

**CONTRACT #MA-080-17011737  
FOR  
ON-CALL FLOORING MAINTENANCE AND REPAIR SERVICES**

THIS Contract MA-080-17011737 for On-Call Flooring and Repair Services, (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 JJJ Floor Covering, 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 Contract for On-Call Flooring and Repair Services under a Usage Contract; and,

WHEREAS, the County solicited for On-Call Flooring and Repair Services as set forth herein, and Contractor has represented that it is qualified to provide On-Call Flooring and Repair Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide On-Call Flooring and Repair Services 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 provide Services under a usage Contract.
2. **Term:** The initial term of this Contract shall become effective upon execution of all authorized signature and shall continue for three (3) years from that date, unless otherwise terminated as provided herein. This Contract may be renewed upon expiration of the initial term, for two (2) additional years, upon mutual agreement of both Parties. The County and District is not obligated to give a reason or notice if it elects not to renew. Renewal amendments may require approval of the County Board of Supervisors.
3. **Aggregate Contract:** This is an aggregate Interfinish Corporation and JJJ Floor Covering, Inc. with a total aggregate contract amount not to exceed \$1,000,000 per year.
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. 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. Said approval shall not be unreasonably withheld.

7. **Contractor's Project Manager and Key Personnel:** The Contractor 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. 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 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. **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 this Contract will be responsible for issuing their own subordinate contracts, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any contract entered into with another agency or entity that is entered into as an extension of this Contract a contract 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 and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. 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.

13. **Conflict of Interest:** 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 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.
14. **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.
15. **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.
16. **Prevailing Wage:** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, 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.

17. **Records:** Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Contractor in accordance with generally accepted accounting principles. These records shall be stored in the County of Orange for a period of seven (7) years. Storage of records in another County will require special clearance from County's Project Manager for this project. 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:

- 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.
- ii. 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:
  - (A) The information contained in the payroll record is true and correct.
  - (B) 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 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.

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.

County's Project Manager: OC Public Works/OC Facilities  
Attn: Art McClure  
1143 E. Fruit Street  
Santa Ana, CA 92701  
Phone: 714-667-3296  
Email: Art.McClure@ocpw.ocgov.com

cc: OC Public Works/Procurement Section  
Attn: Anni Cerda, County DPA  
2301 N. Glassell Street, 2<sup>nd</sup> Floor  
Orange, CA 92865  
Phone: 714-667-9623  
Email: Anita.Cerda@ocpw.ocgov.com

Contractor: JJJ Floor Covering, Inc.  
Attn: John Kells  
4831 Passons Blvd.  
Pico Rivera, CA 9060  
Phone: 562-692-9008  
Email: jkells@jjjfloorcovering.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. Indemnification, and

- as more fully described in Article 58. Indemnification, 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. Indemnification, it shall indemnify, defend and hold County and County Indemnittees 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.

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.
- 3) 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/Purchasing or the agency/department purchasing 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.

**\*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. Indemnification, 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-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. Indemnification, 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.
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.

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

JJJ FLOOR COVERING, INC.\*, a State of California corporation

By: [Signature]

Print Name: Rick Barba

Title: President  
Corporate Officer

Date: 5/1/17

By: [Signature]

Print Name: Eryl F Lillard III

Title: Secretary  
Corporate Officer

Date: 5/1/17

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

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: Deputy Purchasing Agent

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM**  
Office of the County Counsel  
Orange County, California

By: [Signature] 5.3.17  
Deputy

\* 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 all labor, supervision, materials, tools, equipment and vehicles required to perform On-Call Flooring Maintenance and Repair Services in various County facilities. Maintenance and repair service projects to be done under this contract will consist of: routine, recurring, and usual work for the preservation or protection of any County owned or operated facility for its intended purpose. Maintenance Service projects should not include any work that is generally considered a public work and is classified as a public work under the Public Contract Code.

Services will be for maintenance and repair of carpet, resilient sheet goods, resilient tile, wood floors and flooring to include floor prep and finishing for any replacement of flooring that is part of the maintenance and repair process.

The contractor must be familiar with rubberized, vinyl, VCT, or any other synthetic type of hard flooring available in the industry, as well as walk-off mats, broadloom, carpet squares, or any woven, rolled or modular fibrous flooring considered to be standard in the industry as well as all various types of carpet underlayment, sound attenuator, and/or padding.

**II. GENERAL**

- A. Contractor shall hold and maintain an active C-15 license for flooring and floor covering issued by the California Contractors State License Board during the term of this Contract.
- B. Contractor shall be registered with the Department of Industrial Relations (DIR)
- C. Contractor may be required to provide an initial written estimate (scope of work, labor, equipment, materials, working hours, cost, etc.) and obtain written approval from the County Project Manager or designee prior to starting work.
- D. Workers shall be courteous to the public and County personnel utilizing the facilities, but shall be responsive only to the requests from the County Project Manager or designee and shall direct all inquiries or requests to the County Project Manager or designee. Exception: If the specific request involves public safety or security of the specific facility, work may proceed without additional prior authorization; Contractor shall notify County Project Manager or designee as soon as possible.
- E. All work shall be subject to the inspection and approval of the County Project Manager or designee prior to acceptance and approval for payment.
- F. For specific projects, the work may be conducted at secured County facilities. As a requirement to work in these facilities, all Contractor employees, including subcontractor employees, must obtain a security clearance. Security clearance procedures and forms will be supplied by the County, if necessary. All costs to obtain security clearances are the responsibility of the Contractor.
- G. Emergency work shall start without a purchase order number provided by OC Public Works/Procurement Services.

**III. CONTRACTOR PERFORMANCE REQUIREMENTS**

Contractor shall:

- A. Provide personnel fully trained and experienced in the installation and repair of all types of flooring material.



- B. Provide and maintain a telephone answering system with twenty-four (24) hour, seven (7) day per week service capable of contacting and dispatching service personnel.
- C. Respond within two (2) hours for emergency service calls.
- D. Respond within three (3) calendar days for non-emergency service.
- E. Perform services during normal working hours, except when emergencies or special conditions require work to be performed off hours (after regular working hours, weekends or holidays). The Contractor shall coordinate all work with the County's Project Manager.
- F. Perform all work under the direction of a trained supervisor who shall be responsible for the conduct and workmanship of the Contractor's employees. The supervisor must read, speak and understand the English language.
- G. Protect County property from damage by its operations. All damage shall be repaired or replaced, at the option of the County, at Contractor's expense within a reasonable time after notification of such damage. Repairs and/or replacements shall be equal to original in all respects.
- H. Documentation must be provided to authenticate that service was performed (signed service ticket/work order, before/after photographs, etc.) and must be included with the invoice for each service.
- I. Fully comply with the applicable federal, state and local laws and regulations. Perform all work in accordance with generally accepted industry practice for safe and efficient operation.
- J. Warranty all labor and materials used in this work for a period of one year after completion and acceptance by OCPW of the repairs/installation, as applicable.
- K. Protect County personnel, property and the public at all times. The Contractor shall take all necessary precautions to perform work in a safe and workmanlike manner.
- L. Ability to provide cleaning services by a certified, trained operator(s) for any or all types of flooring.
- M. Ability to provide cleaning specifications and protocols for the maintenance and upkeep of various types of existing flooring throughout County.
- N. Any single project over \$25,000 shall require payment and performance bonds at 100% of the project amount for each bond.

#### **IV. COUNTY RESPONSIBILITIES**

County Project Manager shall:

- A. Notify Contractor that payment and performance bonds are needed for contracts \$25,000 and over.
- B. Supply payment and performance bonds forms to Contractor when necessary.
- C. Submit an Expediter requisition with approved quote and project scope of work attached for approvals prior to start of work.
- D. Request liquidated damages be added to a project's subordinate contract when applicable and in the amount necessary.

**V. MATERIAL**

Contractor shall:

- A. Maintain an adequate supply of repair materials (such as adhesive, etc.).
- B. Maintain a supply system for acquisition of those materials not in stock (such as carpet, VCT, base, etc.) which will provide all of the necessary material either immediately or with minimal delay.

**VI. LABOR RATES**

- A. The hourly rate shall include all costs for the work including direct and indirect labor charges (in accordance with the established general prevailing wage rate requirements), vehicles, all necessary equipment, tools, overhead, travel, 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. Off hour rates will not be paid on non-emergency response requests unless specifically authorized by the County Project Manager or designee at the time the request for service is initiated.

**VII. MATERIAL COSTS**

- A. Material purchased by the Contractor will be charged the actual cost with no markup.
- B. Contractor will provide a copy of the supplier's itemized invoice for all material, which shall be attached to Contractors request for payment.

**ATTACHMENT B  
CONTRACTOR'S PRICING**

- I. COMPENSATION:** This is an all-inclusive usage Contract between the County and Contractor for as-needed carpet and hard surface flooring repair services, as set forth in Attachment A, "Scope of Work".

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance, bonds, vehicles, lift equipment, tools, materials, overhead, travel, profit, etc. 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 not pay any sum in excess of the total contract amount or fixed-prices and hourly rates specified below, unless work is authorized by Amendment in accordance with Article 28 Amendments and Article 43 Changes of the County Contract Terms and Conditions.

- II. FEES AND CHARGES:** County will pay the following prices in accordance with the provisions of this Contract.

- |   |  |
|---|--|
| A. <u>Repair Services, Four (4) Hours or Less, Normal Hours</u><br>(Monday - Friday - 7:00 am to 5:00 pm) | \$ <u>316.00</u><br>Flat rate service charge |
| B. <u>Repair Services, Normal Hours</u><br>(Monday - Friday - 7:00 am to 5:00 pm)                         | \$ <u>79.00</u><br>Per man hour              |
| C. <u>Repair Services, Four (4) Hours or Less, Off Hours</u><br>(Monday - Friday - 5:01 pm to 6:59 am)    | \$ <u>357.00</u><br>Flat rate service charge |
| D. <u>Repair Services, Four (4) Hours or Less, Off Hours</u><br>(Saturday, Sunday and County Holidays)    | \$ <u>550.00</u><br>Flat rate service charge |
| E. <u>Repair Services, Off Hours</u><br>(Monday - Friday - 5:01 pm to 6:59 am)                            | \$ <u>89.75</u><br>Per man hour              |
| F. <u>Repair Services, Off Hours</u><br>(Saturday, Sunday and County Holidays)                            | \$ <u>135.00</u><br>Per man hour             |
| G. <u>Material</u><br>All material will be compensated at cost, per material invoices                     |  |
| H. <b><u>AGGREGATE CONTRACT AMOUNT SHALL NOT EXCEED:</u></b>  | <b><u>\$1,000,000 PER YEAR</u></b>           |

**III. PRICE INCREASES/DECREASES:** No price increases will be permitted during the first year of the Contract. All price decreases will automatically be extended to the County. The County requires bona fide proof of cost increases on Contracts prior to price adjustment. A minimum of one hundred eighty (180) days advance notice in writing is required to secure such an 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. 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 County during the term of this Contract not otherwise specified and provided for within this Contract.

**V. PAYMENT TERMS:** Invoices are to be submitted in arrears, after services have been received. Payment will be net 30 days after receipt of an invoice in a format stated below. Invoices shall be verified and approved by County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to Contractor for correction.

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

Payments made by County shall not preclude the right of 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.

**VI. INVOICING INSTRUCTIONS:** Contractor will provide an invoice on 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 (1), 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
- J. Service authentication documentation (attached to invoice)

Invoices and support documentation are to be forwarded to:

OC Public Works/Procurement Services  
Attn: Accounts/Payables  
300 North Flower Street, 8th Floor  
Santa Ana, CA 92703  
Email: [accountspayables@ocpw.ocgov.com](mailto:accountspayables@ocpw.ocgov.com)