

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



2567

SUBMITTAL DATE:
October 12, 2016

FROM : ECONOMIC DEVELOPMENT AGENCY (EDA)::

SUBJECT: Approve and execute the Agreement with GI Endurant, LLC for the Southwest Justice Center (SWJC) Cogeneration Plant maintenance without seeking competitive bids for five years. [District 3], [Total Cost \$1,366,860], [\$273,372 annually]; 100% EDA Energy

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute the Agreement with GI Endurant, LLC for Plant maintenance for \$273,372 annually, and option to renew for four more years; and authorize the Chairman of the Board to execute the agreement on behalf of the county; and
2. Authorize Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding and as approved by County Counsel to sign amendments that do not change the substantive terms of the Agreement; and sign amendments to the compensation provisions that do not exceed 10% annually.

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 182,248	\$ 273,372	\$ 1,366,860	\$ 273,372
NET COUNTY COST	\$ 182,248	\$ 273,372	\$ 1,366,860	\$ 273,372
SOURCE OF FUNDS: EDA Energy 100%			Budget Adjustment: None	
			For Fiscal Year: 2016/17-21/22	

C.E.O. RECOMMENDATION: [CEO use]

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Tavaglione and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington and Ashley
Nays: None
Absent: Benoit
Date: November 1, 2016
xc: EDA, Purchasing

Kecia Harper-Ihem
 Clerk of the Board
 By: *[Signature]*
 Deputy

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STATE OF CALIFORNIA**

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BACKGROUND:

Summary

On December 6, 2011, the Board of Supervisors approved the agreement with GI Endurant equipment services at the cogeneration plant at SWJC. The combination of a redesigned cogeneration plant and a highly qualified maintenance company has resulted in many benefits to the County. A recent in-depth analysis of the actual savings from the SWJC cogeneration plant revealed an annual cost savings of \$877,000. The annual costs of maintenance by GI Endurant were included in this analysis.

These savings are made possible by implementing a number of energy savings measures afforded by the cogeneration plant. First, the natural gas engines that are the heart of the plant generate over 550,000 kilowatt hours of electricity every month. Since the County purchases the natural gas commodity in bulk from the State Department of General services at a highly reduced rate, the electricity produced is lower in cost than Edison's costs. The cogeneration plant also produces heat, which is captured for several purposes. In the winter, the heat can be captured to produce hot water for both the adult and juvenile detention centers on the campus.

This lessens the need to run large boilers, which in turn reduces costs associated with South Coast Air Quality Management District requirements. In the summer, the waste heat can be diverted to an absorption chiller, which can run during peak electricity periods at very low cost. Because of this, the plant can shift air conditioning operations to off peak periods when the cost of electricity and demand charges is much less.

One vendor, Cornerstone Energy Services, Inc. is capable of performing services per Waukesha Manufacturer representative, David McCallum. Waukesha recommended GI Endurant since they performed the rebuilding of the cogeneration engines and oversaw the resign work for the plant. Also, Cornerstone is a third party company and not a manufacturer's representative like GI Endurant is. Futhermore, Risk Management (in 2011) suggested that the County use GI Endurant as the maintenance provider due to their experience with the plant redesign and knowledge of the historical operation of the plant.

GI Endurant performed the rebuilding of both Waukesha engines at the SWJC, a process that was overseen by Risk Management and the County's insurance company. The success of GI Endurant's maintenance program has resulted in the County realizing annual savings of \$877,000 per year. Continuity of service from GI Endurant must be maintained to ensure continued energy savings.

GI Endurant has played a critical part in helping the County keep the cogeneration plant running 24/7, while optimizing the plant to maximize energy savings. Over five years, the partnership between the County and GI Endurant has saved the County well over \$3,500,000. It is in the County's best interest to continue this partnership through a renewed maintenance agreement.

Impact on Citizens and Businesses

The ability to significantly reduce energy costs on the SWJC campus results in less tax payer dollars being spent to operate County buildings.

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SUPPLEMENTAL:

Additional Fiscal Information

Sufficient funding for the maintenance agreement costs, as well as ongoing maintenance not covered by the agreement is already budgeted in the Energy Management budget.

Contract History and Price Reasonableness

While having the right to raise the cost of monthly maintenance agreement annually, GI Endurant did not raise their costs during the entire five year period of performance from November 1, 2011 through October 31, 2016. The new monthly cost is 6.8% above the old cost and is reasonable considering GI Endurant's contributions to the significant energy savings the county is realizing.

ATTACHMENTS

**Agreement
Sole Source**

RF:JV:HM:PR:JP:ac 13368_2567 FM06720004086
S:\Energy Division\Form 11's\13368_2567 - Approve the Renewal of the Agreement with GI Endurant for Equipment Services_11-1-16.doc

COPY 

Date: September 29, 2016
From: Robert Field
Assistant County Executive Officer
To: Board of Supervisors/Purchasing Agent
Via: Joe Angelone, 951-955-7989
Subject: Sole Source Procurement; Request for Southwest Justice Center (SWJC)
Cogeneration Plant Maintenance Contract Agreement

The below information is provided in support of my Department requesting approval for a sole source.

1. **Supplier being requested: GI Endurant, LLC**
2. **Vendor ID: 0000113532**
3. **Supply/Service being requested:**
Request SWJC Cogeneration Plant Maintenance Agreement, GI Endurant is the current provider with a successful maintenance program.
4. **Alternative suppliers that can or might be able to provide supply/service and extent of market search conducted:**
One other vendor, Cornerstone Energy Services, Inc. is capable of performing services per Waukesha Manufacturer representative, David McCallum. Waukesha recommended GI Endurant since they performed the rebuilding of the cogeneration engines and oversaw the resign work for the plant. Also, Cornerstone is a third party company and not a manufacturer's representative like GI Endurant is. Furthermore, Risk Management (in 2011) suggested that the county use GI Endurant as the maintenance provider due to their experience with the plant redesign and knowledge of the historical operation of the plant.
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide (if proprietary software or machinery, hardware, please provide a supporting letter from the manufacturer):**
GI Endurant performed the rebuilding of both Waukesha engines at the SWJC, a process that was overseen by Risk Management and the County's insurance company. GI Endurant assisted in the redesign and rebuilding of the cogeneration plant. The success of GI Endurant's maintenance program has resulted in the county realizing annual savings of \$877,000 per year. Continuity of service from GI Endurant must be maintenance to ensure continued energy savings.
6. **Reasons why my department requires these unique features and what benefit will accrue to the county:**
Successful maintenance of the cogeneration plant is critical to ongoing operation of the plant. When the cogeneration plant was not functioning, the county was in danger of not meeting the terms and requirements required under the Self Generation Incentive Programs (SGIP) offered by Southern California Edison (SCE) and Southern California Gas Company. Both utilities issued rebates to the county in excess of \$1.2 million dollars. When the cogeneration was not operating, both utilities had the right under the SGIP program to demand return of the \$1.2 million in rebates. Regular maintenance performed by this

competent company ensures that this return of rebates will not be required. Furthermore, the successful operation of this plant is critical to the county realizing in excess of \$877,000 in energy savings annually. Finally, there are major changes looming in the electric industry with regard to changes in what SCE determines to be peak hours for using electricity. SCE has filed a rate case with the California Public Utilities Commission to request a change in the time for each peak period. If these changes are approved, they will have a major impact on the operation of the cogeneration plant and how the county achieves energy savings. It will be critical to have a supremely competent maintenance service provider who can help steer the county through these changes and maintain the current energy savings.

7. **Period of Performance:** From: November 1, 2016 to November 1, 2021
(Five years)

Is this an annually renewable contract? No Yes

Is this a fixed-term agreement: No Yes

(A fixed-term agreement is set for a specific amount of time; it is not renewed annually. Ensure fixed-term agreements include a cancellation, non-appropriation of funds, or refund clause. If there is no clause(s) to that effect, then the agreement must be submitted to the Board for approval.)

8. **Identify all costs for this requested purchase. If approval is for multiple years, ongoing costs must be identified below. If annual increases apply to ongoing costs such as CPI or other contract increases, provide the estimated annual cost for each consecutive year. If the annual increase may exceed the Purchasing Agent's authority, Board approval must be obtained. (Note: ongoing costs may include but are not limited to subscriptions, licenses, maintenance, support, etc.)**

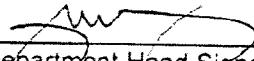
Description:	FY16-17	FY17-18	FY18-19	FY19-20	FY20-21	Total
One-time Costs:	\$0	\$0	\$0	\$0	\$0	\$0
Ongoing Costs:	\$182,248	\$273,372	\$273,372	\$273,372	\$273,372	\$1,275,736
Annual Maintenance Costs	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$182,248	\$273,372	\$273,372	\$273,372	\$273,372	\$1,275,736

Note: Insert additional rows as needed

9. **Price Reasonableness:** *(Explain why this price is reasonable or cost effective, and if this service/commodity will be bid out in the future.)*

While having the right to raise the cost of monthly maintenance agreement annually, GI Endurant did not raise their costs during the entire five year period of performance from November 1, 2011 through October 31, 2016. The new monthly cost is 6.8% above the old cost and is reasonable considering GI Endurant's contributions to the significant energy savings the county is realizing. GI Endurant has also provided additional measures that help the county. The oil used in the plant engines fluctuates on a daily basis, based on the daily market value. GI Endurant has made allowances in their agreement which will cover oil increases throughout the five year contract, so that the county does not have to pay an increased monthly fee.

10. Projected Board of Supervisor Date (if applicable): 11-1-16
(Form 11s must accompany the sole source request for Purchasing Agent approval.)


Department Head Signature
Jeffrey Van Wageningen
Managing Director

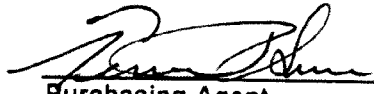
Jeff Van Wageningen
Print Name

10.4.16
Date

Purchasing Department Comments:

Approve Approve with Condition/s Disapprove

Not to exceed: \$ 1,275,736 One time ~~Annual~~ Amount through 6/30/21
(Date)


Purchasing Agent

10/12/16
Date

17-118
Approval Number
(Reference on Purchasing Documents)

List Attachments:

MT 2567

PROFESSIONAL SERVICE AGREEMENT

for

MAINTENANCE OF SOUTHWEST JUSTICE CENTER COGENERATION FACILITY

between

COUNTY OF RIVERSIDE

and

GI ENDURANT, LLC



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This Agreement, made and entered into this 25th day of October, 2016, by and between GI ENDURANT, LLC, (herein referred to as "CONTRACTOR" or "GIE"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY" or "OWNER"). 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, including Attachment A thereto, and Exhibit D, Scheduled Maintenance Parts & Milestones, at the prices stated in Exhibit B, Compensation to the Agreement, all of which are attached hereto and incorporated by this reference. The Scheduled Maintenance services shall be performed with regard to the Generating Facility located at 30755 Auld Road, Murrieta, California 92653.

1.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to 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 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.

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 Services under this Agreement shall commence on November 1, 2016 and continue in effect through November 1, 2017, unless terminated earlier, with an option to renew based on satisfactory performance, through October 30, 2021. CONTRACTOR 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 Scheduled Maintenance 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 Two Hundred Seventy-four Thousand Four Hundred Fifty-Two (\$274,452.00) including all expenses (\$22,781.00 per month) for

Scheduled Maintenance as described in Exhibit A. 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, 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 (If applicable). 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
Accounting & Finance
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; Agreement number (FM06720004086); 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,

and invoices shall be rendered "monthly" in arrears. In the State of California, Government agencies are not allowed to pay excess interest and late charges, per Government Codes, Section 926.10. 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 terminated, have no further force, and effect.

3.5 Labor Code and Prevailing Wages

1. The services under this contract are considered maintenance and subject to the payment of prevailing wage pursuant to Labor Code section 1720 and 1771, and 8 C.C.R § 16000.

2. Reference is made to Chapter 1, Part 7, Division 2 of the California Labor Code (commencing with Section 1720). By this reference said Chapter 1 is incorporated herein with like effect as if it were here set forth in full. The parties recognize that said Chapter 1 deals, among other things with discrimination, penalties and forfeitures, their disposition and enforcement, wages, working hours, and securing worker's compensation insurance and directly effect the method of prosecution of the work by Consultant and subject it under certain conditions to penalties and forfeitures. Execution of the Agreement by the parties constitutes their agreement to abide by said Chapter 1, their stipulation as to all matters which they are required to stipulate as to by the provisions of said Chapter 1, constitutes Contractor's certification that he is aware of the provisions of said Chapter 1 and will comply with them and further constitutes Consultant's certification as follows: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract."

3. Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates, including the per diem wages applicable to the work, and for holiday and overtime work, including employer payments for health and welfare, pension, vacation, and similar purposes, in the county in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. These wages are available from the California Department of Industrial Relations' Internet website at <http://www.dir.ca.gov>, and are available at the main office of Agency.

4. Alteration or Changes to the Agreement

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is 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 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 that may 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.

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 If the Agreement is federally or State funded, CONTRACTOR cannot be debarred from the System for Award Management (SAM). CONTRACTOR must notify the COUNTY immediately of a debarment. Reference: System for Award Management (SAM) at <https://www.sam.gov> for Central Contractor Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<http://www.epls.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17). The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

5.7 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.

5.8 Termination for Convenience. This Agreement may also be terminated at any time by CONTRACTOR for convenience upon ninety (90) days written notice to COUNTY in accordance with the provisions of Section 18, herein. Such a termination for convenience will not be considered a waiver of any other right that either party may have under this Agreement, at equity or at law. Upon termination for convenience, COUNTY will pay CONTRACTOR in full satisfaction and discharge of all obligations owed to CONTRACTOR for work performed under this Agreement, all labor and expenses incurred by CONTRACTOR in fulfilling this Agreement to the date of termination. Each party has a duty to mitigate termination charges and shall make commercially reasonable efforts to reduce costs upon termination for convenience.

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. The material, reports or products may be used by the COUNTY for any purpose that the 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 the CONTRACTOR.

9. Independent Contractor

9.1 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.

9.2 CONTRACTOR warrants that it shall make its best effort to fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees performing work under this Agreement 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.

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. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the

COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous to imply bad faith. 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. County shall be responsible for applying, procuring, and renewing all permits necessary for: (i) County to do business in the jurisdictions in which the Generating Facility and Site are located and (ii) the ownership and operation of the Generating Facility and the Site.

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 particulars assigned to the individual, such as finger or voice print or a photograph.

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
Facilities Management
3403 Tenth St, 5th Floor, Suite 500
Riverside, CA 92501

CONTRACTOR

GI Endurant LLC
134 N. LaSalle Street, Suite 510
Chicago, IL 60602

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, acts of war, civil disorders, or other similar acts, 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 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, action, claim or damage 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. CONTRACTOR shall defend the Indemnitees at its sole expense including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such acts, omissions or services.

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 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.

21.5 In the event there is a conflict between this clause and California Civil Code section 2782 or 2782.8, this clause shall be interpreted to comply with Civil Code 2782 and 2782.8. Such interpretation shall not relieve the CONTRACTOR from indemnifying the Indemnitees to the fullest extent allowed by law.

21.6 CONTRACTOR's indemnification obligations shall also apply to any action or claim regarding actual or alleged intellectual property infringement related to any material or product provided to COUNTY pursuant to this Agreement. In the event of any such action or claim, CONTRACTOR shall provide immediate notice to COUNTY of the action or claim. CONTRACTOR may defend or settle the action or claim as CONTRACTOR deems appropriate; however, CONTRACTOR shall be required to

obtain for COUNTY the right to continue to use the material or product (or a similar non-infringing material or product with the same function) on terms identical to those stated in this Agreement.

21.7 CONTRACTOR'S indemnification obligations do not extend or apply to any action or claims arising from the functioning of the Southwest Justice Center Cogeneration Facility as caused by the performance of third party vendors, when not involving or contributed to by the action(s) of CONTRACTOR. Third parties performing services regarding the Facility will also be required to provide the indemnification as noted in 21.1 through 21.5 herein.

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 \$1,000,000 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 \$1,000,000 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 is 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 \$1,000,000 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. 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 \$500,000 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 County'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, Contractor. will provide 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 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 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.

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.

24. 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 one (1) day after their deposit in the United States Mail, postage prepaid:

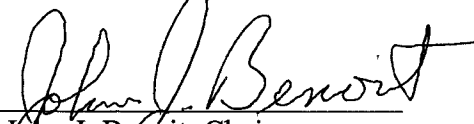
COUNTY:
Economic Development Agency
3403 Tenth St. Fifth Floor
Riverside, CA 92501
Attn: Janet Purchase

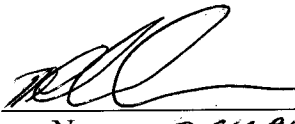
CONTRACTOR:
GI Endurant, LLC
134 N. LaSalle Street, Suite 510
Chicago, IL 60602
Attn: _____

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY OF RIVERSIDE

GI ENDURANT, LLC


By: 
John J. Benoit, Chairman
Board of Supervisors

By: 
Name: TD CHAUDHRY
Title: CEO


Dated: NOV 01 2016

Dated: October 18th 2016.

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: 
Deputy

APPROVED AS TO FORM:
Gregory P. Priamos
County Counsel

By:  10/24/16
Marsha L. Victor
Chief Deputy County Counsel