SECTION III: MODEL CONTRACT

REGIONAL COOPERATIVE AGREEMENT (RCA)
CONTRACT NUMBER TBD
BETWEEN
COUNTY OF ORANGE/COUNTY PROCUREMENT OFFICE
AND
CONTRACTOR'S NAME TBD
FOR
HVAC & BUILDING CONTROL EQUIPMENT, INSTALLATION, SUPPLIES AND RELATED SERVICES

This Contract **TBD** for HVAC & Building Control Equipment, Installation, Supplies and Related Services (Contract) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (County) and Contractor's Name TBD, a State of California Corporation (Contractor), with County and Contractor sometimes individually referred to as (Party), or collectively referred to as (Parties).

ATTACHMENTS

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

Attachment A – Scope of Work

Attachment B – Pricing and Compensation

Attachment C - Staffing Plan & Subcontractor

Attachment D – Axia Cooperative Solicitation Exhibits

Exhibit 1- OCLSB & DVBE

Exhibit 2 – Non-Collusion Affidavit

Exhibit 3 – Levine Act

Exhibit 4 – Cost Proposal

RECITALS

WHEREAS, Contractor responded to a Request for Proposal (RFP) for HVAC & Building Control Equipment, Installation, Supplies and Related Services, RFP-017-2714705-SC, as further set forth herein; and represented that it proposed services shall meet or exceed the requirements and specifications of the RFP; and,

WHEREAS, Contractor and County are entering into this Contract for HVAC & Building Control Equipment, Installation, Supplies and Related Services under a firm fixed fee Contract; and,

WHEREAS, County solicited Contract for HVAC & Building Control Equipment, Installation, Supplies and Related Services as set forth herein, and Contractor represented that it is qualified to provide HVAC & Building Control Equipment, Installation, Supplies and Related Services to the County as further set forth here; and,

WHEREAS, Contractor agrees to provide HVAC & Building Control Equipment, Installation, Supplies and Related Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and,

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

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

GENERAL TERMS AND CONDITIONS:

A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

B. **Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.

C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to Contractor.

E. **Delivery:** Time of delivery of commodities and services is of the essence in this Contract. County reserves the right to refuse any commodities and services and to cancel all or any part of the commodities not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed scope of work. Acceptance of any part of the order for commodities shall not bind County to accept future shipments nor deprive it of the right to return commodities already accepted at Contractor's expense. Over shipments and under shipments of commodities shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all commodities or services have actually been received and accepted in writing by County.

F. **Acceptance Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the commodities/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. **Warranty:** Contractor expressly warrants that the commodities covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in article "Z" below, and as more fully described in article "Z" harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal

codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in article "Z" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.

I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of Contractor. Exercise by County of its right to terminate Contract shall relieve County of all further obligation.

L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction**.** Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other commodities/services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. **Insurance Provision:**

Prior to the provision of services under this Contract, the Contractor agrees to carry 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 current, provide Certificates of Insurance, and endorsements to the County during the entire term of this Contract.

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 (SIR)'s shall be clearly stated on the Certificate of Insurance. Any SIR in excess of Fifty Thousand Dollars $50,000 shall specifically be approved by the County's Risk Manager, or designee. The County reserves the right to require current audited financial reports from Contractor. If Contractor is self-insured, Contractor will indemnify the County for any and all claims resulting or arising from Contractor's services in accordance with the indemnity provision stated in this contract.

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).**

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, CEO/ 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:

Coverage	**Minimum Limits**
Commercial General Liability	$1,000,000 per occurrence $2,000,000 aggregate
Commercial General Liability Including Products Completed Operations (Rigger's Liability is required if a crane is used to lift property of others)	$3,000,000 per occurrence $3,000,000 aggregate
Automobile Liability including coverage for owned or scheduled, non-owned, and hired vehicles	$1,000,000 combined single limit each accident
Workers Compensation	Statutory
Employers Liability Insurance	$1,000,000 per accident or disease

Pollution Liability	$1.000.000 per claims-made or occurrence

Increased insurance limits may be satisfied with Excess/Umbrella policies. Excess/Umbrella policies when required must provide Follow Form coverage.

Required Coverage Forms

The Commercial General Liability coverage shall be written on occurrence basis utilizing 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 10 04 13 , or a form at least as broad naming the County of Orange its elected and appointed officials, officers, employees, and agents as Additional Insureds, or provide blanket coverage, which will state As Required by Written Contract.

2) A primary non-contributory 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 shall be excess and non-contributing.

3) Products and Completed Operations endorsement using ISO Form CG 20 37 04 13, or a form at least as broad.

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*** or provide blanket coverage, which will state ***As Required by Written Contract*** **when acting within the scope of their appointment or employment.**

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

1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, employees, and agents as Additional Insureds or provide blanket coverage which shall state As Required by Written Contract.

2) A primary non-contributory endorsement evidencing that the Contractor's insurance is primary, and any insurance or self-insurance maintained by the County shall be excess and non-contributing.

The Pollution Liability insurance must include coverage for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual or alleged discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants resulting from any services or work performed by, or behalf of, Contractor, including the transportation of hazardous waste, hazardous materials, or contaminants.

If the Pollution Liability is a claims-made policy, Contractor shall agree to the following:

1) The retroactive date must be shown and must be before the date of the Contract or the beginning of the Contract services.

2) Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after expiration or earlier termination of Contract services.

3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Contract services, Contractor must purchase an extended reporting period for a minimum of three (3) years after expiration of earlier termination of the 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, employees, and agents*** when acting within the scope of their appointment or employment.

Contractor shall provide thirty (30) days prior written notice to the County of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to 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).

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 provide acceptable Certificates of Insurance and endorsements to 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.

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

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

Insurance certificates should be emailed to CEOCPOInsurance@ocgov.com.

Insurance certificates should state:

County of Orange
County Procurement Office
Attn: Insurance

400 West Civic Center Drive, 5th Floor
Santa Ana, CA 92701

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

Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and County agrees to an assignment of 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 County.

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

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

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 Contractor, this obligation shall apply to Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of the Insurance and Indemnification section, 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.

Contractor shall remain in compliance and in good standing, maintaining current and active business entity and/or nonprofit registration status, with all applicable federal, state and local registration requirements at the time of execution of the contract through the duration of the term of the Contract, and shall provide annual confirmation of current and active status to County through the term of the Contract.

U. **Freight:** Prior to County's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under Contract.

V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.

X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

Y. **Employee Eligibility Verification:** 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. 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. Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. **Audits/Inspections:** Contractor agrees to permit County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by 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 Contract including, but not limited to, the costs of administering Contract. County will provide reasonable notice of such an audit or inspection.

County reserves the right to audit and verify 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 County to audit records and interview staff of any subcontractor related to performance of this Contract.

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

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

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

ADDITIONAL TERMS AND CONDITIONS:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure HVAC & Building Control Equipment, Installation, Supplies and Related Services from Contractor as further detailed in the Scope of Work, identified, and incorporated herein by this reference as Attachment A.

2. **Term of Contract:** This Contract shall commence upon execution of all necessary signatures and continue for five (5) calendar year(s) from that date, unless otherwise terminated by County.

3. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of County assigned Deputy Purchasing Agent.

4. **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 paragraph "Z" above, 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.

5. **Breach of Contract:** The failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

   a. Terminate Contract immediately, pursuant to Article K herein;

   b. Afford Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

   c. Discontinue payment to the Contactor for and during the period in which Contractor is in

breach; and

d. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the above.

6. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

7. **Conflict of Interest – Contractor's Personnel:** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of County. This obligation shall apply to Contractor, Contractor's officers, directors, employees, agents, and subcontractors associated with accomplishing work and services hereunder. Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of County.

   Contractor shall notify County, in writing, of any potential or actual conflicts of interest between Contractor and County that may arise prior to, or during the period of, Contract performance, including, but not limited to, whether any known County public officer's child is an officer or director of, or has an ownership interest of ten (10) percent or more in, Contractor. While Contractor will be required to provide this information without prompting from County any time there is a change regarding conflict of interest, Contractor must also provide an update to County upon request by County.

8. **Conflict of Interest – County Personnel:** County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

9. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by County and shall not be changed without the written consent of County's Project Manager, which consent shall not be unreasonably withheld.

   Contractor's Project Manager shall be assigned to this project for the duration of Contract and shall diligently pursue all work and services to meet the project time lines. County's Project Manager shall have the right to require the removal and replacement of Contractor's Project Manager from providing services to County under this Contract. County's Project manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal within five (5) business days after written notice by County's Project Manager. County's Project Manager shall review and approve the appointment of the replacement for Contractor's Project Manager. County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under Contract.

10. **Contractor Personnel – Reference Checks:** Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.

11. **Contractor's Expense: The Contractor will be responsible for all costs related to photo copying,** telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

12. **Contractor Personnel – Uniform/Badges/Identification:** Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.

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

13. **Contractor's Records:** 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 Orange County for a period of three (3) years after final payment is received from County. Storage of records in another county will require written approval from County of Orange assigned Deputy Purchasing Agent.

14. **Conditions Affecting Work:** 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 Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to County. 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 County are expressly stated in Contract.

15. **Cooperative Contract:** This Contract is a cooperative contract and may be utilized by all County of Orange departments.

    The provisions and pricing of this Contract may be extended, at the option of Contractor, to any Municipal, County, Public Utility, Hospital, Educational Institution, or any other non-profit or governmental organization (the "Cooperative Program") through the Axia Cooperative purchasing program, as defined in **Attachment D**. Parties in a Cooperative Program wishing to use this Contract will be responsible for issuing their own purchase documents / price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any agreement entered into with another agency or entity that is entered into pursuant to the provisions and pricing of this Contract a clause that binds the parties to the agreement to "indemnify, defend with counsel approved in writing by the County of Orange, California ("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" under the agreement. Failure to so include this clause voids the Contract's extension to a Cooperative Program and 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 County of Orange makes no guarantee of usage by other users of this Contract.

    Subordinate contracts must be executed prior to the expiration or earlier termination of this Contract and may survive the expiration of this Contract. This Cooperative Contract provision shall survive expiration or termination of this Contract.

16. **Data – Title To:** All materials, documents, data or information obtained from County data files or any County medium furnished to Contractor in the performance of this Contract will at all times remain the property of County. Such data or information may not be used or copied for direct or indirect use by Contractor after completion or termination of this Contract without the express written consent of County. All materials, documents, data or information, including copies, must be returned to County at the end of this Contract.

17. **Default – Re-Procurement Costs:** In case of Contract breach by Contractor, resulting in termination by County, County may procure the commodities and services from other sources. If the cost for those commodities and services is higher than under the terms of the existing Contract, Contractor will be responsible for paying County the difference between Contract cost and the price paid, and County may deduct this cost from any unpaid balance due Contractor. The price paid by County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

18. **Disputes – Contract:** The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, as specified in **Article 28** "Notices," such matter shall be brought to the attention of the County DPA by way of the following process:

    a. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent 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 County, on its own initiative, has already rendered such a final decision.

    b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to Contract, 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 Contract adjustment for which Contractor believes County is liable.

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

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

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

    a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).

    b. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:

        i. The dangers of drug abuse in the workplace;

        ii. The organization's policy of maintaining a drug-free workplace;

        iii. Any available counseling, rehabilitation and employee assistance programs; and

        iv. Penalties that may be imposed upon employees for drug abuse violations.

    c. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:

        i. Will receive a copy of the company's drug-free policy statement; and

ii. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

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

i. Contractor has made false certification, or

ii. Contractor violates the certification by failing to carry out the requirements as noted above.

20. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom County pays $600 or more or with whom County enters into a contract for $600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

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

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

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

21. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by County, state or federal government, Contract may be subjected to unusual usage. Contractor shall service County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by Contractor shall apply to serving County's needs regardless of the circumstances. If Contractor is unable to supply the goods/services under the terms of Contract, then Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from Contractor shall show both the emergency purchase order number and Contract number.

22. **Error and Omissions**: All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary, and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

23. **Equal Employment Opportunity:** Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

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

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

24. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

25. **News/Information Release:** Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from County through County's Project Manager.

26. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor:	***Contractor TBD*** Attn: Contact/Project Manager Contractor's Address Contractor's City, ST, Zip Phone: (###) ###-#### Email: Name@domain
County:	County of Orange, County Procurement Office Attn: Program Contact Address:

Telephone: (###) ###-####
Email: Name@ocgov.com

Assigned DPA: County of Orange, County Procurement Office
Attn: Name, DPA
601 North Ross Street
6th Floor
Santa Ana, CA 92701
Telephone: (###) ###-####
Email: Name@ocgov.com

27. **Precedence:** Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.

28. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted or otherwise delegated by Contractor, in whole or in part, without first obtaining the prior express written consent of County. Any attempt by Contractor to subcontract or delegate any performance of this Contract without the prior express written consent of County shall be invalid and shall constitute a material breach of this Contract, and any attempted assignment or delegation in derogation of this paragraph shall be void.

    In the event that Contractor is authorized by County to subcontract, this Contract shall take precedence over the terms of the agreement between Contractor and subcontractor, and any agreement between Contractor and a subcontractor shall incorporate by reference the terms of this Contract. Contractor shall remain responsible for the performance of this Contract and indemnification of County notwithstanding the County's consent to Contractor's request for approval of a subcontractor. Under no circumstances shall County be required to directly monitor the performance of any subcontractor. All work performed by a subcontractor must be monitored by Contractor and must meet the approval of the County of Orange pursuant to the terms of this Contract.

29. **Termination – Orderly:** After receipt of a termination notice from County of Orange, Contractor may submit to County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by County upon written request of Contractor. Upon termination County agrees to pay Contractor for all services performed prior to termination which meet the requirements of Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of Contract.

30. **Usage:** No guarantee is given by County to Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. Contractor agrees to supply services and/or commodities requested, as needed by County of Orange, at rates/prices listed in Contract, regardless of quantity requested. County of Orange makes no representation or warranty concerning the use of the Master Agreement by any other Participating Public Agency.

31. **Usage Reports:** Contractor shall submit usage reports on an annual basis to the assigned Deputy Purchasing Agent of County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted 90 days prior to the expiration date of Contract term, or any subsequent renewal term, if applicable.

32. **County of Orange Local Small Business Preference Requirements:** If Contractor certified as such with its [bid/proposal], Contractor certifies it is in compliance with County of Orange Local Small Business Preference requirements at the time this contract is executed.

33. **Disabled Veteran Business Enterprise Preference Requirements:** If Contractor certified as such with its [bid/proposal], Contractor certifies it is in compliance with County of Orange Disabled Veteran Business Enterprise Preference requirements at the time this Contract is executed.

34. **Project Manager, County:** The County shall appoint a Project Manager to act as liaison between the County and the Contractor during the term of this Contract. The County's Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

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

35. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents or damage or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County directives regarding potential hazards.

    Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

    Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation.

36. **Mandatory Kick-Off Meeting**: Upon award of the contract, the awarded vendor(s) may be required to attend a mandatory kick-off meeting with County representatives to discuss important information related to the scope of work, the contract, and the invoice payment process. A quarterly check-in meeting may be required to review any issues with the contract.

37. **Prevailing Wage**

    a. **Prevailing Wage (Labor Code §1773):** Pursuant to the provisions of Section 1773 et seq. of the California Labor Code, 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 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.

       Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates. Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.

    b. Labor Code Requirements: Contractor and all Subcontractors shall comply with all applicable requirements of the Labor Code throughout the performance of Contract, including but not limited to the following:

    c. **Labor Code Notice:** Contractor and all Subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Bids cannot be accepted from unregistered contractors except as provided in Section 1771.1. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. After award of the Contract, Contractor and each Subcontractor shall

furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.

d. **Threshold Requirements for Prevailing Wages:** Except for public works projects of one thousand dollars ($1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

e. **Wage Rates:** Contractor shall post a copy of the wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. These rates are on file with the Clerk of the Board of Supervisors. Copies may be obtained at cost at the office of OC Community Resources/ OC Parks or visit the website of the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov/DLSR/PWD. The Contractor shall comply with the provisions of Sections 1774, 1775, 1776 and 1813 of the Labor Code.

f. **Apprenticeship Requirements:** The Contractor shall comply with Section 230.1(A), California Code of Regulations as required by the Department of Industrial Relations, Division of Apprenticeship Standards by submitting DAS Form to the Joint Apprenticeship Committee of the craft or trade in the area of the site.

g. **Registration of Contractor:** All contractors and subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Bids cannot be accepted from unregistered contractors except as provided in Section 1771.1. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. After award of the contract, Contractor and each Subcontractor shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.

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

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

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

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

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

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

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

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:

1. The information contained in the payroll record is true and correct.
2. The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.

iii. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.

iv. Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.

v. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have ten (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 ten (10) day period, he or she shall, as a penalty to County, forfeit one hundred dollars ($100), or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

vi. Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at www.dir.ca.gov. If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

38. **Work Hour Penalty:** Eight (8) hours of labor constitute a legal day's work, and forty hours constitute a legal week's work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars ($25) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than the legal day's or week's work, except that work performed by employees of said Contractor and subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight (8) hours per day of not less than 1-1/2 times the basic rate of pay.

39. **Wage Rate Penalty:** Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Section 1775. Contractor and any Subcontractor(s) shall be subject to a penalty in an amount up to $200, or a higher amount as provided by Section 1775, for each calendar day, or

portion thereof, for each worker paid less than the prevailing wage rates for any work done by Contractor or Subcontractor(s) under Contract.

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

    Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractors under him employing workers in any apprenticeable craft or trade in performing any work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the work.
    Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractor under him may be required to make contributions to the apprenticeship program.
    The Contractor and all subcontractors under him shall comply with Labor Code Section 1777.6 which Section forbids certain discriminatory practices in the employment of apprentices.

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

42. **Permits and Licenses:** Contractor shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the permitted operation as set out herein. No permit approval or consent given hereunder by County in its governmental capacity shall affect or limit Contractor's obligations hereunder, nor shall any approvals or consents given by County as a party to this Contract, be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules, or regulations.

43. **Inventory:** County has an ongoing requirement for the commodities indicated in this Contract. Contractor shall maintain a reasonable stock on hand of all commodities for delivery upon request.

44. **Order Dates:** Orders may be placed during the term of Contract even if delivery may not be made until after the term of Contract. Order dates take precedence over delivery dates. Contract must clearly identify the order date on all invoices to County.

45. **Ownership of Documents:** County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

46. **Safety:** Contractor shall comply with the County's Safety and Loss Prevention Policy and Procedure#306 ("Contractor Safety Responsibilities") and submit a copy of their Injury and Illness Prevention Program (IIPP) and Contractor Safety-Activity Checklist to the County's Project Manager prior to the start of any work performed under the Contract. Contractor will notify County Project Manager of any revisions to the Safety-Activity Checklist and will provide a new Safety-Activity Checklist upon County request. The IIPP shall comply with California Code of Regulations, Title 8, Section 1509 or 3203(whichever applies). Contractor shall submit other safety programs that pertain to the type of job that will be performed on site. County reserves the right to

conduct inspections and audits as necessary for the purpose of evaluating any aspect of safety performance under this Contract.

47. **Precedence:** Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.

CONTRACT SIGNATURE PAGE

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

CONTRACTOR'S NAME, *

Signature	Name	Title	Date

Signature	Name	Title	Date

COUNTY AUTHORIZED SIGNATURE:

Deputy Purchasing Agent

Signature	Name	Title	Date

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

ATTACHMENT A

SCOPE OF WORK

HVAC & BUILDING CONTROL EQUIPMENT, INSTALLATION, SUPPLIES AND RELATED SERVICES

I. BACKGROUND

The County is comprised of 22 departments and over 18,000 employees located throughout the County. The County's core businesses are public safety, public health, environmental protection, regional planning, public assistance, social services and aviation. The County of Orange may have over 100+ locations/facilities that may require servicing throughout the County.

The County is seeking proposals from qualified contractors for the provision of HVAC & Building Control Equipment, Installation, Supplies and Related Services. Contractor shall provide maintenance, repairs, and minor replacement of existing heating, ventilating, and air conditioning, located in or adjacent to various County facilities including remotely located facilities, on an as needed basis, as part of this Contract.

II. DEFINITION/ABBREVIATION

1. HVAC - Heating, Ventilation & Air Conditioning
2. Contract: A legally enforceable agreement between two or more parties to do or not do a certain thing, which meets the requisite statutory elements of: (a) Parties capable of contracting, (b) Consent, (c) A lawful object and (d) A sufficient cause or consideration. Cal. Civ. Code §§ 1549-1550.
3. Proposal: The document submitted by a respondent in response to a Request for Proposal (RFP). A proposal includes a detailed description of the commodities or services to be provided to the County per the scope of work included in the Request for Proposal (RFP), including, but not limited to cost, time frame for completion of work or delivery of commodities, and method of accomplishment of services.
4. Regional Cooperative Agreement (RCA): A cooperative contract for commonly used services and commodities executed by the Office of the County Procurement Officer or designee to take advantage of the County's economies of scale and reduce the duplication of efforts across the County.
5. Installation: is referred as replacing or exchanging of existing old malfunction parts or components.

III. SCOPE OF WORK

The scope of this RFP shall include but is not limited to the following Product and Services Categories:

1. Air Handling – Intake, filters, heating & cooling coils, humidifiers, dehumidifiers, head exchangers, appurtenances, fans, etc.
2. Air Terminal Devices and Heating Products – Variable Air Volume (VAV) boxes, convectors, fan coils, ventilators, heaters, etc.
3. Boilers & Water Heaters – natural gas, electric, combination, condensing, etc.
4. Cooling Towers – wet (open), fluid coil (closed), dry, evaporative, etc.
5. Direct Digital Control (DDC) – master station, sensors, etc.
6. Duct Systems – Rigid, flexible, semi-rigid, etc.
7. Energy Services – Tracking, audits, analysis, recommendations, rebates, etc.

8. Equipment Parts and Supplies – System parts, materials and supplies.
9. Equipment Rentals – Rentals for all proposed HVAC systems and components.
10. Financial Services – Programs for leasing, financing, prompt-payment discounts, etc.
11. HVAC Refrigeration – Compressors and chillers, etc.
12. Indoor Air Quality Products – Purifiers, humidifiers, dehumidifiers, air cleaning systems, air quality monitors, etc.
13. Installation and Turnkey Contracting – retrofitting, energy retrofitting, controls installation and related services, upgrades, etc.
14. Inverters – Components designed to vary operating speed to achieve energy savings, cost savings, temperature control, etc.
15. Pumps – Circulating, end-suction, split-case, vertical in-line, turbine, single stage, single-stage, multi-stage, etc.
16. Residential HVAC – Systems designed for residences and smaller office settings.
17. Service & Maintenance – Preventative & scheduled maintenance, annual plans, monitoring, emergency service, regulatory compliance, cleaning, etc.
18. Startup & Commissioning Services – Startups, checkouts, commissioning, rebate auditing, control verification, etc.
19. Unitary HVAC – Combined systems, rooftops, split systems, mini-splits, etc.
20. Warranty Services – Extended parts & labor programs, etc.
21. Other - detail relevant products and services that should be made available to the County of Orange and other public agencies through the Axia Cooperative purchasing program.

IV. NATIONAL CONTRACT AND AXIA COOPERATIVE (ATTACHMENT D)

Axia Coop LLC ("Axia Cooperative" or "Axia") is a national public sector cooperative purchasing organization. Axia works with respected leaders from the public procurement community to offer a growing portfolio of master agreements that leverage national volume to deliver savings, efficiency, and innovation for non-federal public sector agencies. Each agreement is publicly solicited by a lead agency utilizing the strictest of procurement standards. The resulting awards address the dynamic needs of today's evolving market while providing both value and cutting-edge solutions. For more information about the contracting process, please visit axiacoop.org/contracting-process.

The County of Orange has entered into an agreement with Axia Cooperative to facilitate the Request For Proposals (RFP) and act as the primary contracting authority for the term of the resulting contract(s). Resulting contract(s) is/are made available to other public agencies nationally for "piggybacking" through the Axia Cooperative purchasing program and authorized by various joint powers authority statutes, rules and regulations within each state and local jurisdiction.

While Axia Cooperative makes no guarantees as to exact quantities and/or purchase volume made by Participating Agencies, the estimated annual volume for purchases made nationwide through this contract category is $50,000,000. Please see Attachment D for more information regarding the Axia Cooperative purchasing program.

V. REQUIREMENTS

It is expected that Contractors have knowledge of all applicable industry standard, laws, and regulations and possess an ability to market and distribute the equipment, products and services to the County.

1. Safety Requirements: All items proposed must comply with current applicable safety or regulatory standards or codes.

2. Deviation from Industry Standard: Deviations from industry standards must be identified with an explanation of how the equipment, products, and services will provide equivalent function, coverage, performance, and/or related services.

3. New Equipment and Products: Proposed equipment and products must be for new, current model; however, proposer may offer certain close-out equipment or products if it is specifically noted in the Pricing proposal.

4. Delivered and operational: Unless clearly noted in the proposal, equipment and products must be delivered to the Participating Entity as operational.

5. Warranty: All equipment, products, supplies, and services must be covered by a warranty that is the industry standard or better.

6. For any electrical work performed as part of this Contract, the Contractor shall possess a valid C-10, Electrical Contractor License issued by the California State Contractor's License Board at the time the bid is submitted and shall maintain the license in full for the term of the contract. Any and all electrical work shall be performed according to the NEC and Jurisdiction Having Authority.

7. 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.

8. For any refrigeration work performed as part of this Contract, the Contractor shall possess a valid C-38. Refrigeration Contractor License issued by the California State Contractor's License Board at the time the bid is submitted and shall maintain the license in full for the term of the Contract. Any and all electrical work shall be performed according to the National Electric Code (NEC) and Jurisdiction Having Authority.

9. For any steam/comfort heating hot water work performed as part of this Contract, the Contractor shall possess a valid C-4. Boiler, hot water heating and steam fitting Contractor License, a valid C-20 license for HVAC issued by the California State Contractor's License Board at the time the bid is submitted and shall maintain the license in full for the term of the Contract. Any and all electrical work shall be performed according to the National Electric Code (NEC) and Jurisdiction Having Authority

VI. GENERAL REQUIREMENTS

1. Contractor shall:

   a. Employ and utilize personnel who are qualified, knowledgeable, and experienced to perform the specific type of service on the specific type of equipment listed in this Contract.

   b. 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.

   c. Be responsible for maintaining a minimum of 2-3 cleared personnel at all times to be available to support probation facilities.

   d. Perform all work in strict accordance with the Jurisdiction Having Authority, Uniform Building Code (UBC), all local codes and/or ordinances and with all CAL-OSHA laws and regulations.

   e. Perform all work in accordance with generally accepted industry standards and practices for safe and efficient operation unless a stricter standard is adopted by the County for this type of work.

   f. Perform installations to meet or exceed the State of California seismic requirements for attaching, bracing and making safe the equipment, chase ways, lighting or any other piece of electrical equipment or device that is required to meet seismic attachment requirements.

   g. Furnish and maintain all power sources, lighting, etc., required to perform the work during any power outages.

h. Furnish and maintain any and all warning devices, i.e., barricades, cones, etc., required to adequately protect the public, County staff, and other workers during the performance of this work.

i. Be well disposed to the Public and County Staff at these facilities but shall only be responsive to the requests of the Contract Manager or his/her designee. All other requests or inquiries shall be directed to the Contract Manager or his/her designee. Exception: The specific request involves public safety or the security of the specific facility.

j. Replace or repair or have the cost of replacement or repair deducted from its payment, at the option of the Contract Manager or his/her designee, all damage sustained to County equipment or facilities as a result of the Contractor's operation.

k. Follow all guidelines and sequences of operations established as Industry Standards for the troubleshooting, Maintenance, Repairs, and Replacement of Existing Heating Ventilating Air Conditioning that are currently considered Best Practices methodology. Contractor may be called to provide service or replacement of HVAC equipment, ducting systems, coils, fans, gauges, controllers or other ancillary parts at various County facilities throughout the term of this contract, however, actual performance at specific locations and facilities will be at the sole option and discretion of the County.

l. Provide after hour repairs. The specific scope of work and schedule will be determined at the time such work is initiated. Contractor to be available for after hour call out services between the hours of 6:00 pm and 6:00 am Monday through Sunday and must respond within a one (1) hour time frame.

m. 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.

n. 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.

o. Not perform additional repair of maintenance without receiving prior approval from the County's Contract Manager.

p. Provide at least one (1) journeymen HVAC mechanic. Contractor shall provide additional non-journeymen staff to adequately, efficiently and safely perform the work specified as part of this contract.

2. All workers performing work on County premises shall be paid prevailing wages pursuant to the Department of Industrial Relations and the State of California. The Contractor shall provide with his/her bid package a list of trades expected to be supplied as part of the Contract, along with the current, up to date listing of prevailing wages to be paid to each appropriate trade that the contractor will be performing labor with under this Contract. Where required by EPA section 608, all personnel shall hold valid EPA-608 certification.

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

4. Many of locations throughout the County that require the services of the Contractor are secured facilities, and as such, the Contractor and Contractor's staff that enter these facilities are required to participate in a background clearance check. Some of the required documents that the Contractor and his/her staff will be required to submit are a birth certificate, driver's license or California ID, Social security Card, Passport, business card etc., which will be copied and returned to the submitter. Clearance time will be a minimum of two weeks. Those who do not pass background will not be admitted to the facilities. The reasons for non-clearance will not be disclosed.

5. It will be the sole discretion of the Contract Administrator or his/her designee to determine whether the Contractor has adequate staffing on each project; the Contractor will adjust staffing

as required by the Contract Administrator or his/her designee to either increase or decrease staffing levels for tradesmen on site.

6. County Project Manager or designee shall:

   a. Coordinate schedule, entry, and completion of work with County on-site staff.

   b. Coordinate HVAC equipment shutdowns with Orange County Public Works (OCPW) and on-site County staff. Shutdowns will only be permitted once an action/work plan is thoroughly discussed, understood and agreed to by all parties involved and/or affected by the shutdown.

   c. Notify on site County staff upon completion of HVAC Service/repairs/installations work and resumption of normal operating conditions to the facility.

VII. MATERIALS:

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

VIII. PERFORMANCE:

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

IX. CONTRACT USAGE

A. Agencies/departments utilizing this Contract will submit a Scope of Service or Scope of Work and request a quote/proposal from Contractor. Services to Agencies/Departments will be "project specific" or at contracted hourly rates, on an as-needed basis.

B. Project specific means that Contractor shall propose the number of hours or a fixed fee required to provide needed services. County Agencies/Departments will provide detailed information including, but not limited to, the type of system to be serviced, frequency of services to be performed, system location, whether parts must be included in the quote/proposal or will be reimbursed, name of requester and their Department, work site address, identify if work requires Prevailing Wage compliance and if quote reflects this cost, Contractor License Number, and any other relevant information in their scope of services for the required project and/or multiple projects. The requesting Agency/Department will review and express acceptance of the quote/proposal in writing. Agency/Department will issue their Subordinate Contract prior to commencement of services.

C. Agencies/Departments must allow a minimum of Three (3) Business Days (Monday through Friday) for Contractors to respond to their quote/proposal.

D. Emergency Calls must be clearly identified and communicated to Contractor if a response is required in less than five (5) Business Days.

E. Equipment may be added or deleted from the Subordinate Contract periodically, at the discretion of the County. County shall notify Contractor when equipment has been added or removed. Contractor shall provide Services for added equipment at contracted hourly rates when applicable.

X. HOURS OF OPERATIONS

1. Contractor shall maintain a telephone answering system, which, at a minimum, provides eight (8) hour a day, five (5) day week coverage from the hours of 8:00 am PT to 5:00 pm PT, and ensures the ability to contact higher management for evening and weekend service projects.

2. For all general services, Contractor shall return calls or respond to emails within twenty-four (24) hours (equivalent to one (1) business day) to County regarding requests for service. Any calls/emails received on Friday shall be answered by the following Monday, unless identified as an emergency or other arrangement is made with each ordering Department.

3. Contractor shall perform services during County's regular hours of operations, except under special conditions requiring a vacant building and/or after hours/weekend projects.

4. Some County facilities are twenty-four (24) hour operations, special arrangements shall be made between Contractor and County Site Coordinator.

5. Each Department may have different hours of operations; however, all non-urgent deliveries shall be completed within regular County business hours. All emergency/urgent deliveries shall be coordinated with each respective ordering Department.

XI. SECURITY REQUIREMENTS

County operates several secured facilities: most notable are Probation, Sheriff and Airport operated sites. Contractors and their employees who perform services in these facilities will be required to strict operation policies and may be required to pass a background check prior to their employment due to security requirements for certain facilities covered under this Contract. During performance of the work, especially at detention facilities, workers shall closely monitor all tools, equipment and other materials at all times. Workers shall have no contact verbal or physical, with any inmate of these facilities. These policies have been designed with the primary purpose of ensuring a safe and secure environment for all involved.

1. Contractor will provide a list of all personnel/employees who will be directly performing tasks associated with the Contract. Contractor's personnel/employees providing service in a secured detention facility, a Probation facility or a Sheriff's facility will be expected to pass two (2) separate background checks performed by the Orange County Sheriff's Department and the Orange County Probation Department. No changes shall be authorized to the approved list without a request in writing submitted by the Contractor and approved by the County Site Coordinator. At no time will unauthorized Contractor employees perform any task associated with this Contract. If this occurs, the Contractor will be notified that they have not complied with the terms of this Contract and are subject to Contract termination. The list of all Personnel/Employees working on County projects shall be submitted prior to award of this Contract.

2. Contractor shall prepare and submit a Security Clearance form to the County Site Coordinator for all persons who will be working on or who will need access to secured facilities.

3. Security Clearance forms shall be submitted at least five (5) working days prior to the start of work or prior to the use of any person subsequent to the start of work.

4. Said Security Clearance forms shall be thoroughly and accurately complete. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance.

5. No person shall be employed on this work who has not received prior clearance from the Probation Department, Sheriff's Department or John Wayne Airport.

6. County, John Wayne Airport, the Probation Department and the Sheriff's Department are not under any obligation to give a reason clearance is denied.

7. Contractor shall be responsible to sign in with the County Site Coordinator or designee, as required. Upon arrival at any secure facility (e.g., JWA, Probation) the Contractor shall report to the Central Control Center (Control). Contractor personnel shall have no contact, either verbal or physical, with internees in secured detention facilities.

   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.

   e. Do not receive any materials from internees (including materials to be passed to another individual or internee).

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

8. Any Contractor personnel/employee(s) engaged in the performance of work under this Contract shall be expected to pass the screening requirements and abide by all of the security requirements set forth by the Federal Aviation Administration (FAA) and the County of Orange.

   "The Federal Aviation Administration (FAA) approved security program for John Wayne Airport requires that each person issued a John Wayne Airport security badge is made aware of his/her responsibilities regarding the privilege of access to restricted areas of the airport".

   All persons within the restricted air operation areas of the airport are required to display, on their person, a John Wayne Airport security badge, unless they are specifically exempted for reasons or they are under escort by a properly badge individual. Each airport employee or airport tenant employee who has been issued a John Wayne Airport security badge is responsible for challenging any individual who is not properly displaying an airport issued or approved and valid identification badge. Any person who is not properly displaying or who cannot produce a valid John Wayne Airport security badge must immediately be referred to the Sheriff's Department Airport Detail Office for proper handling.

   John Wayne Airport security badge is the property of the County of Orange and must be returned upon termination of employment at John Wayne Airport. The loss of a badge shall be reported within twenty-four (24) hours to the Sheriff's Department Airport Dispatch Center (949) 252-5000. A report shall be made before a replacement badge will be issued.

9. All vehicles parked on-site shall be locked and thoroughly secured at all times.

10. All equipment and materials shall remain in Contractor possession at all times and shall never be left unattended. All lost or misplaced equipment or materials shall be reported immediately to the (a) security staff or Control in secured detention facilities or (b) the escort or Control in Sheriff's facilities.

11. Personnel shall not smoke or use profanity or other inappropriate language while on-site.

12. Personnel shall not enter the facility while under the influence of alcohol, drugs or other intoxicants and shall not have such materials in their possession.

13. Personnel shall plan their activities to minimize the number of times they must enter and exit a facility, i.e., transport all equipment and materials needed for the day at the start of work and restrict all breaks to the absolute minimum.

14. Contractor employee(s) shall be well-disposed to the public and County staff utilizing the facilities but shall be responsive only to the requests of the County Site Coordinator unless otherwise directed and shall direct all inquiries or requests to the County Site Coordinator.

XII. MISCELLANEOUS CLAUSE: Contractor shall provide a quote for items not listed under Attachment A.

Miscellaneous items not listed in the Contract, may be purchased off this Contract. Contractor will provide requesting department with quote and process order once the County department has authorized the order in writing.

Prices shall include all costs, but not limited to, overhead, all necessary labor, transportation, freight, delivery and/or shipping/handling fees, fuel/fuel surcharges, mileage, storage, self-imposed fees and any other costs necessary to provide the item/s requested.

In addition to the commodity requirements and all other terms and conditions provided herein, Contractor shall satisfy the following billing/invoicing procedures for miscellaneous items not named specifically on this attachment. Failure to follow these procedures fully may delay payment of miscellaneous items.

1. An authorized County Department staff member will contact the Contractor to obtain a written quote for any items needed that are not listed above or are of a different quantity than specified.
2. An authorized County Department staff must obtain a quote for items on the Contract if purchased in different quantities than listed on the Contract.
3. Contractor to include all charges in the quote including but not limited to; initial set-up fees and/or color matching fees, rush charges (if applicable) and shipping charges.
4. If the authorized County Department staff member finds the quote satisfactory, the authorized staff member will sign the quote and email or fax it back to the vendor authorizing the purchase. The Contractor under no circumstance shall release or deliver any miscellaneous items without a written quote signed by an authorized County Department staff member, in their possession.
5. Contractor must attach with the invoice a copy of the matching quote with the authorized County Department staff member signature.
6. The agency/department shall certify on the invoice that the prices are per the signed quote.

ATTACHMENT B

PAYMENT AND COMPENSATION

1. **Compensation:** This is a firm-fixed fee Contract between County and Contractor for HVAC & Building Control Equipment, Installation, Supplies and Related Services as set forth in Attachment A, "Scope of Work".

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

2. **Fees and Charges:** County will pay the fees and charges in accordance with the provisions of this Contract. – See Exhibit 4.

3. **Miscellaneous Items:** Any commodities not listed in the Contract must be approved by the County's Project Manager or designee in accordance with the Miscellaneous Clause found in the scope of work.

4. **Price Increase/Decreases:** No price increases will be considered during the first year of the Contract. County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required for consideration of such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to County of Orange. County may enforce, 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 Contract. Adjustments increasing Contractor's profit will not be allowed.

5. **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.

6. **Contractor's Expense:** 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.

7. **Taxpayer ID Number:** Contractor shall include its taxpayer ID number on all invoices submitted to County for payment to ensure compliance with IRS requirements and to expedite payment processing.

8. **Payment – Invoicing Instructions:** Contractor will provide an invoice on Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:

   a. Contractor's name and address
   b. Contractor's remittance address, if different from 1 above
   c. Contractor's Taxpayer ID Number
   d. Name of County Agency/Department
   e. Delivery/service address
   f. Contract TBD
   g. Requisition TBD
   h. Agency/Department's Account Number
   i. Date of order
   j. Product/service description, quantity, and prices

k. Sales tax, if applicable
l. Freight/delivery charges, if applicable
m. Total

Contractor shall issue and send invoices according to each Department Subordinate Agreement instructions/requirements of the Contract. Adjustments increasing the Contractor's profit will not be allowed.

Payment (Electronic Funds Transfer (EFT): County of Orange offers contractors 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 an Electronic Remittance Advice with the payment details via e-mail. An e-mail address will need to be provided to The County of Orange via an EFT Authorization Form. To request a form, please contact the agency/department Procurement Buyer listed in Contract. Upon completion of the form, please mail, fax or email to the address or phone listed on the form.