

FORM APPROVED COUNTY COUNSEL
 BY: MA VICTOR 5/22/13
 DATE: 5/22/13
 MARSHAL VICTOR

844



**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FROM: Economic Development Agency

SUBMITTAL DATE:
 June 6, 2013

SUBJECT: Approval of Professional Services Agreement for Southwest Justice Center
 RetroCommissioning Project

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute the attached Professional Services Agreement with Enovity, Inc., not to exceed \$100,000; and
2. Authorize the Assistant County Executive Officer/EDA, to administer the agreement in accordance with applicable Board policies.

BACKGROUND: (Commences on Page 2)

REVIEWED BY CIP

 Christopher Hans

Robert Field
 Assistant County Executive Officer/EDA
 By: Lisa Brandl, Managing Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 100,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13

COMPANION ITEM ON BOARD AGENDA: No

SOURCE OF FUNDS: Energy Management Budget	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
 BY:
 Jennifer L. Sargent

County Executive Office Signature

FISCAL PROCEDURES APPROVED
 PAUL ANGULO, CPA, AUDITOR-CONTROLLER
 BY: 6/4/13
 SAMUEL WONG

Dep't Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: 3.31 of 8/28/12 | District: 3/3 | Agenda Number:

2013 JUN 11 AM 3:00
 RECEIVED COUNTY OF RIVERSIDE COMPLEX

2013 JUN 11 AM 3:52
 RECEIVED COUNTY OF RIVERSIDE COMPLEX

3-21

BACKGROUND:

On August 28, 2012, the Board of Supervisors approved a pre-qualified list of architectural and engineering firms to be retained on an as-needed basis. EDA has selected Enovity, Inc., from the pre-qualified list to provide engineering services for the Retrocommissioning Project at the Southwest Justice Center Campus. Retrocommissioning is defined as a systematic process of identifying less-than-optimal performance in a facility's equipment, lighting and control systems. These problems are then corrected, which improves the facility's energy efficiency. Enovity, Inc., was selected to provide the services for this project due to their experience in retrocommissioning and building automation systems, as well their successful completion of similar projects for the County.

The scope of work will include the energy retrocommissioning of building air handling systems, as well as implementation of optimized controls to maximize energy efficiency. This type of program, known as a Monitoring-Based Persistence Commissioning (PCx) program, is offered to the County through our partnership with Southern California Edison and Southern California Gas Company. The technical services to identify the optimization opportunities in heating, ventilation, and air conditioning, controls and lighting systems was provided at no-cost to the County through the partnership. The technical services provided will also install monitoring devices to ensure that the energy savings achieved do not diminish over time.

When completed, the project is expected to save the following annually:

1. 342,667 kilowatt hour (kwh)
2. 42.70 kilowatt (kW-demand)
3. 45,439 therms
4. \$72,535 in energy cost savings

This project has also been approved for a rebate of \$0.24 per kwh saved and \$1.00 per therm saved, up to 80% of the project cost. The simple payback for the project, including energy cost savings and rebates are expected to be less than one year.

FINANCIAL DATA:

All costs associated with this agreement are fully funded by the Energy Conservation Fund (subfund) within the Energy Management budget. Thus, there is no impact to the General Fund and no additional net county cost will be incurred as a result of this transaction.

PROFESSIONAL SERVICE AGREEMENT

for

**SOUTHWEST JUSTICE CENTER MONITORING-BASED PERSISTENCE
RETROCOMMISSIONING PROJECT**

between

COUNTY OF RIVERSIDE

and

ENOVITY, INC.



TABLE OF CONTENTS

<u>SECTION HEADING NUMBER</u>	<u>PAGE</u>
1. Description of Services	
2. Period of Performance	
3. Compensation	
4. Alteration or Changes to the Agreement	
5. Termination.....	
6. Ownership/Use of Contract Materials and Products	
7. Conduct of Contractor.....	
8. Inspection of Service: Quality Control/Assurance	
9. Independent Contractor	
10. Subcontract for Work or Services.....	
11. Disputes	
12. Licensing and Permits	
13. Use by Other Political Entities.....	
14. Non-Discrimination	
15. Records and Documents	
16. Confidentiality	
17. Administration/Contract Liaison.....	
18. Notices	
19. Force Majeure.....	
20. EDD Reporting Requirements	
21. Hold Harmless/Indemnification	
22. Insurance	
23. General	
Exhibit A-Scope of Service.....	
Exhibit B- Fees.....	

This Agreement, made and entered into this ____ day of _____, 2013, by and between Enovity, Inc., (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, consisting of four (4) pages at the prices stated in Exhibit B, Fees, consisting of one (1) page.

1.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to fully and adequately perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and in accordance with the applicable professional standard of care, which is that CONTRACTOR's performance under this Agreement shall be consistent with the professional skill and care ordinarily provided by professionals practicing in the State of California under the same or similar circumstances consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement except without COUNTY's express prior written authorization, pursuant to section 4.1 herein.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

2. Period of Performance

2.1 This Agreement shall be effective upon signature of this Agreement by both parties and continue in effect through June 1, 2014, with the option to renew for one (1) year, each year shall be renewable in one year increments by written amendment, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both

parties and shall diligently and continuously perform thereafter. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year agreement.

3. Compensation

3.1 The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B. Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed one hundred thousand (\$100,000.00) annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit B or otherwise in writing signed by both parties, pursuant to section 4.1 herein, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.2 No price increases will be permitted during the first year of this Agreement. All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3.3 CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices in duplicate. For

this Agreement, send the original and duplicate copies of invoices to: Economic Development Agency, 3133 Mission Inn Ave Riverside, CA 92507.

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered monthly in arrears.

3.4 The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed immediately terminated and have no further force or effect.

4. Alteration or Changes to the Agreement

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee are the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within thirty (30) days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the

CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

5. Termination

5.1. COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

5.2 COUNTY may, upon five (5) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress to endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.3 After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit B.

5.5 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

6. Ownership/Use of Contract Materials and Products

The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY; and may be used by the COUNTY for any purpose COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports, or products without prior written authorization of the COUNTY.

7. Conduct of Contractor

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

8. Inspection of Service; Quality Control/Assurance

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms

of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

9. Independent Contractor

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

10. Subcontract for Work or Services

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

11. Disputes

11.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

11.2 Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

12. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

13. Use By Other Political Entities

The CONTRACTOR agrees to extend the same pricing, terms, and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County. It is understood that other entities shall make purchases in their own name.

make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

14. Non-Discrimination

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

15. Records and Documents

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

16. Confidentiality

16.1 The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

16.2 The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

16.3 The confidentiality obligations contained in this section shall not apply to the extent that (a) CONTRACTOR is required to disclose information by law, regulation or order of a governmental agency or a court of competent jurisdiction; (b) CONTRACTOR receives the prior written approval of COUNTY to disclose any of its privileged or confidential information; or (c) CONTRACTOR can demonstrate that (i) the disclosed information was public knowledge at the time of such disclosure, or thereafter became public knowledge, other than as a result of actions of CONTRACTOR; (ii) the disclosed information was rightfully known by CONTRACTOR prior to the date of disclosure by COUNTY; (iii) the information was disclosed to CONTRACTOR on an unrestricted basis from a source unrelated to COUNTY and not under a duty of confidentiality to COUNTY; or (iv) the information was independently developed by CONTRACTOR without use of privileged or confidential information disclosed by COUNTY. Notwithstanding any other provision of this Agreement, CONTRACTOR must use any privileged or confidential information received by it solely in accordance with the terms of this Agreement in order to carry out its obligations or exercise its rights under the Agreement.

17. Administration/Contract Liaison

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

18. Notices

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE

Economic Development Agency
3133 Mission Inn Ave.
Riverside, CA 92507

CONTRACTOR

Enovity, Inc.
100 Montgomery St., Suite 600
San Francisco, CA 94104

19. Force Majeure

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers, such party shall not be held liable for such failure to comply.

20. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within ten (10) days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and

Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

21. Hold Harmless/Indemnification

21.1 CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of CONTRACTOR, its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. CONTRACTOR shall defend, at its sole expense, all costs, and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions. CONTRACTOR shall not be liable hereunder to the extent such liability is found by a court or forum of competent jurisdiction to be solely caused by the negligence or intentional misconduct of Indemnitees, or any of them.

21.2 With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S indemnification to Indemnitees as set forth herein.

21.3 CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

21.4 The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

22. Insurance

22.1 Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

A. Workers' Compensation:

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than one million (\$1,000,000.00) per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than one million (\$1,000,000.00) per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than one million (\$1,000,000.00) per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

D. Professional Liability Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Agreement, with a limit of liability of not less than one million (\$1,000,000.00) per occurrence and two million (\$2,000,000.00) annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

E. General Insurance Provisions - All lines:

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds five hundred thousand (\$500,000.00) per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the Country's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which

guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk

Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

23. General

23.1 CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein without the prior written consent of COUNTY shall be deemed void and of no force or effect.

23.2 Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

23.3 In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

23.4 CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement or otherwise authorized in writing by COUNTY.

23.5 CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or

products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

23.6 Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

23.7 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

23.8 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

23.9 CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

23.10 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

23.11 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

23.12 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

COUNTY:

Economic Development Agency
3403 10th Street Suite 310
Riverside, CA 92501

Signature: _____

Print Name: John J. Benoit, Chairman

Title: Board of Supervisors

Dated: _____

CONTRACTOR:

Enovity, Inc.
100 Montgomery St., Suite 600
San Francisco, CA 94104

Signature: 

Print Name: GREGORY W. CUNNINGHAM

Title: PRINCIPAL

Dated: 5.20.13

FORM APPROVED COUNTY COUNSEL
BY:  5/22/13
MARSHAL L. VICTOR DATE

EXHIBIT A SCOPE OF SERVICE

Energy efficiency measures have been identified at the Southwest Justice Center, which consists of the Detention Center, Juvenile Hall, Fleet Services, Patrol and Central Plant at 30755 Auld Road, Murrieta, CA 92563. Through a collaborative Southern California Edison Company (SCE) utility program, County of Riverside seeks to retrocommission mechanical systems at the Southwest Justice Center.

RETROCOMMISSIONING SCOPE OF WORK SUMMARY

A legacy Robertshaw building control system currently controls the air handling units throughout the complex. Actuating devices are pneumatic control devices controlled through electronic-pneumatic transducers. The central plant is not included in this project scope of work; it is currently controlled by a TAC LON system.

Work will be performed on 33 air handling units and 6 hot water pumps. The project work includes the following:

1. Repair system deficiencies
2. Calibrate sensors and devices
3. Optimize the sequence of operation and tune control loops
4. Test and verify optimization and performance of the systems

1.1 ENERGY EFFICIENCY MEASURE #1: JAIL - ECONOMIZER REPAIR

1.1.1 CONTRACTOR SCOPE OF WORK

1.1.1.1 Calibrate existing RAT, OAT, and MAT sensors, and restore proper economizer function through repair of dampers, actuators, and controls hardware and sequences.

1.1.1.2 For AHUs F4, B1, C1, E2, F3, G2, and G3 provide economizer lockout at OAT > 75°F, calibrate existing RAT, OAT, and MAT sensors, and restore

proper economizer function through repair of dampers, actuators, and controls hardware and sequences.

1.1.1.3 Beyond the repair of known economizer performance issues , perform additional retrocommissioning for complete air handler function and sequence of operation for AHUs F4, B1, C1, E2, F3, G2, & G3 as well as AHUs B2, B4, C2, D2, E1, E3, E4, F1, F2, G1, G4, B1 Juv (Juvenile Hall), B2 Juv, & C9 Juv.

1.1.1.4 Retrocommissioning scope includes detailed functional and calibration testing and deficiency listing, repair, allowance for replacement of deficient parts, calibration, programming changes, and final functional testing after fixing deficiency list to confirm compliance. Deficiencies identified with energy efficiency opportunities will be evaluated by the PCx program for additional savings and incentives potential prior to repair.

1.1.2 ENERGY AUDIT INVESTIGATION FINDINGS

1.1.2.1 Percent outside air is fixed at 20% for AHU-F4-Jail, 20% for AHU-B1-Jail, 20% for AHU-C1-Jail, 40% for AHU-E2-Jail, 20% for AHU-F3-Jail, 70% for AHU-G2-Jail, and 30% for AHU-G3-Jail.

1.1.2.2 Trend data shows that outside air is fixed at approximately 20%, 20%, 20%, 40%, 20%, 70% and 30%. Air side economizer full operation range is not being used. AHU-F4 is VAV single duct system. The rest of AHUs are CV single duct system. All AHUs have cooling and heating coils.

1.2 ENERGY EFFICIENCY MEASURE #2: JUVENILE HALL - ECONOMIZER REPAIR

1.2.1 CONTRACTOR SCOPE OF WORK

1.2.1.1 Calibrate existing RAT, OAT, and MAT sensors, and restore proper economizer function through repair of dampers, actuators, and controls hardware and sequences.

1.2.1.2 For AHUs B4, B5, B7, and C8 provide economizer lockout at OAT > 75°F, calibrate existing RAT, OAT, and MAT sensors, and restore proper economizer function through repair of dampers, actuators, and controls hardware and sequences.

1.2.1.3 Beyond the repair of known economizer performance issues, perform additional retrocommissioning for complete air handler function and sequence of operation for AHUs B4, B5, B7, & C8 as well as AHUs A1, P2, B3, A10 Juv (Juvenile hall), B3 Juv, & B6 Juv.

1.2.1.4 Retrocommissioning scope includes detailed functional and calibration testing and deficiency listing, repair, allowance for replacement of deficient parts, calibration, programming changes, and final functional testing after fixing deficiency list to confirm compliance. Deficiencies identified with energy efficiency opportunities will be evaluated by the PCx program for additional savings and incentives potential prior to repair.

1.2.2 ENERGY AUDIT INVESTIGATION FINDINGS

1.2.2.1 Percent outside Air is fixed at 80% for AHU-B4-Juv (Juvenile Hall), 30% for AHU-B5-Juv, 50% for AHU-B7-Juv, and 50% for AHU-C8-Juv.

1.2.2.2 Trend data shows that outside air is fixed at approximately 80%, 30%, 50% and 50%. Air side economizer full operation range is not being used. All AHUs are VAV single duct system. All AHUs have cooling coil only.

1.3 ENERGY EFFICIENCY MEASURE #3: JAIL – AHU-A1 & AHU-P1 STATIC

1.3.1 CONTRACTOR SCOPE OF WORK

1.3.1.1 For AHU A1 and P1 provide static pressure feedback and restore SF VFD operation.

1.3.1.2 Beyond the repair of known fan control issues, perform additional retrocommissioning for complete air handler function and sequence of operation for AHU A1 and P1.

1.3.1.3 Retrocommissioning scope includes detailed functional and calibration testing and deficiency listing, repair, allowance for replacement of deficient parts, calibration, programming changes, and final functional testing after fixing deficiency list to confirm compliance. Deficiencies identified with energy efficiency opportunities will be evaluated by the PCx program for additional savings and incentives potential prior to repair.

1.3.2 ENERGY AUDIT INVESTIGATION FINDINGS

1.3.2.1 SF VFD operates at fixed speed 98% for AHU-A1 and P1-Jail.

1.3.2.2 Facility crew will manually enter speed of SF VFD for AHU-A1 and P1 at 98%. AHU-A1 is VAV, single duct system. There is no feedback from static pressure to SF VFD.

1.4 ENERGY EFFICIENCY MEASURE #4: JAIL – SF VFD & RAT FEEDBACK

1.4.1 CONTRACTOR SCOPE OF WORK

1.4.1.1 For AHU B1, C1 & D1 provide RA temperature feedback and restore SF VFD operation.

1.4.1.2 Beyond the repair of known fan control issues, perform additional retrocommissioning for complete air handler function and sequence of operation for AHU B1, C1 & D1.

1.4.1.3 Retrocommissioning scope includes detailed functional and calibration testing and deficiency listing, repair, allowance for replacement of deficient parts, calibration, programming changes, and final functional testing after fixing deficiency list to confirm compliance. Deficiencies identified with energy

efficiency opportunities will be evaluated by the PCx program for additional savings and incentives potential prior to repair.

1.4.2 ENERGY AUDIT INVESTIGATION FINDINGS

1.4.2.1 SF VFD operates at fixed speed 98% for AHU-B1, C1 & D1-Jail

1.4.2.2 Facility crew will manually enter fix speed of SF VFD for AHU-B1, C1 & D1 at 98%. AHU-B1, C1 & D1 are CV, single duct system. There is no feedback from RAT or zone set point to SF VFD.

**EXHIBIT B
FEES**

FEES

Work will be billed monthly based on percentage of work complete. Terms are net 30 days from date of invoice. The proposed fixed fee for the scope of work describe in the above section is as follows:

Task Description	Amount
Calibrate sensors & devices	\$ 17,325
Optimize sequence & tune loops	\$ 48,025
Test and verify performance	\$ 23,100
Backcheck repair work & test	\$ 11,550
TOTAL PROPOSED FEE	\$ 100,000

NOT TO EXCEED \$100,000.00