Orange assigned DPA in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

DD. **Security Requirements for Probation Facilities:**

a. **Security Requirements for Probation Facilities**

- i. **Background Checks:** All Contractor personnel to be employed in performance of work under this Contract shall be subject to background checks and clearance prior to working in Probation facility per the Vendor Clearance Process detailed in Attachment C.
- ii. ***Contractor is responsible for maintaining a minimum of 2-3 cleared personnel at all times to support probation facilities.***
- iii. **Performance Requirements:** All Contractor vehicles parked on site shall be locked and thoroughly secured at all times. All tools and materials shall remain in Contractor's possession at all times and shall never be left unattended. All lost or misplaced tools or materials shall be reported immediately to the security staff or Control in youth detention facilities or to the escort or Control in the Sheriff's facilities. All materials, large or small, from removal operations or new construction (especially those materials that could be used to inflict injury, such as nails, wire, wood, and any other objects or weapons of convenience) shall be continuously cleaned up as work progresses. All work areas shall be secured prior to the end of each work period. Workers shall have no contact, either verbal or physical, with inmates in the facilities.

b. Contractor's employees shall not:

- i. Give names or addresses to inmates;
- ii. Receive any names or addresses from inmates (including materials to be passed to another individual or inmate);
- iii. Disclose the identity of any inmate to anyone outside the facility;
- iv. Give any materials to inmates;
- v. Receive any materials from inmates (including materials to be passed to another individual or inmate); or

vi. Smoke or use profanity or other inappropriate language while on site. Contractor's employees shall not enter the facility while under the influence of alcohol, drugs or other intoxicants and shall not have such materials in their possession. Contractor's employees shall plan their activities to minimize the number of times they must enter and exit a facility.

c. Contractor's personnel shall:

- i. Comply with the written schedule provided by the County which shall clearly show the specific start and end times for each workday.
- ii. Arrive at the site no more than fifteen (15) minutes prior to the scheduled time or no more than fifteen (15) minutes after the scheduled time.
- iii. Report to the control desk and sign-in log, name, date and time upon arrival at the job site.
- iv. Report to the control desk and sign-out, name, and time when leaving the facility.
- v. Control will ensure that the work area is clear and ready for work to begin. If a Contractor's employee is delayed or cancellation is necessary, the designated on-site coordinator or the County's Project Manager or his designee should be contacted immediately. Repeat problems will be grounds for remedial action which may include Contract termination.
- vi. Immediately report all accidents, spills, damage, unusual conditions and/or unusual activities to the Control Desk.
- vii. Securely close and check all gates and doors to ensure that they are tightly closed and locked.
- viii. Restrict all activities to the immediate work site and adjacent assigned areas.
- ix. Remain with the assigned escort at all times, unless otherwise directed by the onsite coordinator.
- x. Transport all tools, equipment and materials needed for the day at the start of the work period and restrict all breaks to the absolute minimum.
- xi. Failure to comply with these requirements is a criminal act and can result in prosecution.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure Maintenance, Repairs, and Replacement of Existing Heating Ventilating Air Conditioning and Refrigeration Equipment from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** This Contract shall commence upon execution of all necessary signatures and continue for five (5) calendar year(s) from that date, unless otherwise terminated by County.

3. **Aggregate:** This is an aggregate Contract with ABM Building Solutions, LLC and F.M. Thomas Air Conditioning, Inc. with a total aggregate contract amount not to exceed \$1,000,000.00.
4. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned DPA.
5. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a. Terminate the Contract immediately, pursuant to Section K herein;
 - b. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
6. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
7. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
8. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
9. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.

The Contractor’s Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s

Project Manager from providing services to the County under this Contract. The County's Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

10. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
11. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
12. **Contractor Personnel – Uniform/Badges/Identification:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.

All Contractor's employees shall be required to wear uniforms, badges, or other means of identification which are to be furnished by the Contractor and must be work at all times while working on County property. The assigned DPA must be notified in writing, within seven (7) days of notification of award of Contract of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven (7) days prior to any changes in this procedure.

13. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned DPA.
14. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
15. **Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use the pre-negotiated prices and terms in this Contract will be responsible for issuing their own purchase documents/contracts, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any contract entered into with another department or entity that is entered into and incorporates by reference the pre-negotiated prices and terms of this Contract a contractual clause that will hold harmless the County of Orange from all

claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this Contract. Failure to do so will be considered a material breach of this Contract by Contractor and grounds for immediate Contract termination. Departments or entities making use of the pre-negotiated prices and terms of this Contract are responsible for obtaining all certificates of insurance and bonds required when entering into their own contract. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

The Contractor shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

16. **County of Orange Disabled Veteran Business Enterprise Preference Requirements:** Contractor certifies it is in compliance with County of Orange Disabled Veteran Business Enterprise Preference requirements at the time this Contract is executed.
17. **County of Orange Local Small Business Preference Requirements:** Contractor certifies it is in compliance with County of Orange Local Small Business Preference requirements at the time this Contract is executed.
18. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
19. **Default – Reprourement Costs:** In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.
20. **Disputes – Contract:** The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, as specified in **Article 26. "Notices,"** such matter shall be brought to the attention of the County DPA by way of the following process:
 - a. The Contractor shall submit to the agency/department assigned DPA a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount

requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County DPA or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in Article K herein.

21. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
- b. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. The organization's policy of maintaining a drug-free workplace;
 - iii. Any available counseling, rehabilitation and employee assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - i. Will receive a copy of the company's drug-free policy statement; and
 - ii. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
2. The Contractor violates the certification by failing to carry out the requirements as noted above.

22. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal

Revenue Code for services received from a “service provider” to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term “service provider” is defined in California Unemployment Insurance Code Section 1088.8, subarticle B.2 as “an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state.” The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as “an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California.”

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at: http://www.edd.ca.gov/Employer_Services.htm

23. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary, and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor’s reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor’s reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
24. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, “Equal Employment Opportunity” as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

25. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
26. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned DPA, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: ABM Building Solutions, LLC
Attn: Jay Barthel
Address: 14201 Franklin Ave
Tustin, CA 92780
Phone: 908-693-0885
Email: jay.barthel@abm.com

County's Project Manager: OC Public Works/OC Facilities
Attn: Dale Vermillion
1143 E. Fruit Street
Santa Ana, CA 92701
Phone: 714-667-4963
Email: dale.vermillion@ocpw.ocgov.com

cc: OC Public Works/Procurement Services
Attn: John Martinez, County DPA
601 North Ross Street, 4th Floor
Santa Ana, CA 92701
Phone: 714-667-<TBA>
Email: john.martinez@ocpw.ocgov.com

27. **Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.
28. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination,

unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.

29. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
30. **Usage Reports:** The Contractor shall submit usage reports on an annual basis to the assigned DPA of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted 90 days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.
31. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract. In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.
32. **Project Manager, County:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's project manager shall have the right to require the removal and replacement of the Contractor's project manager and key personnel. The County's project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice from the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

33. **Mandatory Kick-Off Meeting:** Upon award of this Contract, the awarded Contractor(s) shall attend a mandatory kick-off meeting with County representatives to discuss important information related to the scope of work, the Contract, and the invoice payment process. A quarterly check-in meeting will be required to review any issues with the Contract.
34. **Prevailing Wage:**
 - a. **Threshold Requirements for Prevailing Wages:** Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and

not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

- b. **Wage Rates:** Contractor shall post a copy of the wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. These rates are on file with the Clerk of the Board of Supervisors. Copies may be obtained at cost at the office of County's OC Public Works/OC Facilities & Asset Management/A&E Project Management or visit the website of the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov/DLSR/PWD. The Contractor shall comply with the provisions of Sections 1774, 1775, 1776 and 1813 of the Labor Code.
- c. **Apprenticeship Requirements:** The Contractor shall comply with Section 230.1(A), California Code of Regulations as required by the Department of Industrial Relations, Division of Apprenticeship Standards by submitting DAS Form to the Joint Apprenticeship Committee of the craft or trade in the area of the site.
- d. **Registration of Contractor:** All contractors and subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Bids cannot be accepted from unregistered contractors except as provided in Section 1771.1. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. After award of the contract, Contractor and each Subcontractor shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.

Prevailing Wage and DIR Requirement: Awarding agencies are not required to submit the notice of contract award through DIR's PWC-100 system on projects that fall within the small project exemption. The small project exemption applies for all public works projects that do not exceed:

- \$25,000 for new construction, alteration, installation, demolition or repair
- \$15,000 for maintenance

If the project meets or exceeds these amounts, the County and the Contractor are required to register the project with the California Department of Industrial Relations.

- e. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide, in summary:

- i. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice,

worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.

Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- i. The information contained in the payroll record is true and correct.
 - ii. The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - iii. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - iv. Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - v. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.
 - vi. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq. and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
- f. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's work, and forty (40) hours constitute a legal week's work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty-Five Dollars (\$25) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to

work more than the legal day's or week's work, except that work performed by employees of said Contractor and subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

- g. **Apprentices:** The Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code Section 1777.5, this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of the Contractor to ensure compliance with this Article and with Labor Code Section 1777.5 for all apprenticeable occupations.

Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractors under him employing workers in any apprenticeable craft or trade in performing any work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the work.

Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractor under him may be required to make contributions to the apprenticeship program.

The Contractor and all subcontractors under him shall comply with Labor Code Section 1777.6 which Section forbids certain discriminatory practices in the employment of apprentices.

35. **Safety Data Sheets (SDS):** The Contractor is required to provide a completed Safety Data Sheet (SDS) for each hazardous substance provided to the County under the Contractor's Contract with the County. This includes hazardous substances that are not directly included in the Contract, but are included in the goods or services provided by the Contractor to the County. The provision of the SDSs must be in accordance with the requirements of California Labor Code Sections 6380 through 6399, General Industry Safety Order Section 5194, and Title 8, California Code of Regulations. The SDSs for each substance must be sent to the place of shipment or provision of goods/service.


Signature Page follows

Signature Page

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date following their respective signatures.

ABM BUILDING SOLUTIONS, LLC*

	Eugenio Burnier	Senior Vice President	12/29/2021
Signature	Name	Title	Date

	Noah Becker	Assistant Secretary	12/29/21
Signature	Name	Title	Date

COUNTY OF ORANGE, A political subdivision of the State of California

COUNTY AUTHORIZED SIGNATURE:

	Carlos Corona	Deputy Purchasing Agent	1-10-2022
Signature	Name	Title	Date

* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signee to bind the corporation.

ATTACHMENT A SCOPE OF WORK

I. SCOPE OF WORK

Contractor shall provide Maintenance, Repairs, and Replacement of Existing Heating, Ventilating, Air Conditioning, and Refrigeration (HVACR) Systems located in or adjacent to various County facilities including remotely located installations, on an as needed basis, as part of this Contract. Services shall include, but are not limited to: Perform Maintenance, Repairs and replacements of existing equipment for HVACR Systems County Wide. Maintenance services shall be used on an on-call basis. Service request involving, repairs and/or replacement of existing equipment shall not exceed \$60,000.

II. CONTRACT REQUIREMENTS:

Contractor shall:

- A. Coordinate all maintenance, repair, installation work with Orange County Public Works (OCPW) Contract Administrator or his/her designee, who will provide the required Scope of Work and arrange for access to the facility where work is to be performed.
- B. Installation of all types of HVACR/Mechanical equipment.
- C. The removal and proper legal disposal of HVACR equipment meeting any County requirements for disposition of refrigerants and recycling of equipment or materials or debris in order to meet any State/County/Federal Mandates.
- D. Maintenance of all types of HVACR equipment with no restriction on size as related to tonnage or volume of conditioned air supply.
- E. Clean coils and other parts, grease fan bearings, change filters, inspect clean and replace condensate pans as needed, inspect and clear condensate lines as needed. Any coil cleaning solutions must be approved prior to use by the County Project Manager or designee prior to use.
- F. Layout and installation, repair and maintenance of heating and cooling duct systems. All Chilled water, Hot water, and steam piping and valves. Chilled water pumps, hot water pumps, and condensate return systems. Repair, maintenance, and replacement of exhaust air systems. Walk in coolers, Walk in freezers, commercial refrigerators, commercial freezers, and ice machines, VAV boxes, variable frequency drive units, condensers, line set piping, soldering, brazing, grilles, diffusers, condensate pans and lines, thermostats controls and all other incidental parts and equipment associated with the maintenance, repair and installation of a typical HVACR system.
- G. Install controllers, wiring and sensors from air conditioning unit to final point of connection, coordinate with County Building Automation technician for interface with County building controls system.
- H. Perform air balancing of systems using AABC certified practices unless this is determined to not be required based on certain systems by the County's project manager or assigned designee.

- I. Add and remove refrigerants using proper documentation for recording of all refrigerant transfer and disposal, with all documentation be given the County for proper record keeping.
- J. The County reserves the right to use alternate sources for completion of the work, to obtain competitive prices on any preventative maintenance, service or repair, and to utilize information obtained under this contract relative to necessary materials and repairs it deems appropriate.

III. MINIMUM REQUIREMENTS:

- A. For any HVACR work performed as part of this Contract, the Contractor shall possess a valid C-20. HVACR Contractor License issued by the California State Contractor's License Board at the time the bid is submitted and shall maintain the license in full for the term of the Contract. Any and all electrical work shall be performed according to the National Electric Code (NEC) and Jurisdiction Having Authority.
- B. For any electrical work performed as part of this Contract, the Contractor shall possess a valid C-10, Electrical Contractor License issued by the California State Contractor's License Board at the time the bid is submitted and shall maintain the license in full for the term of the contract. Any and all electrical work shall be performed according to the NEC and Jurisdiction Having Authority.
- C. Contractor shall be registered and in good standing with the Department of Industrial Relations (DIR) at the time the bid is submitted, and the contractor's registration number shall be clearly visible and legible.
- D. For any Refrigeration work performed as part of this Contract, the Contractor shall possess a valid C-38. Refrigeration Contractor License issued by the California State Contractor's License Board at the time the bid is submitted and shall maintain the license in full for the term of the Contract. Any and all electrical work shall be performed according to the National Electric Code (NEC) and Jurisdiction Having Authority.
- E. For any Steam/Comfort heating hot water work performed as part of this Contract, the Contractor shall possess a valid C-4. Boiler, hot water heating and steam fitting Contractor License issued by the California State Contractor's License Board at the time the bid is submitted and shall maintain the license in full for the term of the Contract. Any and all electrical work shall be performed according to the National Electric Code (NEC) and Jurisdiction Having Authority.

IV. GENERAL REQUIREMENTS:

- A. Contractor shall employ and utilize personnel who are qualified, knowledgeable, and experienced to perform the specific type of service on the specific type of equipment listed in this Contract.
- B. All workers performing work on County premises shall be paid prevailing wages pursuant to the Department of Industrial Relations and the State of California. The Contractor shall provide with his/her bid package a list of trades expected to be supplied as part of the Contract, along with the current, up to date listing of prevailing wages to be paid to each appropriate trade that the contractor will be performing labor with under this Contract. Where required by EPA section 608, all personnel shall hold valid EPA-608 certification.

- C. All invoices submitted shall be accompanied by with a record of time spent working on the subject project by tradesmen to include name, trade specific type of work provided and craft level designation (Journeyman etc.), and receipts for all materials purchased.
- D. The Contractor shall provide at his/her expense, all tools and equipment necessary to perform the work. This includes ladders, lift equipment, scaffolding and planking which are to be OSHA approved for the type of work being performed.
- E. Many of locations throughout the County that require the services of the Contractor are secured facilities, and as such, the Contractor and Contractor's staff that enter these facilities are required to participate in a background clearance check. Some of the required documents that the Contractor and his/her staff will be required to submit are a birth certificate, driver's license or California ID, Social security Card, Passport, business card etc., which will be copied and returned to the submitter. Clearance time will be a minimum of two weeks. Those who do not pass background will not be admitted to the facilities. The reasons for non-clearance will not be disclosed.
- F. It is expected that the journeyman HVACR mechanic(s) performing the specified work will have a minimum of (6,000) hours direct experience performing preventative maintenance and repairs on high voltage emergency generators before being utilized on the work specified in this contract.
- G. It will be the sole discretion of the Contract Administrator or his/her designee to determine whether the Contractor has adequate staffing on each project; the Contractor will adjust staffing as required by the Contract Administrator or his/her designee to either increase or decrease staffing levels for tradesmen on site.
- H. County Project Manager or designee shall:
 - 1. Coordinate schedule, entry, and completion of work with County on-site staff.
 - 2. Coordinate HVACR equipment shutdowns with OCPW and on-site County staff. Shutdowns will only be permitted once an action/work plan is thoroughly discussed, understood and agreed to by all parties involved and/or affected by the shutdown.
 - 3. Notify on site County staff upon completion of HVACR Service/repairs/installations work and resumption of normal operating conditions to the facility.

V. CONTRACTOR REQUIREMENTS:

Contractor shall:

- A. Provide and maintain a telephone answering system which provides for contact twenty-four (24) hours per day, seven (7) days per week, capable of contacting and dispatching service personnel within one (1) hour after receipt of notification from the County.
- B. Contractor is responsible for maintaining a minimum of 2-3 cleared personnel at all times to be available to support probation facilities.
- C. Perform all work in strict accordance with the Jurisdiction Having Authority, Uniform Building Code (UBC), all local codes and/or ordinances and with all CAL-OSHA laws and regulations.

- D. Perform all work in accordance with generally accepted industry standards and practices for safe and efficient operation unless a stricter standard is adopted by the County for this type of work.
- E. Perform installations to meet or exceed the State of California seismic requirements for attaching, bracing and making safe the equipment, chase ways, lighting or any other piece of electrical equipment or device that is required to meet seismic attachment requirements.
- F. Furnish and maintain all power sources, lighting, etc., required to perform the work during any power outages.
- 1. Contractor shall furnish and maintain any and all warning devices, i.e., barricades, cones, etc., required to adequately protect the public, County staff, and other workers during the performance of this work.
- G. Be well disposed to the Public and County Staff at these facilities but shall only be responsive to the requests of the Contract Manager or his/her designee. All other requests or inquiries shall be directed to the Contract Manager or his/her designee. Exception: The specific request involves public safety or the security of the specific facility.
- H. Replace or repair or have the cost of replacement or repair deducted from its payment, at the option of the Contract Manager or his/her designee, all damage sustained to County equipment or facilities as a result of the Contractor's operation.
- I. Follow all guidelines and sequences of operations established as Industry Standards for the troubleshooting, Maintenance, Repairs, and Replacement of Existing Heating Ventilating Air Conditioning and Refrigeration Equipment that are currently considered Best Practices methodology. Contractor may be called to provide service or replacement of HVACR equipment, ducting systems, coils, fans, gauges, controllers or other ancillary parts at various County facilities throughout the term of this contract, however, actual performance at specific locations and facilities will be at the sole option and discretion of the County.
- J. Provide after hour repairs. The specific scope of work and schedule will be determined at the time such work is initiated. Contractor to be available for after hour call out services between the hours of 6:00 pm and 6:00 am Monday through Sunday and must respond within a one (1) hour time frame.
- K. All work that interferes with normal County operations shall be performed on Saturdays, Sundays or holidays and the schedule shall be arranged by the County and the Contractor prior to starting work.
- L. Identify notify/advise the Contract Manager or his/her designee in writing of any additional repair or maintenance work that may be required or advisable to maintain the efficient operation and useful life of the equipment.
- M. Not perform additional repair of maintenance without receiving prior approval from the County's Contract Manager.
- N. Provide at least one (1) journeymen HVAC mechanic. Contractor shall provide additional non-journeymen staff to adequately, efficiently and safely perform the work specified as part of this contract.

VI. MATERIALS:

- A. The Contractor shall maintain a supply of spare parts common to this type of work.
- B. The Contractor shall maintain a reasonable supply system for acquisition of additional parts which will provide all the additional parts either immediately or with minimal delay.
- C. All parts shall be new and shall meet or exceed the original equipment parts provided by the original manufacturer.
- D. If the Contractor proposes to furnish and install any part that will not be supplied by the original equipment manufacturer, it shall furnish all documentation, upon request, required by the County to verify that it is an equal value part. If the part is not found to be of equal quality by the County, the Contractor shall furnish an original equipment part.
- E. Contractor shall warrant all materials and labor for one (1) year after the completion of installation/repairs (or in accordance with manufacturer's warranty if longer).

VII. PERFORMANCE:

- A. Contractor shall meet with the Contract Manager or his/her designee prior to any scheduled maintenance and repair project to discuss details of the project ensure that proper notification to the specific facility has occurred, and coordinate schedules.
- B. Contractor shall review manufacturer's service manuals for equipment specifications and proper testing/repair procedures.
- C. All work shall be subject to inspection and approval of the County, either by the Contract Manager or his/her designee at each facility prior to acceptance and approval for payment.

**ATTACHMENT B
PAYMENT/COMPENSATION**

1. Compensation

The Respondent agrees to accept the specified compensation as set forth in the final negotiated contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Respondent of all its duties and obligations hereunder. The Respondent shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the Fixed Prices and Total Contract Amount specified herein unless authorized by amendment in accordance with Articles C and P of the County Contract Terms and Conditions, which may require approval by the County Board of Supervisors.**

2. Fees and Charges: County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

A. TIME:

Maintenance/Repairs	Labor Rate per Hour
Hourly Rate (Mon-Fri 8:00 am – 5:00 pm Normal Working Hours)	\$155.00
Hourly Rate (Mon-Fri – 5:01 pm – 7:59am After Normal Working Hours)	\$232.50
Hourly Rate (Sat – Normal Working Hours)	\$232.50
Hourly Rate (Sat – After Normal Working Hours; Sundays; Holidays, Emergency Call)	\$310.00

All invoices submitted shall be accompanied by a record of time spent working on the project by tradesmen to include name, trade specific type of work provided and craft level designation (Journeyman etc.), and receipts for all materials purchased including total amount of taxes paid for merchandise.

B. Rental Equipment:

For all rental equipment, a copy of the Contractor’s invoice is required for reimbursement which shall be submitted with the extended cost multiplied by the mark-up listed below. The maximum percentage mark-up allowed for rental equipment is 10%. Mark-up is prior to tax.

Rental Equipment Mark-up	<u>10</u> %
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C. MISCELLANEOUS ITEM MARKUP STRUCTURE:

Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not exceed \$5,000 per invoice, including tax, unless the following process is followed.

Miscellaneous Items ranging between \$5,000 and \$25,000, including tax, must be pre-approved by the County Project Manager or Designee prior to processing. The County will obtain price quotes from Contractor for all Miscellaneous Items purchased between \$5,000 and \$25,000. The Contractor shall provide the list price and discount price on all invoice(s) for all Miscellaneous Items.

Cost + 10 % Mark Up

D. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED:\$ 1,000,000.00

- III. **LABOR RATES:** Labor hours shall be charged on the basis of actual time spent on each job, not on a portal-to-portal basis and shall be computed to the nearest one-quarter (1/4) hour.
- IV. **PRICE INCREASES/DECREASES:** All price decreases will automatically be extended to the County. The County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of one hundred eighty (180) days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
- V. **FIRM DISCOUNT AND PRICING STRUCTURE:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.
- VI. **CONTRACTOR'S EXPENSE:** The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
- VII. **EXPENDITURE LIMIT:** The Contractor shall notify the County Project Manager in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless an amendment to cover those costs has been issued.
- VIII. **PAYMENT TERMS:** Invoices are to be submitted in arrears, after goods have been received. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange. Invoices shall be verified and approved by the County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

Billing shall cover goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods not provided, or when goods do not meet the contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items involved or billed under this contract and shall not be construed as acceptance of any part of the goods.

IX. INVOICING INSTRUCTIONS: The Contractor will provide an invoice on the Contractor's letterhead. Each invoice will have a unique number and will include the following information:

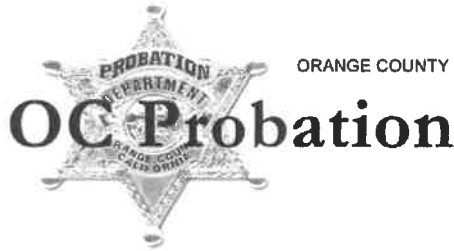
- A. Contractor's name and address
- B. Contractor's remittance address, if different from (A), above
- C. Name of County agency/department
- D. Delivery/service address
- E. Master Agreement number **MA-080-22010321**
- F. Service Date
- G. Description of Services
- H. Total
- I. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

OC Public Works/Facility Operations
Attn: Accounts Payable
1143 E. Fruit Street
Santa Ana, CA 92701

Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the DPA.

**ATTACHMENT C
VENDOR CLEARANCE PROCESS**



STEVEN J. SENTMAN
CHIEF PROBATION
OFFICER

TELEPHONE: (714) 569-2000

1055 N. MAIN STREET, 5TH
FLOOR SANTA ANA, CA
92701

MAILING ADDRESS:
P.O. BOX 10260
SANTA ANA, CA 92711-0260

**VENDOR BACKGROUND APPOINTMENT
INFORMATION 1535 EAST ORANGEWOOD
AVE.
ANAHEIM, CA. 92805**

All individuals who perform work in Probation Department facilities or on Probation Department property are required to undergo and pass a security clearance that includes being fingerprinted.

NOTE: A number of situations will prevent you from clearing this process, including, but not limited to: current or recent grant of probation or parole; active warrant for your arrest; or pending criminal matters, use of false or altered documents, or dishonesty when providing requested information.

On the day of your appointment, report to:

**Orange County Probation Department – North County Field Services Office
1535 EAST ORANGEWOOD AVE., ANAHEIM CA. 92805**

Please use the stairs adjacent to the ramp in the front of the building to enter. You may bypass the “Do Not Enter” sign posted on the door. You do not need to wait in the weapons screening line on the ramp. Please provide a photo ID to the Sheriff’s Special Officer and explain you are here for a background appointment with PSD. Once inside the building, please also check in with reception and ask for **XXXXXXXXXXXX 714-XXX-XXXX**.

Bring the following required documents with you to your appointment:

- California driver’s license or ID; *no copies will be accepted.*
- Social Security Card; *no copies will be accepted.*
- Documents that establish employment authorization (*whichever applies below*):

If born in the U.S., bring original birth certificate *or* U.S. passport; *no copies*,

- *abstracts, or hospital-issued certificates will be accepted; no passports from U.S. Territories: American Samoa, Swain Islands, and Northern Mariana Islands will be accepted.*
- *If you became an American Citizen, bring original U.S. Certificate of Naturalization or U.S. passport; no copies will be accepted.*
- - *If you are **not** an American Citizen, bring original and valid U.S. Permanent Resident Card (Green Card) or original and valid Employment Authorization Document (Work Permit); no copies will be accepted.*

Please bring employer's business card to the appointment.

All documents need to be original and valid. Only the documents listed above will be accepted.

If you do not have the required documents, you will not be permitted to proceed with the clearance process.

The results will be provided to your employer once the background is complete.

Vendor 2

CONTRACT MA-080-22010321

FOR

**MAINTENANCE, REPAIRS, AND REPLACEMENT OF EXISTING
HEATING VENTILATING AIR CONDITIONING AND REFRIGERATION
EQUIPMENT**

BETWEEN

OC PUBLIC WORKS

AND

F.M. THOMAS AIR CONDITIONING, INC.



**CONTRACT MA-080-22010321
WITH
F.M. THOMAS AIR CONDITIONING, INC.
FOR
MAINTENANCE, REPAIRS, AND REPLACEMENT OF EXISTING HEATING
VENTILATING AIR CONDITIONING AND REFRIGERATION EQUIPMENT**

THIS CONTRACT MA-080-22010321 for Maintenance, Repairs, and Replacement of Existing Heating, Ventilating, Air Conditioning and Refrigeration Equipment ("Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, ("County") and F.M. Thomas Air Conditioning, Inc., with a place of business at 231 Gemini Ave., Brea, CA 92821("Contractor"), with a County and Contractor sometimes referred to as "Party" or collectively as "Parties."

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference in this Contract:

Attachment A – Scope of Work

Attachment B – Payment/Compensation

Attachment C – Vendor Clearance Process

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Maintenance, Repairs, and Replacement of Existing Heating Ventilating and Air Conditioning Equipment under a firm fixed fee Contract; and,

WHEREAS, County solicited Contract for Maintenance, Repairs, and Replacement of Existing Heating, Ventilating, Air Conditioning and Refrigeration Equipment as set forth herein, and Contractor represented that it is qualified to provide Maintenance, Repairs, and Replacement of Existing Heating, Ventilating, Air Conditioning and Refrigeration Equipment to the County as further set forth here; and,

WHEREAS, Contractor agrees to provide Maintenance, Repairs, and Replacement of Existing Heating, Ventilating, Air Conditioning and Refrigeration Equipment to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and,

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Payment/Compensation, attached hereto as Attachment B; and,

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DPA shall mean the Deputy Purchasing Agent assigned to this Contract.

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. **Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Procurement Officer or designee.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County; 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in article "Z" below, and as more fully described in article "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work

performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in article "Z" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.
- I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall

at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

- O. **Insurance Requirements:** Contractor will need to comply with the following insurance requirements if making the deliveries to the County of Orange. No insurance is required if a common carrier makes deliveries to the County of Orange.

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1. In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
2. Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the *County of Orange its elected and appointed officials, officers, agents and employees* as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**
2. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, agents and employees* or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

The Commercial General Liability policy shall contain a "Severability of Interests" clause also known as a "Separation of Insureds" clause (standard in the ISO CG 0001 policy). Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Procurement or the agency/department procurement division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. Changes: Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract, and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a

change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of article "Z," below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **Freight:** Prior to the County's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section

1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the parties and this Contract.

- Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.

- BB. Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. Expenditure Limit:** The Contractor shall notify the County of Orange assigned DPA in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.
- DD. Security Requirements for Probation Facilities:**
- a. **Security Requirements for Probation Facilities**
 - i. **Background Checks:** All Contractor personnel to be employed in performance of work under this Contract shall be subject to background checks and clearance prior to working in Probation facility per the Vendor Clearance Process detailed in Attachment C.
 - ii. ***Contractor is responsible for maintaining a minimum of 2-3 cleared personnel at all times to support probation facilities.***
 - iii. **Performance Requirements:** All Contractor vehicles parked on site shall be locked and thoroughly secured at all times. All tools and materials shall remain in Contractor's possession at all times and shall never be left unattended. All lost or misplaced tools or materials shall be reported immediately to the security staff or Control in youth detention facilities or to the escort or Control in the Sheriff's facilities. All materials, large or small, from removal operations or new construction (especially those materials that could be used to inflict injury, such as nails, wire, wood, and any other objects or weapons of convenience) shall be continuously cleaned up as work progresses. All work areas shall be secured prior to the end of each work period. Workers shall have no contact, either verbal or physical, with inmates in the facilities.
 - b. **Contractor's employees shall not:**
 - i. Give names or addresses to inmates;
 - ii. Receive any names or addresses from inmates (including materials to be passed to another individual or inmate);
 - iii. Disclose the identity of any inmate to anyone outside the facility;
 - iv. Give any materials to inmates;
 - v. Receive any materials from inmates (including materials to be passed to another individual or inmate); or

- vi. Smoke or use profanity or other inappropriate language while on site. Contractor's employees shall not enter the facility while under the influence of alcohol, drugs or other intoxicants and shall not have such materials in their possession. Contractor's employees shall plan their activities to minimize the number of times they must enter and exit a facility.
- c. Contractor's personnel shall:
- i. Comply with the written schedule provided by the County which shall clearly show the specific start and end times for each workday.
 - ii. Arrive at the site no more than fifteen (15) minutes prior to the scheduled time or no more than fifteen (15) minutes after the scheduled time.
 - iii. Report to the control desk and sign-in log, name, date and time upon arrival at the job site.
 - iv. Report to the control desk and sign-out, name, and time when leaving the facility.
 - v. Control will ensure that the work area is clear and ready for work to begin. If a Contractor's employee is delayed or cancellation is necessary, the designated on-site coordinator or the County's Project Manager or his designee should be contacted immediately. Repeat problems will be grounds for remedial action which may include Contract termination.
 - vi. Immediately report all accidents, spills, damage, unusual conditions and/or unusual activities to the Control Desk.
 - vii. Securely close and check all gates and doors to ensure that they are tightly closed and locked.
 - viii. Restrict all activities to the immediate work site and adjacent assigned areas.
 - ix. Remain with the assigned escort at all times, unless otherwise directed by the onsite coordinator.
 - x. Transport all tools, equipment and materials needed for the day at the start of the work period and restrict all breaks to the absolute minimum.
 - xi. Failure to comply with these requirements is a criminal act and can result in prosecution.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure Maintenance, Repairs, and Replacement of Existing Heating, Ventilating, Air Conditioning and Refrigeration Equipment from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** This Contract shall commence upon execution of all necessary signatures and continue for five (5) calendar year(s) from that date, unless otherwise terminated by County.

3. **Aggregate:** This is an aggregate Contract with F.M. Thomas Air Conditioning, Inc. and ABM Building Solutions, LLC with a total aggregate contract amount not to exceed \$1,000,000.00.
4. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned DPA.
5. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a. Terminate the Contract immediately, pursuant to Section K herein;
 - b. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
6. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
7. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
8. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
9. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.

The Contractor’s Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s

Project Manager from providing services to the County under this Contract. The County's Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

10. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
11. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
12. **Contractor Personnel – Uniform/Badges/Identification:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.

All Contractor's employees shall be required to wear uniforms, badges, or other means of identification which are to be furnished by the Contractor and must be worn at all times while working on County property. The assigned DPA must be notified in writing, within seven (7) days of notification of award of Contract of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven (7) days prior to any changes in this procedure.

13. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned DPA.
14. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
15. **Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use the pre-negotiated prices and terms in this Contract will be responsible for issuing their own purchase documents/contracts, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any contract entered into with another department or entity that is entered into and incorporates by reference the pre-negotiated prices and terms of this Contract a contractual clause that will hold harmless the County of Orange from all

claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this Contract. Failure to do so will be considered a material breach of this Contract by Contractor and grounds for immediate Contract termination. Departments or entities making use of the pre-negotiated prices and terms of this Contract are responsible for obtaining all certificates of insurance and bonds required when entering into their own contract. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

The Contractor shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

16. **County of Orange Disabled Veteran Business Enterprise Preference Requirements:** Contractor certifies it is in compliance with County of Orange Disabled Veteran Business Enterprise Preference requirements at the time this Contract is executed.
17. **County of Orange Local Small Business Preference Requirements:** Contractor certifies it is in compliance with County of Orange Local Small Business Preference requirements at the time this Contract is executed.
18. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
19. **Default – Reprocurement Costs:** In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.
20. **Disputes – Contract:** The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, as specified in Article 26. "Notices," such matter shall be brought to the attention of the County DPA by way of the following process:
 - a. The Contractor shall submit to the agency/department assigned DPA a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount

requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County DPA or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in Article K herein.

21. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
- b. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. The organization's policy of maintaining a drug-free workplace;
 - iii. Any available counseling, rehabilitation and employee assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - i. Will receive a copy of the company's drug-free policy statement; and
 - ii. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
2. The Contractor violates the certification by failing to carry out the requirements as noted above.

22. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal

Revenue Code for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subarticle B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at: http://www.edd.ca.gov/Employer_Services.htm

23. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary, and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
24. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

25. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
26. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned DPA, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: F.M. Thomas Air Conditioning, Inc.
Attn: Michael Feyka
Address: 231 Gemini Ave
Brea, CA 92821
Phone: 714-738-1062
Email: mfeyka@fmthomas.com

County's Project Manager: OC Public Works/OC Facilities
Attn: Dale Vermillion
1143 E. Fruit Street
Santa Ana, CA 92701
Phone: 714-667-4963
Email: dale.vermillion@ocpw.ocgov.com

cc: OC Public Works/Procurement Services
Attn: John Martinez, County DPA
601 North Ross Street, 4th Floor
Santa Ana, CA 92701
Phone: 714-667-<TBA>
Email: john.martinez@ocpw.ocgov.com

27. **Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.
28. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination,

unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.

29. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
30. **Usage Reports:** The Contractor shall submit usage reports on an annual basis to the assigned DPA of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted 90 days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.
31. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract. In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.
32. **Project Manager, County:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's project manager shall have the right to require the removal and replacement of the Contractor's project manager and key personnel. The County's project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice from the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.
33. **Mandatory Kick-Off Meeting:** Upon award of this Contract, the awarded Contractor(s) shall attend a mandatory kick-off meeting with County representatives to discuss important information related to the scope of work, the Contract, and the invoice payment process. A quarterly check-in meeting will be required to review any issues with the Contract.
34. **Prevailing Wage:**
 - a. **Threshold Requirements for Prevailing Wages:** Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and

not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

- b. **Wage Rates:** Contractor shall post a copy of the wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. These rates are on file with the Clerk of the Board of Supervisors. Copies may be obtained at cost at the office of County's OC Public Works/OC Facilities & Asset Management/A&E Project Management or visit the website of the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov/DLSR/PWD. The Contractor shall comply with the provisions of Sections 1774, 1775, 1776 and 1813 of the Labor Code.
- c. **Apprenticeship Requirements:** The Contractor shall comply with Section 230.1(A), California Code of Regulations as required by the Department of Industrial Relations, Division of Apprenticeship Standards by submitting DAS Form to the Joint Apprenticeship Committee of the craft or trade in the area of the site.
- d. **Registration of Contractor:** All contractors and subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Bids cannot be accepted from unregistered contractors except as provided in Section 1771.1. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. After award of the contract, Contractor and each Subcontractor shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.

Prevailing Wage and DIR Requirement: Awarding agencies are not required to submit the notice of contract award through DIR's PWC-100 system on projects that fall within the small project exemption. The small project exemption applies for all public works projects that do not exceed:

- \$25,000 for new construction, alteration, installation, demolition or repair
- \$15,000 for maintenance

If the project meets or exceeds these amounts, the County and the Contractor are required to register the project with the California Department of Industrial Relations.

- e. **Payroll Records:** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide, in summary:

- i. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice,

worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.

Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- i. The information contained in the payroll record is true and correct.
 - ii. The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
 - iii. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
 - iv. Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.
 - v. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.
 - vi. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq. and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.
- f. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's work, and forty (40) hours constitute a legal week's work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty-Five Dollars (\$25) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to

work more than the legal day's or week's work, except that work performed by employees of said Contractor and subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

- g. **Apprentices:** The Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code Section 1777.5, this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of the Contractor to ensure compliance with this Article and with Labor Code Section 1777.5 for all apprenticeable occupations.

Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractors under him employing workers in any apprenticeable craft or trade in performing any work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the work.

Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractor under him may be required to make contributions to the apprenticeship program.

The Contractor and all subcontractors under him shall comply with Labor Code Section 1777.6 which Section forbids certain discriminatory practices in the employment of apprentices.


- 35. **Safety Data Sheets (SDS):** The Contractor is required to provide a completed Safety Data Sheet (SDS) for each hazardous substance provided to the County under the Contractor's Contract with the County. This includes hazardous substances that are not directly included in the Contract, but are included in the goods or services provided by the Contractor to the County. The provision of the SDSs must be in accordance with the requirements of California Labor Code Sections 6380 through 6399, General Industry Safety Order Section 5194, and Title 8, California Code of Regulations. The SDSs for each substance must be sent to the place of shipment or provision of goods/service.

Signature Page follows

Signature Page

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date following their respective signatures.

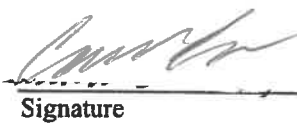
F.M. THOMAS AIR CONDITIONING, INC*


Signature _____ Name Tom Feyka Title President Date 12/22/21


Signature _____ Name Carolyn Feyka Title Sec/Treas Date 12/22/21

COUNTY OF ORANGE, A political subdivision of the State of California

COUNTY AUTHORIZED SIGNATURE:


Signature _____ Name Carlos Corona Title Deputy Purchasing Agent Date 1-10-2022

* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signee to bind the corporation.

ATTACHMENT A SCOPE OF WORK

I. SCOPE OF WORK

Contractor shall provide Maintenance, Repairs, and Replacement of Existing Heating, Ventilating, Air Conditioning, and Refrigeration (HVACR) Systems located in or adjacent to various County facilities including remotely located installations, on an as needed basis, as part of this Contract. Services shall include, but are not limited to: Perform Maintenance, Repairs and replacements of existing equipment for HVACR Systems County Wide. Maintenance services shall be used on an on-call basis. Service request involving, repairs and/or replacement of existing equipment shall not exceed \$60,000.

II. CONTRACT REQUIREMENTS:

Contractor shall:

- A. Coordinate all maintenance, repair, installation work with Orange County Public Works (OCPW) Contract Administrator or his/her designee, who will provide the required Scope of Work and arrange for access to the facility where work is to be performed.
- B. Perform installation of all types of HVACR/Mechanical equipment.
- C. Execute the removal and proper legal disposal of HVACR equipment meeting any County requirements for disposition of refrigerants and recycling of equipment or materials or debris in order to meet any State/County/Federal Mandates.
- D. Maintenance of all types of HVACR equipment with no restriction on size as related to tonnage or volume of conditioned air supply.
- E. Clean coils and other parts, grease fan bearings, change filters, inspect clean and replace condensate pans as needed, inspect and clear condensate lines as needed. Any coil cleaning solutions must be approved prior to use by the County Project Manager or designee prior to use.
- F. Perform layout and installation, repair and maintenance of heating and cooling duct systems. All Chilled water, hot water, and steam piping and valves. Chilled water pumps, hot water pumps, and condensate return systems. Repair, maintenance, and replacement of exhaust air systems. Walk in coolers, Walk in freezers, commercial refrigerators, commercial freezers, and ice machines, VAV boxes, variable frequency drive units, condensers, line set piping, soldering, brazing, grilles, diffusers, condensate pans and lines, thermostats controls and all other incidental parts and equipment associated with the maintenance, repair and installation of a typical HVACR system.
- G. Install controllers, wiring and sensors from air conditioning unit to final point of connection, coordinate with County Building Automation technician for interface with County building controls system.
- H. Perform air balancing of systems using AABC certified practices unless this is determined to not be required based on certain systems by the County's project manager or assigned designee.

- I. Add and remove refrigerants using proper documentation for recording of all refrigerant transfer and disposal, with all documentation be given the County for proper record keeping.

The County reserves the right to use alternate sources for completion of the work, to obtain competitive prices on any preventative maintenance, service or repair, and to utilize information obtained under this contract relative to necessary materials and repairs it deems appropriate.

III. MINIMUM REQUIREMENTS:

- A. For any HVACR work performed as part of this Contract, the Contractor shall possess a valid C-20 HVACR Contractor License issued by the California State Contractor's License Board at the time the bid is submitted and shall maintain the license in full for the term of the Contract. Any and all electrical work shall be performed according to the National Electric Code (NEC) and Jurisdiction Having Authority.
- B. For any electrical work performed as part of this Contract, the Contractor shall possess a valid C-10, Electrical Contractor License issued by the California State Contractor's License Board at the time the bid is submitted and shall maintain the license in full for the term of the contract. Any and all electrical work shall be performed according to the NEC and Jurisdiction Having Authority.
- C. Contractor shall be registered and in good standing with the Department of Industrial Relations (DIR) at the time the bid is submitted, and the contractor's registration number shall be clearly visible and legible.
- D. For any Refrigeration work performed as part of this Contract, the Contractor shall possess a valid C-38. Refrigeration Contractor License issued by the California State Contractor's License Board at the time the bid is submitted and shall maintain the license in full for the term of the Contract. Any and all electrical work shall be performed according to the National Electric Code (NEC) and Jurisdiction Having Authority.
- E. For any Steam/Comfort heating hot water work performed as part of this Contract, the Contractor shall possess a valid C-4 Boiler, hot water heating and steam fitting Contractor License issued by the California State Contractor's License Board at the time the bid is submitted and shall maintain the license in full for the term of the Contract. Any and all electrical work shall be performed according to the National Electric Code (NEC) and Jurisdiction Having Authority.

IV. GENERAL REQUIREMENTS:

- A. Contractor shall employ and utilize personnel who are qualified, knowledgeable, and experienced to perform the specific type of service on the specific type of equipment listed in this Contract.
- B. All workers performing work on County premises shall be paid prevailing wages pursuant to the Department of Industrial Relations and the State of California. The Contractor shall provide with his/her bid package a list of trades expected to be supplied as part of the Contract, along with the current, up to date listing of prevailing wages to be paid to each appropriate trade that the contractor will be performing labor with under this Contract. Where required by EPA section 608, all personnel shall hold valid EPA-608 certification.

- C. All invoices submitted shall be accompanied with a record of time spent working on the subject project by tradesmen to include name, trade specific type of work provided and craft level designation (Journeyman etc.), and receipts for all materials purchased.
- D. The Contractor shall provide at his/her expense, all tools and equipment necessary to perform the work. This includes ladders, scaffolding and planking which are to be OSHA approved for the type of work being performed.
- E. Many of locations throughout the County that require the services of the Contractor are secured facilities, and as such, the Contractor and Contractor's staff that enter these facilities are required to participate in a background clearance check. Some of the required documents that the Contractor and his/her staff will be required to submit are a birth certificate, driver's license or California ID, Social security Card, Passport, business card etc., which will be copied and returned to the submitter. Clearance time will be a minimum of two weeks. Those who do not pass background will not be admitted to the facilities. The reasons for non-clearance will not be disclosed.
- F. It is expected that the journeyman HVACR mechanic(s) performing the specified work will have a minimum of (6,000) hours direct experience performing preventative maintenance and repairs on high voltage emergency generators before being utilized on the work specified in this contract.
- G. It will be the sole discretion of the Contract Administrator or his/her designee to determine whether the Contractor has adequate staffing on each project; the Contractor will adjust staffing as required by the Contract Administrator or his/her designee to either increase or decrease staffing levels for tradesmen on site.
- H. County Project Manager or designee shall:
 - 1. Coordinate schedule, entry, and completion of work with County on-site staff.
 - 2. Coordinate HVACR equipment shutdowns with OCPW and on-site County staff. Shutdowns will only be permitted once an action/work plan is thoroughly discussed, understood and agreed to by all parties involved and/or affected by the shutdown.
 - 3. Notify on site County staff upon completion of HVACR Service/repairs/installations work and resumption of normal operating conditions to the facility.

V. CONTRACTOR REQUIREMENTS:

Contractor shall:

- A. Provide and maintain a telephone answering system which provides for contact twenty-four (24) hours per day, seven (7) days per week, capable of contacting and dispatching service personnel within one (1) hour after receipt of notification from the County.
- B. Contractor is responsible for maintaining a minimum of 2-3 cleared personnel at all times to be available to support probation facilities.
- C. Perform all work in strict accordance with the Jurisdiction Having Authority, Uniform Building Code (UBC), all local codes and/or ordinances and with all CAL-OSHA laws and regulations.

- D. Perform all work in accordance with generally accepted industry standards and practices for safe and efficient operation unless a stricter standard is adopted by the County for this type of work.
- E. Perform installations to meet or exceed the State of California seismic requirements for attaching, bracing and making safe the equipment, chase ways, lighting or any other piece of electrical equipment or device that is required to meet seismic attachment requirements.
- F. Furnish and maintain all power sources, lighting, etc., required to perform the work during any power outages.
- I. Contractor shall furnish and maintain any and all warning devices, i.e., barricades, cones, etc., required to adequately protect the public, County staff, and other workers during the performance of this work.
- G. Be well disposed to the Public and County Staff at these facilities but shall only be responsive to the requests of the Contract Manager or his/her designee. All other requests or inquiries shall be directed to the Contract Manager or his/her designee. Exception: The specific request involves public safety or the security of the specific facility.
- H. Replace or repair or have the cost of replacement or repair deducted from its payment, at the option of the Contract Manager or his/her designee, all damage sustained to County equipment or facilities as a result of the Contractor's operation.
- I. Follow all guidelines and sequences of operations established as Industry Standards for the troubleshooting, maintenance, repair, and installation of heating, ventilating and air conditioning equipment that are currently considered Best Practices methodology. Contractor may be called to provide service or replacement of HVACR equipment, ducting systems, coils, fans, gauges, controllers or other ancillary parts at various County facilities throughout the term of this contract, however, actual performance at specific locations and facilities will be at the sole option and discretion of the County.
- J. Provide after hour repairs. The specific scope of work and schedule will be determined at the time such work is initiated. Contractor to be available for after hour call out services between the hours of 5:00 pm and 8:00 am Monday through Sunday and must respond within a one (1) hour time frame.
- K. All work that interferes with normal County operations shall be performed on Saturdays, Sundays or holidays and the schedule shall be arranged by the County and the Contractor prior to starting work.
- L. Identify notify/advise the Contract Manager or his/her designee in writing of any additional repair or maintenance work that may be required or advisable to maintain the efficient operation and useful life of the equipment.
- M. Not perform additional repair of maintenance without receiving prior approval from the County's Contract Manager.
- N. Provide at least one (1) journeymen HVAC mechanic. Contractor shall provide additional non-journeymen staff to adequately, efficiently and safely perform the work specified as part of this contract.

VI. MATERIALS:

- A. The Contractor shall maintain a supply of spare parts common to this type of work.
- B. The Contractor shall maintain a reasonable supply system for acquisition of additional parts which will provide all the additional parts either immediately or with minimal delay.
- C. All parts shall be new and shall meet or exceed the original equipment parts provided by the original manufacturer.
- D. If the Contractor proposes to furnish and install any part that will not be supplied by the original equipment manufacturer, it shall furnish all documentation, upon request, required by the County to verify that it is an equal value part. If the part is not found to be of equal quality by the County, the Contractor shall furnish an original equipment part.
- E. Contractor shall warrant all materials and labor for one (1) year after the completion of installation/repairs (or in accordance with manufacturer's warranty if longer).

VII. PERFORMANCE:

- A. Contractor shall meet with the Contract Manager or his/her designee prior to any scheduled maintenance and repair project to discuss details of the project ensure that proper notification to the specific facility has occurred, and coordinate schedules.
- B. Contractor shall review manufacturer's service manuals for equipment specifications and proper testing/repair procedures.
- C. All work shall be subject to inspection and approval of the County, either by the Contract Manager or his/her designee at each facility prior to acceptance and approval for payment.

**ATTACHMENT B
PAYMENT/COMPENSATION**

1. Compensation

The Respondent agrees to accept the specified compensation as set forth in the final negotiated contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Respondent of all its duties and obligations hereunder. The Respondent shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the Fixed Prices and Total Contract Amount specified herein unless authorized by amendment in accordance with Articles C and P of the County Contract Terms and Conditions, which may require approval by the County Board of Supervisors.**

2. Fees and Charges: County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

A. TIME:

Maintenance/Repairs	Labor Rate per Hour
<u>Hourly Rate (Mon-Fri 8:00 am – 5:00 pm Normal Working Hours)</u>	\$130.00
<u>Hourly Rate (Mon-Fri – 5:01 pm – 7:59am After Normal Working Hours)</u>	\$185.00
<u>Hourly Rate (Sat – Normal Working Hours)</u>	\$185.00
<u>Hourly Rate (Sat – After Normal Working Hours; Sundays; Holidays; Emergency Call)</u>	\$220.00

All invoices submitted shall be accompanied by a record of time spent working on the project by tradesmen to include name, trade specific type of work provided and craft level designation (Journeyman etc.), and receipts for all materials purchased including total amount of taxes paid for merchandise.

B. Rental Equipment:

For all rental equipment, a copy of the Contractor's invoice is required for reimbursement which shall be submitted with the extended cost multiplied by the mark-up listed below. The maximum percentage mark-up allowed for rental equipment is 15%. Mark-up is prior to tax.

Rental Equipment Mark-up	<u>15</u> %
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C. MISCELLANEOUS ITEM MARKUP STRUCTURE:

Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not exceed \$5,000 per invoice, including tax, unless the following process is followed.

Miscellaneous Items ranging between \$5,000 and \$25,000, including tax, must be pre-approved by the County Project Manager or Designee prior to processing. The County will obtain price quotes from Contractor for all Miscellaneous Items purchased between \$5,000 and \$25,000. The Contractor shall provide the list price and discount price on all invoice(s) for all Miscellaneous Items.

Cost + 15 % Mark Up

D. TOTAL CONTRACT AMOUNT SHALL NOT EXCEED: \$ 1,000,000.00

- III. LABOR RATES:** Labor hours shall be charged on the basis of actual time spent on each job, not on a portal-to-portal basis and shall be computed to the nearest one-quarter (1/4) hour.
- IV. PRICE INCREASES/DECREASES:** All price decreases will automatically be extended to the County. The County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of one hundred eighty (180) days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
- V. FIRM DISCOUNT AND PRICING STRUCTURE:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.
- VI. CONTRACTOR'S EXPENSE:** The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
- VII. EXPENDITURE LIMIT:** The Contractor shall notify the County Project Manager in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless an amendment to cover those costs has been issued.
- VIII. PAYMENT TERMS:** Invoices are to be submitted in arrears, after goods have been received. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange. Invoices shall be verified and approved by the County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

Billing shall cover goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods not provided, or when goods do not meet the contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items involved or billed under this contract and shall not be construed as acceptance of any part of the goods.

IX. INVOICING INSTRUCTIONS: The Contractor will provide an invoice on the Contractor's letterhead. Each invoice will have a unique number and will include the following information:

- A. Contractor's name and address
- B. Contractor's remittance address, if different from (A), above
- C. Name of County agency/department
- D. Delivery/service address
- E. Master Agreement number **MA-080-22010321**
- F. Service Date
- G. Description of Services
- H. Total
- I. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

OC Public Works/Facility Operations
Attn: Accounts Payable
1143 E. Fruit Street
Santa Ana, CA 92701

Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the DPA.

ATTACHMENT C
VENDOR CLEARANCE PROCESS



STEVEN J. SENTMAN
CHIEF PROBATION
OFFICER
TELEPHONE: (714) 569-2000
1055 N. MAIN STREET, 5TH
FLOOR SANTA ANA, CA
92701
MAILING ADDRESS:
P.O. BOX 10260
SANTA ANA, CA 92711-0260

VENDOR BACKGROUND APPOINTMENT
INFORMATION 1535 EAST ORANGEWOOD
AVE.
ANAHEIM, CA. 92805

All individuals who perform work in Probation Department facilities or on Probation Department property are required to undergo and pass a security clearance that includes being fingerprinted.

NOTE: A number of situations will prevent you from clearing this process, including, but not limited to: current or recent grant of probation or parole; active warrant for your arrest; or pending criminal matters, use of false or altered documents, or dishonesty when providing requested information.

On the day of your appointment, report to:

Orange County Probation Department – North County Field Services Office
1535 EAST ORANGEWOOD AVE., ANAHEIM CA. 92805

Please use the stairs adjacent to the ramp in the front of the building to enter. You may bypass the “Do Not Enter” sign posted on the door. You do not need to wait in the weapons screening line on the ramp. Please provide a photo ID to the Sheriff’s Special Officer and explain you are here for a background appointment with PSD. Once inside the building, please also check in with reception and ask for **XXXXXXXXXXXX 714-XXX-XXXX**.

Bring the following required documents with you to your appointment:

- California driver’s license or ID; *no copies will be accepted.*
- Social Security Card; *no copies will be accepted.*
- Documents that establish employment authorization (*whichever applies below*):

If born in the U.S., bring original birth certificate *or* U.S. passport; *no copies*,

- *abstracts, or hospital-issued certificates will be accepted; no passports from U.S. Territories: American Samoa, Swain Islands, and Northern Mariana Islands will be accepted.*
- *If you became an American Citizen, bring original U.S. Certificate of Naturalization or U.S. passport; no copies will be accepted.*
-
- *If you are not an American Citizen, bring original and valid U.S. Permanent Resident Card (Green Card) or original and valid Employment Authorization Document (Work Permit); no copies will be accepted.*

Please bring employer's business card to the appointment.

All documents need to be original and valid. Only the documents listed above will be accepted.

If you do not have the required documents, you will not be permitted to proceed with the clearance process.

The results will be provided to your employer once the background is complete.