

CONTRACT MA-080-17011044
To
MAINTENANCE AND REPAIR OF WATER CHILLERS

THIS Contract MA-080-17011044 to provide Maintenance and Repair of Water Chillers, (hereinafter referred to as "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, (hereinafter referred to as "County") and FM Thomas Air Conditioning, Inc., a State of California Corporation, (hereinafter referred to as "Contractor") with County and Contractor sometimes individually referred to as ("Party"), or collectively referred to as ("Parties").

RECITALS

WHEREAS, County and Contractor are entering into this to Maintenance and Repair of Water Chillers under a Usage Contract; and,

WHEREAS, County solicited to Maintenance and Repair of Water Chillers as set forth herein, and Contractor has represented that it is qualified to provide to Maintenance and Repair of Water Chillers to the County as further set forth herein; and,

WHEREAS, Contractor agrees to Maintenance and Repair of Water Chillers the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

1. **Scope of Contract:** This Contract, including attachment(s), specifies the contractual terms and conditions by which the Contractor will Maintenance and Repair of Water Chillers under a usage Contract.
2. **Term:** The initial term of this Contract shall be effective upon execution of all authorized signatures or approval by the Orange County Board of Supervisors, whichever occurs later, and shall continue for five (5) years from that date unless otherwise terminated as provided herein.
3. **Aggregate Contract:** This is an aggregate Contract with ACCO Engineered Systems and F.M. Thomas Air Conditioning, Inc. with a Total Aggregate Contract Amount not to exceed **\$5,000,000.**
4. **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.
5. **Precedence:** The Contract documents consist of this Contract 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 attachments.

6. **County's Project Manager:** The County shall appoint a Project Manager, as specified in Article 25. Notices, 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 Contractor personnel. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar 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 and Contractor personnel. Said approval shall not be unreasonably withheld.

7. **Contractor's Project Manager:** The Contractor's Project Manager and Key Personnel shall be assigned to this Contract for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Contractor's Key Personnel are those individuals who report directly to the Contractor's Project Manager.
8. **Contractor's Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of work under this Contract shall possess sufficient experience and/education to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one business day of notification by County. County shall submit the request in writing to the Contractor's project manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
9. **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.
10. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County, at prices listed in the Contract, regardless of quantity requested. Orders may be placed against this contract at the convenience of the using agency/department.
11. **Usage Reports:** Upon County request, Contractor shall submit usage reports to the County which shall include, at minimum, summarized quantities, item descriptions (including Manufacturer/Part No.). The usage report shall be in a format specified by the County.

~~12. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent~~

Amendment
No. 1 – removed
language

~~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 relatives; sub-tier Consultants; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.~~

13. **Child Support Enforcement Requirements:** Contractor is required to comply with the child support enforcement requirements of the County. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.
14. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
15. **Prevailing Wage: (Labor Code §1773):** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>. The contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates. The contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.
16. **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 part:

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:

The information contained in the payroll record is true and correct.

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.

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.

Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.

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.

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.

17. **Registration of Contractors:** 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.
18. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.

19. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute 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. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - c. Terminate the Contract immediately without penalty.
20. **Contract Disputes:** 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 Supervisor and the County's project manager as specified in Article 25. "Notices" by way of the following process, such matter shall be brought to the attention of the County DPA by way of the following process:
- (i) The Contractor shall submit to the County 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.
 - (ii) 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.
 - (iii) 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. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of the County's final decision or one year following the accrual of the cause of action, whichever is later.
21. **Orderly Termination:** 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 execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

22. **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.
23. **Delivery Parking:** The County of Orange will not provide free parking for delivery services.
24. **Material Safety Data Sheets (MSDS):** The Contractor is required to provide a completed Material Safety Data Sheet (MSDS) for each hazardous substance provided to the County under the contract. 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 MSDS 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 MSDS for each substance must be sent to the County Project Manager and must also be sent to:

County of Orange CEO/Risk Management
Attn: Safety and Loss Prevention Program
PO Box 327
Santa Ana, CA 92702

25. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, 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 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.

Amendment No. 2
updated contact
information.

County's Project Manager:

OC Public Works/OC Facilities Maintenance

Attn: Robert Kmetz
1143 East Fruit Street
Santa Ana, CA 92701
Phone: 714-667-3281

Amendment No. 1
updated contact
information.

Email: robert.kmetz@ocpw.ocgov.com

cc: ~~OC Public Works/Procurement~~

~~Services~~

~~Attn: Robert Esparza, County DPA
300 North Flower Street, Suite 838
Santa Ana, CA 92703-5001
Phone: 714-667-9746
Email: Robert.Esparza@ocpw.ocgov.com~~

OC Public Works/Procurement Services
Attn: Nichols Murray, County DPA
601 North Ross Street

Santa Ana, CA 92701
Phone: 714-667-1659
Email: nicholas.murray@ocpw.ocgov.com

Contractor: FM Thomas Air Conditioning, Inc.
Attn: Thomas Feyka
231 Gemini Ave.
Brea, CA 92821
Phone: 714-738-10624
Email: mfeyka@fmthomas.com

26. **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 trial to another County.
27. **Entire Contract:** This Contract, including Attachments which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, 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 County's Purchasing Agent or his designee.
28. **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.
29. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
30. **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 description, or services that do not conform to the prescribed Scope 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. Overshipments and undershipments 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.
31. **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.

32. **Warranty:** Contractor expressly warrants that the goods/services 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 "58" below, and as more fully described in Article "58", 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.
33. **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 "58" below, it shall indemnify, defend and hold County and County Indemnities 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, but not limited to, attorney's fees, costs and expenses.
34. **Assignment or Subcontracting:** 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 or subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract 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.
35. **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 all the penalties imposed for a violation of Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
36. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any 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 obligations.
37. **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.

38. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
39. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
40. **Performance:** Contractor shall perform 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 workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; 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; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.
41. **Insurance Provisions:** 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. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. 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) or deductibles shall be clearly stated on the Certificate of Insurance. If no deductibles or SIRs apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management upon review of Contractor's current audited financial report.

Contractor shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.

Upon notice of any actual or alleged claim or loss arising out of subcontractor's work hereunder, subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

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	\$3,000,000 per occurrence \$3,000,000 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 00 12, CA 00 20, or a substitute form providing liability coverage 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 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees and agents as Additional Insureds.
- 2) A primary non-contributing endorsement 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.

- 3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

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, employees and agents when acting within the scope of their appointment or employment.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents 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 (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to:

OC Public Works/Procurement Services
Attn: Robert Esparza
300 North Flower Street, Suite 838
Santa Ana CA 92703-5001

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

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 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 in any way to reduce the policy coverage and limits available from the insurer.

***Certificate Holder Information**

The County of Orange has contracted with Ebix RCS to monitor insurance certificates and endorsements for compliance with the above requirements. Upon initial award of a Contract, the certificate(s) and endorsement(s) should be forwarded to the agency/department address listed on the solicitation. The County will forward these documents to Ebix RCS on your

behalf. Ebix RCS may contact you to advise you of deficiencies and request corrected documents. Please cooperate with their request for information or corrections in order for the County to continue your Contract through the expiration date.

42. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of Article "58" below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
43. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

~~44. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.~~

45. **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.

46. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and 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.
47. **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 "58" 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.
48. **Freight (F.O.B. Destination):** 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.
49. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Contractors Pricing attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.

Amendment No. 1
Removed
language

50. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
51. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and Articles, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
52. **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.
53. **Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
54. **Attorneys Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney’s fees, costs and expenses.
55. **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 has 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 of 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 effect the purpose of the Parties and this Contract.
56. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
57. **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.
58. **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.

59. **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 agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project manager.

60. 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, 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. 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 of 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, or conflict of interest, 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

Amendment
No. 1
Added
language

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.

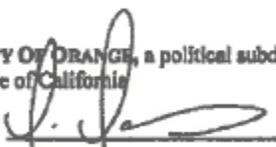
IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown below their respective signatures below.

FM THOMAS AIR CONDITIONING, INC.,* a
State of California corporation

By: 
Print Name: Thomas Fuyka
Title: President
Corporate Officer
Date: 12/22/16

By: 
Print Name: Carolyn Fuyka
Title: Sec/Treasurer
Corporate Officer
Date: 12/22/16

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

By: 
Print Name: MICHAEL MACIAS
Title: Deputy Purchasing Agent
Date: 3/28/17

APPROVED AS TO FORM:
County Counsel

By: 
Deputy County Counsel
Date: 1.4.17

* 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 signator to bind the corporation.

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

FM THOMAS AIR CONDITIONING, INC.

By: [Signature]
Print Name: Tom Feyka
Title: [Signature]
Corporate Officer
Date: 3/4/20

By: [Signature]
Print Name: Carolyn Feyka
Title: Sec/Treas.
Corporate Officer
Date: 3/5/20

Amendment
No. 1

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

By: [Signature]
Print Name: Nicholas Murray
Title: Deputy Purchasing Agent
Date: 04/21/2020

* 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 signator to bind the corporation.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown below their respective signatures below.

FM THOMAS AIR CONDITIONING, INC.,*

By: _____
Print Name: _____
Title: _____
Corporate Officer
Date: _____

By: _____
Print Name: _____
Title: _____
Corporate Officer
Date: _____

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

By _____
Print Name _____
Title Deputy Purchasing Agent
Date _____

APPROVED AS TO FORM:

County Counsel

By _____
Deputy County Counsel
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 signator to bind the corporation.

**ATTACHMENT A
SCOPE OF WORK**

- I. SCOPE OF WORK:** Contractor shall provide full maintenance, repair and services for water chillers located in various buildings and facilities throughout the County.

Performance under the Contract is to include all periodic inspections, manufacturer recommended service requirements, and any repairs and other services as required, which shall include replacement of broken or damaged components, portions or sections of the chiller necessary to maintain operational status, all replacement parts, lubricants and any other ancillary items that would be provided during a normal servicing of the equipment over the 5 year period of this contract.

All chillers are to receive an initial inspection and service as part of this Contract in order for the Contractor to establish a list of current needs and maintenance baseline.

Current manufactures of chillers in use by the County of Orange:

- A. Trane
- B. Carrier
- C. York
- D. McQuay

See Attachment C for locations of Chillers.

II. MINIMUM QUALIFICATIONS:

- A. Contractor shall ensure all workers performing work on under this Contract 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 for each trade category that will provide services under this Contract.
- B. Contractor shall possess a valid C-20, Warm-Air Heating, Ventilating and Air-Conditioning Contractor's 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 Authority Having Jurisdiction Having (AHJ)
- C. 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 National Electric Code (NEC) and Authority Having Jurisdiction Having (AHJ). All journeyman level electricians shall possess a certificate identifying them as journeyman electricians by the State of California.
- D. 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.

- E. Must have ten (10) years experience working with Trane water cooled rotary liquid chillers, and shall provide factory-trained and experienced technicians that have a minimum of five (5) years of experience working on Trane water cooled rotary liquid chillers, in order to perform all labor, materials, tools, equipment, permits and licensing necessary to maintain and inspect the equipment for the five (5) Trane water cooled rotary liquid chillers, and comply with industry guidelines for safe and efficient operation.
- F. Show proof that they currently have four (4) factory-trained Trane technicians that have worked on the Trane water cooled rotary liquid chillers. Provide at least 1 journeyman HVAC mechanic. Contractor shall provide additional non-journeymen staff to adequately, efficiently and safely perform the work specified as part of this contract.

III. CONTRACTOR REQUIREMENTS:

Contractor shall:

- A. Be courteous to County staff and the public utilizing the facilities and direct all inquiries or requests to the Project Manager.
- B. Cooperate with County staff relative to operations within the facilities.
- C. Respond to request of the Project Manager (or designee) except when the specific request involves public safety or security of the specific facility.
- D. Comply with all County and OSHA regulations regarding profanity, drugs, alcohol, visitors and general conduct.
- E. Comply with the provisions of this contract, for labor, the Contractor is allowed 10% for overhead and profit, and the allowable mark-up for materials is an additional 10%.
- F. Ensure all invoices submitted shall be accompanied by 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.
- G. 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.
- H. Ensure all technicians providing service on equipment identified in the Scope of Work are factory trained to work on the particular equipment being serviced and or repaired. The 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. The County reserves the right to change manufacturers of equipment at any time.
- I. 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.

- J. It will be the sole discretion of the Contract Administrator or his/her designee to determine whether the Contractor has adequate journeyman level 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.

IV. CONTRACT REQUIREMENTS:

Contractor shall:

A. ANNUAL INSPECTION AND SERVICE

At the time of each inspection, the following will be done as necessary to keep the system operating properly and with maximum energy efficiency:

1. Change all liquid line core drier filters and remove condenser heads, brush clean (only) tubes and replace heads with new gasket materials.
2. Controls
 - a. Inspect, test and calibrate safety controls: (log cut-in and cut-off points)
 - b. Inspect, test and calibrate operating controls: (including slide valve operation)
 - c. Inspect control panel: (confirm proper operation of components and lights)
 - d. Perform diagnostic test of all solid state components in accordance with manufacturer's service bulletins.
3. Starter Panel
 - a. Inspect contacts, arc shield and transformer.
 - b. Tighten all terminals.
 - c. Test magnetic overloads.
 - d. Prepare and submit a report of operating conditions.
4. Lubrication Circuits
 - a. Remove replaceable oil filters and install new filter cores if applicable.
 - b. Analyze the oil and submit a report.
 - c. Inspect oil heater and submit a report.
 - d. Dispose used filters.
5. Refrigerant Circuit
 - a. Analyze refrigerant and submit a report on the acid and oil content.

- b. Replace refrigerant filter and dispose of old one.
- c. Tighten flange nuts and bolts, as appropriate.
- d. Test for leaks with an electronic detector.
- e. Repair any leak.
- f. Adjust refrigerant level.

6. Compressor Motor Assembly

- a. Inspect the condition of the motor and slide valve assemblies and submit a report.
- b. Tighten terminals.
- c. Perform megger test on motor windings and submit a report.
- d. Measure compressor/motor starting transition time and submit a report.

7. Miscellaneous

- a. Check fluid levels through sight glasses and record levels.
- b. Check for proper flows through chiller.
- c. Inspect condition of thermometers and gauges.
- d. Measure amperage, voltage, temperature and pressure and submit a report.
- e. Analyze all conditions, measurements and reports, identify unusual conditions, needed repairs and/or service and submit report. Submit all reports to OC Public Works/OC Facilities Operation, 1143 East Fruit Street, Santa Ana, to the attention of the AC Supervisor.

B. SEMI-ANNUAL INSPECTION AND SERVICE

1. Controls:

- a. Inspect, test and calibrate safety controls (log cut-in and cut-off points).
- b. Inspect, test and calibrate operating controls (including slide valve operation).
- c. Inspect control panel and confirm proper operation of components and lights.
- d. Perform diagnostic test of all solid state components in accordance with manufacturer's service bulletins.

2. Starter Panel:

- a. Inspect operating conditions and submit a report to the Project Manager.
 - b. Lubrication Circuits:
 - c. Analyze oil and submit report for remedial action.
3. Refrigerant Circuit:
- a. Analyze refrigerant and submit a report on the acid and oil content.
 - b. Tighten flange nuts and bolts, as appropriate.
 - c. Test for leaks with an electronic detector.
 - d. Adjust refrigerant level.
4. Compressor Motor Assembly:
- a. Inspect motor and slide valve assemblies and submit a report on the condition to the Project Manager.
 - b. Perform megger test on motor windings and submit a report to the Project Manager.
5. Miscellaneous:
- a. Check fluid levels through sight glasses and record levels.
 - b. Check for proper flows through chiller.
 - c. Inspect condition of thermometers and gauges.
 - d. Measure amperage, voltage, temperature and pressure and submit a report to the Project Manager.
 - e. Analyze all conditions, measurements and reports, identify unusual conditions, needed repairs and service and submit a report to the Project Manager.
6. Reports:
- a. Submit all reports to OC Public Works/OC Facilities Operation, 1143 East Fruit Street, Santa Ana, to the attention of the AC Supervisor.

V. ADDITIONAL GENERAL CONDITIONS:

Contractor shall:

- A. Identify and advise the County of any additional maintenance or repair work that may be required to maintain the efficient operation and useful life of the equipment.
- B. Provide emergency repairs. The specific scope of work and schedule will be determined at the time such work is initiated.

- C. Ensure 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.
- D. 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.
- E. Receive prior approval from the County's Contract Manager or designee before performing additional repairs.
- F. Complete inspections during regular working hours of 7:00 a.m. to 4:30 p.m., Monday through Friday. Any repairs that require the scheduling of a shutdown shall be performed on off hours and weekends. Any shutdown of the equipment shall be scheduled in writing with the County representative and the facility where work is to take place. The request for the equipment to be shutdown shall be accompanied by a written work plan depicting the start of the shutdown, milestones, hours involved, proposed completion time and the time that the equipment is scheduled to be placed back on-line for use by the facility.
- G. Ensure all work shall be subject to the inspection and approval of the County either by the Project Manager or a designated representative prior to acceptance and approval for payment.
- H. Submit a written report with the invoice for each inspection which includes a list of the tasks performed, equipment condition, hours expended and materials used. The reports shall be mailed to OC Facilities Operation, 1143 E. Fruit Street, Santa Ana, to the attention of the Project Manager.
- I. Ensure all work shall be performed in strict accordance with California Administrative Code (O.S.H.A.) and California Codes for Industrial Safety, Southern California Air Quality Management District (SCAQMD) Rule 1415, and Federal EPA Rule 608 in complying with any oil or refrigerant handling. A copy of the report is to be placed in the chiller room and a copy is to be sent OC Facilities Operation, 1143 East Fruit Street, Santa Ana, to the attention of the Project Manager.

VI. MATERIALS:

Contractor shall:

- A. During the repair work, Contractor shall only charge the actual cost of the parts (including all applicable taxes). Contractor will pay for all freight charges. Contractor is to provide with his a copy of the suppliers invoice for any parts costing \$50.00 or more
- B. Maintain a stock of all parts required for the maintenance and repair of the specific equipment included under this Contract.
- C. Maintain a supply system for acquisition of additional parts, as may be required, to include next day delivery to avert any delays.
- D. Ensure that all parts used in performance of this work shall meet or exceed the original manufacturer's equipment specifications.
- E. Use original manufacturer's parts and equipment.

- F. Use only Manufacturers specified oil that has been specifically formulated for the Chillers listed

VII. PROGRAM SCHEDULE

- A. Contractor shall conduct one (1) annual inspection within the first month after award of the Contract and within the first month of each renewal year thereafter. Contractor shall conduct one (1) semi-annual inspection within six (6) months after award of the Contract.
- B. Contractor must notify OC Public Works/Facilities Operation's HVAC Shop Planner or Craft Supervisor a minimum of 72 hours in advance to schedule the P.M. inspection.

VIII. SERVICE REQUIREMENTS

- A. Contractor shall provide and maintain a telephone answering system which provides for dispatching service personnel twenty-four (24) hours per day, seven (7) days per week.
- B. Contractor shall respond within one (1) hour of call being placed by County representative.
- C. Contractor shall perform all work in accordance with the manufacturer's service and repair manuals, manufacturer's service recommendations and generally accepted industry practice for safe and efficient operation.

IX. LABOR RATES:

- A. The hourly rate shall include all costs for the work to include direct and indirect labor charges (in accordance with established general prevailing wage rate requirements), truck, all necessary equipment, tools, overhead, depreciation, other expenses and all profit.
- B. 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.
- C. Premium hour or special hour rates will not be paid on non-emergency response requests unless specifically authorized by the Contract Manager or his/her designee at the time of the request for service is initiated.
- D. Non journeyman tasks shall be limited to:
 - 1. For safety requirements due to the high voltage capacity of this type of equipment, there are no tasks required for non-journeymen level technicians to perform under this Contract.
- E. Minimum call charge is applicable only when actual job cost is below the established minimum. It is not a separate or additional charge.
- F. Trip charge is not applicable to additional responses immediately following first response if the distance between subsequent locations is less than four (4) miles.

X. SECURITY REQUIREMENTS SHERIFF'S FORENSIC FACILITY

The County operates and provides court facilities for the Sheriff's Forensic. Contractors and their employees who perform services in this facility will be required to pass a security screening process and to adhere to strict operation policies. These policies have been designed with the primary purpose of ensuring a safe and secure environment for all involved.

A. Background Checks:

1. Contractor personnel, who will be used to perform contracted services, will be required to pass a background check before receiving clearance to enter the facilities. Contractor shall contact Justin Paxon at (714) 834-6422 for further information concerning the back ground checks for each employee performing service in the facility at least five working days prior to the start of services. Forms shall be filled out thoroughly and accurately. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance. When clearance is denied the County does not, nor is it obligated to, give reason why clearance has been denied.
2. Contractor acknowledges that Contractor employees who attempt to enter a secured facility, who have not passed the background check; who have falsified information on their forms; or who have outstanding wants or warrants may be delayed and/or detained by Sheriff Personnel.
3. With the exception of demands related to the performance of the contract, Contractor and his employees will comply with all directions and orders issued by Sheriff Personnel. (Issues relating to the performance of contracted services shall be at the direction of the Contract Administrator or Building Coordinator.) In rare occurrences, workers may be asked to leave the facility prior to the completion of their work, or they may be detained within a facility until an incident is resolved.

B. All Facilities:

Contractor shall ensure that:

1. All vehicles parked on site shall be locked and thoroughly secured at all times.
2. All tools and materials shall remain in possession of the user at all times and shall never be left unattended.
3. All lost or misplaced tools shall be reported immediately to the security staff or escort personnel.
4. All materials, especially those materials that could be used to inflict injury such as nails, wire, wood, etc. shall be continuously cleaned up and removed from the work site as work progresses.

C. Workmen shall:

1. Have no contact, either verbal or physical, with internees in the facility.

Specifically:

- a. Do not give names or addresses to internees.
 - b. Do not receive any names or addresses from internees.
 - c. Do not disclose the identity of any internee to anyone outside the facility.
 - d. Do not give any materials to internees, especially cigarettes, matches, tools, etc.
 - e. Failure to comply with these requirements is a criminal act and can result in prosecution.
2. Plan their activities to minimize the number of times they must enter and exit a facility. i.e., transport all tools, equipment and materials needed for the day at the start of work and restrict all breaks to the absolute minimum.
 3. 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.
 4. If delay or cancellation is necessary, immediately contact the designated on-site Building Coordinator and/or the Site Supervisor.
 5. Report to the Control Desk or on-site Building Coordinator and sign-in log, name, date and time upon arrival at the job site. Control will ensure that the work area is clear and ready for work to begin. Follow any special security requirements issued by the on-site Coordinator.
 6. Report to the Control Desk or the on-site site Building Coordinator and sign-out name and time when leaving the facility, either temporarily or at the end of the workday.
 7. Immediately report all accidents, spills, damage, unusual conditions and/or unusual activities to the Control Desk or the on-site Building Coordinator.
 8. Securely close and check all gates and doors to ensure that they are tightly closed and locked.

IX. SECURITY REQUIREMENTS FOR PROBATION FACILITIES:

A. 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 a youth detention facility per the Vendor Clearance Process detailed in Exhibit 1.

B. 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, etc.) 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.

C. Contractor's employees shall not:

1. Give names or addresses to inmates;
2. Receive any names or addresses from inmates (including materials to be passed to another individual or inmate);
3. Disclose the identity of any inmate to anyone outside the facility;
4. Give any materials to inmates;
5. Receive any materials from inmates (including materials to be passed to another individual or inmate); or
6. 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.

D. Contractor's personnel shall:

1. Comply with the written schedule provided by the County which shall clearly show the specific start and end times for each work day.
2. Arrive at the site no more than 15 minutes prior to the scheduled time or no more than 15 minutes after the scheduled time.
3. Report to the control desk and sign-in log, name, date and time upon arrival at the job site.
4. Report to the control desk and sign-out, name, and time when leaving the facility.
5. 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 Contract Coordinator or his designee should be contacted immediately. Repeat problems will be grounds for remedial action which may include Contract termination.
6. Immediately report all accidents, spills, damage, unusual conditions and/or unusual activities to the Control Desk.
7. Securely close and check all gates and doors to ensure that they are tightly closed and locked.
8. Restrict all activities to the immediate work site and adjacent assigned areas.
9. Remain with the assigned escort at all times, unless otherwise directed by the onsite coordinator.

10. 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.
11. Failure to comply with these requirements is a criminal act and can result in prosecution.

ATTACHMENT B
CONTRACTOR'S PRICING

I. **COMPENSATION:** This is a usage Contract between the County and Contractor to perform maintenance and repair of water chillers on an as needed basis, as set forth in Attachment A "Scope of Work".

The Contractor agrees to accept the specified hourly rates as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, shipping/freight, labor 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 Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below 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 hourly rates and Total Not-to-Exceed Contract Amount specified herein unless authorized by amendment in accordance with Articles 28 and 43 of the County Contract Terms and Conditions, which may require approval by the County Board of Supervisors.**

II. **FEES AND CHARGES:** Payment shall be made in accordance with the provisions of this Contract.

A. Maintenance/Repairs Labor Rate per Hour, per Attachment A

Straight Time (8:00am - 5:00pm Mon-Fri and County Holidays) per hour

- 1. Journeymen \$ 197.00
- 2. Assistant \$ 167.00

Straight Time (8:00am - 5:00pm Sat-Sun and County Holidays) per hour

- 3. Journeymen \$ 222.00
- 4. Assistant \$ 189.00

Overtime (5:01pm – 7:59am Mon-Sun and Holidays)

- 5. Journeyman \$ 247.00
- 6. Assistant \$ 211.00

Overtime for the hours listed above are only applicable as authorized by the County's Project Manager or designee, for the sole purposes of meeting emergency needs or time constraints that may be required by the County. No invoice shall be accepted for payment of overtime hours without written consent/approval of the County's Project Manager.

~~B. Miscellaneous Item Discount Structure: Miscellaneous parts and various supplies not included for routine maintenance/repair may be purchased against the Contract. Miscellaneous item purchases shall not exceed \$3,000 per invoice including tax. County will obtain price quotes from Contractor for all miscellaneous parts and various supplies purchased. Contractor shall provide the manufacturer list price and discount price on all invoice(s) for all miscellaneous items.~~

15 % off List Price

B. Miscellaneous Item Discount Structure: Miscellaneous Items may be purchased against the Contract. Miscellaneous Item purchases shall not

Amendment No.
2 – Replaced
language

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 original cost receipts of all items cost of \$100 or more.

C. **TOTAL CONTRACT AMOUNT SHALL NOT EXCEED:** \$ **5,000,000.00**

III. 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.

IV. 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.

V. 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.

VI. 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.

VII. 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. Contract number

- 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/Facilities Operations
Attention: Accounts Payable
1143 East Fruit Street
Santa Ana, CA 92701-4204

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
 LIST OF CHILLER EQUIPMENT
 AQMD RULE 1415 CHILLER REGISTRATION (50LB> CHARGE)

Amendment
 No. 1 -updated
 equipment list
 list

Location	Chiller	Model No	Serial No	Refrigerant	Charge (Lbs)	Leak Ck Date
COC 'B'	Chiller #1 York	YCWJ88XVO-46PE	YFAM895659	Hcfc-22	286	July
1300 South Grand Ave	Chiller #2 York	YCWJ99MJO-46PA	SAFM-595660	Hcfc-22	296	July
Santa Ana						
CUF	CR-1 York	YSTJFJBJ3-KDF5-00F-S	SDNM300560	134-A	3,494	July
	CR -4 York	YSTWRW4K7 with FD4	SDEM746590	134-A	TBD	TBD
525 North Flower St	CR -5 York	YSTWRW4K7 with FD4	SDEM746760	134-A	TBD	TBD
	CR -6 York	YKW4W1K7-DKGS		134-A	TBD	TBD
	CR -7 York	TBD	TBD	134-A	TBD	TBD
	AR -1 Trane	ABSD1350	L05C0175	Lithium Bromide		Feb
Santa Ana	AR -2 York	LLR-022	371-01787-143	Lithium Bromide		Feb
Data Center	Chiller #1 Trane	RTHA215FCPOLCUC3LF2LF NNOOGUQ	U91K06180	Hefe-22	415	June
1400 South Grand Ave	Chiller #2 Trane	RTHA215FCPOLCUC3LF2LF NNOOGUQ	U91J06181	Hefe-22	415	June
Santa Ana	Chiller #3 Trane	RTHA150FCPOLCUC3LF2LF NNOOGUQ	U91K06182	Hefe-22	330	June
HCA Clinic	Chiller #1 Carrier	3ORBD1606H37H7	3612Q78023	410-A	268	May
Data Epicenter	Chiller #1 YORK	YVWADDDCGXJF0200SAX4 6BFXSSXSALXXSXREBXX AC199EXTSAX44321CXX1G GWXX90260CXXSCGWLBS XXX1XXXXH5	11551K85507509	R-134a	416	March
1400 South Grand Ave	Chiller #2 YORK	YVWADDDCGXJF0200SAX4 6BFXSSXSALXXSXREBXX AC199EXTSAX44321CXX1G GWXX90260CXXSCGWLBS XXX1XXXXH5	11551K85507522	R-134a	416	March
Santa Ana	Chiller #3 YORK	YVWADDDCGXJF0200SAX4 6BFXSSXSALXXSXREBXX AC199EXTSAX44321CXX1G GWXX90260CXXSCGWLBS XXX1XXXXH5	11551K88507524	R-134a	416	March
HCA Lab	Chiller #1 Trane	RTAA1254XK01A3DOBF	U99F09387	Hcfc-22	196	May
1729 West 17th Street	Chiller #2 Trane	RTAA1254XK01A3DOBF	U99F09386	Hcfc-22	196	May
Santa Ana						
Laguna Niguel Fac. 30143 Crown Valley Pkwy	Chiller Trane	RTAA1004XK01A3DOBG	U99A05593	Hcfc-22	146	Aug

Location	Chiller	Model No	Serial No	Refrigerant	Charge (Lbs)	Leak Ck Date
Laguna Niguel						
MOB	Chiller #1 Carrier	23XL0000NC40	2799J59794	Hcfc-22	600	Aug
301 The City Drive	Chiller #2 Carrier	23XL1011NC40	2799J59795	Hcfc-22	600	Aug
Orange						
Probation Juvenile Hall	Unit Y & Z- Chiller Carrier	30RBA1606C-5670L	2509Q73012	410a	145	Aug
331 The City Drive	Unit T - Chiller Carrier	30RAP0406JA06150	3313Q48804	410a	A14.9 B15	N/A
Orange	Unit Q- Chiller Carrier	30RAN045---611KD	2604F43324	R-22	A44# B44#	N/A
Probation	Chiller York	YCWJ77KHO-46PE	UNGMQ00487	Hcfc-22	286	Nov
909 N. Main Street						
Santa Ana						
SSA	Chiller Carrier	30HXC1612	1805Q05126	R-134a	267	Aug
800 North Eckhoff Street						
Orange						
SSA	Chiller Trane	RTHDUB1FXG0UAB1AL31A2	U06D06994	R-134a	410	Apr
2020 Walnut						
Santa Ana						
YGC	Chiller #1 Trane	CGAFC604AEA1000D000J000000000	C01K63750	R-22	130	May
3030 North Hesperian Way	Chiller #2 Trane	CGAFC604AEA1000D000J000000000	C01K63751	R-22	130	
Santa Ana						
YLA	Chiller #1 Mcquay	AGZ055BS27-ER11	STNU050500027	R-22	Cir.A 45 Cir.B 45	N/A
3155 West Justice Center Way	Chiller #2 Mcquay	AGZ055BS27-ER11	STNU050500025	R-22	Cir.A 45 Cir.B 45	N/A
Orange						
Westminster Library	Chiller Carrier	30RAP0606JA07100	3612Q46044	R-410a	17.1	Aug
8180 13th Street					17.9	
Westminster						
Aliso Viejo Library	Carrier Chiller	1P30RB-0605D-FG787	S1211Q75543	R410a	40	Aug
1 Journey (At Pacific Park)					20	
Aliso Viejo, Ca						

*County of Orange, OC Public Works
Chiller Maintenance Repair at Various County Locations*

Location	Chiller	Model No	Serial No	Refrigerant	Charge (Lbs)	Leak Ck Date
Lake Forrest Library 24672	York	YCAL0032EC17XDBBXT	2QTM001319	R22	70	Aug
Raymond Way El Toro, Ca 92630					150	
Rancho Santa Margurita Library	A New 45 Ton Carrier - Aguasnap			R-410a		Aug
30902 La Pomoesa	Air Cooled Chiller Will Be In Place By					
Rancho Santa Margurita, Ca 92688	Start Of New Contract. Contractor To	Price this for size and type of chiller.				

EXHIBIT 1
VENDOR CLEARANCE PROCESS

NEW PROBATION FACILITY CLEARANCE REQUIREMENTS

“All employees, volunteers and contract/vendor personnel who work within the department or have access to departmental facilities, staff, clients, systems or confidential and/or financial information are required to undergo a background investigation. The level of scrutiny varies between subject groups and includes a range of evaluative tools designed to ensure the highest degree of confidence be maintained in our workforce, volunteers and contract/vendor service providers.

The Probation Department's Background Investigation Unit will conduct the appropriate level of investigation and determine the suitability of candidates based on statute, professional standards, general guidelines and departmental policies and procedures. Questionable cases may be brought to the attention of Top Management via the Director of Human Resources & Training Division.”

**ORANGE COUNTY PROBATION DEPARTMENT
1535 EAST ORANGEWOOD AVE.
ANAHEIM, CA.92805**

VENDOR CLEARANCE PROCESS

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

TO BEGIN THE CLEARANCE PROCESS YOU MUST:

1. Call and make an appointment with:
 - **Margarita Perez (714) 937-4714**
2. On the day of your appointment, report to street level reception at the Orangewood Office. Ask for Margarita Perez.
3. Bring the following required documents with you to your appointment:
 - Government issued picture identification (i.e. driver's license)
 - Social Security Card (a photocopy is not acceptable)
 - Proof of Legal US Status: (whichever applies)
 - If born in the U.S., bring birth certificate or U.S. Passport
 - If you became an American Citizen, bring U.S. Certificate of Naturalization or U.S. Passport
 - If you are *not* an American Citizen, bring U.S. Permanent Resident Card (Green Card) or Employment Authorization Document (Work Permit)

(Note: All documents need to be original and valid. Only the documents listed above will be accepted. If you do not have the required identification, you will not be permitted to proceed with the clearance process.)

Do not contact the Probation Department for clearance results. The results will be forwarded to the Probation Department's project coordinator and you will be notified.