



**SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH SYSTEM MEDICAL CENTER GOVERNING BOARD
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM: 15.2
(ID # 17308)

MEETING DATE:

Tuesday, October 05, 2021

FROM : RUHS-MEDICAL CENTER:

SUBJECT: RIVERSIDE UNIVERSITY HEALTH SYSTEM-MEDICAL CENTER: Approval of Riverside University Health System Medical Center Maintenance and Air Handler Replacement Project, Approval of the associated Project Budget, Adoption of Resolution No. 2021-194, and Approval of an Energy Services Agreement and Work Order for Final Design, Construction-Related Services and continuing Maintenance of four Air Handling Units (AHUs) at the RUHS Medical Center, effective October 5, 2021; 9 years, All Districts. (CEQA Exempt) [Maximum Total Cost \$25,023,642 + up to \$250,000 in additional compensation; 100% - Hospital Enterprise Fund 40050]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the Medical Center Maintenance and Air Handler Replacement Project is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15301, Existing Facilities Exemption, Section 15302 Replacement or Reconstruction Exemption, and Section 15061 (b)(3) "Common Sense" Exemption;
2. Find that the conditions described in Resolution No. 2020 – 258 (December 15, 2020) relating to the Air Handling, heating, ventilation, humidity control and power systems at Riverside University Health System Medical Center continue to exist;

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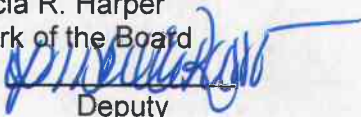
ACTION:Policy


Jennifer Cruikshank, Chief Executive Officer - Health System 9/23/2021

MINUTES OF THE GOVERNING BOARD

On motion of Supervisor Spiegel, seconded by Supervisor Washington and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
 Nays: None
 Absent: None
 Date: October 5, 2021
 xc: RUHS-Medical Center

Kecia R. Harper
 Clerk of the Board
 By: 
 Deputy

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RECOMMENDED MOTION: That the Board of Supervisors:

3. Approve the Medical Center Maintenance and Air Handler Replacement Project;
4. Approve the associated budget for the Project in the amount of \$25,032,642 plus up to \$250,000 in additional compensation;
5. Adopt the attached Resolution No. 2021 –194, approving the Energy Services and Resource Optimization Agreement (ESA) and associated Work Order with Redaptive Inc. without a competitive selection process and authorizing the Chair of the Board to sign the contract documents on behalf of the County; and
6. Delegate to the CEO of RUHS Medical Center the project management authority for the Project in accordance with applicable Board policies, including the authority to utilize consultants on the approved prequalified list for services in connection with the Project, within the approved project budget and the authority to approve change orders related to the Project within the terms of the Agreement and applicable state law.

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$464,523	\$1,514,731	\$25,273,642	\$0
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS: 100% Hospital Enterprise Fund-40050			Budget Adjustment: No	
			For Fiscal Year: 21/22 – 29/30	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

Since Riverside University Health System (RUHS) – Medical Center, then known as Riverside County Regional Medical Center, opened its doors to the public in Moreno Valley on March 31, 1998 the facility has been served by a series of roof top mounted air handling devices, which control the heat, humidity and quality of air brought into the facility. Because of the design of the hospital many of its critical services – the intensive care units, operating rooms and Emergency Department - are all served by one set of these air handlers mounted on the roof of the building housing those units. Those Air Handling Units (AHUs) are original to the building, are near or have reached the end of useful serviceable life, and now require replacement of specific elements and rehabilitation of the entire air handling system within that building in order to maintain consistent temperature and humidity parameters in the operating rooms and critical care area to meet regulatory requirements and insure the continued, uninterrupted, high level of services provided at the Medical Center.

The system of controls used for managing the air handlers is also original to the building. Together with AHUs these original systems currently are challenged in maintaining required

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temperatures and levels of humidity for the functions that take place in the building. In addition, failure of any of the units would create the need to close down operations in up to a quarter of the critical care building until repairs could be completed.

AHU replacement is not a simple matter of purchasing off the shelf new equipment and placing it where the current AHUs are located. Each unit provides air to a quarter of each floor within the critical care building – so a plan for providing temporary air to all those floors while the AHUs are replaced had to be developed. In addition, the AHUs are connected to a complex network of internal ducts which must be examined, cleaned and, most likely, in some places repaired before the new AHUs can be placed into service and their performance tested. In addition, the design for these replacements and the temporary operations plans will have to meet the standards and ongoing review of California's Office of Statewide Health Planning and Development (OSHPD).

After careful research, RUHS Medical Center leaders identified, and this Board approved in December 2020 a public private partnership – a P3 approach – to replacing the AHUs. The first part of that partnership has been successfully completed. Under the Personal Services Agreement signed in December 2020 Mesa Energy Systems, Inc. (Mesa) under the oversight and management of GI Endurant LLC, provided and led evaluation, design development and engineering services resulting in a full set of design documents and plans for the Project which are currently under review by OSHPD.

Completed plans - Those plans outline not only the replacement of the four AHUs on the roof of the critical care building, but also other components of the building's systems which are in need of replacement, cleaning or repair in order for the AHUs to function efficiently – including repair of 47 existing humidifiers, replacement of steam traps and steam valves, and cleaning of all related interior ducting. The work related to this replacement project will impact the surface of the roof sections on levels 3 and 4 – also original to the building - which will be replaced at the end of the project. The final stage will be a room by room, floor by floor "air balancing" of the entire building. The plans prepared by Mesa also lay out all the critical "phasing" of this work that is necessary so that operations at the Medical Center are impacted as little as possible while the building is maintained around them. These plans are owned by the County and the improvements described in the plans will be completed by Mesa according to OSHPD's requirements. Completion of OSHPD's review is anticipated before the end of 2021.

Despite the increased amount of necessary work found through Mesa's detailed investigation of the building's Air Handling system, the cost of the entire maintenance Project, as designed, was actually below the estimate obtained by RUHS in 2018.

Energy Services Agreement - As contemplated in the PSA, RUHS negotiated and finalized an Energy Services and Resource Optimization Agreement with Redaptive, Inc., a California

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licensed general building contractor, which will provide oversight of the maintenance repair of the AHUs, financing for the Project and over its eight year term, will guarantee the performance of the AHUs through the preventative maintenance and repair services delivered by the firm that designed the system – Mesa. This servicing and maintenance aspect of the ESA will prolong the life of the system and will provide qualified, timely repair during the critical first years of the system’s operation.

This ESA includes features specifically negotiated to reflect the operational requirements of the Medical Center. For example, during the replacement project arguably the most impactful portions on hospital operations will be those requiring temporary closure of certain rooms while the ducting leading to and from them is cleaned. RUHS negotiated for and Redaptive agreed to pay significant liquidated damages if it is unable to meet the agreed to schedules when those rooms would be returned to patient care. Once the AHUs are replaced they become an essential part of a facility that operates three hundred sixty-five days a year, twenty-four hours a day. So the ESA includes a 365/24/7 response by Mesa within thirty minutes of being called for service.

Proposed Project Budget

The approximate allocation of the project budget is as follows:

Line Item	Budgeted Amount
OSHPD Construction Cost	\$16,051,507
Installation Contingency	\$802, 575
Construction Financing Interest	\$884,239
Maintenance & Operation Guarantee Services (24/7 Operational Coverage) (96 months)	\$1,134,835
Post Construction Financing Interest (96 months)	\$3,360,717
Ownership Cost & Risk Coverage	\$2,325,246
Bonding	\$464,523
OSHPD Approvals	\$5,000
Total	\$25,023,642

Applicable Contracting Authorities

This Board found, in December 2020, that approval of the Personal Services Agreement with GIE Energy for the design of the AHU project without a competitive selection process was necessary to support the County’s access to Critical Care and Surgery services at the Medical Center. Since that time the conditions described in Resolution 2020 – 258 have continued, the

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existing, original equipment continues to age and – and because of the COVID pandemic - the Medical Center continues to treat above average numbers of patients, many of them in the Critical Care units that would be directly impacted by a failure of one or more of these AHUs. Abatement of those conditions therefore requires swift action and delay would exacerbate this risk to the health and safety of the population of the County including, but not limited to, the risk of Covid-19.

Government Code section 53030 also specifically provides authority for the County to contract for “special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required”. As outlined in the attached Resolution 2021-194 and the proposed Agreement and Work Order, the services encompassed within this project are specialized and require skills and knowledge not available within the County including how to design and complete such a project within an operating medical facility, how to do it in the shortest possible time and how to have the least possible impact on patient care. The proposed firms who are recommended to complete the project have specialized knowledge of RUHS MC and the challenges of working within such an environment, specialized knowledge of the proposed design currently under review with OSHPD, and have proven through work with this County and other similar facilities to have the necessary skills and resources to complete the Project within the time allotted.

California Environmental Quality Act (CEQA)

There is no possibility that the Maintenance and Air Handler Replacement Project will have a significant effect on the environment. The Project, as proposed, is limited to the replacement and repair of existing equipment within the Medical Center building and improvements to make the equipment functional and to meet OSHPD and Life Safety standards. The facility will continue to provide public services and this project will not result in a significant increase in capacity or intensity of use. Therefore, the Project is exempt as the project meets the scope and intent of the Common Sense Exemption in 14 California Code of Regulations (CCR) Section 15061 (b)(3), the Class 1 Categorical Exemption in 14 CCR Section 15301 and the Class 2 Exemption in 14 CCR Section 15302. A Notice of Exemption will be filed by RUHS Medical Center with the County Clerk within five days of Board approval.

Impact on Residents and Businesses

This Agreement will improve patient care by providing for better control of the heat, humidity and quality of air brought into the Medical Center’s Critical Care building.

Additional Fiscal Information

The ESA Work Order for the Project is a fixed price/stipulated sum agreement.

The source of funding will be Hospital Enterprise Fund at 100%.

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ATTACHMENTS:

Attachment A: **Energy Services and Resource Optimization Agreement with Redaptive Inc.**

Attachment B: **AHU Work Order #1**

Attachment C: **Resolution No. 2021 -194**



Jacqueline Ruiz, Sr. Management Analyst 9/29/2021



Gregory L. Priamos, Director County Counsel 9/24/2021

RESOLUTION NO. 2021-194

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A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE TO APPROVE ENERGY SERVICES AGREEMENT WITHOUT A COMPETITIVE PROCESS AS PART OF A RIVERSIDE UNIVERSITY HOSPITAL MEDICAL CENTER PROJECT NECESSARY FOR CRITICAL CARE PURSUANT TO STATE AND LOCAL COVID-19 PROCLAMATIONS AND GOVERNMENT CODE SECTION 53060

WHEREAS, certain combined air handling, heating, ventilation, humidity control and power systems and components of the Riverside University Health System Medical Center located in Moreno Valley, CA (“RUHS-MC”), in the County of Riverside (“County”) are near or have reached the end of useful serviceable life, and now require replacement of specific elements and rehabilitation of the entire air handling system in order to maintain consistent temperature and humidity parameters in operating rooms and critical care areas; and

WHEREAS, in order to maintain the proper operation of the RUHS - MC, including, but not limited to the minimum efficiency reporting values (“MERV”) air quality filtration and humidity requirements needed to conduct certain types of surgery (“Surgery”), to provide protective environment rooms for critically ill patients, including COVID-19 patients, and for neonatal intensive care units (“Critical Care”), the County must promptly contract for final design and construction-related services to replace certain elements and rehabilitate the combined heating, ventilation, humidity control and power systems and components in the Medical Center’s Building F, and implement various related improvements to the air handling units system (“AHUs”), which have been designed and submitted to the

FORM APPROVED COUNTY COUNSEL
BY: *M. Knutson* 9/23/21
DATE
BY: MARTHA ANN KNUTSON

1 California's Office of Statewide Health Planning and Development ("OSHPD") (the "Project") and
2 which can be completed, financed, and maintained through the proposed Energy Services and Resource
3 Optimization Agreement attached hereto as Exhibit A ("ESA") and the Work Order attached hereto as
4 Exhibit B ("AHU Work Order"); and

5 WHEREAS, the condition of the AHU at the RUHSMC, if left unabated, will result in a threat to
6 health and safety for those patients needing Surgery and Critical Care and thus will create a threat to the
7 health and safety of the population in the County; and

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10 WHEREAS, addressing the needs of those needing Critical Care requires swift action and delay
11 will only exacerbate the risk to the health and safety of the population of the County including, but not
12 limited to, the COVID-19 risk to the County's population; and

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15 WHEREAS, on March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of
16 Emergency due to the introduction of the novel corona virus ("COVID-19") in the state of California; and

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18 WHEREAS, on March 8, 2020, the County's Public Health Officer declared a local health
19 emergency based on an imminent and proximate threat to public health from the introduction of COVID
20 in the County; and

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23 WHEREAS, on March 10, 2020, the County's Board of Supervisors ("Board") issued Resolution
24 No. 2020-062 proclaiming the existence of a local emergency regarding COVID 19; and

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26 WHEREAS, many COVID-19 patients require Critical Care, which needs may be unmet without
27 approval of the ESA, AHU Work Order, and the Project.

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2 WHEREAS, California Government Code section 53060 (“**Section 53060**”) authorizes the Board
3 to contract with and employ any persons for the furnishing of special services and advice in financial, and
4 engineering matters if such persons are specially trained and experienced and competent to perform the
5 special services required; and

6
7 WHEREAS, the County wishes to engage Redaptive, Inc., a Delaware corporation and California
8 licensed general building contractor, to provide financing, and management of certain engineering and
9 construction activities for the Project. as more fully described in the ESA attached hereto as Exhibit A and
10 the AHU Work Order attached hereto as Exhibit B on a negotiated “sole-source” basis without the time or
11 expense of a competitive selection process; and
12

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14 WHEREAS, the ESA and AHU Work Order will also specifically include construction and
15 maintenance services by Mesa Energy Systems, Inc., a California licensed commercial HVAC contractor
16 headquartered in Irvine, California, specializing in HVAC maintenance, service, retrofit, building
17 automation systems (BAS) services, commercial refrigeration repair, and chiller services (“**Mesa**”); and
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20 WHEREAS, Mesa has performed services identical to those described in the proposed ESA and
21 AHU Work Order for the County of San Bernardino at Arrowhead Regional Medical Center for many
22 years; and
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25 WHEREAS, the County of Riverside and its project management office has previously used Mesa
26 to perform maintenance on the chillers at the SW Justice Center, various projects at County Farm Road,
27 and to evaluate the roof at RUHS Medical Center; and
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2 WHEREAS, Mesa has conducted an extensive investigation in 2021 of RUHS Medical Center's
3 building and HVAC systems and produced a design for the Project which was reviewed and approved by
4 an independent third party HVAC engineer and is presently under review by OSHPD; and
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6 WHEREAS, based on the County's experience with Redaptive and Mesa, RUHS Medical Center
7 staff and consultants are satisfied that Redaptive and Mesa have the qualifications and demonstrated
8 competence to execute the Project as negotiated; and
9

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11 WHEREAS, because of the budget shortfall caused by the current pandemic, the County does not
12 currently have sufficient funds to pay for the estimated cost of the Project, the attendant public benefit of
13 Redaptive financing the Project will result in completion of the Project significantly more quickly and for
14 less cost than if the Project were delivered through a competitive selection process involving a request for
15 qualifications and request for proposals, and will allow the County to more quickly meet the Surgery
16 Critical Care needs of its residents, and
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19 WHEREAS, the need to replace the RIHSMC AHUs and related systems requires an expeditious
20 response and responsible use of valuable County resources; and
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23 WHEREAS, calling upon organizations such as Redaptive, Inc. to provide its expertise will result
24 in a more expeditious response to complete the Project when compared to alternative, multiple-step
25 processes, thus providing significant value to the County while preserving the County's valuable
26 resources; and
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1 NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of
2 Riverside, in consultation and agreement with the Riverside University Health System Medical Center:

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- 5 1. Find that the condition of the Critical Care building AHUs at the RUHSMC if left unabated, will
6 result in a threat to health and safety for those needing Critical Care in the County and that
7 addressing the needs of those residents requires swift action and delay will threaten the public
8 health, welfare and safety of the those living within the County.
- 9
- 10 2. Find the Project and the services described in the ESA and the AHU Work Order, are in the best
11 interest of the County and the general public, meet the needs of the population of the County and
12 therefore will further the goals of the County by enhancing RUHS MC's ability to provide Surgery
13 and Critical Care services to the residents of the County during the current COVID-19 pandemic
14 and in the future.
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- 17 3. Deem the Project and the ESA and the AHU Work Order services to be necessary to assist in
18 meeting the aforementioned needs of the County.
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- 21 4. Find Redaptive Inc. and Mesa's personnel, and consultants, are specially trained, qualified,
22 experienced and competent to provide specialized engineering, construction and financing services
23 for the Project in accordance with Government Code section 53030, which engineering,
24 construction and financing services are unusual and unavailable within the County, as the County
25 does not have personnel with the specialized knowledge and skill necessary to complete the
26 Project and does not have the current budget or public financing needed for the construction of the
27 Project.
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- 5. Find that the County may forgo the competitive selection process for the design and financing of the Project because the process would not result in an economic advantage for the County.

- 6. Approve the ESA and the AHU Work Order, and authorize the Chairman of the Board to execute the ESA and the AHU Work Order in substantial conformance with the form of ESA and the AHU Work Order, as approved by County Counsel.

ROLL CALL:

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None

The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Supervisors on the date therein set forth.

Kecia R. Harper, Clerk of said Board

By  Deputy

Energy Services and Resource Optimization Agreement

This Energy Services and Resource Optimization Agreement (this “**Agreement**” or “**Contract**” or “**ESA**”) is entered into by and between Redaptive, Inc., a Delaware corporation (“**Provider**”), and County of Riverside California, a political subdivision of the State of California (“**County**”), dated and effective as of October 5, 2021 (the “**Effective Date**”) whereby the Provider agrees to implement the Resource Optimization measures for the authorized Systems, and perform the other Services set forth in this Contract, which includes the attached schedules:

Schedule A: Project and Systems Summary Description and List of Key Personnel and Division of Responsibility

Schedule A-1, Master Project Construction Schedule and Construction Operations Phasing Plan, if any, to be added by amendment

Schedule B: Work Order

Attachment 1, Scope of Services

Exhibit A to Attachment 1, OSHPD Construction Drawings

Exhibit B to Attachment 1, Specifications

Attachment 2, Construction Schedule and Construction Operations Phasing Plan

Attachment 3, Operation Guarantee

Attachment 4, Site Specific Provider Responsibilities

Attachment 5, County’s Preventative Maintenance Obligations

Attachment 6, Method for Computing Site Closure Fee

Attachment 7, Certificate of Substantial Completion

Attachment 8, Training Program

Attachment 9, Warranty/Correction Period

Attachment 10, Performance Acceptance Test on Completion

Attachment 11, Purchase Amount Calculation

Attachment 12, Proposed Metering/Performance Tracking

Attachment 13, Reduction of Payments Based on the System Availability Shortfalls

Attachment 14, Energy Savings Guarantee

Schedule C: Not Used

Schedule D: Definitions

Schedule E: Prevailing Wage Laws and Use of Apprentices

Schedule F: Provider’s Insurance Requirements

Schedule G: Form of Payment Bond and Performance Bond

RECITALS

WHEREAS, in order to maintain the proper operation of the County-owned Riverside University Health System Medical Center located in Moreno Valley, CA, more fully described in Schedule A (the “**Host Site**” or “**Site**”), the County must implement various improvements and Resource Optimization measures, which are contemplated to be constructed and installed at the

Site described on Schedule A and more specifically described within each respective Work Order (the “**Project**”); and

WHEREAS, County wishes to enter into a third party financing agreement for all the equipment, installation, start-up, commissioning, monitoring, and maintenance of specified Resource Optimization measures at such Site during the specified term, collectively referred to as the “**Work**” or the “**Services**;” and

WHEREAS, Provider has made or caused to be made an assessment of the energy and other utility consumption and the indoor air quality including temperature and humidity control characteristics of the Project, systems and existing equipment, and has developed certain procedures for reducing energy consumption, controlling indoor air quality, and reducing operating costs through Services provided and equipment that can be installed at the Project; and

WHEREAS, certain existing Air Handling Unit (AHU) system components at the Host Site are near or have reached the end of useful serviceable life, and now require prompt replacement in order to maintain consistent temperature and humidity parameters in the Medical Center’s Building F operating rooms and critical care areas; and

WHEREAS, Provider and its team are engaged in the business of investigation, design, financing, pre-construction, construction, and maintenance of heating, ventilation, humidity control, power and energy systems and components of occupied facilities in California meeting the standards of California’s Office of Statewide Health Planning and Development (“**OSHPD**”) and have completed or demonstrated the experience, competency, capability and capacity to complete projects of similar size, scope or complexity and that proposed key personnel have sufficient experience and training to competently manage and complete the final design and construction of the Project and have the financial capacity to complete the Project; and

WHEREAS, County desires to engage Provider to provide final design, construction, initial start-up, commissioning, training, monitoring, and maintenance of certain energy and operating cost savings equipment, energy savings tracking, verification of performance, and other work for the Project in accordance with the Work Product prepared by Endurant Energy pursuant to the Professional Services Agreement (“**PSA**”) between Endurant Energy and the County, as more fully described in this Agreement and Work Orders issued pursuant thereto, and subject to County approval, and Provider wishes to accept such engagement, subject to the terms and conditions set forth herein; and

WHEREAS, County and Provider will execute one or more Work Orders setting forth the terms and conditions and authorizing Provider’s performance of Work specific to the respective Systems.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as set forth below:

PREFACE

A. **Definitions.** The meanings of all capitalized terms not defined in this Contract shall have the meaning set forth below, or in **Schedule D**.

B. **Provision of Services.** Subject to the terms and conditions of this Agreement, the County hereby engages Provider to provide, and Provider hereby agrees to provide the equipment, installation, start-up, commissioning, monitoring, and maintenance of specified Systems at such Site during the specified term, as described in one or more Work Orders (defined below) to this Agreement (collectively, the “**Services**” or “**Work**”).

C. **Schedules and Work Orders.** This Agreement sets forth the general terms and conditions applicable to the provision of Services to County and is supplemented by one or more Work Orders, each of which describes a System designed to deliver Resource Optimization to County. From time to time during the ESA Term of this Agreement, the Provider and County may execute a work order (each, a “**Work Order**”) to (i) authorize the commencement of installation of one or more Systems, (ii) describe where on the Host Site Provider will install the System(s), (iii) describe the Resources the County is seeking to conserve by allowing Provider to install such System(s), and (iv) describe the Services Operation Guarantees that are applicable to such System(s) and Site(s). Each Work Order incorporates the terms of this Contract including the Schedules incorporated therein and constitutes a separate binding agreement for Services.

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ARTICLE 1. AGREEMENT ESA TERM AND PROJECT SCHEDULES

1.1 ESA Term and Work Order Term. The “**ESA Term**” is the period of time from the Effective Date and continues until the completion and acceptance of all Services and Systems authorized by Work Orders. In no event will the ESA Term expire before the expiration or termination of all Work Orders in accordance with the terms of this Agreement. The initial term of each Work Order, the “**Work Order Term**” shall begin on the date established by County in the Work Order, and continue for the duration of the Installation Period and the Operation Period for each System County authorizes by Work Order. The “**Installation Period**” is the period of time from the Date of Commencement of Services pursuant to a Work Order until Final Acceptance of the System. The “**Operation Period**” is the period of time from the date of Substantial Completion, through delivery of Services until final payment.

1.2 Date of Commencement. The “**Date of Commencement**” of the Work of each System is the date established by the respective Work Order.

1.3 Liquidated Delay Damages. The County shall be entitled to recover from Provider (or offset against monthly payments) as Liquidated Delay Damages, and not as a penalty, the sums set forth in each Work Order. **Project and Work Order Construction Schedules and Construction Operations Phasing Plans.** The County-approved Master Project Construction Schedule and Project Phasing Plan are attached hereto in **Schedule A-1.** Construction Schedules for each System and Construction Operations Phasing Plans for each System shall be included in each respective Work Order. The Construction Schedules provided for the entire Project and for each Work Order shall be in a detailed precedence Critical Path Management (“CPM”), Microsoft Project or Primavera-type format, satisfactory to the County’s Project representative, which shall: (a) indicate the Commencement Date of the Work and the dates for Substantial Completion of the entire Project and the Dates for Interim Completion of each System and portions of each Site; (b) provide a graphic representation of the interrelationship of all activities and events that will occur during performance of the Work; (c) indicate the proposed starting and completion dates for the various items or subdivisions of the Work through design, construction, occupancy and maintenance; (d) indicate early and late start dates for the various Work activities and items so that all Float time is accurately identified; (e) disclose relationship in number of days and types of linkage between all linked activities; (f) identify, coordinate and integrate design schedules, construction schedules, County’s responsibilities, the dates for all appropriate and necessary approvals of governmental authorities, the early access dates for certain phases or stages of the Work by County, and other activities necessary for the timely Substantial Completion of the Work; (g) depict all critical off-Site Work and construction activities, including procurements, fabrication and delivery of materials, as individual activities with the relationships of such critical off-Site Work and construction activities to the commencement of on-Site Work and construction activities; and (h) set forth dates that are critical in ensuring the timely and orderly completion of the totality of the Work in accordance with the requirements of the Contract Documents. At a minimum the Construction Schedules for the entire Project and for each Work Order shall depict the schedule for Work on a trade by trade basis, tasks within each trade, and floor by floor or area by area basis. The Construction Schedule for each Work Order shall include: (1) proposed activity sequences and durations showing the amount of Float for each activity; (2) dates for receipt and acceptance of pertinent information, including County-supplied information and approvals by AHJ’s; (3) dates for preparation and processing of Submittals; (4) dates for fabrication and delivery

major items of material and equipment including those requiring long lead-time procurement; (5) County's occupancy and use requirements showing portions of the Project having occupancy priority; (6) the date of Substantial Completion; and (7) other information reasonably required by County. Float time on the CMP Construction Schedules shall be for the benefit of both County and Provider. Provider shall submit the final approved Construction Schedules for the Project and each Work Order to the County's Project representative in a working "live" version in Primavera/Microsoft Project format so County's Project representative can review logic and relationships of linked items as well as a pdf version for review each month.

1.4.2 The Provider shall monitor the progress of the Work for conformance with the requirements of the Construction Schedules and shall promptly advise the County's representative of actual or potential delays. In addition, the Construction Schedules shall be updated by the Provider and submitted to the County at least at a minimum every seven (7) days, in both hard copy and "live" electronic format, dated, numbered sequentially, comparing the "baseline" or "as-planned" schedule with the as-built schedule, all progress slippages occurring during the previously-covered time periods, the corrective action taken, all anticipated delays or difficulties, other information required to accurately represent the actual status of the progress of the Work. Failure to timely update the Construction Schedules shall constitute a default in accordance with **Section 13.2.1**. Provider shall provide County with actual start and completion dates for all scheduled activities. Key changes shall be noted by Provider when submitting. In the event any update to a Construction Schedule indicates any delays, which are the fault of Provider or its Subcontractors or suppliers, the Provider shall propose an affirmative plan to correct the delay, including active and/or additional labor, if necessary. In no event shall any update constitute an adjustment in the ESA Term or in the Work Order Term, a County-approved Construction Schedule, any completion deadlines/Milestones or an adjustment to the Work Order Purchase Amount unless any such adjustment is agreed to by the County's representative and authorized pursuant to Change Order. The Provider shall submit a revised Construction Schedule when the Provider's planned sequence is changed or when Project changes are made that affect the Construction Schedule. Any changes to the Construction Schedules and Construction Operations Phasing Plans are subject to review and approval by the County. When performing the Work, the Provider shall comply with the Master Project Construction Operations Phasing Plan and the Construction Schedule for each Work Order.

1.4.3 Excused Delays and Performance. The Provider shall not be responsible for and its performance is excused in the event of: (i) damage to or destruction of a System not caused by Provider or its subcontractors, suppliers, agents, components, materials, equipment, systems, errors, omissions or breach of contract; (ii) any loss or damage to a System due to changes to Site conditions and/or any loss or damage due to lack of access to a Site occurring after the starting date of the Work Order and, in each case, not caused by Provider, (iii) the inoperability of any equipment not (a) connected to the System, (b) provided by or through Provider, (c) under the control of Provider, or (d) damaged by Provider or its agents, contractors or subcontractors, (iv) damage or loss to the extent caused by the County's material breach of any provision of this Agreement, or County's negligence, fraud or willful misconduct, (v) loss or damage caused by the presence of any Hazardous Materials on the Site that were not brought onto the Site by Provider or Provider's agents or subcontractors, which shall be treated as Concealed Conditions in accordance with **Section 8.4**.

1.4.4 Submittal Schedule. To the extent applicable, Work Orders shall specify all required submittals, and Provider shall submit a schedule of Submittals for the County's approval upon issuance of a Work Order. The County's approval shall not be unreasonably delayed or withheld. The Submittal schedule shall (a) be coordinated with the Provider's Construction Schedule, and (b) allow the County reasonable time to review Submittals. If the Provider fails to submit a Submittal schedule, or fails to provide Submittals in accordance with the approved Submittal schedule, the Provider shall not be entitled to any increase in Work Order Purchase Amount or extension of ESA Term or Work Order Term based on the time required for review of Submittals.

1.4.5 Procurement Schedule. To the extent applicable, the Provider shall prepare and keep current, for the County's approval, a schedule for procurement, fabrication and delivery of materials and equipment including, but not limited to, those with long lead times and those for which an Allowance has been established, which is coordinated with the Construction Schedule and Submittals schedule and allows the County reasonable time to review and approve. The procurement schedule shall be provided at the time of issuance of each Work Order. The Provider is solely responsible for any delay, disruption, impact, loss of efficiency or other loss arising directly or indirectly from Provider's failure to manage procurement properly, except to the extent that County delay in approving Submittals has delayed procurement. County shall review and return all Submittals within fourteen (14) days of receipt from Provider unless the scope, length or complexity of the Submittal requires additional time for review, in which case the duration will be extended for a reasonable amount of time to complete the review.

1.4.6 Daily Logs and Progress Photographs. Specific to each Work Order issued pursuant to this Agreement, Provider shall maintain a daily log containing a record of: weather; Provider's own forces working on site; Subcontractors working on the site; number and labor classification of workers for each Subcontractor and Sub-subcontractor on Site; materials delivered; major equipment on site; Work started, completed and accomplished that day; approximate count of all personnel at the Project site; inspections, tests and visitors; accidents; any Work stoppages, delays, shortages or losses; problems encountered and other similar relevant data as the County may reasonably require. The daily log shall be signed by Provider's Superintendent. Daily logs shall be provided to County daily. Provider shall maintain daily photographs documenting the progress of the Work for every day Provider's Superintendent is on site, showing status of the Work, including excavation, footings, foundations, framing, blocking, structural members, plumbing, HVAC ducts, electrical, and communications wiring, windows, and doors, before such Work is covered. Provider shall also document any repair work, before "close up" of the repair work.

ARTICLE 2. COMPENSATION TO THE PROVIDER

2.1 Work Order Purchase Amounts. The County shall pay the Provider for the due, proper, and complete performance of the Work as required hereunder and for the due performance of all other obligations and duties imposed upon this Provider pursuant to the Contract Documents, the Work Order Purchase Amounts for all Systems authorized by County Work Order, subject to additions and deductions by Change Order as provided in the Contract Documents.

2.1.1 Work Order Payments. With respect to each System, County will pay Provider a series of monthly payments as set forth in the applicable Work Order and subject to adjustment as set forth herein and in each Work Order. County's overall payment liability with respect to a System is capped at an amount equal to the Work Order Purchase Amount, set forth in the applicable Work Order. A Work Order will be deemed completed and County will have no further payment obligation with respect to such System once the monthly payments for such System equals the Work Order Purchase Amount, as may be adjusted pursuant to **Sections 8 and 13.2.**

2.1.2 Work Order Invoices. From and after the date of Substantial Completion for each System as set forth in each respective Work Order, Provider shall invoice the County on a monthly basis, and each invoice shall state the monthly payment due from County for the System at the applicable Site.

2.1.3 Payment Terms. Provider will invoice County approximately thirty (30) days prior to the payment due date set forth in the applicable Work Order (each, a "**Payment Due Date**"). Provider shall issue an invoice to County for Services, and County shall pay through ACH. County payments to Provider shall be made net thirty (30) days commencing upon the date of Substantial Completion for each Work Order.

2.1.4 Taxes. To the extent County's purchase of the Services is subject to taxes, County will be responsible for such taxes.

2.2 Environmental Incentives. The Provider shall disclose and provide estimates of the dollar value all Environmental Incentives on each Work Order and then determine which Party owns, and may assign or sell, in the owner's sole discretion, all right, title, and interest associated with Environmental Incentives that relate to a System and the use of technology in Provider's delivery of the Services, which, if owned or assigned to Provider, the estimate will be used to reduce County's monthly payment which is owed following obtainment of the Environmental Incentives. If such benefits are paid directly to County, County may use such amounts to make monthly payments to Provider.

2.3 Compensation for Performance and Savings Tracking Services. To the extent that Services are required to measure performance and savings, the requirements shall be set forth in each Work Order.

ARTICLE 3. COUNTY RIGHTS AND OBLIGATIONS

3.1 Project Specific County Responsibilities. The County agrees to undertake the Project specific County responsibilities set forth in the Work Orders.

3.2 County Representative. The County will designate an individual or individuals in each Work Order who are authorized to act on behalf of the County either to approve, reject or otherwise facilitate the orderly execution of the Provider's Services for each Work Order and with whom the Provider may consult at all reasonable times, and whose instructions, requests, and decisions in writing shall be binding upon the County as to all matters pertaining to this Agreement and the respective Work Orders.

3.3 County's Representations and Warranties. The County represents and warrants to Provider that (i) to the best of County's knowledge all information provided by County to Provider, as it pertains to the Facility(ies) and Site(s) physical configuration, and County's planned use of the Facility(ies) and Site(s), including but not limited to all information on each Schedule, is accurate in all material respects, (ii) to the best of County's knowledge, there are no existing conditions or use restrictions that prevent either the construction, installation or operation of a System at the applicable Facility and Site or the performance of either Party under this Agreement, and (iii) this Agreement, each Work Order, Schedule and each other document delivered pursuant hereto by County has been and will be executed and delivered by a person who is duly authorized by County to do so.

3.5 Telephone and Network Access. The County is responsible for providing all required telephone lines and telephone service and/or all required network LAN/WAN access including but not limited to VPN tunneling, firewall coordination, and static/dynamic IP address maintenance to allow the Provider 24/7 remote access to performance tracking monitoring systems to the extent required to perform and complete the Services.

3.6 Existing Utilities; Removal, Relocation and Protection. In accordance with California Government Code § 4215, County shall assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project Site, if such utilities are not indicated on the Contract Documents. For such unmarked utility facilities, Provider shall be compensated for the costs of locating, repairing damage not due to the Provider's failure to exercise reasonable care, and removing or relocating utility facilities not indicated in the Contract Documents with reasonable accuracy, and for equipment on the Project Site necessarily idled during such work. Nothing in Government Code § 4215 shall be deemed to require County to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Project Site can be inferred from the presence of other visible facilities, such as buildings, meters and junction boxes, on or adjacent to the Project Site, provided, however, nothing in Government Code § 4215 shall relieve County from identifying main or trunklines in the Contract Documents. If the Provider encounters utility facilities not identified by the County in the Contract Documents, the Provider shall immediately notify, in writing, the County and the utility.

3.7 Site Access Rights. Subject to the restriction below, County hereby grants to Provider and to Provider's agents, employees, subcontractors, and insurers a non-exclusive license to access each Site during any Work Order Term involving such Site, such license to include access to, on, over, under and across each such Site and the buildings and structures located at each such Site (the "**Facility(ies)**") for the limited purposes of (a) installing, owning, maintaining, monitoring, accessing, repairing, removing and replacing any System(s) specified for such Site in an applicable Work Order; (b) performing all the Services and other obligations under this Agreement related to such System(s); and (c) enforcing all of Provider's rights set forth in the Agreement and each related Work Order. County also grants to Provider and to Provider's agents, employees, subcontractors, and insurers the right to temporary use of certain areas of the Facilities and/or Site for laydown, installation, staging, and maintenance, as may be required during installation of a System and during operation of same from time to time. Notwithstanding anything to the contrary in this Section, prior to Provider or any of its Subcontractors or other agents

accessing any Site, Provider will first obtain County's approval that such parties may access the applicable Site.

3.8 Maintenance of Facilities. Subject to the Provider's maintenance and warranty obligations under this Agreement, and any Work Order relating to a specific Site and System, County shall, at its sole cost and expense, maintain each Facility in good condition and repair in accordance with the requirements set forth in the Work Order. Except as set forth in the applicable Work Order, County is fully responsible for the maintenance and repair of each Facilities' electrical, water, communications, and computer systems and all of County's own systems and equipment (up-stream and down-stream of Systems). Each Party shall promptly notify the other Party of any matters of which it is aware that could reasonably be expected to adversely affect the Services to be provided hereunder, including, without limitation, any power outages (scheduled or otherwise), water outages, water quality, computer outages and/or weather.

3.9 No Interference. Except in connection with **Section 13.2** and/or County's preventative maintenance obligations (up-stream and down-stream of Systems) in accordance with the requirements set forth in a Work Order, or with Provider's advance written authorization, County agrees that it will not contract, allow or permit any officer, employee, representative, agent or any other party acting by, through or under County to access, perform service on, inspect, alter, modify or otherwise interfere with a System during the Installation Period.

3.10 No Liens or Claims. County shall not cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to any System or any interest therein. County shall promptly notify Provider in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, and cause the same to be discharged and released of record without cost to Provider. Except as provided in **Section 12.3** herein, Provider agrees it shall not cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to any System or any interest therein, or upon the Site, Facility or property of the County. Provider shall promptly notify the County in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, and cause the same to be discharged and released of record without cost to County. Notwithstanding the foregoing, Provider may file the UCC financing statements reflecting its ownership interest (or that of its assigns) in the Systems. Notwithstanding the foregoing, provided County furnishes alternative security (e.g., letter of credit) in the amount of the unpaid Purchase Amount for such System within a reasonable time after Provider's request, Provider agrees that it will not remove any System or any component of any System in use by County from the Facility without the written consent of County or an order of a court of competent jurisdiction.

3.11 County's Right to Stop the Work. If the Provider fails to correct Work that is not in accordance with the requirements of the Contract Documents or repeatedly fails to carry out Work in accordance with the Contract Documents, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Interim Completion deadlines or Milestones established in the respective Work Order or County-approved Construction Schedule for Substantial Completion and Final Acceptance of each System, or Work Order Term, as applicable, or disregards the instructions of the Inspector of Record or the County when based on the requirements of the Contract Documents,

the County may issue a written order to the Provider to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the County to stop the Work shall not give rise to a duty on the part of the County to exercise this right for the benefit of the Provider or any other person or entity. County's right to stop the Work is in addition to and without prejudice to any other rights or remedies of County. Subject to **Section 3.12**, notwithstanding anything to the contrary herein, in no event shall the Provider's failure to correct Work excuse the County's obligations to make monthly payments hereunder.

3.12 County's Right to Carry Out the Work. Notwithstanding other remedies available to the County, if the Provider defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within the period of time established in the respective Work Order or County-approved Construction Schedule for Substantial Completion and Final Acceptance of each System, or Work Order Term, as applicable, following receipt of notice from the County to commence and continue correction of such default or neglect with diligence and promptness ("**Correction Period**"), the County may, without prejudice to other remedies the County may have, correct such default or neglect. County may, withhold or nullify a monthly payment in whole or in part, to the extent reasonably necessary to reimburse the County for the reasonable cost of correcting such deficiencies. If current and future monthly payments are not sufficient to cover such amounts, the Provider shall pay the difference to the County immediately. This remedy is cumulative.

3.13 County's Right to Order Non-Compensable Extraordinary Measures. In the event the County determines that the performance of the Work, or any portion thereof, has not progressed or reached the level of completion required by the Contract Documents due to causes within the control of Provider, the County shall have the right to order the Provider to take corrective measures necessary to expedite the progress of construction, including, without limitation, (a) working additional shifts or overtime, (b) supplying additional manpower, equipment, and facilities and (c) submitting a recovery schedule for re-sequencing performance of the Work or other similar measures (hereinafter referred to collectively as Extraordinary Measures). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion as required by the Contract Documents. The Provider shall not be entitled to an adjustment in the monthly payment in connection with the Extraordinary Measures required by the County under or pursuant to this Section. The County may exercise the rights furnished the County under or pursuant to this Section as frequently as the County deems necessary to ensure that the Provider's performance of the Work will comply with the Interim Completion date set forth in the Contract Documents, subject to **Section 9.2**. If Provider or its Subcontractors fail to commence Extraordinary Measures within the period of time set forth in the respective Work Order from County's written demand ("**Extraordinary Measure Period**"), County may, without prejudice to other remedies, take corrective action at the expense of Provider.

3.14 Prohibited County Interests. No official of County who is authorized in such capacity and on behalf of County to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project shall become directly or indirectly interested financially in this Contract or in any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for County who is authorized in such capacity and on behalf of County to exercise any executive, supervisory or other

similar functions in connection with construction of Project shall become directly or indirectly interested financially in this Contract in any part thereof Provider shall receive no compensation and shall repay County for any compensation received by Provider hereunder, should Provider aid, abet or knowingly participate in violation of this Article.

3.15 Stopping the Work. In the event that the County wrongfully exercises its right to order the Provider to stop Work, as set forth in **Section 3.11**, Provider shall be entitled payments for additional actual costs arising from such wrongful work stoppage as set forth in **Section 9.4** relating to compensable delay.

3.16 Property Insurance. Prior to commencement of the Work, the County shall secure the builder's risk property insurance. The County's property insurance policy will have a basic **\$25,000.00** deductible per occurrence for fire and extended coverage; other deductibles may apply to other types of losses. In case of loss, Provider shall be responsible for and shall pay to County, **\$5,000.00** for each loss payable under the Builder's Risk policy attributable to the acts, errors, or omissions of Provider, its Subcontractors of every tier, and any other entity for whom Provider may be responsible. Payment of the deductible amount will be considered an uninsured loss. As such, County will hold Provider liable for payment of up to **\$5,000.00** for any such loss and may assess such losses against monthly payments due Provider. County, in its sole discretion, has the right to charge back the **\$5,000.00** obligation to any Provider or Subcontractor whom County deems responsible after the parties involved in the loss have had seven (7) calendar days to determine the responsible party for advancing such deductibles. If the Work involves remodeling an existing structure, the County shall purchase and maintain property insurance protecting the existing structure against direct physical loss or damage.

ARTICLE 4. INSTALLATION PERIOD SERVICES

4.1 Permits and Approvals. Except for those permits and fees that are specified as the responsibility of the County under the Contract Documents, the Provider shall secure and pay for necessary permits, approvals, assessments and charges required for the proper execution and completion of the Work under each Work Order issued pursuant to this Agreement. Provider shall comply with local building codes, laws, regulations, and ordinances, including submission, scheduling and necessary follow-ups to the City of Moreno Valley, OSHPD and other AHJ's to secure all necessary final approvals associated with the Project.

4.2 Design and Engineering Documents. Only to the extent required by a Work Order, the Provider shall prepare and provide at issuance of the Work Order, for written approval by the County and other AHJ's, working drawings and Specifications, which meet the program and design goals of the County, setting forth in detail the requirements for the permitting, construction, installation, testing, and start-up of the Work of the Project in accordance with the Contract Documents that will enable experienced contractors to undertake and complete the Work ("**Design & Engineering Documents**"). The Design & Engineering Documents shall include all drawings, Specifications, schedules, diagrams, and plans, and such content and detail as is necessary to properly complete the construction of each System that is part of the Project, and shall provide information customarily necessary for the use of such documents by those in the building trades. The Design & Engineering Documents must bear the stamp or seal of architects or engineers licensed in California. The Design & Engineering Documents need not be submitted to the County as a complete set, but may be submitted in successive packages according to the County-approved Submittal schedule required in **Section 1.4.4** above, each of which address separate construction trades or Systems applicable to the Project. Within fourteen (14) days after submission, unless a longer time is necessary due to the content of the Submittal, the County shall review each package of Design & Engineering Documents and either (a) approve such documents; or (b) disapprove such documents, specifying in writing the basis for disapproval.

4.2.2 The Provider covenants and agrees that (a) it shall not commence the procurement or construction of any portion of the Project until the completed Design & Engineering Documents relevant to such part or portion have been approved by the County in writing; and (b) the Design & Engineering Documents shall be accurate and free from any errors or omissions, and shall be in compliance with and accurately reflect all applicable laws. The Provider shall, at no expense to County, promptly modify any Design & Engineering Documents which are not in accordance with laws or are inaccurate or contain errors or omissions.

4.2.3 The Provider acknowledges and agrees that any review, approval, comment or evaluation by the County of any plans, drawings, specifications, or other documents prepared by or on behalf of the Provider shall be solely for the County's determining for its own satisfaction the suitability of the Project for the purposes intended therefor by the County, and may not be relied upon by the Provider, its Subcontractors, or any other third party as a substantive review thereof. The County, in reviewing, approving, commenting on, or evaluating any plans, drawings, Specifications, or other documents, shall have no responsibility or liability for the accuracy or completeness of such documents, for any defects, deficiencies or inadequacies therein or for any failure of such documents to comply with the requirements set forth in the Contract Documents, except for those documents provided to the Provider by the County. In no event shall any review, approval, comment, or evaluation by the County relieve the Provider of any liability or responsibility under this Contract, it being understood that the County is at all times ultimately relying upon the Provider's skill, knowledge, and professional training and experience in preparing any plans, drawings, Specifications, or other documents.

4.2.4 Execution of the Contract by the Provider is a representation that the Provider has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Provider shall verify existing above-grade site conditions, and perform all drawing research for existing conditions. Provider shall research and consider all relevant documents and

drawings in County's possession necessary for the Work. Provider shall investigate and field verify all existing field conditions and dimensions for inclusion on the drawings as required to develop accurate construction drawings, and final record drawings.

4.2.5 In accordance with California Government Code Sections 4216 – 4216.10, when Work is to be conducted in an area which is known, or can be inferred from the presence of other visible facilities on or adjacent to the Project site, to contain underground utilities or subsurface improvements, the Provider shall contact Underground Service Alert of Southern California at least two (2) Working Days, but not more than 14 Calendar Days, in advance of any construction activity that will or could damage or affect any underground utility or subsurface improvement, and obtain an inquiry identification number (CGC 4216.2). Caltrans and certain other agencies are not required to become a member of Underground Service Alert. The Provider shall contact non-member agencies directly and request they locate and mark their subsurface installations.

4.2.6 Field Measurements. Before starting each portion of the Work, Provider shall carefully study and compare the various Design & Engineering Documents, and other Contract Documents relative to that portion of the Work, as well as the information furnished by the County pursuant **Section 3.3**, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it.

4.3 Supervision and Performance of the Work. The Provider shall supervise, perform, and direct the Work, using the professional skill, care, and attention reasonably required for projects similar to the Project. The Provider shall be solely responsible for and have control over means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. The Provider agrees to faithfully and fully perform the terms of this Contract, and shall complete the Work free and clear of all liens except as provided in **Section 12.3**. The Provider shall, at all times during the progress of the Work, employ enough skilled workmen and have on hand and maintain an adequate supply of materials and equipment to complete the Work in accordance with the Construction Schedule. The Provider has satisfied itself, by its own independent investigation and study, regarding all the conditions of the specific areas in the Site affected by the Work to be done and materials to be furnished; the meaning, intention and sufficiency of any plans and Specifications for the Work; the recommendations of the Investment Grade Audit; and the conditions under which the Work is to be done; and has executed this Contract based on such investigation, study and determination. The Provider shall be responsible for inspection of portions of Work already performed and any pre-existing improvements to which the Work is to be interconnected to determine that such portions are in proper condition to receive subsequent Work to be performed by the Provider.

4.4 Employee Discipline. The Provider shall enforce discipline and good order among the Provider's employees and other persons carrying out the Work.

4.5 Safety. The Provider shall be responsible for initiating, maintaining, and supervising reasonable safety precautions and programs in connection with the performance of the Services. The Provider shall take reasonable precautions for safety of, and shall provide reasonable and appropriate protection to prevent damage, injury or loss to (a) employees on the Work and

other persons who may be affected thereby; (b) the Work and materials and equipment to be incorporated therein; and (c) other property at the Site or adjacent thereto.

4.6 Waste Materials and Rubbish. The Provider shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by the Work. Upon Final Acceptance of a System, the Provider shall, to the County's satisfaction, remove from and about the Site all waste materials, rubbish, Provider's tools, equipment, machinery, and surplus material.

4.7 Recycling. The Provider shall give preference to the use of recycled products in the performance of any Work, and shall cooperate with any recycling program established for the Site or available through local government(s).

4.8 Inspection and Access to the Work. The Work is subject to continuous inspection by a certified hospital inspector and other inspectors approved by the County and AHJs including, but not limited to, OSHPD and City of Moreno Valley upon providing forty-eight (48) hours prior written notice to Provider. The Provider shall notify the County's Inspector of Record before noon of the Working Day before inspection is required. Work shall be done only in the presence of the Inspector of Record, unless otherwise approved. Any work done without proper inspection will be subject to rejection. The Provider shall provide the County, the Inspector of Record, County's authorized representatives and AHJ with unrestricted access to the Work in preparation and progress wherever located during its construction at shops and yards and while in storage, as well as at the Work Site. Provider shall provide every reasonable facility for ascertaining that the materials and workmanship conform to the Contract Documents. Inspection of the Work shall not relieve the Provider of the obligation to fulfill all conditions of the Contract. The Inspector of Record cannot authorize deviations from the Design & Engineering Documents, and does not have the authority to obligate the County financially. Provider may be entitled to a schedule adjustment and/or change order in the event that an inspection causes any delay or stoppage of work or rework.

If any Work is concealed or performed without the requisite inspection notice, then the Work shall be subject to such tests or exposure as may be necessary to prove to the Inspector of Record that the materials used and the Work performed are in conformity with the Contract Documents, or said materials or Work may be removed and installed or performed again at the discretion of the Inspector of Record. All labor, equipment and materials necessary for exposing, testing or complete removal, and installation or replacement shall be furnished by the Provider at its own expense. The Provider shall replace, at its own expense, any materials or Work damaged by exposure or testing.

Cost of rework inspection incurred by the County will be deducted from the Work Order Purchase Amount, as applicable, by Unilateral Change Order. Rework inspection cost is as follows:

- (1) Provider's failure to complete the Work within the ESA Term or Work Order Term, as applicable, including any previously authorized extensions thereof, if it results in additional inspections.
- (2) Extra inspections required for Provider's correction of defective Work.
- (3) Overtime costs for acceleration of work done for Provider's convenience.

- (4) All associated costs including travel.

4.9 Use of Site. The Provider shall confine its operations to the portions of the Site identified in the Contract Documents or otherwise approved by the County, and shall not unreasonably encumber the portions of the Site used for the Work with materials, equipment, or similar items. The Provider and all Subcontractors shall use only such entrances to the Site as are designated by the County. During occupied hours, Provider shall limit construction operations to methods and procedures that do not adversely and unduly affect the environment of occupied spaces within the Site, including but not limited to creating noise, odors, air pollution, ambient discomfort, or poor lighting.

4.10 Project Meetings. The Provider shall provide for regularly scheduled project meetings during the Installation Period of each Work Order, and shall give timely advance written notice and agenda of such meetings to the County. The Provider shall provide an expedient way for continually advising County of missing information, data, needs, or decisions which may delay efficient implementation of the Work. The Provider shall record minutes, generate and maintain an "Action Items" list, distribute copies of minutes of meetings to the County within five (5) business days after each meeting setting forth a deadline for corrections by participants, make all corrections noted, and distribute revised meeting minutes, if any, within five (5) business days after the deadline established for corrections by participants. The Provider shall schedule additional project meetings if requested by the County.

4.11 Correction of the Work. The County shall have the right and authority to reject Work which does not conform to the Contract Documents. The Provider shall promptly correct Work rejected by the County for failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, and shall correct any Work found to be not in accordance with the requirements of the Contract Documents within the correction period of no less than one year after the date of Substantial Completion of the entirety of all Systems authorized by a Work Order, or Operations Guarantee period set forth in each Work Order, whichever is longer. The provisions of this **Section 4.11** apply to Work done by Subcontractors as well as to Work done by direct employees of the Provider.

4.11.1 Nothing contained in this **Section 4.11** shall be construed to establish a period of limitation with respect to other obligations which the Provider might have under the Contract Documents. Establishment of such time period as described in this **Section 4.11** relates only to the specific obligation of the Provider to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Provider's liability with respect to the Provider's obligations other than specifically to correct the Work.

4.11.2 **Service Level Commitment.** At County's option for each Work Order, Provider shall provide County with preventative maintenance and repair services described in the Work Order applicable to that System, from and after the date of Substantial Completion of each System authorized by the Work Order.

4.12 Performance and Payment Bonds. The Provider, shall, upon execution of each Work Order and prior to performing any Work on a System authorized by Work Order, obtain and furnish to the County two surety bonds. If County's issuance of a Notice to Proceed with the Work Order is delayed due to Provider's failure to return fully-executed bonds and evidence of insurance within **ten (10) calendar days** after the award, then Provider agrees to the deduction of **one (1) calendar day** from the number of days to achieve Substantial Completion of the Work for every day of delay in County's receipt of said documents. The Provider, shall furnish a satisfactory performance bond on the form attached to **Schedule B** approved by County. The performance bond shall be furnished as a guarantee of the faithful performance and completion of the Work in accordance with the requirements of the Contract Documents as may be amended from time to time including, but not limited to, liability for delays and damages to County, and Provider's warranties, guarantees, insurance and indemnity obligations, in an amount that shall remain equal to one hundred percent (100%) of the cost of the Work performed by the Provider and its subcontractors pursuant to the respective Work Order. The Provider shall furnish a satisfactory Labor and Materials Payment on the form attached to **Schedule B** approved by County in an amount that shall remain equal to one hundred percent (100%) of the cost of the Work performed by the Provider and its subcontractors pursuant to the respective Work Order to secure payment of all claims, demands, stop payment notices, mechanics liens, or charges of the State of California, of material suppliers, mechanics, or laborers employed by the Provider or by any Subcontractor or any person, firm or entity eligible to file a stop payment notice or mechanics lien with respect to the Work. Such bonds shall be issued by a California Admitted Surety Insurer company authorized to do business in the state that the Site is located. Bonds issued by a California Admitted Surety Insurer listed in the latest versions of the U.S. Department of Treasury Circular 570 shall be deemed to be accepted unless specifically rejected by County. Bonds from a California Admitted Surety Insurer not listed in Treasury Circular 570 must be accompanied by all of the documents enumerated in California Code of Civil Procedure Section 995.660(a). The bonds shall bear the same date as the Work Order and shall be in conformance with all applicable laws. The attorney-in-fact who executes the required bonds on behalf of the surety shall affix thereto a certified and current copy of the power of attorney. In the event of changes which increased the Work Order Purchase Amount, the amount of each bond shall be deemed to increase and at all times remain equal to the Work Order Purchase Amount. The signatures on the bonds shall be acknowledged by a Notary Public. Every bond must display the Surety's bond number and incorporate the Contract for construction of the Work by reference. The terms of the bonds shall provide that the Surety agrees that no notice of change order need be given to the surety company and no change shall in anyway affect its obligations and shall waive notice of any such change, extension of time, alteration or modification of the Contract Documents. The Provider shall supply evidence satisfactory to the County that the party issuing the bonds has the authority to bind the issuing surety company.

4.12.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Provider shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

4.12.2 Should any bond become insufficient, or should any of the sureties, in the opinion of the County, become non-responsible or unacceptable, the Provider shall, within thirty (30) Calendar Days after receiving notice from the County, provide written documentation to the

Satisfaction of the County that Provider has secured new or additional sureties for the bonds; otherwise the Provider shall be in default of the Contract.

4.12.3 Stop Payment Notice and Mechanics Lien Release Bonds. If the Provider or a Subcontractor disputes the correctness or validity or enforceability of any stop payment notice or mechanic's lien, the Provider may file with County a bond, on a form provided by County, to be approved by County's Director of Finance, executed by one or more corporate California Admitted Surety Insurers, in an amount equal to one hundred and twenty-five percent (125%) of the claim stated in the stop payment notice or mechanic's conditioned for the payment of any sum which the stop payment notice or mechanic's lien claimant may recover on the claim together with its costs of suit in the action. Upon County's acceptance of such bond and Provider's recordation and service on claimant of any mechanic's lien release bond, County shall not withhold money from the Provider on account of the stop payment notice or mechanic's lien. The Surety(ies) upon the stop payment notice release bond shall be different than, and jointly and severally liable to the stop payment notice claimant with, the Payment Bond Surety(ies).

4.13 Startup/Commissioning. The Provider shall conduct a thorough and systematic performance test of each element and total System of the installed System in accordance with **Schedule A**, and demonstrate that all Systems comply with the requirements of the Contract Documents. County shall have the right to approve or retain, at its sole cost, a commissioning agent which shall perform testing. The Provider shall provide advance written notice of at least ten (10) business days to the County of the scheduled test(s). Provider will provide a commissioning test script to the County ten (10) days prior to the test date, and the test script shall be approved by the County prior to the agreed-upon test date. The County shall have the right to designate representatives to be present at any or all such tests including representatives of the manufacturers of the Systems. The Provider, or its Subcontractor(s), shall correct or adjust all deficiencies in operation of the Systems identified during the course of the tests described in this Section. The Provider shall provide to the County a description of the ongoing training requirements for the Site's operations and maintenance personnel necessary to maintain proper System performance after Final Acceptance.

4.13.1 Original Equipment Manufacturer. Provider shall execute and manage all OEM and vendor functional checkouts and production support as required to meet all Project Operation Guarantees as set forth in each Work Order including, without limitation a Certificate of Compliance.

4.14 Manufacturers' Warranties. At Final Acceptance of a particular System, the Provider shall furnish the County two (2) original complete sets of all manufacturers' warranties, guarantees, parts lists, and literature applicable to equipment, systems, fittings, and furnishings included in the Work for that System (collectively referred to as "**Manufacturers' Warranties**"), completed in favor of the County. These Manufacturers' Warranties are in addition to and not in lieu of the Provider's warranty set forth in Section 5.11, and the County is entitled to look to the Provider for remedy in all cases where the Provider's warranty applies regardless of whether a Manufacturer's Warranty also applies. The County shall acknowledge receipt of the sets of Manufacturers' Warranties on the set itself, and the Provider shall cause six (6) copies of an acknowledged set to be made and furnished to the County. All Manufacturers' Warranties will be for applicable periods and contain terms not less favorable to the County than those terms that are

standard for the applicable industries, and will either be issued in the first instance in the name of and for benefit of the County, or be in a freely assignable form and be assigned to the County to the extent assignable.

4.15 Risk of Loss. For areas under Provider's control (i.e., the Work Site), on those days and during the hours of Provider or its Subcontractors' construction operations of a given Work Order are underway at the Work Site, risk of loss to the Work for each System shall remain with Provider until the date of County's final payment for that particular System or otherwise as long as Provider maintains an ownership interest in the System. Provider is not responsible for loss or damage to the extent caused by the fault, negligent acts or omissions, or willful misconduct of County, its agents, and other third parties.

ARTICLE 5. OTHER SERVICES AND REQUIREMENTS OF PROVIDER

5.1 Contract Documents. Provider hereby covenants and agrees that it shall duly and properly perform the Services and implement the Project in accordance with the Contract Documents. Unless otherwise provided in the Contract Documents, the Provider shall provide and pay for labor, materials, tools, equipment and machinery necessary for the proper execution and completion of the Services as set forth in each Work Order issued pursuant to this Agreement. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Services including, without limitation, all items and services that are consistent with, contemplated by, or reasonably inferable from the Contract Documents, whether or not such items and services are specifically mentioned therein. The Contract Documents are complementary, and what is required by one shall be binding as if required by all.

5.2 Subcontractors. Subject to the terms of this Agreement, Provider shall be permitted to engage Subcontractors, subject to the County's prior written approval, to perform its obligations under this Agreement; provided that Provider shall continue to be responsible for all of its obligations under this Agreement and the quality of the work performed by its Subcontractors. Provider shall list the names of the Subcontractors to whom the Provider plans to award any portion of the Services in each respective Work Order for the County's approval in accordance with Section 9(d) of the Work Order.

5.2.1 Ineligible Subcontractors. Pursuant to Labor Code Section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a subcontractor on a public works project. This list of debarred contractors is available from the Department of Industrial Relations website at http://www.dir.ca.gov/dir/Labor_law/DLSE/Debar.html. In addition, Subcontractors shall not be qualified to engage in the performance of this public works project unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Provider shall not contract with an uninsured Subcontractor.

5.2.2 County's Right to Object to Subcontractors. All Subcontractors, of any tier, must be acceptable to the County. If the County has made a reasonable objection to a Subcontractor proposed by the Provider prior to installation of a System or because the proposed Subcontractor has materially breached a term of this Agreement, the Provider shall propose a

replacement. All Subcontractors shall be competent, have experience performing similar work on similarly sized projects, and have the financial capacity to complete their work.

5.2.3 Subletting and Subcontracting Fair Practices Act. Once a subcontractor (as defined in the Public Contract Code § 4100 et seq.) has been listed in a Work Order, Provider shall not have the right to make any substitution of such subcontractor except in accordance with the provisions of the Subletting and Subcontracting Fair Practices Act, Public Contract Code § 4100 et seq.

5.2.4 Contracts between the Provider and Subcontractors shall require each Subcontractor, to the extent of the Services, including maintenance activities, to be performed by the Subcontractor, to be bound to the Provider by the terms of the Contract Documents, and to assume toward the Provider all the obligations and responsibilities which the Provider, by the Contract Documents, assumes toward the County. The Provider shall be responsible to the County for acts and omissions of the Subcontractors, their agents and employees, and any other persons performing portions of the Services, to the same extent as the acts or omissions of the Provider hereunder.

5.3 Provider Team Members and Key Personnel. Included within Schedule A attached hereto is a list of the Provider Team members and key personnel (identified by name, address, discipline, scope of Services and resumes) who will be responsible for supervising the performance of the Services (“**Key Personnel**”). Among such Key Personnel there shall be appointed a principal representative of the Provider (the “**Provider’s Representative**”) who shall be the Provider’s authorized representative, and who shall receive and initiate all communications to and from the County and be authorized to render binding decisions related to the Services. The Provider shall not remove any such Key Personnel from the Project without the County’s prior written consent, which consent shall not be unreasonably withheld. If, after execution of this Contract, the County reasonably objects to any of the Provider’s Key Personnel, the Provider shall promptly remove such disapproved personnel. If any of the Provider’s Key Personnel are removed as provided above, any replacement personnel shall be subject to the prior written approval of the County, which approval shall not be unreasonably withheld. Also included within Schedule A is a list of County’s key personnel associated with this Agreement.

5.4 Taxes. Unless otherwise provided in a Work Order, the Provider shall pay all federal, state or local sales, consumer, use, and other similar taxes for which it bears the incidence of taxation that are legally enacted as of the date of execution of this Contract, whether or not effective or merely scheduled to go into effect.

5.5 Compliance with Law. The Provider shall comply with and give all notices required by federal, state, county, and municipal laws, ordinances, regulations, and orders and with the rules, regulations, or orders of the local board of fire underwriters or other similar body bearing on the performance by the Provider of the duties or responsibilities under this Contract. The Work Order Purchase Amount for the System authorized by Work Order is based upon laws, codes and regulations in existence as of the date this Contract is executed. Any changes in or to applicable laws, codes, and regulations affecting the cost of the Work shall entitle the Provider to an equitable adjustment in the Work Order Term and for the Work Order Purchase Amount for the System authorized by Work Order through a Change Order.

5.5.1 The Provider shall promptly remedy any violation of any such law, ordinance, rule, regulation, or order that comes to its attention to the extent that the same results from its performance of the Work. The Provider shall promptly, and in no event later than the close of the next business day following receipt, give notice to the County by telephone, with confirmation in writing, of receipt by the Provider of any information relating to violations of laws, ordinances, rules, regulations, and orders.

5.5.2 The Provider represents and warrants to, and covenants with, the County that (a) neither the Provider nor any of its owners or affiliates currently are, or shall be at any time during the term hereof, in violation of any laws relating to terrorism or money laundering (collectively, the “**Anti-Terrorism Laws**”), including without limitation Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and regulations of the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC) related to Specially Designated Nationals and Blocked Persons (SDN’s OFAC Regulations), and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the “**USA Patriot Act**”); (b) neither the Provider nor any of its owners, affiliates, investors, officers, directors, employees, vendors, subcontractors or agents is or shall be during the term hereof a “**Prohibited Person**” which is defined as follows: (i) a person or entity owned or controlled by, affiliated with, or acting for or on behalf of, any person or entity that is identified as an SDN on the then-most current list published by OFAC at its official website, www.treas.gov/offices/eotffc/ofac/sdn/t11sdn.pdf, or at any replacement website or other replacement official publication of such list, and (ii) a person or entity who is identified as or affiliated with a person or entity designated as a terrorist, or associated with terrorism or money laundering pursuant to regulations promulgated in connection with the USA Patriot Act; and (iii) the Provider has taken appropriate steps to understand its legal obligations under the Anti-Terrorism Laws and has implemented appropriate procedures to assure its continued compliance with such laws. The Provider hereby agrees to defend, indemnify, and hold harmless the County, its officers, directors, agents, and employees, from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney’s fees and costs) arising from or related to any breach of the foregoing representations, warranties and covenants. At any time and from time-to-time during the term, the Provider shall deliver to the County within ten (10) days after receipt of a written request therefor, a written certification or such other evidence reasonably acceptable to the County evidencing and confirming the Provider’s compliance with this Section.

5.6 **Compliance with Prevailing Wage Law.** Included within **Schedule F** attached hereto is a description of the Payment of Prevailing Wages and Employment of Apprentices.

5.7 **Remedy for Damage or Loss.** Subject to the limitation on liability set forth in Article 6, the Provider shall promptly remedy County and third-party damage, injury or loss at the Site to the extent caused in whole or in part by the Provider, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

5.8 **Royalties and License Fees.** Subject to the limitation on liability set forth in Article 6, the Provider shall pay all royalties and license fees related to the Services; shall defend suits or third-party claims for infringement of patent rights required for the Services to be performed; and shall hold the County harmless from loss on account thereof.

5.9 Publicity. County hereby authorizes Provider to use the name of County to display on Provider's website or other marketing materials; provided that the Parties shall coordinate and cooperate with each other if and when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Without the prior written consent of the County, the Provider shall not disclose details or information relating to the Project or Services to the press, the public, any news-disseminating agency or any other party, except to those parties performing portions of the Services, and then only to the extent required for the performance of the particular portion of the Services being performed.

5.10 Retention and Inspection of Documents. The Provider and its Subcontractors shall furnish the County with such information as the County reasonably requests regarding the progress and execution of the Services. For three (3) years after the Provider receives its final payment in connection with the Work Order, the Provider and its Subcontractors shall maintain and allow the County to inspect and copy records on the Services showing utilization of Subcontractors, work performed, and data and information necessary to support all performance Specifications.

5.11 Warranty. Provider warrants to the County that materials and equipment furnished under the Contract Documents will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from faults and defects not inherent in the quality required or permitted, that the materials, equipment and Work will conform with the requirements of the Contract Documents, and that the Work will be free from any encumbrances, liens, security interests, or other defects in title upon conveyance of title to the County, except as provided in **Section 12.3** herein. More specific warranty obligations and the remedies for such warranties shall be set forth in each Work Order issued pursuant to this Agreement.

5.12 Indemnification. Provider Indemnification. To the fullest extent permitted by law, Provider shall indemnify and hold harmless the County and its respective agents and employees from and against third-party claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from performance of the Services provided that such third-party claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused in whole or in part by negligent acts or omissions of the Indemnifying Party, and in no event shall the preceding indemnification apply to liability to the extent caused by the negligence or willful misconduct of the party indemnified or held harmless. This indemnification shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation act, disability benefit acts, or other employees' benefit acts.

5.12.2 County Indemnification. To the fullest extent permitted by law, County shall indemnify and hold harmless the Provider and its agents and employees from and against third-party claims, damage to property, injury to persons, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from County's sole negligence and willful misconduct in connection with the work area occurring during the Operation Period.

5.13 Insurance. The Provider shall purchase from and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Site is located, insurance coverage in accordance with the provisions of **Schedule H**. Certificates of such insurance shall be filed with the County prior to commencement of the Work. During the Guarantee Period, the insurance coverage set forth on **Schedule H** may be adjusted to a level deemed necessary by the County, in its reasonable discretion, to protect the County from liability for acts of the Provider and risks and indemnities assumed by the Provider during the performance of the Guarantee Period Services.

5.14 Organizational Conflicts of Interest Prohibited. An organizational conflict of interest is a circumstance arising out of a contractor's existing or past activities, business or financial interest, familial relationships, contractual relationships, and/or organizational structure (i.e., parent entities, subsidiaries, Affiliates, etc.) that results in: (i) impairment or potential impairments, or of Provider's ability to render impartial assistance or advice to the County or of its objectivity in performing work for the county; (ii) an unfair competitive advantage for Provider or its team members in submitting in award of a County contract or (iii) a perception or appearance of impropriety with respect to any of the County's procurements or contracts, or a perception or appearance of unfair competitive advantage with respect to a procurement by the County (regardless of whether any such perception is accurate). If any such conflict of interest is found to exist, the County may: disqualify Provider; or determine that it is otherwise in the best interest of the County to contract with such Provider and include appropriate provisions to mitigate or avoid such conflict in the contract awarded. Prior to signing this Contract, Provider has fully disclosed organizational conflicts of interest of each member of its team. If an organizational conflict of interest is discovered following the execution of the Contract the Provider will make an immediate and full written disclosure to the County that includes a description of the action that the Offeror has taken or proposes to take to avoid or mitigate such conflicts.

ARTICLE 6. LIMITATION OF PROVIDER'S LIABILITY

Notwithstanding anything to the contrary contained in this Contract, the aggregate liability of the Provider in relation to this Agreement shall not exceed an amount that is equal to the following amount: (a) two times the Work Order Purchase Amount for the System authorized by Work Order, if such amount is less than or equal to \$5,000,000; (b) \$10,000,000, if the Work Order Purchase Amount is greater than \$5,000,000 but less than or equal to \$10,000,000; or (c) the Work Order Purchase Amount, if such amount is greater than \$10,000,000. However, the preceding limitation shall not apply to, and no credit shall be issued against such liability limitation for:

- (i) The Provider's defense and hold harmless obligations set forth in Section 5.8 as they relate to patent infringement;
- (ii) The Provider's indemnity obligations set forth in Section 5.12 as they relate to claims by third parties for bodily injury, property damage, or otherwise; and
- (iii) Claims which arise or result from fraudulent or criminally unlawful acts, or the gross negligence or willful misconduct of Provider or its Subcontractors. Notwithstanding the foregoing, Provider's liability with respect to gross

negligence shall be limited to the extent such claims are covered by insurance and paid by its insurers.

The limitations on liability established in this Section shall not limit any insurance provider's liability hereunder.

In no event shall either Party be liable for damages for loss of profits, loss of use, loss of revenue, or any other special, indirect or consequential damages of any kind. Notwithstanding the foregoing, such exclusion shall not apply for the following:

- (i) The Provider's defense and hold harmless obligations set forth in **Section 5.8** as they relate to patent infringement;
- (ii) The Provider's indemnity obligations set forth in **Section 5.12** as they relate to claims by third parties for bodily injury, property damage, or otherwise; and
- (iii) Claims which arise or result from fraudulent or criminally unlawful acts, or the gross negligence or willful misconduct of Provider or its Subcontractors. Notwithstanding the foregoing, Provider's liability with respect to gross negligence shall be limited to the extent such claims are covered by insurance and paid by its insurers.

FOR THE SAKE OF CLARITY, THE PARTIES ACKNOWLEDGE AND AGREE THAT THE FOREGOING LIMITATION ON DAMAGES SHALL NOT IN ANY WAY LIMIT A PARTY'S RIGHTS TO COMMENCE A DISPUTE IN CONNECTION WITH ANY MONTHLY PAYMENTS OR SITE CLOSURE FEES PAYABLE IN CONNECTION WITH THIS AGREEMENT.

ARTICLE 7. CLAIMS AND DISPUTE RESOLUTION

7.1 Public Contract Code Section 9204 Claims Process. This section is intended to comply with the provisions of Public Contract Code Section 9204 pertaining to Claim resolution.

Click the following link for the full text of Public Contract Code Section 9204:

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PCC§ionNum=9204

7.2 Definition of Claim. The term "**Claim**" means a separate demand by Provider to County sent by registered mail or certified mail with return receipt requested, for one or more of the following:

- (a) An extension of the ESA Term or a Work Order Term, including relief from damages or penalties assessed by County for delay;
- (b) Payment by County of money or damages arising from Work done by, or on behalf of, the Provider pursuant to this Contract

and payment for which is not otherwise expressly provided for or to which Provider is not otherwise entitled in the Contract Documents;

- (c) Payment of an amount the payment of that is disputed by the County; or
- (d) An assertion by Provider that Provider's performance is prevented, delayed, or excused because the acts or omissions of County.

The term "Claim" does not include, and the Claims procedures provided under this Section do not apply to, the following:

- (v) Penalties, forfeitures or other remedies prescribed by statute or ordinance which a County is specifically authorized to administer, including revocation of prequalification status, barring a bidder from County contracts; however, statutory penalties sought against County, such as Public Contract Code sections 7107 or 20104.50, are considered Claims.
- (w) Personal injury, death, reimbursement, or other demands for compensation arising out of or resulting from liability for personal injury or death.
- (x) The County's determination of whether the Work complies with the Contract Documents, or concerning a latent defect, breach of warranty, or guarantee to repair.
- (y) Stop payment notices.
- (z) County's rights under the Contract Documents including, but not limited to, rights of indemnification, termination, and any claims asserted by County against Provider.

7.3 Accrual of Claims. Scope Changes. When Provider has a claim for an increase in the Work Order Purchase Amount or Work Order Term due to a scope change which has not yet become final, a "Claim" will be deemed to arise once the County has issued a written decision (a) denying, in whole or in part, Provider's change order proposal request; (b) denying Provider costs or time extension arising from a Change Directive; or (c) issuing of Disputed Work directive.

7.3.2 Other Claims/Notice of Intent to File. In the case of a Claim by Provider that does not involve a scope change or extension of time and which has not become final, the Claim may be asserted if, and only if, Provider gives written notice to County of intent to file the Claim within fifteen (15) calendar days of the date of discovery relative to such circumstances (even if Provider has not yet been damaged or delayed). Such written notice of intent to file a Claim shall be valid if, and only if, it identifies the event or condition giving rise to the Claim, states its probable effect, if any with respect to Provider's entitlement to an adjustment of the Work

Order Purchase Amount or Work Order Term and complies with the requirements for delays and as set forth below. For purposes of this paragraph, a claim for which such written notice is required and has been given by Provider shall be deemed to arise on the date that such valid initial written notice is received by County.

7.4 Content of Claims. A Claim must include the following:

- (a) a statement that it is a Claim and a request for a decision on the Claim;
- (b) a detailed description of the act, error, omission, unforeseen condition, event or other circumstance giving rise to the Claim;
- (c) supporting documentation as follows: (i) if the Claim involves a Change, documentation demonstrating that a complete Change Order request was timely and properly submitted; (ii) if the Claim involves an adjustment to the ESA Term or Work Order Term, documentation demonstrating that a complete Notice of Delay and Request for Extension were timely and properly submitted, a precedence diagrammatic-style (CPM) schedule analysis identifying delays to the Work on the critical path as well as the circumstances of the delay, cause of the delay, the measures taken to prevent or minimize the delay, the length of time extension requested and the impact of the time extension requested, and, if applicable, the direct costs attributable to County-caused delay; (iii) for all other Claims, documentation demonstrating that a notice of intent to file the Claim was timely and properly submitted as required; and
- (d) a detailed justification for any remedy or relief sought by the Claim, including, without limitation, all of the following: (i) a detailed cost breakdown in the form required for submittal of Change Order Requests, and (ii) job cost records substantiating the actual costs that have been incurred.

7.5 Time for Submission of Claims. No Claims by Provider are permitted after final payment of the Purchase Amount for a System, as may be adjusted in accordance with the Contract Documents.

7.6 Waiver of Claims for Noncompliance. Any Claim not submitted within the times specified in Sections 7.3 and 7.5 will be deemed waived, regardless of any course of conduct or dealings between the Parties, express or implied acceptance of additional Work, or any alleged unjust enrichment, and regardless of whether the County is in fact prejudiced or enriched by Provider's failure to comply with this Article.

7.7 County's Receipt of a Claim; Governing Body Approval; Payment of Undisputed Amount. A Claim by Provider shall be deemed to be made on the date that valid written notice is received by County as evidenced by the return receipt issued by the United States

Postal Service. Provider shall promptly provide County with a copy of the return receipt of the Claim.

- (b) Upon receipt of a Claim, the County shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days, shall provide the Provider a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, County and Provider may, by mutual agreement, extend the time period provided in Public Contract Code Section 9204(d).
- (c) If the County needs approval from its governing body to provide the Provider a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the County shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the Provider a written statement identifying the disputed portion and the undisputed portion.
- (d) Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the County issues its written statement.

7.8 Informal Conference to Meet and Confer; Nonbinding Mediation. If the Provider disputes the County's written response, or if the County fails to respond to a Claim within the time prescribed, the Provider may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the County shall schedule a meet and confer conference within 30 days for settlement of the dispute.

- (b) Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the County shall provide the Provider a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the County issues its written statement. Any disputed portion of the Claim, as identified by the Provider in writing, shall be submitted to nonbinding mediation, with the County and the Provider sharing the associated costs equally. The County and Provider shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing. If the parties

cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures outside Public Contract Code section 9204.

- (c) For purposes of a Claim, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in Public Contract Code section 9204.
- (d) Unless otherwise agreed to by the County and the Provider in writing, the mediation conducted pursuant to Public Contract Code section 9204 shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
- (e) Public Contract Code Section 9204 does not preclude County from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under Public Contract Code section 9204 does not resolve the parties' dispute.

7.9 County's Failure to Respond. Failure by the County to respond to a Claim from Provider within the time periods described Public Contract Code Section 9204 shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the County's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of Public Contract Code section 9204, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Provider.

**7.10 PUBLIC CONTRACT CODE SECTIONS 20104-20104.6 ("ARTICLE 1.5")
RESOLUTION OF CONSTRUCTION CLAIMS.**

Click the following link for the full text of Article 1.5:

http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PCC&division=2.&title=&part=3.&chapter=1.&article=1.5

7.11 Notice of Third Party Claims. The County shall provide Provider with prompt written notice of the receipt of any third-party claim relating to the Contract by sending a copy of the third-party claim to Provider at the address indicated in the Agreement.

7.12 Litigation. Any Claim, dispute, or other matter in question arising out of or related to the Contract or Project that cannot be resolved between the Parties through negotiation or mediation shall be resolved by a court of competent jurisdiction in the State of California.

7.13 Attorneys' Fees. Except as expressly provided in this Agreement, each Party to any dispute arising out of this Agreement shall bear its own attorneys' fees and costs.

7.14 Government Code Claims. Nothing in the Contract, waives or modifies Provider's obligation to present a timely Claim under Government Code Section 900 et seq. Notwithstanding Provider's participation in dispute resolution proceedings or other Claims procedures under the Contract, such proceedings are in addition to Provider's obligation to present a written Government Code claim, which is a prerequisite to filing a lawsuit for money or damages against County.

7.15 Continuation of Work. Pending final resolution of any dispute under this Contract, the Provider will proceed diligently with the performance of its duties and obligations under the Contract Documents, and the County will continue to make payments of undisputed amounts in accordance with the Contract Documents.

ARTICLE 8. CHANGES IN THE WORK

8.1 Change Orders. With respect to any System authorized by a signed Work Order, the Parties may mutually agree to modify the Work, the Installation Period, the Construction Schedule, the Guarantee Period of Services and, if applicable, the Work Order Purchase Amount and Payment Terms, in which case the Parties will amend and execute new Work Order(s) for such System(s) on mutually agreeable terms. The County may order, or the Provider may request of the County (which request may be approved, rejected, conditioned, or delayed in the County's sole and absolute discretion), changes in the Work consisting of Extra Work, Deleted Work, or modifications to the Work. Such changes in the Work shall be authorized only by written Change Order signed by the County and the Provider. The adjustment to the Work Order Purchase Amount and Payment Terms for any Work Order shall be based on the mutual acceptance of a lump sum price for the Change Order work. Provider shall prepare and deliver a written proposed Change Order to County. Should County decide to proceed, it shall return the Change Order to Provider signed to indicate acceptance and instruction to proceed. Provider shall maintain, on a weekly basis, a record of Scope changes, with an estimate of fixed design cost, schedule impact, and other relevant information, in a Scope Changes Tracking Log.

8.2 No Changes That Impact Guarantee. To the extent the Provider reasonably determines that any change in the Work requested or directed by the County will materially and adversely impact the Provider's ability to meet or sustain achievement of the operation guarantees set forth in **Schedule B**, the Provider has the right, in its sole and absolute discretion, to decline such change in the Work.

8.3 Concealed Conditions. Provider shall immediately notify County if it encounters Concealed Conditions at the Site prior to significantly disturbing the same. If such Concealed Conditions cause an increase in Provider's cost of, or time required for, performance of any part of the Work the Provider and County shall agree, by Change Order, on how to proceed and the

extent of any adjustment to the time required for performance of the Work and to the Work Order Purchase Amount for the System authorized by Work Order. If the County determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the County shall promptly notify the Provider, stating the reasons. In the event that a dispute arises between the County and the Provider as to whether the conditions materially differ, or cause a decrease or increase in the Provider's cost of, or time required for, performance of any part of the Work, the Provider shall not be excused from any scheduled completion date provided for by the Contract or Work Order, but shall proceed with all Work to be performed under the Contract or Work Order.

8.4 Disputed Work. If the Provider and County are unable to reach agreement on whether or not Provider is entitled to a Change Order, the County may direct the Provider to proceed with the Disputed Work by issuing a Disputed Work directive. Payment shall be as later determined by mutual agreement or in accordance with the Claims and dispute resolution procedures in **ARTICLE 7**. Although not to be construed as proceeding under **ARTICLE 7**, the Provider shall keep and furnish record of Disputed Work to the County in accordance with **ARTICLE 7**.

8.5 Changes to Work Order Term, Work Order Purchase Amount and ESA Term. The Work Order Term, Work Order Purchase Amount, Substantial Completion Date, Interim Completion Date, Final Acceptance Date, and time periods set forth in the Work Orders may only be changed by Change Order for Compensable Changes.

ARTICLE 9. TIME

9.1 Time Limits. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Contract and each Work Order, the Provider confirms that the Final Acceptance Date for the Project and each System authorized by Work Order is a reasonable period of time for performing the Work.

9.2 Delays in the Progress of the Work. If the Provider is delayed at any time in progress of the Work by any delay caused by County and/or its Affiliates or delay due to government approvals, including but not limited to OSHPD review and approval, changes ordered in the Work by the County, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions that affect the Work not reasonably anticipatable, unavoidable casualties or any other causes which otherwise constitute a Force Majeure and are beyond the control of the Provider, then the ESA Term or Work Order Term, as applicable, shall be extended by Change Order provided that: (a) the Provider has notified the County in writing of such delay within fifteen (15) days following the date when the Provider becomes aware, or should have become aware through the exercise of reasonable diligence, of such delay; (b) the Provider has taken all reasonable steps to avoid any such delay (including its continuance); (c) such delay is not a theoretical delay but does actually adversely affect the critical path of the Work; and (d) it is not caused by an act or omission of Provider or a Subcontractor, of any tier, constituting negligence, willful misconduct, or a violation of an Applicable Law, or a failure by Provider or any Subcontractor, of any tier, to comply with the Contract Documents. Otherwise, the Provider shall not be entitled to an extension of the ESA Term, or any Work Order Term, for any delays in the

progress of the Work. The Provider shall not be entitled to damages or additional payments due to such delays, except as provided in **Section 9.4**.

9.3 Force Majeure. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt written or oral notice describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required as a result of the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. Provider shall not be liable for any damage to the Facility resulting from a Force Majeure event. During the Installation Period, the Work Order Term and schedule for those Systems or Sites affected by such Force Majeure event shall be extended day for day for each day that performance of the Services is suspended due to a Force Majeure event. Should a Force Majeure event occur during the Installation Period that results in termination of this Agreement, Provider shall be entitled to the proportionate compensation then due in accordance with Section 15(b) of the respective Work Order and termination expenses incurred by Provider through the date of termination in accordance with Section 15(b) of the respective Work Order. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement, including (without limitation) County's obligation to make each monthly payment, shall not be excused by a Force Majeure event occurring during the Operation Period.

9.4 Payments for Compensable Delay.

The Provider will be compensated for its costs arising from Compensable Delays as set forth in **Section 9.2**. The County will not be liable for damages which the Provider could have avoided by any reasonable means.

9.5 Temporary Suspension of Services and the Work

The County may order the Provider in writing to suspend, delay, or interrupt the Services and the Work, in whole or in part, for such period of time as the County may deem necessary up to ninety (90) days, when determined by the County that the suspension is necessary and in the interest of the County. Provider shall comply immediately with any written order of the County's Representative. To the extent that any such suspension results in additional costs incurred by Provider, Provider shall be compensated by the County for its actual, demonstrated costs incurred due to the suspension in accordance with this Section, which shall be memorialized in a written amendment to this Agreement. Any suspension extending beyond ninety (90) days shall be deemed a termination of the Agreement for County's convenience in accordance with **Section 13.5**. Such suspension shall be without liability to the Provider on the part of the County except as otherwise provided in **Section 9.4**. Notwithstanding the foregoing, the County cannot suspend its payment obligations hereunder after the System has been installed and Final Acceptance has occurred, except as provided in **Sections 3.12, 13.2 and 13.4** herein.

ARTICLE 10. PAYMENTS AND COMPLETION

10.1 Payments. Payments to the Provider for the Work performed during the Installation Period shall be made on a monthly basis after the date of Substantial Completion for each System authorized by Work Order as set forth in the respective Work Order. The total of all payments owed by County for the Work performed by the Provider shall constitute the Work Order Purchase Amount.

10.1.2 Provider shall make payments to its Subcontractors and suppliers and shall provide the following documentation, to the extent applicable, to County for each Work Order upon request:

- (a) copies of an executed subcontract or suppliers' contract or purchase order including bonds, insurance, certificates and endorsements and all other exhibits and attachments, for each item of material, labor and service for which a disbursement has been requested;
- (b) a Change Order Log, including a list of any Change Orders contemplated or under negotiation at the date of such payment request;
- (c) daily logs for month;
- (d) record Documents updated with current Project information;
- (e) copy of Updated Construction Schedule;
- (f) copy of monthly progress report;
- (g) copies of accident reports for accidents occurring during the current pay period, if any;
- (h) other certificates or other documentation or information the County may request.

10.2 Initial Work Order Submission. To the extent applicable, the following items must be completed and submitted to County by the Provider prior to issuance of a Work Order for the System:

- (a) List of all Subcontractors, regardless of percentage of work, and suppliers, with names, addresses and telephone numbers, and license numbers.
- (b) A description of the types of Work and the amounts thereof to be provided by the Provider (as opposed to the Subcontractors)

- (c) Copies of necessary permits and inspection cards required for performance or rework.
- (d) Copies of authorizations and licenses from governing authorities for performance of the Work.
- (e) Certificates of insurance, endorsements for Provider and all Subcontractors.
- (f) Performance and payment bonds.
- (g) Resume of Provider's Designated Representative for the Work Order.
- (h) Submittal schedule.
- (i) Procurement schedule; and
- (j) List of Provider's Key Personnel

10.3 Retainage. Not applicable and all County withholdings are addressed at Section 13.2.

10.4 Monthly Payments to Subcontractors and Suppliers and Conditions to Final Completion. To the extent applicable and as otherwise provided in the Work Order, Provider shall make payments to Subcontractors and suppliers and shall provide the following documentation to County for each Work Order, all in form and substance satisfactory to the County:

- (a) A duly executed and acknowledged Provider's certification showing all Subcontractors with whom the Provider has entered into subcontracts, the amount of each subcontract, the amount requested for any Subcontractor in the invoice and the amount to be paid to the Provider, together with similar certifications from all Subcontractors;
- (b) As a condition to Final Acceptance of the System authorized by the Work Order duly executed **unconditional waivers and release on final payment** of mechanics', materialmen's and construction liens and statutory payment rights on form specified by the California Civil Code § 8138 from all Subcontractors and preliminary notice filers and from all parties entitled to receive payment from Provider and who have filed a preliminary notice in connection with the Work;
- (c) Record Documents and As-Built Drawings and Specifications (in reproducible format) including, but not limited to, accepted Shop Drawings and other Submittals, showing the various elements of

the Work including changes and selections made during construction;

- (d) Documentation that Provider has inspected, tested, and adjusted performance of every System or Facility of the Work to ensure that overall performance is in compliance with terms of the Contract Documents;
- (e) Consent of surety(ies) to final payment;
- (f) Reasonable proof that Provider has discontinued and removed temporary facilities and services from the Site, along with construction tools and facilities, forms, and similar items except for Provider's field office;
- (g) Reasonable proof that Provider has provided instruction for the County's operating personnel on systems and equipment operational requirements;
- (h) A report on performance of completed installations after adjustment that appear unable to comply with the requirements of the Contract Documents;
- (i) The operating manuals for operating and maintaining the Work including, but not limited to, instructions for all items of equipment and all control systems;
- (j) Four (4) copies of all warranties from vendors and Subcontractors, operation and maintenance manuals, instructions and related agreements, equipment certifications and similar documents, and maintenance and operating instructions, which shall include:
 - (i) Piping and wiring diagrams;
 - (ii) Valve charts and schedules;
 - (iii) Electrical panel schedules complete and posted in panels;
 - (iv) Lubrication charts and schedules;
 - (v) Guides for troubleshooting;
 - (vi) Pertinent diagrams of equipment with main parts designated for identification;
 - (vii) Manufacturer's data and capacity data on all equipment and manufacturer's parts list; and
 - (viii) Testing procedures for operating tests;
- (k) Reasonable proof that Provider has provided all tools, spare parts and required extra materials (i.e., attic stock), and similar items;

- (l) Proof of the final change-over of locks and keys to new locks. In addition, Provider must advise the County's personnel of the change-over in security provisions;
- (m) Written start-up testing performance reports of all systems after completion of start-up testing, and complete instruction of the County's operating and maintenance personnel; and
- (n) Such other documents and information as may be necessary or as may be reasonably requested by the County to verify satisfactory completion of the Work covered by such invoice.

10.5 Liens and Stop Payment Notice Claims Filed Against the Work. Provider shall not voluntarily permit any laborer's, materialmen's, mechanic's, or other similar liens to be filed or otherwise imposed on any part of the Work or the property on which the Work is performed. If any laborer's, materialmen's, mechanic's, or other similar lien or claim thereof is filed or otherwise imposed against the Site, the Provider, within thirty (30) days of the filing of such lien or other imposition thereof, shall cause such lien to be released or otherwise discharged, except as to liens which the Provider is contesting in good faith by appropriate action diligently pursued, provided the Provider has notified the County of the nature of such lien and informed the County of the type of action being pursued by the Provider and, if requested by the County, has provided the County with a bond satisfying the requirements of the laws of the state in which the Site is located sufficient to cover such claim (or cause the surety to acknowledge in writing that the lien claim is covered by the payment bond) in the event the Provider is unsuccessful in contesting same or has made other arrangements satisfactory to the County. If, however, the Provider, within the aforesaid thirty (30) day period, does not cause such lien either to be released and discharged forthwith or contests same in the manner provided hereinabove, then the County may deduct 125% of the amount of the lien claim from the next payment until the Provider has caused such lien to be released and discharged, provided a release bond, or otherwise contested the same in the manner provided hereinabove. The Provider shall indemnify, defend and hold harmless the County from all claims, losses, demands, causes of action or suits of whatever nature arising out of any such lien or that part of the Work covered thereby.

ARTICLE 11. HAZARDOUS MATERIALS

11.1 Provider's Responsibilities With Respect to Hazardous Materials. Except as set forth in a Work Order, including, without limitation the AHU System Work Order, which shall include cleaning of all ducts per NADCA duct cleaning standards, and County's infection control standards and protocols that are part of or that connect to the AHU System (Units #1-4) pursuant to Section 9(b) of the respective Work Order, the scope of Work to be performed by the Provider pursuant to this Contract and the compensation to be paid to the Provider hereunder for the Work do not include the cost of any work or service associated or connected with the identification, abatement, cleanup, control, or removal of any currently existing Hazardous Materials in or nearby the Site. The Parties agree that all duties and obligations in connection with any Hazardous Materials currently located in, on or nearby the Site or brought into the Site by a party other than the Provider or its Subcontractors, other than those defined in a Work Order, are not the Provider's responsibility. Should the Provider become aware, discover or based on reasonable evidence

suspect the presence of Hazardous Materials or any inappropriate biological condition or substance beyond those addressed in a Work Order, the Provider will immediately cease work in the affected area, and promptly notify the County of the conditions discovered. Should the Provider stop work because of such discovery, the Parties shall promptly investigate the discovery, agree on a method(s) of remediation and the County will issue a Change Order to the applicable Work Order if it would like Provider to perform remediation work in order to address impacts to the associated schedule and related monthly payments.

11.2 County's Representations and Responsibilities With Respect to Hazardous Materials. The County warrants and represents that to the best of the County's knowledge, other than as disclosed to the Provider in writing at the time of the execution of each Work Order, there are no Hazardous Materials or inappropriate biological condition or substance in or on the premises that will affect, be affected by, come in contact with, or otherwise impact upon or interfere with the Work to be performed by the Provider pursuant to this Contract.

11.3 Hazardous Materials Introduced to the Site by Provider. Notwithstanding anything to the contrary set forth in this ARTICLE 11, if any Hazardous Materials are negligently introduced to the Site after the Date of Commencement by the Provider, its Subcontractors, and any party for whom they may be liable or if any inappropriate biological substance or condition occurs within the Site as the result of the negligent implementation of the Project or the improper functioning of the Systems, then any response, removal, cleanup, or other remedial action required by applicable law shall be performed by the Provider at its sole cost and expense. Except as to the Provider's initial response to an emergency, any such remedial action(s) shall require the prior review and approval of the County.

11.4 Notice of Violations. During the term of this Agreement, each Party shall promptly notify the other Party of any summons, citation, directive, notice, complaint, letter or other communication, written or oral, received by such Party from the State's environmental protection agency, the United States Environmental Protection Agency or any other entity concerning (a) any alleged violations of any applicable law or (b) any investigation or request for information relating to the generation, use, handling, packing, transportation, treatment, storage, release, or disposal of Hazardous Material with respect to the Work or the Site.

ARTICLE 12. OWNERSHIP OF DESIGN MATERIALS AND SYSTEMS

12.1 Work Product. Upon payment of the Break Fee to the Provider in the amounts established in Exhibit B to the PSA and Final OSHPD Engineering Cost (capped at \$100,000) ("**Design Break Fee**"), if applicable to each Work Order, the design and engineering documents, deliverables and as-built drawings and Specifications ("**Work Product**") (as defined in Sections 8.2 and 8.3 of the PSA) shall become the exclusive property of the County and shall be delivered to County upon Provider's receipt of such payment(s). The Provider shall use its best efforts to ensure all copies of the Work Product are delivered or returned to the County. The Provider may retain one copy of the Work Product for its records, but shall not use such copies for any purpose other than with respect to the Services without the County's prior written consent.

12.2 Delivery of Design & Engineering Documents, Deliverables and As-Built Drawings and Specifications. Upon the earlier of the date of Interim Completion for a particular

System, or the date of termination of this Contract, the Provider shall deliver to the County any design Deliverables that have not been previously submitted to the County for that System. Upon the date of Final Acceptance of the entire Project, and each System, the Provider must provide in hard copy, reproducible "As-Built" drawings and Specifications of all existing and modified conditions associated with the Project, conforming to typical engineering standards. The As-Built drawings shall also be submitted in an electronic format compatible with the AutoCAD or other similar system in use by the County.

12.3 Ownership of Each System. For any Work Order in which County selects to make monthly payments, Provider shall be the legal and beneficial owner of each System during the applicable Work Order Term and each System shall remain the personal property of Provider. County shall concurrently authorize Provider to file the UCC financing statements, reflecting the ownership interest of Provider (or its assigns) in the Systems on the forms set forth on Schedule ("**Provider Title Documents**"), which ownership shall automatically be terminated on the date of the last Monthly Payment (or payment in full of the Site Closure Fee calculated in accordance with Attachment 6 of each Work Order) or each such System of the applicable Work Order, at which time: (a) the System shall become the Property of County; (b) Provider shall file releases of the Provider Title Documents; and (c) Provider shall execute any documents reasonably requested by the County to transfer title to County. Notwithstanding the foregoing, neither Provider, nor any assignee, may remove any portion of a System from a Site unless County is in default of its payment obligations, and without providing the County at least 180 days prior written notice and opportunity for County to cure.

12.4 Data Collection; Software. County acknowledges that Provider or Provider's subcontractors may collect information and raw data from the Systems, or that the Systems may deliver certain information and raw data to Provider or its subcontractors, which such data, shall be the joint property of County and Provider, which Provider shall submit to County upon County's request. Provider or Provider's subcontractors may use such data for any legitimate business purpose of Provider or Provider's subcontractors, provided that any general public disclosure of such data shall be done in a way such that County's identity is not, and cannot through reasonable efforts, be determined. Provider agrees and shall require its subcontractors to agree to share with County all information and data that each of them collects from the Systems.

ARTICLE 13. PERFORMANCE REVIEWS, DEFAULTS AND TERMINATION

13.1.1 Periodic Review. The County shall have the option, not more frequently than every three (3) months during the ESA Term, to conduct a review (the "**Periodic Review**") to evaluate, among other things, the extent to which the Provider is complying with its obligations under this Agreement and any Work Orders issued pursuant to this Agreement.

13.1.2 Meet and Confer. Prior to deeming Provider to be in default of this Agreement or a Work Order issued pursuant to this Agreement, the Parties shall meet and confer to seek mutual resolution of areas of concern or defaults. To the extent feasible, the Parties may come to a mutual agreement, to the extent feasible, to pause any actions and activities of the Parties pursuant to this Agreement or a Work Order (except, to the extent applicable, insurance and indemnification obligations) for a period of up to thirty (30) days to enable the Parties to schedule one or more additional meet and confer events to gather additional information and continue

discussions of the Periodic Review Matters or such events of default, as applicable, and attempt to reach a resolution.

13.2 Defaults.Provider Defaults. Provider shall be deemed to be “**Defaulting Party**” if after written notice and expiration of the Cure Period and/or Termination Cure Period, Provider:

- (a) repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- (b) repeatedly fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Provider and the Subcontractors or suppliers;
- (c) repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority including, but not limited to, violations of safety requirements;
- (d) repeatedly fails to promptly commence the Work or unnecessarily or unreasonably delays the Work or improperly discontinues the prosecution of the Work or abandons the Work;
- (e) fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from County to do so or (if applicable) after cessation of the event preventing performance;
- (f) made a representation or warranty in the Contract Documents or any certificate, schedule, instrument, or other document delivered by Provider pursuant to the Contract Documents that was false or materially misleading when made;
- (g) assigns the Contract or a Work Order or sublets the Work other than as specified in the Contract Documents;
- (h) materially fails to execute the Work in accordance with the Contract Documents;
- (i) fails to properly design, install, maintain, and/or repair the System Components in accordance with its obligations hereunder and in the applicable Work Order;
- (j) abandons a System in a manner that renders the System materially inoperable;
- (k) is otherwise guilty of substantial breach of a provision of the Contract Documents; or

- (l) failure by the Provider to pay any amount due the County in connection with Liquidated Delay Damages or failure to achieve the Operation/Savings Guarantee.

13.2.2 County Defaults. County shall be deemed to be a Defaulting Party if after written notice and expiration of reasonable period to cure, County:

- (a) fails to pay the amounts due and payable under any Work Order by the due date; or
- (b) fails substantially perform any material obligations under Article 3 or the Contract Documents.

13.3 County's Right to Cure Provider's Default. If the Provider is deemed a Defaulting Party, as set forth above, the County shall provide written notice of such default. If the Provider has not cured such default within the time period set forth in the respective Work Order following receipt of the County's notice or such other cure period as set forth in the applicable Work Order ("**Cure Period**"), and without prejudice to any other right or remedy the County may have, the County may make good such deficiencies and may deduct the cost thereof, including compensation for the County's services and expenses made necessary thereby, from the monthly payment then or thereafter due to the Provider under the Work Order that is subject to such default (and not a Work Order not subject to a default above in **Section 13.2**).

13.3.1 Emergencies. In the event of an "emergency" (defined herein as any default, neglect or defect in or with respect to the Work being performed by Provider or its Subcontractor which endangers life and which was caused by Provider or its Subcontractor), the County shall provide the Provider with written notice of such default, failure or neglect constituting such emergency, but the County may immediately commence and continue correction of such emergency, without waiting for the expiration of the above-described notice and cure period by employing reasonable self-help measures. Any costs associated with such correction may be charged to Provider and deducted from the payment then or thereafter due the Provider.

13.4 County Termination Upon Provider's Default. In the event that the Provider has not cured the default in **Section 13.2** within the cure period set forth in each respective Work Order ("**Termination Cure Period**"), County may terminate the Work Order. If the unpaid balance of the Purchase Amount and all damages incurred by the Provider exceed the County's costs of curing Provider's default, including liquidated damages, offsets for failure to meet performance guarantees, and other damages incurred by the County subject to the limitation in **ARTICLE 6**, such excess shall be paid to the Provider. If such costs and damages exceed the unpaid balance, the Provider shall pay the difference to the County. A default under one Work Order (or a default attributable to one System, in the case of a Work Order that encompasses multiple Systems) shall not constitute a default of any other Work Orders (or any other Systems, in the case of a Work Order that encompasses multiple Systems) or this Agreement, and similarly termination of one Work Order (or termination of one System, in the case of a Work Order that encompasses multiple Systems) shall not constitute termination of any other Work Orders or this Agreement.

13.5 County's Termination of Provider For Convenience. The County reserves the right, for its convenience, to terminate all or any portion of the Work or to terminate this Agreement by thirty (30) days written notice stating the effective date of the termination. In that case, the Provider and its Subcontractors shall (except for services necessary for the orderly termination of the Work):

- (a) stop all Work so terminated;
- (b) place no further order or subcontracts for materials, services, equipment, or supplies on the terminated Work;
- (c) to the extent assignable, assign to the County (in the manner and to the extent directed) all of the rights of the subcontracts relating to the terminated Work;
- (d) at the County's expense, take any action necessary to protect property of the County and property in the Provider's possession in which the County has, or may acquire, an interest; and
- (e) at the County's expense, take any other reasonable action toward termination of the Work that the County may direct.

In the event of such termination, the County's payment obligations owed to the Provider shall be as set forth in the respective Work Order.

13.6 Provider Termination. Subject to the County's right to offset Liquidated Delay Damages against payments, reduce payments for Provider's failure to meet performance guarantee, and deducts costs to cure Provider's defaults from monthly payments pursuant to **Section 3.12**, if the County fails to make monthly payments to the Provider as set forth in **ARTICLE 10** and **Schedule E**, the Provider may, upon thirty (30) days' prior written notice to the County, terminate its performance of the Contract and immediately recover the Work Order Purchase Amount.

13.6.1 Effect of Termination. Upon the termination or expiration of any Work Order, County shall notify Provider in writing which of the following options it elects:

- (a) Subject to terms mutually agreed between County and Provider, Provider shall continue to provide maintenance services for the System(s) that are the subject thereof; or
- (b) County will assume all liability for maintenance associated with the System(s) that are the subject thereof; except with respect to events arising before the end of the Work Order Term; or
- (c) In the event the termination of a Schedule by the County is for cause, then the County may, at its discretion and without waiving any rights or other remedies, take over maintenance of the System(s), and hold Provider liable for any damages.

If County does not make an election or County and Provider do not reach mutual agreement within thirty (30) days of the end of a Work Order Term, then clause (b) shall be in effect with respect to the System(s) covered by such Work Order.

13.6.2 Termination for Non-Appropriation. The County acknowledges and agrees all Services under this Agreement are essential to the County's operations. If in any fiscal year during the ESA Term, the County's Board of Supervisors does not appropriate funds for County's payment obligations under the Agreement, County may at any time terminate any Work Order provided (a) that the County has first used its best efforts to seek funds in good faith for its payment obligations under the Agreement and (b) the County's rationale for not appropriating funds for its payment obligations under the Agreement is not to avoid paying the Site Closure Fee ("Non-Appropriation Termination"). In the event of a Non-Appropriation Termination, the County shall make payment of the Site Closure Fee in accordance with the Attachment 6 to the respective Work Order(s) or, in the County's discretion and at the County's sole cost, shall (i) remove any equipment in connection with terminated Work Order and (ii) deliver such equipment to a reasonable location chosen by Provider.

ARTICLE 14. ASSIGNMENT

14.1 Provider Assignment. The Provider may: (i) assign its rights but not its obligations under the Contract Documents to an Affiliate of Provider; (ii) assign its rights but not its obligations under the Contract Documents to any person or entity in connection with a reorganization, merger, acquisition, change of control, or sale of all or substantially all of the assets or business of Provider; and (iii) assign, mortgage, pledge or otherwise collaterally assign its rights but not its obligations under the Contract Documents to any third parties providing Provider with financing or other credit support. Any attempted assignment in violation of the foregoing shall be null and void. Provider shall remain liable to perform all of its obligations under the Contract Documents in the event of an assignment, except for a successful assignment to Redaptive Sustainability Services, LLC. Notwithstanding anything to the contrary herein, Provider may assign obligations hereunder if the assignee cures a default of Provider, the assignee does not remove any vendors currently providing goods and/or services to the County in connection with a Work Order unless removal is done to cure a default hereunder, and such assignee has the same capability to perform hereunder as Service Provider. In the event of an assignment, Provider agrees that no contractors or vendors who have been debarred by the County or the State of California shall be permitted to perform work in connection with this Agreement or any Work Order. Further, the Parties acknowledge that that Provider may assign this Agreement to Redaptive Sustainability Services, LLC once Provider's CSLB contractor's license has been transferred from Redaptive, Inc. to Redaptive Sustainability Services, LLC, and that the performance and payment bonds are revised and restated to reflect Redaptive Sustainability Services, LLC as the principal under the bonds while continuing to cover all services performed prior to the assignment. After a successful assignment, Redaptive Sustainability Services, LLC shall be "Provider" under this Agreement and all outstanding Work Orders.

14.2 County Assignment. The County may assign the Contract Documents to any purchaser of the Site, to a lender for collateral purposes, or any entity wholly owned or controlled by the County so long as the County has satisfied its obligation to pay the Purchase Amount in

accordance with the Contract Documents, or the assignee is acceptable to the Provider as a qualified, creditworthy entity.

14.3 Permitted Assigns. This Contract shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties hereto.

ARTICLE 15. OTHER CONDITIONS OR PROVISIONS

15.1 Representations and Warranties. Each Party warrants and represents to the other that:

- (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and the State of California;
- (b) It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
- (c) it has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority necessary for such Party to own its assets, carry on its business and to execute, deliver and perform under this Agreement;
- (d) it is in compliance with all laws that relate to this Agreement in all material respects;
- (e) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its governing documents, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation and do not and shall not violate any law;
- (f) the applicable provisions of this Agreement are valid obligations of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable laws now or hereafter in effect);
- (g) Its execution, delivery, and performance of this Contract do not conflict with and will not result in a breach or violation of, or constitute a default under, any other agreement, lease, obligation or instrument to which it is a party, or by which it or its properties may be bound or affected; and
- (h) It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards,

permits, or orders that would materially and adversely affect its ability to perform hereunder.

15.2 Cooperation. Each Party will cooperate with and assist the other Party, its advisors, consultants, attorneys, employees, agents, and representatives, at all times during the ESA Term so as to complete the Services in an efficient, timely, and economical manner. Such cooperation and assistance by the Provider shall include, without limitation, any cooperation or assistance required in connection with the County's efforts to obtain financing for the Project.

15.3 Confidential Information. The term "Confidential Information" means Information (including Proprietary Information) that is treated as confidential by a disclosing Party, its Affiliates, or their Representatives, whether in oral, written, electronic or other form or media, whether or not such Information is marked, designated or otherwise identified as "confidential," and includes any Information that due to the nature of its subject matter or circumstances surrounding its disclosure, would reasonably be understood to be non-public, confidential or proprietary, including, without limitation: (a) the existence, terms and conditions of this Agreement, (b) all non-public Information concerning the Project, either Party or the Project, (c) all Information concerning unpatented inventions, ideas, methods and discoveries, know-how, trade secrets, unpublished patent applications and invention disclosures, invention summaries and other confidential Intellectual Property and (d) all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials that contain, are based on, or otherwise reflect or are derived from, any of the foregoing in whole or in part.

15.3.2 Each Party acknowledges that it may, in connection with the performance of this Contract, have access to, or be directly or indirectly exposed to Confidential Information of the other Party. Each Party shall hold confidential all Confidential Information of the other Party and shall not disclose or use such Confidential Information without express prior written consent of the disclosing Party, except as may be legally required. Each Party shall use reasonable measures at least as strict as those the Party uses to protect its own confidential information. Such measures shall include, without limitation, requiring employees and subcontractors to execute a non-disclosure agreement before obtaining access to the other Party's Confidential Information.

15.4 Modification or Amendment of Agreement; Operating Memoranda.

15.4.1 No amendment to this Contract shall be effective until and unless reduced to writing and executed by the Parties.

15.4.2 The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may make appropriate changes with respect to the details of performance of the Parties under this Agreement. If, as a result of a Periodic Review provided for in **Section 13.1**, or otherwise from time to time during the ESA Term, the Parties mutually agree that non-substantive refinements or adjustments that do not require any public review or approval and that concern details of performance of the Parties hereunder, are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, "Operating Memorandum", and collectively, "Operating Memoranda") approved by the Parties which, after execution, shall be attached to this Agreement

as addenda and become a part hereof. Operating Memoranda must be executed on behalf of the County by its Executive Officer or designee, and on behalf of the Provider by its authorized representative. Operating Memoranda shall not require prior notice or approval by the County's Board of Supervisors, and shall not constitute an amendment to this Agreement.

15.4.3 Operating Memoranda may be approved to make refinements or adjustments to this Agreement or to any Work Order issued pursuant to this Agreement.

15.4.4 Any substantive or significant modifications to the terms and conditions set forth in this Agreement or a Work Order, such as an increase of the Work Order Purchase Amount, reduction in insurance or indemnity requirements, or waiver of any discretionary approval requirement, shall be processed as an amendment of this Agreement, and must be approved by the Provider and by the County's Board of Supervisors or an individual authorized by the County.

15.5 Governing Law/Choice of Law. The law of the State of California shall govern this Agreement without giving effect to conflict of laws principles.

15.6 Invalidity/Severability. If any provision of this Contract or any Work Order is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement, or such Work Order (or any other Work Order) unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law.

15.7 No Waiver. No course of dealing or failure of the County and/or the Provider to enforce strictly any term, right or condition of this Contract shall be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Contract shall operate as a waiver of any other term, right or condition.

15.8 Entire Agreement. This Contract represents the entire agreement between the County and the Provider with respect to the subject matter hereof, and supersedes all prior negotiations, representations or agreements, whether written or oral.

15.9 Rights Cumulative. Except as otherwise provided in this Contract, (a) rights and remedies available to the County and/or the Provider as set forth in this Contract shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to the Parties at law and/or in equity, and (b) any specific right or remedy conferred upon or reserved to the County and/or the Provider in any provision of this Contract shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

15.10 Further Assurances. Each Party hereto shall, from time to time, at the request of the other Party and without further consideration, execute and deliver and cause to be executed and delivered such other instruments and take such other actions as the requesting Party may reasonably request to undertake the Services and carry out the intent and purposes of this Contract.

15.11 Work Orders. Each Work Order executed pursuant to this Agreement constitutes a separate contract that incorporates by reference the terms of this Agreement and the Schedules. Each such Work Order together with this Agreement and the Schedules hereto that are referenced in such Work Order completely and exclusively state the agreement of the Parties regarding the

subject matter of such Work Order and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding the subject matter of such Work Order. This Agreement and Schedules, as well as any Work Orders executed pursuant hereto may be modified only by a writing signed by both Parties.

15.12 Order of Precedence of Contract Documents. In the event of conflict between any of the Contract Documents, the provision placing a more stringent requirement on the Provider shall prevail. The Provider shall provide the better quality or greater quantity of Work and/or materials unless otherwise directed by County in writing. In the event none of the Contract Documents place a more stringent requirement or greater burden on the Provider, the controlling provision shall be that which is found in the document with higher precedence. The order of precedence, from highest to lowest, shall be as follows:

- (a) Change Orders, Change Directives and written Amendments.
- (b) This Energy Services Agreement and all Schedules
- (c) Work Orders

15.13 Survival. The rights and obligations of the Parties which by their express terms or nature and context are intended to survive termination or expiration of this Agreement, including without limitation those set forth in **Sections 5.10, 5.11, 5.12, 5.13, 5.14, and 15.1** shall survive any such termination or expiration and shall be binding upon the Parties until any action hereunder is barred by the applicable statute of limitations or statute of repose.

15.14 Counterparts. This Contract and any Work Order may be executed in counterparts, each of which shall be deemed an original, and all of which counterparts shall constitute one agreement. To facilitate execution of this Contract, the Parties may execute and exchange facsimile, PDF, or electronic signature counterparts of the signature pages.

15.15 No Third Party Beneficiaries. Except as otherwise expressly provided herein, this Agreement and all rights hereunder and under any Work Order are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other person.

15.16 Incorporation by Reference. The recitals set forth on the first few pages of this Contract, as well as all Schedules attached hereto, are hereby incorporated into this Contract by this reference and expressly made a part of this Contract.

15.17 Notices. All notices under this Agreement shall be in writing and shall be by personal delivery, electronic mail, overnight courier, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified set forth below or such other address as either Party may specify in writing. Each Party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document. All notices shall be addressed as follows:

If to County: Riverside University Health System Medical Center
26520 Cactus Avenue
Moreno Valley, CA 92555
Attn: Hospital Administration

With a copy to: County Counsel's Office
County of Riverside
3960 Orange St Ste 500
Riverside, CA 92501-3644
Attn: Martha Ann Knutson, Deputy County Counsel
Email: mknutson@rivco.org

If to Provider: Redaptive, Inc.
340 Brannan Street, Suite 400
San Francisco, CA 94107
Attn: Legal
Email: legal@redaptiveinc.com

The foregoing addresses may be changed from time to time by notice to the other Party in the manner herein before provided for.

15.18 Contractor's License Notice. Contractors are required by law to be licensed and regulated by the Contractors State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California 95826.

[SIGNATURE PAGE FOLLOWS]

Energy Services and Resource Optimization Agreement

Signature Page

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement effective as of the date first above written.

COUNTY

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

By: Karen S. Spiegel

Name: Karen Spiegel
Title: Chair, Board of Supervisors

Date: 10.05.2021

PROVIDER

REDAPTIVE, INC., a Delaware corporation

DocuSigned by:
Arvin Vohra

By: C71263D9E6E44C1
Name: Arvin Vohra
Title: Chief Executive Officer

Date: 8/31/2021

California CSLB License No.: 1080335
DIR Registration No.: TBD

ATTEST:

Kecia R. Harper
Clerk of the Board

By: Priscilla Rasso

Name: Priscilla Rasso
Title: Deputy

Date: 10.05.2021

APPROVED AS TO FORM:

Gregory P. Priamos
County Counsel

By: Martha Ann Knutson

Name: Martha Ann Knutson
Title: Deputy County Counsel

Date: 9/23/21

SCHEDULE A

**Project and Systems Summary Description and
List of Provider's Key Personnel and Division of Responsibility**

[REDAPTIVE TO PROVIDE ONCE FULL PROJECT EEM LIST FINALIZED]

Provide list of Key Personnel (with resumes) for each System and division of responsibility matrix and County's Key Personnel

SCHEDULE A-1

Project Construction Schedule and Construction Operations Phasing Plan

[REDAPTIVE TO PROVIDE ONCE FULL PROJECT EEM LIST FINALIZED]

SCHEDULE B

Work Order Form

This Work Order No. ___ (“Work Order”) is entered into this ___ day of _____, 20___, by and between Redaptive, Inc. (“Provider”) and County of Riverside (“County”).

RECITALS

- A. On or about _____, 20___ Provider and County executed an Energy Services and Resource Optimization Agreement (“Agreement”).
- B. The Agreement provides that the Parties would enter into a Work Order to authorize certain work set forth in the Scope of Services described in **Attachment 1** to the Agreement. The purpose of this Work Order is to authorize work on the terms and conditions set forth herein.

NOW, THEREFORE, the Parties hereto hereby agree:

1. **Work Order.** This Work Order incorporates the terms of the Agreement, all schedules attached thereto, and the applicable Addendum, constitutes a separate binding agreement for Services, and may only be amended, modified or waived with the written consent of the entities that are Parties to this Work Order at the time of such amendment, modification or waiver (giving effect to any assignments hereof, as discussed in the Agreement). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement as supplemented by such Addendum.
2. **Scope of Work.** The Provider is directed to perform the work listed on **Attachment 1** attached hereto and incorporated herein by reference (the “Work”) at the Host Site identified in Schedule A to the Agreement. The Work shall proceed on a System-by-System basis and consists of the following individual Systems:
 - a. [INSERT SYSTEMS]
3. **Compensation to the Provider.** The Work Order Purchase Amount for the System(s) authorized by this Work Order, subject to additions and deductions by written Change Order, shall be _____, the calculation of which is set forth in **Attachment 11** which is attached hereto and incorporated herein by reference. Following the date of Substantial Completion, the Provider shall regularly invoice the County, and the County shall remit its Monthly Payments to the Provider on a monthly basis. Billing will commence on a System-by-System basis.
 - a. Itemized Purchase Amount. The County shall pay the Provider the Purchase Amount for Provider’s performance of the AHU Work Order. The Purchase Amount includes: (1) the OSHPD Construction Cost in the Stipulated Sum of \$ _____ identified in the Itemized Purchase Amount in Attachment 11, Exhibit A to the Work order; plus (2) a Project Installation Contingency in the

Guaranteed Not-to-Exceed Amount of \$_____, for an "Installation Guaranteed Maximum Price of \$_____ ("Installation GMP") plus Maintenance and Operation Guarantee Services Attachment 11, Exhibit A, plus financing costs Attachment 11, Exhibit A.

The Purchase Amount is guaranteed by Provider not to exceed \$_____ for a ___ month maintenance, guarantee and finance period, subject to additions for changes and deductions for changes, liquidated damages, and similar remedies. This maximum sum is referred to as the ("**Work Order Purchase Amount**").

b. Installation Contingency.

- i. Amounts from the Project Installation Contingency may be reallocated among other line items contained in the OSHPD Construction Cost; provided, however, that Provider shall notify County of the need to utilize Contingency funds and obtain County's **prior** approval, which shall not be unreasonably withheld, before utilizing or reallocating any amount from the Project Installation Contingency line item. Provider shall reflect (with a narrative explanation and back-up documentation of reasonable, necessary, actual costs incurred) any use and allocation of Project Installation Contingency funds on a monthly basis for each month that Provider uses or allocates Project Installation Contingency funds and each use and allocation of such funds is subject to County's prior written approval, which shall not be unreasonably withheld. Unused Project Installation Contingency amounts shall **not** be transferred to another line item, but, instead, shall reduce the Installation GMP by Unilateral Change Order, with such savings for the benefit of the County.
- ii. The Project Installation Contingency line item is intended to be utilized only for costs to be reimbursed, subject to the Work Order Purchase Amount, for unforeseen costs arising from:
 1. costs reasonably incurred by Provider in implementation of any Construction Schedule recovery program provided such recovery is not otherwise compensable under the Contract;
 2. costs reasonably incurred by Provider due to those circumstances where the actual cost for an item or portion of the Work exceeds the amount allocated to such item in **Attachment 11**, except and excluding, field supervision and overhead, insurance costs and bond costs (which may be increased only in connection with a Change Order);
 3. costs reasonably incurred by Provider prior to Final Completion of the Work to repair damaged or Defective Work, but only to the extent such costs are not paid for with the proceeds of applicable insurance and Provider has exhausted all reasonable means to

recover such costs from a Subcontractor, Sub-subcontractor or anyone else for whom Provider is responsible pursuant to the Contract Documents or Applicable Law;

4. costs reasonably incurred by Provider due to unexpected circumstances, unanticipated charges, overtime, and additional expenses incurred by Provider due to errors in estimating both time and money, as well as Provider's cost and expenses incurred to correct Subcontractor or Sub-subcontractor scope deficiencies and Subcontractor or Sub-subcontractor field errors and omissions that are not otherwise reimbursable and do not constitute a change in the Work as set forth in this Agreement; and
 5. costs necessary to replace any Subcontractor because of the bankruptcy or failure to perform of such Subcontractor unless the performance of any such Subcontractor has been assured by a performance bond or is insured by, or enrolled under, subcontractor default insurance.
4. **Date of Commencement.** The "Date of Commencement" of each System shall be in accordance with the Construction Schedule set forth in **Attachment 2** attached hereto and incorporated herein by reference.
 5. **Work Order Term.** The Work Order Term shall begin on Date of Commencement and continue until the conclusion of the Operation Period.
 6. **Construction Schedule.** The Construction Schedule is set forth in **Attachment 2**, pursuant to change in accordance with Sections 1.4.3, 8.1, 9.2 and 9.3 of the Agreement.
 7. **Submittals.** The following submittals including, but not limited to the below list, shall be submitted by Provider for this Work Order:
 - a. [INSERT LIST OF SUBMITTALS].
 8. **County Rights and Obligations.**
 - a. County Representative. Pursuant to Section 3.2 of the Agreement, the County hereby designates _____ as its Representative for purposes of this Work Order.
 - b. County's Preventative Maintenance Obligations. The County's preventative maintenance obligations are set forth in **Attachment 5** attached hereto and incorporated herein by reference.
 - c. Upon commencement of the Work Order and at Final Acceptance, the County shall issue written confirmation that Provider is in compliance with all material terms of this Work Order and the Agreement, or notify Provider if it is not in compliance.

9. Provider Services.

- a. Design and Engineering Documents. The provisions of Section 4.2 of the Agreement are applicable to this Work Order. Provider shall construct all systems in compliance with the final design and engineering documents including, without limitation, all deferred approvals, approved by the County and OSHPD.
- b. Duct Cleaning. This Work Order includes the cleaning of all ducts per NADCA duct cleaning standards, Applicable Law, and the County's infection control standards and protocols, that are part of or that connect to the AHU System (Units #1-4).
- c. Hazardous Materials. During that cleaning, should Provider become aware, discover or based on reasonable evidence suspect the presence of Hazardous Materials or any inappropriate biological condition or substance, Provider will immediately cease work in the affected area and will promptly notify the County of the conditions discovered. Should the Provider stop work because of such discovery, the Parties shall investigate the discovery and agree on a method(s) of remediation and Change Orders to the applicable Work Order to address impacts, if any, to the associated schedule and related Monthly Payments.
- d. Subcontractors. In accordance with Section 5.2 of the Agreement, the Provider shall engage _____, located in _____ (CSLB license number _____, DIR public works contractor registration number _____) as the Subcontractor for the performance of the Work authorized by this Work Order.

Lower tier subcontractors shall include the following:

Trade	Subcontractor Name	Principal Location of Business	CSLB License Number	DIR Registration Number

County hereby consents to the use of the aforementioned Subcontractor(s). Any lower tier subcontractors to be engaged by the aforementioned Subcontractor(s) after execution of this Work Order shall be submitted to the County for its review and approval prior to such lower tier subcontractors commencing work on County property. County's approval shall not be unreasonably withheld.

- e. Environmental Incentives. Environmental incentives may be available in relation to the Work performed under this Work Order and will be subject to mutual

approval by the Parties. The Parties shall mutually agree to account for the value of any applicable environmental incentives in the Work Order Purchase Amount.

- f. Warranty. Warranty obligations are as set forth in **Attachment 9** which is attached hereto and incorporated herein by reference.
- g. Operation Guarantee. Provider shall provide County with the maintenance services set forth in **Attachment 3**, attached hereto and incorporated herein by reference, from and after the date of Substantial Completion.
- h. Site Specific Provider Responsibilities. Provider's Site-specific responsibilities are set forth in **Attachment 4** attached hereto and incorporated herein by reference.
- i. Performance Tracking and Energy Savings Guarantee. Metering/ performance tracking services are set forth in **Attachments 12 and 13**, attached hereto and incorporated herein by reference. The energy savings guarantee is set forth in **Attachment 14**, attached hereto and incorporated herein by reference.
- j. Training Program. The training program to be provided is set forth in **Attachment 8** attached hereto and incorporated herein by reference.

10. Changes in the Work.

- a. Change Order. If the Parties cannot agree on a lump sum price for ordered changes to the Work, then the County may, by written Change Order, direct Provider to commence with such changes in the Work. The costs of such Work shall be determined on the basis of reasonable actual costs and savings of performing the Work attributable to the change, plus five percent (5%) for Provider self-performed Work, ten percent (10%) for work performed by first tier Subcontractors, five percent (5%) for work performed by second-tier Sub-subcontractor, nothing (0%) for work performed by lower tier Sub-subcontractors; and a reasonable ESA funding rate not to exceed 6.95% in the event that County elects to fund the work under this Work Order. In such case, Provider shall keep and present, in such form as County may reasonably require, an itemized accounting, together with appropriate supporting data, which form the basis for an adjustment to the Work Order Purchase Amount.

11. County Remedies.

- a. County's Right to Carry Out the Work. Pursuant to Section 3.12 of the Agreement, Provider shall promptly and diligently correct any such default or neglect in any System immediately upon receipt of notice from the County. If the Provider defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within thirty (30) days following receipt of notice from the County to correct such default or neglect unless it is anticipated to take longer in accordance with a work plan approved by the County ("**Correction Period**"), the County may, without prejudice to other remedies the County may have, correct such default or neglect. County may, withhold or nullify a payment in whole or in

part, to the extent reasonably necessary to reimburse the County for the reasonable cost of correcting such deficiencies.

- b. Non-Compensable Extraordinary Measures. Pursuant to Section 3.13 of the Agreement, Provider or its Subcontractors shall promptly and diligently commence Extraordinary Measures upon receipt of notice from the County. If Provider or its Subcontractors fail to effectuate the requisite Extraordinary Measures within thirty (30) days, or such other commercially reasonable amount of time as set forth in a written work plan acceptable to the County that demonstrates why a longer time period is needed to complete the cure, from County's written demand ("**Extraordinary Measure Period**"), County may, without prejudice to other remedies, take corrective action at the expense of Provider.

12. Substantial Completion and Final Acceptance.

- a. Substantial Completion Date. The Provider will commence the Work no later than the Date of Commencement and will successfully achieve Substantial Completion of the Work for each System within the number of days from the Date of Commencement ("**Substantial Completion Date**") set forth in the Construction Schedule. Provider shall diligently perform the Work of the Project and each System in accordance with the Construction Schedule in **Attachment 2**.
- b. Request for Inspection, Punch List and Notice of Substantial Completion. When the Provider believes that the Work associated with a System has achieved Substantial Completion, the Provider will notify County in writing. Unless the County determines that the Work is not sufficiently complete to warrant an inspection, County, the Inspector of Record, and such others as may be designated by the County will inspect the Work. If the County concurs that the described portion of the Work as performed has achieved Substantial Completion, the County sign the Notice of Substantial Completion on the County's form, attached hereto as **Attachment 7**, returning it to the Provider, attaching a Final Completion Punch List of Work and establishing a deadline for completion of the Final Completion Punch List items prior to County's Final Acceptance ("**Final Completion Date**"). If the County does not concur that the Work has achieved Substantial Completion, then the County shall within ten (10) business days of such inspection prepare and give to Provider a Substantial Completion Punch List of any discrepancies or incomplete items to be completed or corrected for Substantial Completion. Failure by County to include an item on the Substantial Completion Punch List does not alter the responsibility of Provider to perform the Work in accordance with the Contract Documents. If the Provider disagrees with the discrepancies raised by the County, the Provider shall notify the County of a dispute, and such dispute shall be resolved in accordance with the Agreement. Provider shall promptly commence and diligently correct or complete such items of Work to conform to the description of the Work set forth herein including, without limitation, any disputed items, and notify the County when it is ready for re-inspection. County will then make such further inspections and Provider shall complete or correct such items as are necessary for County to issue a Notice of Substantial Completion, which shall

attach the Final Completion Punch List. Regardless of the date the Notice of Substantial Completion is issued, Substantial Completion shall be deemed to have occurred on the date stated in the Notice of Substantial Completion. Substantial Completion may occur on a System-by-System basis, and the date of Substantial Completion shall trigger the commencement of billing for each System.

- c. Final Completion Punch List. Provider shall prepare and submit to County at the time that Provider requests inspection for Substantial Completion of the entire Work, a draft proposed Final Completion Punch List of items of Work that will be required to be completed or corrected for Final Completion. Items identified in the course of any inspection for Substantial Completion that are required to achieve Final Completion the Work following Substantial Completion shall be added to the proposed Final Completion Punch List and the revised Final Completion Punch List attached to the Notice of Substantial Completion. If Provider disputes any of the items included, it shall so note its objection on the Final Completion Punch List. When Provider considers the Final Completion Punch List to be complete, it shall promptly sign and deliver the Final Completion Punch List to the County. Failure by County, Inspector of Record or Provider to include an item on the Final Completion Punch List does not alter the responsibility of Provider to perform the Work in accordance with the Contract Documents. Items of Work necessary for Final Completion that, for any reason, have been omitted from the Final Completion Punch List shall be added to the Final Completion Punch List upon request by the County made at any time prior to Final Payment and completion of such items shall be made promptly and before the Work will be considered Finally Complete.
- d. Performance of Final Completion Punch List. Provider shall proceed promptly and no later than the Final Completion Date established in the Notice of Substantial Completion to correct and complete the items on the Final Completion Punch List, including, without limitation, any disputed items, and all such items of Work shall be completed by Provider before the Work will be considered to have achieved Final Completion.
- e. Request for Final Inspection. Provider shall notify County when Provider believes that the Work is Finally Complete. County, Inspector of Record, and such others as County deems necessary or appropriate will then make a further inspection to determine whether such Work has achieved Final Completion. If such inspection, or any subsequent re-inspection required pursuant hereto, discloses any item, whether or not included on the Final Completion Punch List, which must be completed or corrected before Final Completion, Provider shall, as a condition of Final Completion, complete or correct such item, which shall then be re-inspected to confirm that such Work is Finally Completed. Provider shall reimburse County, or County may at its option withhold from Provider's payments, amounts incurred by County to the Inspector of Record, County Consultants or others whose services, for reasons within the control or responsibility of Provider or the Subcontractors, are necessary for more than two (2) inspections to determine Final Completion.

- f. Notice of Final Completion. When County determines that the Work is Finally Complete, County will prepare a Notice of Final Completion on the County's form, which shall state the date of Final Completion. Regardless of the date the Notice of Final Completion is issued, Final Completion shall be deemed to have occurred on the date stated in the Notice of Final Completion.
- g. Final Acceptance by County. Acceptance may be exercised by County, in its sole and absolute discretion, either after Final Completion or, without waiving or releasing Provider from any of its obligations under the Contract Documents, at any time after Substantial Completion and prior to Final Completion.
- h. Notice of Completion. In addition to issuance of the Notice of Substantial Completion and Notice of Final Completion, County shall have the right, exercised in its sole and absolute discretion, to record a Notice of Completion pursuant to California Civil Code §9204.
- i. No Waiver by County. No inspections conducted pursuant to this Section nor any approvals or certificates issued by County or Inspector of Record shall be deemed to be a waiver or limitation on County's right to insist on Final Completion and full performance of all other conditions to Final Payment under the Contract Documents prior to issuance of Final Payment to Provider.
- j. **Attachment 10**, attached hereto and incorporated herein by reference, sets forth information regarding the performance acceptance test and commissioning activities which must be completed prior to Substantial Completion of the last System.

13. Liquidated Delay Damages. The Parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to fix with precision the actual damages the County would incur in the event of delays in achieving Substantial Completion, or the milestones specified below, and that the liquidated damages identified in this paragraph are a good faith and reasonable estimate of the damages and loss the County would suffer, not a penalty. Notwithstanding anything herein to the contrary, in no event shall Provider's liability for liquidated delay damages exceed an aggregate of \$250,000.

- a. **Scheduled Unavailability.** As part of the Services provided, Provider and the County will agree on schedules of work, some of which will impact the availability of rooms within the Medical Center for direct patient care, including inpatient rooms, outpatient treatment areas and operating rooms (direct patient care rooms). Specifically, scheduled unavailability of portions of these areas will be required during the following times: (1) change overs between temporary and permanent air handling units (AHUs), (2) cleaning of ducting connected to the AHUs being replaced, and (3) air balancing of the areas served by each AHU being replaced. Scheduled unavailability of these areas is expected – and will not be a basis for liquidated damages. It is also expected that changes in such schedules may be necessary and agreed to between the Provider and County to respond to

unanticipated circumstances – and such agreed to changes would not be a basis for liquidated damages.

- b. **Unscheduled Unavailability.** It is also possible that changes in these schedules not agreed to by the Provider and County may occur.
 - i. In that situation the County shall be entitled to recover as liquidated damages the sum of \$4,000 per day for each direct patient care area that is not returned, as scheduled, to patient care. A “direct patient care area” for this purpose will consist of either one or a block of rooms within an inpatient unit, an operating room, or one or a block of rooms within an outpatient unit. Unavailability, even according to the agreed schedule, of areas that are not used for direct patient care will not be a basis for assessing liquidated damages. If Provider is able to complete work in a patient care area ahead of an agreed-upon scheduled date any “unused” days of unavailability will roll over to the next scheduled block of unavailability and can be used by Provider to avoid liquidated damages relating to unavailability in that subsequent area.
 - ii. Unscheduled Unavailability liquidated damages, as set forth in Section 13(b)(i) will be calculated on a running basis throughout the Services and assessed against, if at all, the amount due to the Provider at the time of Substantial Completion of each System, provided, however, that Liquidated Damages shall not exceed the aggregate limit of \$250,000.
- c. **Work Order Substantial Completion Damages.** In addition to damages for unscheduled unavailability, the County shall be entitled to recover as liquidated damages the sum of \$100 for each day Substantial Completion of the Work Order is delayed beyond the Substantial Completion Date for the entire Work Order.

14. Default and Termination.

- a. Termination Cure Period. In accordance with Section 13.2 of the Agreement, Provider shall immediately commence to cure a default and shall prosecute such cure with due diligence. If the Provider has not cured a default within thirty (30) days from receipt of the County’s notice (“Termination Cure Period”) or provided a plan for doing so that is acceptable to the County, County may terminate this Work Order as set forth in Section 13.4 of the Agreement herein.
- b. County’s Termination of Work Order for Convenience. If County desires to terminate this Work Order for convenience prior to completion of installation and Acceptance of the System, it shall pay a Site Closure Fee as calculated in accordance with **Attachment 6**, attached hereto and incorporated herein by reference (“Pre-Acceptance Site Closure Fee”). If County desires to terminate this Work Order for convenience in accordance with the Agreement following completion of the installation and Acceptance of the System, it shall pay a Site

Closure Fee as calculated in accordance with **Attachment 6** ("Post-Acceptance Site Closure Fee") with respect to such Closed Systems on the termination date.

- c. Effect of Termination. Termination or expiration of this Work Order shall be in accordance with the effect of termination provisions in the Agreement.

15. Modification or Amendment of Work Order; Operating Memoranda. No amendment of this Work Order shall be effective until and unless reduced to writing, either as an amendmenet or an Operating Memorandum, and executed by the Parties.

16. Assignment. The Parties acknowledge that that Provider may assign this Work Order to Redaptive Sustainability Services, LLC once Provider's CSLB contractor's license has been successfully transferred from Redaptive, Inc. to Redaptive Sustainability Services, LLC provided that the performance and payment bonds are revised and restated to reflect Redaptive Sustainability Services, LLC as the principal under the bonds.

17. Except as amended or supplemented herein or in previous task orders, the terms and conditions of the Agreement shall remain in full force and effect. Notwithstanding the immediately preceding sentence, the Agreement shall be interpreted in a manner consistent with the intent of this Work Order.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR WORK ORDER NO. __

IN WITNESS WHEREOF, Provider and County have caused this Work Order No. __ to be executed as of the day and year first above written.

REDAPTIVE, INC.

COUNTY OF RIVERSIDE, a public agency

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

SCHEDULE D

Definitions

All capitalized terms used in this Agreement shall have the meaning set forth below, or in Schedule D:

1. “**Act of God**” as defined in Public Contract Code section 7105, means earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves.

2. “**Admitted Surety Insurer**” means surety authorized to transact surety insurance in the State of California, as evidenced by a valid Certificate of Authority issued by the California Department of Insurance as defined in Section 105 of the Insurance Code (CCP 995.120).

3. “**Affiliate**” of a Person (as defined below) means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition only, the term “control” means the power to direct or cause the direction or the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise/direct or indirect ownership of more than fifty percent (50%) of the voting securities of a Person, and “controlled by” and “under common control with” have correlative meanings.

4. “**AHJ**” means authority having jurisdiction over the Work or Project Site including, but not limited to, County, City of Moreno Valley, OSHPD, and CalOSHA.

5. “**AHU System**” means and the Air Handling Units and related air distribution components and controls, whether temporary or permanent described in Schedule A of this Agreement.

6. “**Allowance**” means a line item amount carried in a Work Order Purchase Amount for a particular scope of Work, which cannot be sufficiently defined or quantified so as to allow the Provider to adequately determine fair value when the County issues the Work Order. Allowances include estimated values established for: (a) certain construction elements that have not yet been fully designed or authorized for inclusion in the Project; or (b) to permit deferral of selection of actual materials and equipment to a later date when additional information is available for evaluation; or (c) to cover unforeseen or differing site conditions.

7. “**Alternate energy equipment**” means equipment for the production or conversion of energy from alternate sources as its primary fuel source, such as solar, biomass, wind, geothermal, hydroelectricity under 30 megawatts, remote natural gas of less than one billion cubic feet estimated reserves per mile from an existing gas gathering line, natural gas containing 850 or fewer British Thermal Units per standard cubic foot, or any other source of energy, the efficient use of which will reduce the use of fossil or nuclear fuels.

8. “**Anti-Corruption Laws**” means all Laws related to the fight against corruption, conflict of interest, bribery, money laundering, terrorism and boycotts, including all local and state

laws, rules, policies and regulations, the United States Foreign Corrupt Practices Act of 1977, the United Kingdom Bribery Act 2010 and the United Nations Convention Against Corruption, all as may be amended from time to time.

9. “**As-Builts**” means the Provider’s daily, current and complete on-site set of Drawings and Specifications showing all changes and details as required by ARTICLE 12.

10. “**Anti-Terrorism Laws**” is defined in Section 5.5.2.

11. “**Business Day**” or “**Working Day**” means a day other than a Saturday, Sunday or other day declared as a County holiday by ordinance passed by the Board of Supervisors or required by Law to be closed for business.

12. “**Change Directive**” means a written order prepared and signed by the County, directing a change in the Work prior to agreement on adjustment, if any, in the Work Order Purchase Amount or ESA Term, or both.

13. “**Change Order**” means a written change in the Project executed by both Parties that, pursuant to ARTICLE 8, specifies changes in the Contract Services and, if applicable, changes in the Work Order Purchase Amount and Work Order Term, or in the Work Order Purchase Amount and ESA Term.

14. “**Certificate of Compliance**” means a written document signed and submitted by a supplier or manufacturer that the material or assembled material supplied to the Work Site conforms to the requirements of the Contract Documents.

15. “**Cogeneration Equipment**” means equipment for cogeneration, as defined in Section 216.6 of the Public Utilities Code, the sequential use of energy for the production of electrical and useful thermal energy. The sequence can be thermal use followed by power production or the reverse, subject to the following standards:

(a) At least 5 percent of the facility’s total annual energy output shall be in the form of useful thermal energy.

(b) Where useful thermal energy follows power production, the useful annual power output plus one-half the useful annual thermal energy output equals not less than 42.5 percent of any natural gas and oil energy input.

16. “**Compensable Change**” means circumstances involving the performance of Extra Work that are the result of: (a) Concealed Conditions; (b) amendments or additions to Applicable Laws, which amendments or additions are enacted after the date of the Contract or Work Order; (c) a Change requested by County in accordance with the conditions of authorization applicable to Compensable Changes set forth herein; or (d) other circumstances involving a Change in the Work for which Provider is given under the Contract Documents a specific and express right to an adjustment to the Work Order Purchase Amount. Compensable Changes are not caused, in whole or in part, by an act or omission of Provider or a Subcontractor, of any tier, constituting negligence, willful misconduct, or violation of an Applicable Law, or by a failure of Provider, of a Subcontractor, of any tier, to comply with the Contract Documents; or for which an adjustment to the Work Order Purchase Amount is neither prohibited by nor waived under the terms of the

Contract Documents; and that if performed would require Provider to incur additional and unforeseeable costs that would not have been required to be incurred in the absence of such circumstances.

17. **“Compensable Delay”** means, pursuant to Public Contract Code Section 7102, a delay to the Critical Path of activities affecting Provider’s ability to achieve Final Acceptance of the entirety of the Work of the Project or a System within the ESA Term or Work Order Term: (a) for which County is responsible (e.g., that is the result of a Compensable Change, the active negligence of the County or others under the control of County, a breach by County of an obligation under the Contract Documents; (b) that is unreasonable under the circumstances involved; (c) that was not within the contemplation of the County and Provider at the time of the Contract or Work Order; (d) that is not caused, in whole or in part, by an act or omission of Provider or a Subcontractor, of any tier, constituting negligence, willful misconduct, or a violation of an Applicable Law, or a failure by Provider or any Subcontractor, of any tier, to comply with the Contract Documents; and (e) for which an adjustment to the ESA Term or Work Order Term is neither prohibited by nor waived under the terms of the Contract Documents.

18. **“Concealed Conditions”** means conditions (a) subsurface or otherwise latent/concealed physical conditions at the Site that differ materially from those indicated by information about the Site made available to Provider prior to agreement on the Work Order Purchase Amount, or (b) unknown physical conditions at the Site of an unusual nature different materially from those ordinarily encountered and generally recognized as inherent in construction activities of the type and character as the Work provided for in the Contract Documents, or (c) material that the Provider believes might be hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law, and that the Provider could not have discovered through the exercise of reasonable diligence during the performance of the PSA by its Affiliate, GIE.

19. **“Concurrent Delay”** means a circumstance when the Provider is entitled to an extension of time due to a Compensable Delay or an Excusable Delay, but the performance of the Work is independently suspended, delays or interrupted by an Unexcused Delay.

20. **“Confidential Information”** is defined in Section 15.3.

21. **“Consequential Damages”** means any consequential, incidental, indirect, exemplary, special, or punitive damages whether arising out of breach of contract, tort (including negligence), strict liability, product liability or otherwise (including the entry into, performance or breach of this Agreement), regardless of whether such loss or damage was foreseeable or the Party against whom such liability is claimed has been advised of the possibility of such loss or damage, and notwithstanding the failure of any agreed or other remedy of its essential purpose, which include but are not limited to (a) damages incurred by the County for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (b) damages incurred by Provider for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

22. **“Construction Operations Phasing Plan”** means a construction operation phasing plan detailing the Provider’s phasing and staging of the Work at the Site.

23. **“Construction Schedule”** means the Provider’s construction schedule for the Work that includes, without limitation, a schedule related to the entire Project and for each energy conservation measure (ECM), and that provides for expeditious and practicable execution of all aspects of the Work.

24. **“Contract Documents”** The Contract Documents are enumerated in the Agreement and consist of the Agreement, the Schedules, Attachments and Exhibits listed in the Agreement, the Design & Engineering Documents (once approved by the County as provided in Section 4.2), the Specified System Addenda and Attachments (once approved by the County as provided in Section 4.2), the County-authorized Work Orders, the Construction Schedule, any Change Orders, the other documents listed in the Contract, and any modifications to the foregoing documents issued after execution of this Contract.

25. **“Cost of the Work”** is defined in each Work Order.

26. **“County-Assumed Risk”** means with respect to any System (a) the damage to or destruction of a System not caused by Provider or its contractors, subcontractors, suppliers, agents, components, materials, equipment, systems, errors, omissions or breach of contract; (b) any loss or damage to a System due to changes to Site conditions or lack of access to a Site occurring after the date of the Work Order and not caused by Provider, (c) the inoperability of any equipment not (i) connected to the System, (ii) provided by or through Provider, (iii) under the control of Provider, or (iv) damaged by Provider or its agents, contractors or subcontractors (provided that such damage is not the result of inoperability of equipment not connected to the System), (d) damage or loss to the extent caused by the County’s material breach of any provision of this Agreement, or County’s negligence, fraud or willful misconduct, and (e) loss or damage caused by the presence of any Hazardous Materials on the Site that were not brought onto the Site by Provider or Provider’s agents, contractors or subcontractors.

27. **“Critical Path”** or **“Critical Path Method (CPM)”** is a method of scheduling the Work in which the Critical Path represents the sequence of activities yielding the longest chain of interrelated activities in terms of time from the beginning of the Project to the end that has a Float value of zero indicating that any delay in any one activity along this path will delay the completion of the overall Work.

28. **“Customer”** or **“County”** is defined on the first page of this Agreement.

29. **“Date of Commencement”** means the date established pursuant to Section 1.2.

30. **“Day”** means calendar day unless otherwise specifically designated.

31. **“Deliverables”** means the Design Materials that are necessary for the County to operate and maintain the Project or are otherwise intended for conveyance to the County.

32. **“Disputed Work”** means work in which the County and Provider are in disagreement.

33. **“Design & Engineering Documents”** is defined in Section 4.2.1.

34. **“Design Materials”** means the copies and other tangible embodiments of the drawings, specifications, designs, plans, “architectural work” (as such term is defined in the Architectural Works Copyright Protection Act of 1990) and other documents, prepared by or on behalf of the County, the Provider, and/or Subcontractors in connection with the Project or the Contract Services.

35. **“Energy Conservation Measures”** or **“Conservation Measures”** or **“ECMs”** and each, an **“ECM”**, or **“Energy Conservation Facility”** means the alternate energy equipment, cogeneration equipment, devices, materials, and/or software, maintenance, load management techniques and equipment, or other conservation measures to reduce energy use or make for a more efficient use of energy, to be installed at the Site by the Provider or implemented at the Site and all related services as described in Schedule A.

36. **“Environmental Incentives”** means all rights, credits (including tax credits), rebates, grants, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the development or installation of the ECMs and the reduction of energy usage at the Site. Without limiting the foregoing, “Environmental Incentives” includes utility rebates or incentive programs, green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under any state tax credit program, grants from nongovernmental organizations, and the right to claim federal income tax credits under Sections 45 and/or 48 of the Internal Revenue Code.

37. **“ESA Term”** is defined in Section 1.1 of the Agreement.

38. **“Excusable Delay”** means a delay, other than a Compensable Delay, to Provider’s ability to achieve the Final Acceptance of the Work within the ESA Term or Work Order Term that is: (a) not caused, in whole or in part, by an act or omission of Provider or a Subcontractor, of any tier, to comply with the Contract Documents; (b) unforeseeable, unavoidable and beyond the control of the Provider and its Subcontractors, of every tier; and (c) the result of a Force Majeure event. Without limitation to the foregoing, neither the bankruptcy, insolvency nor financial inability of the Provider, any a Subcontractor, of any tier, nor any failure by a Subcontractor, of any tier, to perform any obligations imposed by contract or Applicable Laws shall constitute grounds for Excusable Delay.

39. **“Extra Work”** means new or unforeseen labor, materials, equipment, services or other work, not reasonably inferable by Provider or its Subcontractors from the design and other information set forth in the Contract Documents, the performance of which requires the expenditure by Provider of additional and unforeseen costs. References to Extra Work shall not be interpreted to mean or imply that Provider is entitled to an adjustment unless such Extra Work constitutes a Compensable Change.

40. **“Final Acceptance”** means the date that the County has determined, in consultation with the Provider, that all of the required Work for constructing and commissioning the Project

have been completed in accordance with the Contract Documents, the Board issues a written acceptance of a completed Contract or Work Order, and, a Notice of Completion has been recorded with the County of Riverside by the County.

41. **“Float”** means the amount of time that any activity or path of activities on the Construction Schedule may be delayed without impacting the date for Substantial Completion of the Work or the date for Interim Completion of a portion of the Work.

42. **“Force Majeure”** means an event or circumstance: (a) beyond a Party’s reasonable control; (b) without the fault or negligence of such Party; and (c) which could not have been reasonably anticipated including, without limitation, acts of God, fire, flood, wars, acts of terrorism, sabotage, a mandate, directive, order, or restraint of any governmental, regulatory or judicial body or agency (excluding the current COVID-19 pandemic and all governmental restrictions and orders arising therefrom), insurrection, the elements, natural gas supply shortages, or any other events or circumstances not within the reasonable control of the Party affected, whether similar or dissimilar to any of the foregoing.

43. **“Guarantee Period”** is defined in Section 1.1.

44. **“Guarantee Period Services”** means the performance guarantee, monitoring, Project modification, guarantee reconciliation, Performance Tracking Services, and other services to be performed during the Guarantee Period as described in the respective Work Orders.

45. **“Hazardous Material”** means (a) pollutants, contaminants, hazardous wastes, toxic substances and hazardous materials, as those terms are defined under by the U.S. Environmental Protection Agency and applicable federal, state and local laws, rules and regulations, (b) oil and petroleum products, including constituents thereof or additions thereto, (c) asbestos and asbestos containing materials, (d) lead paint (e) polychlorinated biphenyls (“PCBs”) or PCB-containing materials, (f) toxic biological material and (g) each and every hazardous chemical, extremely hazardous chemical, toxic chemical, regulated toxic substance, hazardous substance, extremely hazardous substance, hazardous material, priority pollutant, hazardous air pollutant, pollutant, and contaminant, identified or listed in any applicable law or regulation adopted thereunder.

46. **“Information”** means any and all ideas, concepts, data, know-how, discoveries, improvements, methods, techniques, technologies, systems, specifications, analyses, products, practices, processes, procedures, protocols, research, tests, trials, assays, controls, prototypes, formulas, descriptions, formulations, submissions, communications, skills, experience, knowledge, plans, objectives, algorithms, reports, results, conclusions and other information and materials, irrespective of whether or not copyrightable or patentable and in any form or medium (tangible, intangible, oral, written, electronic, observational or other) in which such information may be communicated or subsist. Without limiting the foregoing sentence, Information includes any technological, scientific, business, legal, patent, organizational, commercial, operational or financial materials or information.

47. **“Inspector of Record”** means the representative of the County, OSHPD and other AHJ’s who are assigned to inspect conformance of the Work to the Contract Documents.

48. **“Installation Period”** is defined in Section 1.1.
49. **“Intellectual Property Rights”** means any registered or unregistered intellectual property, including without limitation, patents, copyrights, trademarks, service marks, trade secrets, inventions, works of authorship or expression, computer programs, data collections and databases, and similar and related intellectual property rights protected by law.
50. **“Interim Completion”** means the achievement of the requirements for Substantial Completion for a particular ECM or System prior to the Substantial Completion Date of the System or the Project, as applicable, as specified in the Agreement or a Work Order.
51. **“Investment Grade Audit”** means the report prepared by the Provider that sets forth, among other things, (a) an assessment of the energy consumption characteristics of the Site, (b) specific energy analysis related to the Site and its operation, and (c) recommendations for projects or programs to achieve cost and/or energy savings in the operation of the Site.
52. **“Law”** and **“Applicable Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction including, but not limited to, Title 24 of the California Code of Regulations, seismic restraints for non-structural components, OSHPD plan final approval requirements, the stay at home directive issued by the Governor of the State of California (Executive Order N-35-20) issued March 19, 2020, as clarified by the List of Essential Critical Infrastructure Workers issued on March 22, 2020; and similar orders issued by AHJ’s arising from the COVID-19 virus and pandemic as amended through the Effective Date if this Agreement.
53. **“Manufacturers’ Warranties”** is defined in Section 4.14.
54. **“Non-Compensable Delay”** means delay caused by Force Majeure events.
55. **“OEM”** means original equipment manufacturer.
56. **“Operation, Maintenance and Warranty Instructions”** means documents published by the manufacturers of pre-manufactured products describing operation, maintenance and any other actions that must be performed by the County as a condition for the manufacturer to honor the specified warranty.
57. **“Parties”** means the Provider and the County. **“Party”** means either the Provider or the County.
58. **“Performance Tracking Services”** means those services to be provided by the Provider to measure and verify the performance of the ECMs described in each Work Order.
59. **“Project”** means the building analysis and recommendation services, design, engineering, installation, repairs, retrofit, complete implementation of the Energy Conservation Measures, and training program for the County’s employees as more fully described in the “Project Description” attached hereto as Schedule A and the other terms and provisions of this Agreement.

60. **“Provider”** is identified on the first page of the Agreement and means a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to this design-build energy services performance contract.

61. **“Provider’s Representative”** is defined in each respective Work Order.

62. **“PSA”** the Professional Services Agreement approved by the County Board of Supervisors on December 15, 2020 which sets forth the County’s basis of design for the Work of the Project.

63. **“Punch List”** means a list of minor items of Work remaining to be completed or to correct imperfections after Provider achieves Substantial Completion and prior to Final Acceptance, which do not prevent an ECM or the Project from being used for the purpose for which it is intended, which have no effect of the safety, function or operability of the Work and which will not prevent the issuance of applicable permits or certificates for such use.

64. **“Resource”** means the energy, water, indoor air quality including temperature and humidity controls, financial, or other resource described in a Work Order.

65. **“Resource Optimization”** means the County-specified performance criteria for a completed System to conserve, generate, or otherwise optimize the County’s specified Resource described in Work Order and the Services described therein.

66. **“Savings Amount”** means utility costs savings to the County as a result of the installation and operation of the System and provision of services provided for in this Agreement and in accordance with the Savings Calculation Formula as set forth in each Work Order.

67. **“Savings Guarantee”** means the Savings Amount that the Provider guarantees the County will achieve as a result of the installation and operation of the System and provision of services provided for in this Agreement and in accordance with the Savings Calculation Formula as set forth in each Work Order.

68. **“Savings Guarantee Commencement Date”** means the first day of the first utility billing period following the earlier to occur of: (a) the month in which Substantial Completion of a System occurs in accordance with the Work Order; or (b) the Final Acceptance Date set forth in the Work Order.

69. **“Services”** means the Work and the Guarantee Period Services.

70. **“Shop Drawings”** means drawings, diagrams, schedules, and other data prepared for the Work by the Provider, or a Subcontractor, manufacturer, supplier, or distributor showing details of manufactured or assembled products proposed to be incorporated into the Work and to demonstrate how the Provider proposes to Conform to the design concept expressed in the Contract Document.

71. **“Site”** means the premises where a Facility of County is located, which Site shall have the address specified in the applicable Work Order.

72. **“Software”** means any software in object code form installed on the System Components for monitoring and control of the applicable System and/or Resource usage, as further described in the applicable Work Order.

73. **“Specifications”** means (a) Provider’s applicable technical and functional specifications and descriptions for a type of System set forth in each Work Order describing that type of System, and (b) County’s technical and functional specifications and descriptions specified in this Agreement or a particular Work Order for purchasing Services using that type of System, which shall control over an inconsistency with the applicable Work Order.

74. **“Subcontractor”** means any partnership, firm, corporation or entity other than an employee of the Provider, who subcontracts with the Provider to perform work or labor or render service to the Provider in or about the construction of the Work or improvement, or a subcontractor licensed by the State of California that, under subcontract to the Provider, specially fabricates and installs a portion of the Work or improvement according to detailed drawings contained in the plans and specifications produced by the Provider Tea,. This term also includes subcontractors of any tier, suppliers, fabricators or manufacturers, whether or not in privity with the Provider.

75. **“Submittal”** means Product Data, Samples and Shop Drawings.

76. **“Substantial Completion”** means the date that is the later of the following: (a) the County has determined, in consultation with the Provider and County’s peer review consultants, the Work for the Project or a particular System or ECM is sufficiently installed, calibrated, and performed according to the performance specifications and in accordance with the Contract Documents, including commissioning of any systems required by the Contract Documents by a third party commissioning agent retained by County, so that the County may utilize the Project, System or the ECM for the use that it is intended, and is fully complete except for minor items, adjustments, and/or corrections that do not interfere with the County’s use and occupancy of the Project, System or ECM including approval of OSHPD or other AHJ’s; or (b) if the nature of such Work requires that a certificate of occupancy be issued, it means the date of issuance of the required certificate of occupancy.

77. **“Substantial Completion Date”** is defined in each Work Order.

78. **“Superintendent”** means the executive representative of the Provider, present on the Project site at all times while performing the Work, authorized by the Provider to receive and execute instructions from the County.

79. **“System”** means: Project systems identified in each Work Order including: (a) the AHU System; (b) interior and exterior lighting retrofits subject to OSHPD approval; (c) high efficiency electrical transformers, power shavers and variable frequency drives (VFD) control systems; (d) Legacy Siemens Building Management Automation System upgrade or replacement and retro-commissioning; and/or (e) electricity generation technologies including photovoltaic solar; (f) expansion of cogeneration plant generation capacity; and (g) other balance of plant components financed, installed and tested following the County-approved ESA and Work Order. A System includes the entirety of the System Components that are installed at a Site in order to provide Services with respect to conservation of a particular Resource at such Site. Each System

shall be more particularly described in the related Work Order, a template of a System Work Order is attached as **Schedule B**.

80. “**System Components**” means those specialized technology and other components supplied Provider that are used to manage and control a System and/or deliver a type of Resource at a Site so as to reduce or conserve consumption of such Resource at such Site, all as more fully described in the applicable Work Order.

81. “**Uncontrollable Circumstances**” means any unforeseeable event or circumstance which prevents or delays the performance of any material obligation arising under this Agreement, including a Force Majeure event, strikes, lock-outs, or other labor disturbances, the exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private entity, and/or a change in applicable law provided that the Party seeking to have its performance obligations excused thereby has taken reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome. The unforeseeable event or circumstance in the previous sentence shall not be deemed an Uncontrollable Circumstance to the extent (a) such event is within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligations excused thereby, and (b) such event is the direct or indirect result of the fault or negligent action or inaction of the Party seeking to have its performance obligations excused thereby or of any third party over whom the Party has the right of control.

82. “**Unexcused Delay**” means any delay caused by Provider, or that is not a Compensable Delay or Excusable Delay, including, without limitations, the following: (a) Delay caused by an act or omission of the Provider or a Subcontractor; (b) Delay for which the Provider has failed to provide a timely and complete Notice of Delay or Request for Extension; or (c) Delay associated with any circumstances where the costs or risk associated with such circumstances are designated in the Contract Documents as being at Provider’s risk or Provider’s own expense.

83. “**Unilateral Change Order**” is a written order signed solely by the County to adjust the Work Order Purchase Amount, or ESA Term, or both, or to adjust a Work Order Purchase Amount, or Work Order Term, or both only in the following instances: (a) to recover costs to County for Provider defaults; (b) for withholds and deductions allowed under the Contract Documents; (c) final quantity adjustments for Unit Price work that reconciles original estimated quantities in the Contract Documents, if any, with final actual quantities used; and (d) an increase or decrease in the Contract Time consistent with the Contract Documents. If Provider disputes a unilateral change order, Provider may proceed with a claim as provided in ARTICLE 7.

84. “**Work**” means the work and services required by the Contract Documents during the Installation Period and during any period of time during which the Provider is required to correct or replace or maintain its work and services pursuant to this Agreement, whether completed or partially completed and, includes all labor, materials, equipment, and services provided or to be provided by the Provider to fulfill the Provider’s obligations under this Agreement.

85. **“Work Order”** means an Exhibit under this Agreement providing authorization to Provider by County to finance, install and construct an individual System in conformance with the approved engineering plans and budget provided to County by GIE.

86. **“Work Order Term”** is the period of time for installation and start-up of the authorized System plus the period of time over which the Work Order Purchase Amount for such System is projected to be fulfilled for County and is set forth in each executed Work Order.

SCHEDULE E

Prevailing Wage Laws and Use of Apprentices

1. Determination of Prevailing Wage Rates.

(a) The County has determined that the Contractor and Subcontractors of any tier must pay not less than the prevailing wage rates to all workers employed in execution of the Contract. The Director of the Department of Industrial Relations, State of California (DIR) pursuant to the California Labor Code, has determined the general prevailing rates of wages in the locality in which the Work is to be performed. County has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the Labor Code determinations of the generally prevailing rates of per diem wages and the prevailing rate for holiday and overtime work in the locality in which the Work is to be performed. Copies of said rates are on file with the Capital Projects Division of the County and, will be made available for inspection during regular business hours and are also available on the Internet at the California Department of Industrial Relations website:

<http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>.

Future effective general prevailing wage rates, which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

(b) The wage rate for any classification not listed, but which may be required to execute the Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. Holidays shall be as defined in the collective bargaining agreement applicable to each particular craft, classification or type of worker employed under the Contract. Per diem wages include employer payments for health and welfare, pensions, vacation, travel time and subsistence pay, apprenticeship or other training programs authorized by California Labor Code § 3093, and similar purposes when the term "per diem wages" is used herein. Holiday and overtime work, when permitted by law, must be paid for at the rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. In accordance with Section 1773.2 of the California Labor Code, the Contractor must post a schedule showing all applicable prevailing wage rates at appropriate and conspicuous locations on the job site where they can easily be seen by workers.

(c) Contractor is required to utilize apprentices as required by the California Labor Code and applicable regulations. Only apprentices, as defined in California Labor Code § 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code § 3070 et seq. are eligible to be employed for the Work.

(d) The Contractor shall comply with all applicable requirements of the California Labor Code, including but not limited to Chapter 2, Subchapter 1, Article 10, Required Apprentices on Public Works Contracts. 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 with, among other things, discrimination, penalties and forfeitures, their

disposition and enforcement, wages, working hours and securing workers' compensation insurance and directly affect the method of prosecution of the Work by Contractor 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 to by the provisions of said Chapter 1, constitutes Contractor's certification that it is aware of the provisions of said Chapter 1 and will comply with them and further constitutes Contractor's certification as follows: "I am aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' 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.

2. Payment of Prevailing Wage Rates.

(a) Statutory Requirements. The Project is subject to the provisions of Labor Code § 1720 et seq. and the requirements of Title 8 of the California Code of Regulations § 16000 et seq., which govern the payment of prevailing wage rates on public works projects. The Contractor and Subcontractors of any tier shall be governed by and required to comply with these statutes and regulations in connection with the Project. Pursuant to Labor Code § 1771, the Contractor and all Subcontractors of any tier must pay not less than the prevailing wage rates to all workers employed in execution of the Contract. Contractor and Subcontractors must comply with all applicable statutes and regulations, including, but not limited to, Labor Code §§ 1771, 1775, 1777.5, 1813, and 1815.

(b) Weekly Payments to Employees. Contractor and all Subcontractors of any tier must pay each worker on the Project, unconditionally and not less often than once each week, the full amounts that are due and payable for the period covered by the particular payday in accordance with the prevailing wage scale determination, regardless of any contractual relationship which may be alleged to exist between the Contractor, Subcontractor, and such laborers. Thus, an employer must establish a fixed workweek and an established payday. On each payday, each worker must receive all sums due at the end of the preceding workweek and must be provided with an itemized wage statement.

(c) Classifications. County shall require that any class of laborers or mechanics, including apprentices and trainees, which are not listed in the General Wage Determinations and which are to be employed under this Contract, shall be classified conformably to such wage determinations. In the event the County does not concur in the Contractor's proposed classification or reclassification of a particular class of laborers and mechanics (including apprentices and trainees) to be used, the question, accompanied by the recommendation of the RBOC Representative, shall be referred to the State Director of Industrial Relations for determination.

(d) Fringe Benefit Cash Equivalent. County shall require, whenever the minimum wage rate prescribed for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage and the Contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof must be established. In the event the interested parties cannot agree upon cash equivalent of the fringe benefit, the questions, accompanied by the

recommendation of the RBOC Representative, shall be referred to the State Director of Industrial Relations for determination.

3. Penalty for Prevailing Wage Rate Underpayment.

Pursuant to Labor Code § 1775, the Contractor must, as a penalty, forfeit Two Hundred Dollars (\$200.00) to the State or the County for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for the Work by the Contractor or by any Subcontractor, of any tier, in connection with the Work. The difference between prevailing wage rates and the amount paid to each worker each calendar day, or portion thereof, for which each worker paid less than the prevailing wage rate, must be paid to each worker by the Contractor.

4. Withholding.

The County shall upon its own action or upon written request of an authorized representative of the Department of Labor or DIR, withhold or cause to be withheld from the Contractor under this Contract so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work, all or part of the wages required by the Contract, the County may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

5. Certified Payroll Records and Basic Payroll Records.

The Contractor and Subcontractors of any tier must maintain Certified Payroll Records and "Basic Payroll Records," defined as time cards, front and back copies of canceled checks, cash receipts, trust fund forms, daily logs, employee sign-in sheets, accounting ledgers, tax forms and/or any other record maintained for the purposes of reporting payroll, during the course of the Work and must preserve them for a period of three (3) years after completion of the Project for all tradesworkers executing the Work of the Contract. Certified Payroll Records must be submitted at the times designated in Paragraph 6 below or upon request as described in Paragraph 7 below. County reserves the right to require Contractor to routinely submit Basic Payroll Records may be requested by the County at any time and must be provided within ten (10) calendar days following the receipt of the request.

6. Submittal of Certified Payroll Records.

Pursuant to Labor Code § 1776, the Contractor and each Subcontractor of any tier must maintain an accurate, weekly payroll record showing the employee full name, address, social security number, work classification, amount paid per hour, straight time, overtime and holiday hours worked each day and weekly totals, the actual per diem wages paid to each person employed for the Work, and the gross/net wages paid for this Project/all projects, as well as the Contractor name and address, Project name and location, and dates of payroll. If payments are made to any

third party trust, funds or plans for health and welfare, pension or vacation trusts, those payments must be stated on the Certified Payroll Record. The basic wage rate paid per hour plus the employer contributions for benefits, including training fund contributions, must at least equal the prevailing wage rate for that classification.

The Contractor must maintain and submit three (3) copies of its Certified Payroll Records and those of its Subcontractors monthly with Contractor's application for payment. County reserves the right to require Contractor to submit to the County each week, no later than seven (7) calendar days after the payday for the week covered, the Certified Payroll Records of Contractor and its Subcontractors of every tier. If there is no Work on a given week or on a given day, the Certified Payroll Record must indicate "no work" for that week or day(s). The Certified Payroll Records must account for each day of the week including Saturdays, Sundays and holidays. Contractor and Subcontractors of every tier must write "final" on the last submitted Certified Payroll Record for the Project.

The Certified Payroll Records must be verified by a written declaration made by a person with authority to represent the reporting entity, under penalty of perjury, that the information contained in the payroll record is true and correct and that the reporting entity has complied with the requirements of California Labor Code §§ 1771, 1811, and 1815 for any Work performed by his, her or its employees on the Project.

In addition, the Contractor shall provide monthly certified payroll records of local hiring and non-local hiring to ascertain local participation and shall allow County and County's staff to conduct onsite visits upon request to ascertain local hiring participation.

Contractor agrees that submission of Certified Payroll Records as well as all related or subsequent requests for supporting document made by County shall be a condition precedent to Contractor's receipt of a progress, final, or retention payment. The County shall withhold any portion of the progress, final, or retention payment up to and including the entire payment until the Certified Payroll Records requirement is met by the Contractor or its Subcontractor. If the Contractor or any Subcontractor is determined to have failed to pay workers in compliance with the applicable prevailing wage sections of the Labor Code, the County shall continue to withhold progress, final, or retention payments until sufficient funds have been withheld for payment of wages to workers and all applicable penalties.

7. Making Certified Payroll Records Available Upon Request.

Pursuant to Labor Code § 1776, in addition to its obligation to deliver certified payroll records to the County on a weekly basis as set forth above, the Contractor must also make payroll records available for inspection at all reasonable hours at the principal office of the Contractor on the following basis: (i) a certified copy of an employee's payroll record must be made available for inspection or furnished to such employee or his/her authorized representative on request; (ii) a certified copy of all payroll records must be made available for inspection or furnished upon request to the County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations; (iii) a certified copy of payroll records must be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public must be made through either the County, the

Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, the requesting party must, prior to being provided the records, reimburse the cost of preparation by the Contractor, Subcontractors and the entity through which the request was made; and the public may not be given access to such records at the principal office of the Contractor; (iv) the Contractor must file a certified copy of the payroll records with the entity that requested such records within ten (10) calendar days after receipt of a written request; and (v) any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the County, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any Subcontractor, of any tier, performing a part of the Work must not be marked or obliterated. The Contractor must inform the County of the location of payroll records, including the street address, city and county and must, within five (5) Working Days, provide a notice of a change or location and address.

8. Forfeiture for Failure to Comply with Written Record Request Laws.

The Contractor or Subcontractor shall have ten (10) calendar days in which to comply, subsequent to receipt of written request regarding Certified Payroll Records or Basic Payroll Records. In the event Contractor or a Subcontractor fails to strictly comply after such 10-day period, the Contractor or Subcontractor shall, as a penalty to the State or the County, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from any portion of the Contract Price then or thereafter due the Contractor. A Contractor is not subject to a penalty assessment pursuant to this paragraph due to the failure of a Subcontractor to comply with this section.

9. Hours of Work.

(a) Limits on Hours of Work. Pursuant to Labor Code § 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to Labor Code § 1811, the time of service of any worker employed at any time by the Contractor or by a Subcontractor, of any tier, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, Work performed by employees of Contractor or any Subcontractor, of any tier, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

(b) Penalty for Excess Hours. Pursuant to Labor Code §§ 1813 and 1815, the Contractor shall pay to the State or the County a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of the Contract by the Contractor or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by

the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

(c) Contractor Responsibility For Cost of Excess Hours. Any Work performed by workers necessary to be performed after regular working hours or on Sundays or other holidays must be performed without adjustment to the Contract Price or any other additional expense to the County.

10. Responsibility for Subcontractors' Payment of Prevailing Wages.

Pursuant to Labor Code § 1774, the Contractor is responsible for ensuring that all Subcontractors of any tier comply with requirements for payment of prevailing wages. Contractor is responsible for Labor Code violations by Subcontractors of any tier. The agreement executed between the Contractor and each Subcontractor must contain a copy of the provisions of Labor Code §§ 1771, 1775, 1777.5, 1813, and 1815, at a minimum. Contractor must monitor each Subcontractor's payment of prevailing wage rates. Upon becoming aware of the failure of any Subcontractor of any tier to pay its workers the specified prevailing wage, the Contractor must diligently take action to halt and rectify the failure, including, without limitation, retaining sufficient funds due to the Subcontractor to cover the underpayment. Before making final payment to any Subcontractor, the Contractor must obtain an affidavit from the Subcontractor, signed under penalty of perjury, which states that the Subcontractor has paid the specified, determined prevailing wage rate to its employees for the Project, as well as any amounts due pursuant to Labor Code § 1813. Contractor must provide copies of such affidavits to the County and provide Contractor's affidavit that it has paid the specified, determined prevailing wage rate to its employees for the Project, as well as any amounts due under Labor Code § 1813.

11. Statement of Employer Payments.

Within five (5) calendar days of County's request, the Statement of Employer Payments (DSLE Form PW 26) must be completed and submitted to the County by each Contractor and Subcontractor who pays benefits to a third party trust, plan or fund for health and welfare benefits, vacation funds or makes pension contributions. The form must contain, for each worker classification, the fund or trust name, address, administrator, and amount per hour contributed and frequency of contributions. Training fund contributions must also be reported on this form. In February and August of each year during the Project, the Contractor and Subcontractors of any tier must verify changes in wage rates for any trade classifications used on the Project.

12. Apprentices.

(a) Apprenticeship Committee Contract Award Information. Pursuant to Labor Code § 1777.5 and Title 8 California Code of Regulations § 230, Contractor and Subcontractors of any tier who are not already approved to train by an apprenticeship program sponsor must, within ten (10) calendar days of signing the Contract or Subcontract, as applicable, but in any event prior to the first day in which the Contractor has workers employed on the Project, must submit contract award information. This information may be submitted on a Public Works Contract Award Information form (DAS form 140). The contract award information must be provided to the

appropriate local apprenticeship committees whose geographic area of operation include the area of the Project and can supply apprentices to the Project.

(b) Employment of Apprentices. Labor Code § 1777.5 and Title 8 California Code of Regulations § 200 et seq. provide detailed requirements for employing apprentices on public works. The responsibility of complying with Section 1777.5 and the regulations lies exclusively with the Contractor. When Contractor or Subcontractor employs workers in any Apprenticeable Craft or Trade, the Contractor and Subcontractor must employ apprentices in at least the ratio set forth in Labor Code Section 1777.5.

Every apprentice employed to perform any of the Work must be paid the prevailing rate of per diem wages for apprentices in the trade to which such apprentice is registered, and such individual must be employed only for the work of the craft or trade to which such individual is registered.

Only apprentices, as defined in Labor Code § 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code § 3070 et seq. are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with either of the following:

(i) The apprenticeship standards and apprentice agreements under which such apprentice is training; or

(ii) The rules and regulations of the California Apprenticeship Council, including regulations Section 230.1(c), which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

(c) Apprenticeship Certificate and Request for Dispatch of Apprentices.

(i) When the Contractor or any Subcontractor of any tier in performing any of the Work employs workers in any Apprenticeable Craft or Trade, as defined below, the Contractor and such Subcontractor may apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of the site of the Work for a certificate approving the Contractor or such Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected, provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the Administrator of Apprenticeship. The Joint Apprenticeship Committee or Committees, subsequent to approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or such Subcontractor in order to comply with California Labor Code § 1777.5. There shall be an affirmative duty upon the Joint Apprenticeship Committee or Committees, administering the apprenticeship standards of the crafts or trades in the area of the site of the Work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local Joint Apprenticeship Committees provided they are already covered by the local apprenticeship standards.

(ii) Contractors who are not already approved to train apprentices must request dispatch of required apprentices from one of the applicable Apprentices Committees whose geographic area of operation includes the site of the Project by giving the committee actual notice of at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the date on which one or more apprentices are required. Contractors and Subcontractors may use DAS form 142 to make the request for apprentices. However, if a non-signatory contractor declines to abide by and comply with the terms of a local committee's standards, the Apprenticeship Committee shall not be required to dispatch apprentices to such contractor. Conversely, if in response to a written request, an Apprenticeship Committee does not dispatch any apprentice to a contractor who has agreed to employ and train apprentices in accordance with either the Apprenticeship Committee's Standards or the California Apprenticeship Counsel Regulations (Title 8, Section 230 et seq.) within 72 hours of such request (excluding Saturdays, Sundays and holidays) the contractor shall not be considered in violation of Section 230.1 as a result of failure to employ apprentices for the remainder of the Project, provided the contractor has made the request in enough time to meet the required ratio. If an Apprenticeship Committee dispatches fewer apprentices than the Contractor or Subcontractor requested, the Contractor or Subcontractor shall be considered in compliance if the contractor employs those apprentices who are dispatched, provided that, where there is more than one Apprenticeship Committee able and willing to unconditionally dispatch apprentices, a Contractor or Subcontractor who is not a participant in an apprenticeship program has requested dispatch from at least two committees.

(d) Ratio of Apprentices to Journeymen.

(i) The ratio of Work performed by apprentices to journeymen, who shall be employed in the Work, may be the ratio stipulated in the apprenticeship standards under which the Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one hour of apprentice work for every five hours of labor performed by a journeyman, except as otherwise provided in California Labor Code § 1777.5. The ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the site of the Work and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any Work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The Contractor must employ apprentices for the number of hours computed as above before the end of the Contract or subcontract, as applicable. The Contractor must, however, endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the site of the Work. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a Joint Apprenticeship Committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(ii) The Contractor or any Subcontractor covered by this Paragraph and California Labor Code § 1777.5, that has agreed to be covered by an Apprenticeship Program's standards, upon the issuance of the approval certificate, or that has been previously approved in such craft or trade, must employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards, but in no event less than the 1-to-5 hourly ratio. Upon proper showing by the Contractor that it employs apprentices in such craft or trade in the State of California on all of its contracts on an annual average of not less than one apprentice to each five

journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 hourly ratio as set forth in this Paragraph and California Labor Code § 1777.5.

(e) Exemption. The requirement to employ apprentices shall not apply to contracts of general contractors, or to contracts of specialty contractors not bidding for work through a general or prime contractor, involving less than Thirty Thousand Dollars (\$30,000.00) or twenty (20) Working Days. The term "Apprenticeable Craft or Trade," as used herein shall mean a craft or trade determined as an Apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

(f) Contributions to Trust Funds. The Contractor or any Subcontractor of any tier who performs any of the Work by employment of journeymen or apprentices in any Apprenticeable Craft or Trade shall contribute to the California Apprenticeship Council in the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. Contractor or any Subcontractor, of any tier, may take as a credit for payments to the Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. Contractors who do not contribute to an apprenticeship program must submit their contributions to the California Apprenticeship Council. Training Fund contributions are due and payable on the 15th day of the month for work performed during the preceding month. Training contributions to the California Apprenticeship Council shall be paid by check and shall be accompanied by a Completed Training Fund Contribution form (CAC-2). Contractors who contribute to an apprenticeship program are entitled to a full credit in the amount of those contributions. The Division of Labor Standards Enforcement is authorized to enforce the payment of such contributions to such fund(s) as set forth in California Labor Code § 227. Such contributions shall not result in an increase in the Contract Price.

(g) Contractor's Compliance. The responsibility of compliance with this Paragraph for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Paragraph are subject to the provisions of California Labor Code § 3081. In the event the Contractor willfully fails to comply with the provisions of this Paragraph and California Labor Code § 1777.5, pursuant to California Labor Code § 1777.7, the Contractor shall: (i) be denied the right to bid on any public works contract for a period of one (1) year from the date the determination of non-compliance is made by the Administrator of Apprenticeship; and (ii) forfeit, as a civil penalty, One Hundred Dollars (\$100.00) for each calendar day of noncompliance. Notwithstanding the provisions of California Labor Code § 1727, upon receipt of such determination, the County shall withhold such amount from the Contract Price then due or to become due. Any such determination shall be issued after a full investigation, a fair and impartial hearing, and reasonable notice thereof in accordance with reasonable rules and procedures prescribed by the California Apprenticeship Council. Any funds withheld by the County pursuant to this Paragraph shall be deposited in the General Fund or other similar fund of the County. The interpretation and enforcement of California Labor Code §§ 1777.5 and 1777.7 shall be in accordance with the rules and procedures of the California Appren

SCHEDULE F

Provider's Insurance Requirements

1.1 General. Provider shall purchase and maintain insurance, and provide bonds, as set forth in this Section.

1.1.1 Certificates of Insurance. The Provider shall provide certificates of insurance and endorsements acceptable to the County evidencing compliance with the requirements in this Section by Provider, its listed Subcontractors, and, upon County's request, other Subcontractors of any Tier, and suppliers at the following times: (1) concurrently with submission to County of the signed Agreement and bonds and, in any event, prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the County's written request. An additional certificate and additional endorsement evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the last Work Order Term hereunder. The certificates will show the County as an additional insured on the Provider's Commercial General Liability and excess or umbrella liability policy or policies. Each certificate and endorsement is to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate(s) and endorsement(s) must be in a form approved by County. Upon the County's request, Provider shall provide copies of all insurance policies required by Section. The copy of each policy provided shall contain all applicable conditions, definitions, exclusions, list of forms, and endorsements. The policy number shall be included in all certificates, endorsements and riders.

1.1.2 Deductibles and Self-Insured Retentions. The Provider shall disclose to the County any deductible or self-insured retentions applicable to any insurance required to be provided by the Provider. All deductibles and self-insured retentions must be identified in the certificates. Any deductible or self-insured retention in excess of **\$50,000** must be declared to and approved in writing by County prior to execution of the Agreement. The deductibles and retentions shall be considered a form of self-insurance.

1.1.3 Self-Insurance. No Provider shall provide self-insurance for any required coverage without the express written authorization of the County.

1.1.4 Additional Insured Obligations. To the fullest extent permitted by law, the Provider shall cause the commercial general liability coverage and excess or umbrella liability policy or policies to include (1) the **County of Riverside, the Board of Supervisors and each member thereof**, and their respective officials, employees, commission members, officers, directors, agents, employees, volunteers and representatives, as additional insureds for claims caused in whole or in part by the Provider's negligent acts or omissions during the Provider's operations; and (2) the **County of Riverside, the Board of Supervisors and each member thereof**, and their respective officials, employees, commission members, officers, directors, agents, employees, volunteers and representatives, as an additional insured for claims caused in whole or in part by the Provider's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the County's general liability

insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms:

- .1 CG 20 10 (11/85); or
- .2 CG 20 10 (04/13) for ongoing operations and CG 20 37 (04-13) for completed operations;
or
- .3 CNA 75079XX; or
- .4 substitute endorsements providing equivalent coverage, approved in writing by County.

The coverage shall contain no special limitations on the scope of protection afforded to such additional insureds. Coverage must not be limited to the vicarious or supervisory role of any additional insured. Coverage afforded to additional insureds must be at least as broad as coverage afforded to the Provider/first Named Insured. If the Provider/Named Insured maintains higher policy limits of coverage than the limits specified herein, or has broader coverage, or has both, then the insurer shall make available the higher limits and broader coverage to such additional insureds. Any additional insured shall have the right, but not the obligation, to pay any deductible, self-insured retention, premium or other charge due under or required by the policy. Coverage for such additional insureds does not extend to liability to the extent prohibited by Insurance Code Section 11580.4.

1.2 Provider's Required Insurance Coverage. The Provider shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, so as to protect County and claimants under the state insolvency or guarantee fund, or otherwise under such forms and limits satisfactory to the County with a company or companies approved by County, following County's examination of the company's financial, reinsurance, claims procedures and other data requested by the County. The Provider shall maintain the required insurance until the expiration of the period for correction of Work, unless a different duration is stated below:

1.2.1 Commercial General Liability

A. Commercial General Liability insurance for the Project written on an occurrence form for products-completed operations hazard, providing coverage for claims that may arise out of, pertain to, or relate to Provider's operations and completed operations under the Contract, whether such operations are by the Provider, its Subcontractors, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and

B. The Provider's Commercial General Liability policy under this Section shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Provider's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 10 of these Special Provisions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

C. Minimum Limits of CGL and Excess Insurance. Provider shall maintain limits of Commercial General Liability and Excess/Umbrella Liability Insurance no less than as follows:

Total Contract Price	For Each Occurrence ¹	Aggregate for Products/Completed Operations	General Aggregate ²	Umbrella or Excess Liability ³
≤\$1,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$2,000,000
>\$1,000,000 ≤\$5,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$10,000,000
>\$5,000,000 ≤\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$15,000,000
>\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$25,000,000

1. Combined single limit for bodily injury and property damage.
2. This limit shall apply separately to the Provider's Work under this Contract.

3. The Umbrella or Excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

1.2.2 Comprehensive Automobile Liability covering vehicles owned, hired, leased, and non-owned vehicles used, whether scheduled or not, written on Insurance Services Office (ISO) form CA 00 01 (12/93 or later edition) or a substitute form providing equivalent coverage, by the Provider, with policy limits of not less than \$1,000,000 per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

A. The Provider may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section 1.3.5.2 and 1.3.5.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

1.2.3 Excess or Umbrella Liability Insurance shall be at least as broad as any underlying coverage. Umbrella or excess liability coverage must apply on a primary, non-contributory basis for the benefit of Provider before the umbrella or excess insurer calls upon Provider's primary insurance policy, or umbrella or excess liability insurance, or any combination of these insurance policies. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion and no contractor's limitation endorsement. The policy shall have starting and ending dates concurrent with the underlying coverages. The Named Insured may determine the layering of primary and excess liability insurance provided that if such layering differs from that described here, the actual coverage program meets the minimum total required limits and complies with all other requirements listed in this Section. Provider's excess or umbrella liability coverage shall be maintained continuously for a minimum of **the duration of the last Work Order Term hereunder.**

1.2.4 Workers' Compensation at statutory limits.

1.2.5 Employers' Liability with policy limits not less than \$1,000,000 each accident \$1,000,000 each employee, and \$1,000,000 policy limit. Provider shall comply with the applicable sections of the California Labor Code concerning workers' compensation for injuries on the job. Compliance is accomplished in one of the following manners:

- (1) Provide copy of permissive self-insurance certificate approved by the State of California; or
- (2) Secure and maintain in force a policy of workers' compensation insurance with statutory limits and Employer's Liability Insurance with a minimal limit of **\$1,000,000** per accident; or
- (3) Provide a "waiver" form certifying that no employees subject to the Labor Code's Workers' Compensation provision will be used in performance of this Contract.

1.2.6 Jones Act, and the Longshore & Harbor Workers' Compensation Act coverage , as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks.

1.2.7 Without limiting Provider's liability, Provider shall obtain, pay for and maintain in full force and effect at its sole expense, **Professional Liability** insurance covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than two million (\$2,000,000.00) per claim and four million (\$4,000,000.00) in the aggregate, insurance written by insurance carriers acceptable to County, throughout the term of this Agreement and for at least four (4) years after completion and County's acceptance of the last System installed hereunder (whether through terms or endorsements providing for an extended reporting period ("ERP") or through renewal or replacement coverage including a retroactive date for prior acts coverage from commencement of Services under this Agreement or earlier, with all such ERP's, renewals and replacement coverage to be approved by County in its sole discretion). The professional liability insurance policy shall be written on a policy form designed to provide coverage for claims arising from negligent acts, errors, or omissions in the performance of professional services by Provider, its employees, agents and "Covered Professional Services" as designated in the policy and must include coverage for services performed in connection with the Work under this Agreement. Any policy exclusions affecting Services performed under this Agreement that would eliminate coverage must be deleted as pertains to this Agreement. Any deductible or self-insured retention shall not exceed \$50,000.00 unless otherwise approved by County. Provider's obligation to maintain this coverage shall survive termination of this Agreement and final payment hereunder.

1.2.8 Provider shall procure **Pollution Liability** insurance, with policy limits of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, providing coverage on a form acceptable to County for liability caused by pollution conditions arising out of the operations of Provider. Coverage shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has not been physically injured), cleanup costs, and defense (including costs and expenses incurred in the investigation, defense, or settlement of claims). All activities contemplated in this Contract shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Project Site to the final disposal location, including non-owned disposal sites. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using Subcontractors, the policy must include work performed "by or on behalf" of the insured. The policy shall specifically provide for a duty to defend on the part of the insurer. Such insurance shall include coverage for all operations, including completed operations and professional services. Coverage afforded to **County of Riverside, the County Department of Waste Resources, the Board of Supervisors and each member thereof**, and their respective officials, employees, commission members, officers, directors, agents, employees, volunteers and representatives shall be at least as broad as coverage provided to the first Named Insured. Such insurance shall not contain any exclusion for asbestos or lead. Provider's pollution liability coverage shall be maintained continuously for a minimum of **ten (10) years after Final Completion**.

1.2.9 Coverage under Sections **1-1.3.5.7** and **1-1.3.5.9** may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than \$2,000,000 per claim and \$4,000,000 in the aggregate.

1.2.12 Property insurance on an “all-risks” completed value form, covering property owned by the Provider and its Subcontractors of every tier and used on the Project, including any tools, Provider’s (or Subcontractors’) employee owned tools, machinery, or motor vehicles owned or rented by the Provider, or the Provider’s agents, suppliers or Subcontractors as well as to any temporary structures, protective fences, scaffolding, and other equipment.

1.3 Provider’s Insurance Terms and Conditions

1.3.1 Primary Coverage. All policies and endorsements shall stipulate that the Provider’s (and the Subcontractors’) insurance coverage shall be primary insurance as respects to **County of Riverside, the Board of Supervisors and each member thereof** and their directors, commissioners, officers, employees, agents and volunteers. Any insurance maintained by the **County of Riverside, the Board of Supervisors and each member thereof** and their directors, commissioners, officers, employees, agents, and volunteers shall be excess of the Provider’s (and its Subcontractors’) insurance and shall not contribute with it.

1.3.2 Coverage Applies Separately to Each Insured and Additional Insured. Coverage shall state that the Provider’s (and its Subcontractors’) insurance shall apply separately to each insured or additional insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability. Coverage shall apply to any claim or suit brought by an additional insured against a named insured or other insured. Nothing in the policy(ies) shall be construed to preclude coverage of a claim by one insured under the policy(ies) against another insured under the policy(ies). All such claims shall be covered as third-party claims, i.e., in the same manner as if separate policies had been issued to each insured. Nothing contained in this provision shall operate to increase or replicate the limits of liability as provided under the policy(ies).

1-1.3.3 Acceptance of Coverage. All insurance policies, certificates, endorsements and binders shall be subject to the approval of the County’s risk manager as to form and content. The insurance requirements are subject to amendment or waiver only if approved in writing by the County’s risk manager. Insurance shall be placed with insurers with an A.M. Best Guide rating of no less than **A:VII**.

1-1.3.4 Continuation Coverage. For completed operations and other insurance coverages that are required to remain in force after Final Completion, a sworn statement attaching a certificate and endorsements evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section **7-3.2** of these Special Provisions. The County-approved certificates of insurance and endorsements for Provider and its listed Subcontractors shall be attached as **Exhibit “_”** to the Work Order.

1-1.3.5 Provider’s Failure to Provide Required Insurance. Failure to maintain required insurance at all times shall constitute a default under Section 13.2 of the Agreement.

1-1.3.6 Verification of Coverage. Upon request of County, Provider shall provide complete copies of Provider's and Subcontractors' insurance policies (including, but not limited to, the declarations page, form list and riders), endorsements or certificates required under the Contract Documents, and premium invoices.

1-1.3.7 Reassessment of Insurance Requirements. Provided there is an equitable adjustment to the Purchase Amount, at any time during the duration of this Contract, the County may require that Provider obtain, pay for, and maintain more or less insurance depending on the County's assessment of any one or more of the following factors: (1) the County's risk of liability or exposure arising out of, or in any way connected with, Provider's Services under this Contract; (2) the nature or number of accidents, claims, or lawsuits arising out of, or in any way connected with, Provider's Services under this Contract; or (3) the availability, or affordability, or both, of increased liability insurance coverage.

1-1.3.8 No Limitation. Provider's maintenance of insurance as required by the Contract Documents shall not be construed to limit the liability of the Provider or its Subcontractors of any tier to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or in equity.

1-1.3.9 Additional Provider Insurance Responsibilities

1-1.3.9.1 In the event that Provider wishes to make any claim for recovery under any insurance policy hereunder, it shall, as a pre-condition thereto, give timely notification to County of the event causing the claim, cooperate with the County, and do all things required of it as an insured under such policy, so as to permit the policy to be complied with and a claim be made there under. Provider and the County will cause their respective insurers to waive all rights of subrogation against one another, additional insured parties hereunder, and affiliates of Provider and County. Provider further agrees that to the extent required under such policy, it shall permit and authorize full subrogation in favor of the insurers of any rights as against any other person, firm or corporation.

1-1.3.9.2 Subcontractor Insurance.

A. The Provider shall include in all subcontracts a requirement that Subcontractors of every Tier shall obtain and maintain, at a minimum, all types of insurance required of Provider in this Section, but the limits of liability and deductibles shall be in amounts determined by the Provider, based on the degree of hazardous exposure according to the Work performed by each Subcontractor and the size of each subcontract. **The County of Riverside, the Board of Supervisors and each member thereof**, and their respective officials, employees, commission members, officers, directors, employees, volunteers, agents and representatives shall be named as additional insureds under each policy.

B. Certificates of insurance and endorsements acceptable to the Provider for each Subcontractor shall be filed with the County prior to the Subcontractor's commencement of Work. The certificates shall contain a provision that coverage affordable under the policies will not be canceled unless at least thirty (30) days' prior written notice has been given to the Provider. The County may, at any time, require that the Provider provide the County with copies of said policies.

1-1.3.9.3 It shall be the responsibility of Provider not to violate nor knowingly permit to be violated any condition of the policies required hereunder, and it shall be Provider's duty and responsibility to impose upon each Subcontractor and have each Subcontractor impose upon each Sub-subcontractor the same responsibilities and obligations imposed upon Provider under the insurance provisions provided for herein.

1-1.4 Miscellaneous

1-1.4.1 County makes no representations that the insurance it specified is sufficient to cover all potential claims.

1-1.4.3 County and Provider may mutually modify these insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

SCHEDULE G

Form of Payment Bond and Performance Bond

Bond forms begin on following page.

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS: THAT

WHEREAS, the Board of Supervisors of the County of Riverside, a political subdivision of the State of California (“**County**”) has awarded to Redaptive Services, LLC, a Delaware limited liability company (“**Principal**”) a contract for Energy Services and Resource Optimization for the Air Handling Units System, by agreement and work order, dated _____, located at the Riverside University Health System Medical Center located in Moreno Valley, CA, which Contract and all of the Contract Documents attached to or forming a part of the Contract (“**Contract**”), are hereby referred to and made a part hereof; and

WHEREAS, Principal is required to furnish a bond in connection with the Contract described above; providing that if Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth (“**Payment Bond**”).

NOW THEREFORE, we, the Principal and _____ as “**Surety**”, are held and firmly bound unto the County in the penal sum of _____ Dollars (\$ _____), the sum being not less than one hundred percent (100%) of the total sum payable by County for construction under the Contract, lawful money of the United States of America, for the payment of which sum well and truly to be made, Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Principal, or its Subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this Payment Bond, all litigation expenses incurred by the County in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This Payment Bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this Payment Bond.

It is further stipulated and agreed that the Surety on this Payment Bond shall not be exonerated or released from the obligation of this Payment Bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the Contract, or Payment Bond, nor

by any conditions precedent or subsequent in the Payment Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the Payment Bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the Payment Bond and that this Payment Bond be construed most strongly against the Surety and in favor of all persons for whose benefit such Payment Bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such Payment Bond has been given, by reason of any breach of Contract between the owner or County and original contractor or on the part of any obligee named in such Payment Bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of Sections 2819 and 2845 of the Civil Code.

In the event suit is brought upon this Payment Bond, then said Surety shall pay costs incurred including a reasonable attorneys' fee to be fixed by the Court. Principal and Surety agree that this Payment Bond is a separate obligation of the Principal and its Surety from the Contract, and that any attorneys' fee provision contained in this Payment Bond shall not apply to the Contract. Except as otherwise provided in the Contract, in the event there is any litigation between the parties arising from the breach of the Contract, each party will bear its own attorneys' fees in the litigation.

IN WITNESS WHEREOF one identical counterpart of this instrument, which shall for all purposes be deemed an original thereof, has been duly executed by the Principal and Surety above named, on the _____ day of _____, 20_____.

[Firm Name of Principal]

By: _____
Name: _____
Title: _____

[Corporation Name – Surety]

By: _____
Name: _____
Title: _____
Address: _____
Phone: _____
Email: _____

NOTE:
Notary acknowledgement of signatures of Principal and Surety under California law and Surety's Power of attorney must be attached.

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS: THAT

WHEREAS, the Board of Supervisors of the County of Riverside, a political subdivision of the State of California, ("**County**") has awarded to Redaptive Services, LLC, a Delaware limited liability company

("Principal") a contract for Energy Services and Resource Optimization for the Air Handling Units System, by agreement and work order, dated _____, located at the Riverside University Health System Medical Center located in Moreno Valley, CA, which Contract and all of the Contract Documents attached to or forming a part of the Contract ("**Contract**"), are hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract ("**Performance Bond**");

NOW, THEREFORE, we, the Principal and _____, as "**Surety**", are held and firmly bound unto the County, in the sum of _____

(\$ _____), the sum not being less than one hundred percent (100%) of the total sum payable by County for construction under the Contract, lawful money of the United States of America, for the payment of which sum well and truly to be made, Principal and Surety bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounded Principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by,

and well and truly keep and perform the covenants, conditions and agreements in the said Contract and any alteration thereof made as therein provided, on Principal's part, to be kept and performed at the time and in the manner specified in the Contract, and shall indemnify, save, and hold harmless County, its officers, agents, and employees, as stipulated in the Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force virtue and effect.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed under the Contract Documents shall in any manner affect its obligations on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration, or additions to the terms of the Contract or to the work or to the specifications.

In the event suit is brought upon this Performance Bond by County and judgment is recovered, Surety shall pay all costs incurred by County in such suit, including a reasonable attorneys' fee to be fixed by the Court. Principal and Surety agree that this Performance Bond is a separate obligation of the Principal and its Surety from the Contract, and that any attorneys' fee provision contained in this Performance Bond shall not apply to the Contract. Except as otherwise provided in the Contract, in the event there is any litigation between the parties arising from the breach of the Contract, each party will bear its own attorneys' fees in the litigation.

IN WITNESS WHEREOF one identical counterpart of this instrument, which shall for all purposes be deemed an original thereof, has been duly executed by the Principal and Surety above named, on the _____ day of _____, 20_____.

[Firm Name of Principal]

By: _____
Name: _____
Title: _____

[Corporation Name – Surety]

By: _____
Name: _____
Title: _____
Address: _____
Phone: _____
Email: _____

NOTE:
Notary acknowledgement of signatures of Principal and Surety under California law and Surety's Power of attorney must be attached.

**Energy Services and Resource Optimization Agreement
Work Order No. 1**

This Work Order No. 1 ("Work Order") is entered into this 5 day of October, 2021, by and between Redaptive, Inc. ("Provider") and County of Riverside ("County").

RECITALS

- A. On or about October 5, 2021 Provider and County executed an Energy Services and Resource Optimization Agreement ("Agreement").
- B. The Agreement provides that the Parties would enter into a Work Order to authorize certain work set forth in the Scope of Services described in **Attachment 1** to the Agreement. The purpose of this Work Order is to authorize work on the terms and conditions set forth herein.

NOW, THEREFORE, the Parties hereto hereby agree:

- 1. **Work Order.** This Work Order incorporates the terms of the Agreement, all schedules attached thereto, and the applicable Addendum, constitutes a separate binding agreement for Services, and may only be amended, modified or waived with the written consent of the entities that are Parties to this Work Order at the time of such amendment, modification or waiver (giving effect to any assignments hereof, as discussed in the Agreement). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement as supplemented by such Addendum.
- 2. **Scope of Work.** The Provider is directed to perform the work listed on **Attachment 1** attached hereto and incorporated herein by reference (the "Work") at the Host Site identified in Schedule A to the Agreement. The Work shall proceed on a System-by-System basis and consists of the following individual Systems:
 - a. AHU 1
 - b. AHU 2
 - c. AHU 3
 - d. AHU 4
 - e. Roof
- 3. **Compensation to the Provider.** The Work Order Purchase Amount for the System(s) authorized by this Work Order, subject to additions and deductions by written Change Order, shall be **Twenty-Four Million Five Hundred Fifty-Nine Thousand One Hundred Nineteen Dollars (\$24,559,119)**, the calculation of which is set forth in **Attachment 11** which is attached hereto and incorporated herein by reference. Following the date of Substantial Completion, the Provider shall regularly invoice the County, and the County shall remit its Monthly Payments to the Provider on a monthly basis. Billing will commence on a System-by-System basis.

- a. Itemized Purchase Amount. The County shall pay the Provider the Purchase Amount for Provider's performance of the AHU Work Order. The Purchase Amount includes: (1) the OSHPD Construction Cost in the Stipulated Sum of \$16,051,507 identified in the Itemized Purchase Amount in Attachment 11, Exhibit A to the Work order; plus (2) a Project Installation Contingency in the Guaranteed Not-to-Exceed Amount of \$802,575, for an "Installation Guaranteed Maximum Price of \$16,854,082 ("**Installation GMP**") plus Maintenance and Operation Guarantee Services Attachment 11, Exhibit A, plus financing costs Attachment 11, Exhibit A.

The Purchase Amount is guaranteed by Provider not to exceed **\$24,559,119.00** for a 96 month maintenance, guarantee and finance period, subject to additions for changes and deductions for changes, liquidated damages, and similar remedies. This maximum sum is referred to as the ("**Work Order Purchase Amount**").

b. Installation Contingency.

- i. Amounts from the Project Installation Contingency may be reallocated among other line items contained in the OSHPD Construction Cost; provided, however, that Provider shall notify County of the need to utilize Contingency funds and obtain County's **prior** approval, which shall not be unreasonably withheld, before utilizing or reallocating any amount from the Project Installation Contingency line item. Provider shall reflect (with a narrative explanation and back-up documentation of reasonable, necessary, actual costs incurred) any use and allocation of Project Installation Contingency funds on a monthly basis for each month that Provider uses or allocates Project Installation Contingency funds and each use and allocation of such funds is subject to County's prior written approval, which shall not be unreasonably withheld. Unused Project Installation Contingency amounts shall **not** be transferred to another line item, but, instead, shall reduce the Installation GMP by Unilateral Change Order, with such savings for the benefit of the County.
- ii. The Project Installation Contingency line item is intended to be utilized only for costs to be reimbursed, subject to the Work Order Purchase Amount, for unforeseen costs arising from:
 1. costs reasonably incurred by Provider in implementation of any Construction Schedule recovery program provided such recovery is not otherwise compensable under the Contract;
 2. costs reasonably incurred by Provider due to those circumstances where the actual cost for an item or portion of the Work exceeds the amount allocated to such item in **Attachment 11**, except and excluding, field supervision and overhead, insurance costs and bond

costs (which may be increased only in connection with a Change Order);

3. costs reasonably incurred by Provider prior to Final Completion of the Work to repair damaged or Defective Work, but only to the extent such costs are not paid for with the proceeds of applicable insurance and Provider has exhausted all reasonable means to recover such costs from a Subcontractor, Sub-subcontractor or anyone else for whom Provider is responsible pursuant to the Contract Documents or Applicable Law;
 4. costs reasonably incurred by Provider due to unexpected circumstances, unanticipated charges, overtime, and additional expenses incurred by Provider due to errors in estimating both time and money, as well as Provider's cost and expenses incurred to correct Subcontractor or Sub-subcontractor scope deficiencies and Subcontractor or Sub-subcontractor field errors and omissions that are not otherwise reimbursable and do not constitute a change in the Work as set forth in this Agreement; and
 5. costs necessary to replace any Subcontractor because of the bankruptcy or failure to perform of such Subcontractor unless the performance of any such Subcontractor has been assured by a performance bond or is insured by, or enrolled under, subcontractor default insurance.
4. **Date of Commencement.** The "Date of Commencement" of each System shall be in accordance with the Construction Schedule set forth in **Attachment 2** attached hereto and incorporated herein by reference.
 5. **Work Order Term.** The Work Order Term shall begin on Date of Commencement and continue until the conclusion of the Operation Period.
 6. **Construction Schedule.** The Construction Schedule is set forth in **Attachment 2**, pursuant to change in accordance with Sections 1.4.3, 8.1, 9.2 and 9.3 of the Agreement.
 7. **Submittals.** The following submittals including, but not limited to the below list, shall be submitted by Provider for this Work Order:
 - a. Air Handler;
 - b. Variable Speed Drive;
 - c. Controls;
 - d. Valves; and
 - e. Temporary Air Handlers.

8. County Rights and Obligations.

- a. County Representative. Pursuant to Section 3.2 of the Agreement, the County hereby designates _____ as its Representative for purposes of this Work Order.
- b. County's Preventative Maintenance Obligations. The County's preventative maintenance obligations are set forth in **Attachment 5** attached hereto and incorporated herein by reference.
- c. Upon commencement of the Work Order and at Final Acceptance, the County shall issue written confirmation that Provider is in compliance with all material terms of this Work Order and the Agreement, or notify Provider if it is not in compliance.

9. Provider Services.

- a. Design and Engineering Documents. The provisions of Section 4.2 of the Agreement are applicable to this Work Order. Provider shall construct all systems in compliance with the final design and engineering documents including, without limitation, all deferred approvals, approved by the County and OSHPD.
- b. Duct Cleaning. This Work Order includes the cleaning of all ducts per NADCA duct cleaning standards, Applicable Law, and the County's infection control standards and protocols, that are part of or that connect to the AHU System (Units #1-4).
- c. Hazardous Materials. During that cleaning, should Provider become aware, discover or based on reasonable evidence suspect the presence of Hazardous Materials or any inappropriate biological condition or substance, Provider will immediately cease work in the affected area and will promptly notify the County of the conditions discovered. Should the Provider stop work because of such discovery, the Parties shall investigate the discovery and agree on a method(s) of remediation and Change Orders to the applicable Work Order to address impacts, if any, to the associated schedule and related Monthly Payments.
- d. Subcontractors. In accordance with Section 5.2 of the Agreement, the Provider shall engage Mesa Energy Systems, Inc., located in Irvine, California (CSLB license number 611215, DIR public works contractor registration number 1000002425) as the Subcontractor for the performance of the Work authorized by this Work Order.

Lower tier subcontractors shall include the following:

Trade	Subcontractor Name	Principal Location of Business	CSLB License Number	DIR Registration Number
Structural steel	Equip Pro, Inc.	41593 Winchester Rd., Ste 200, Temecula, CA 92590	1010797	1000757822
Crane service	Crane Rental Service	1901 W Collins Ave, Orange, CA, 92867-5467	314618	1000009341
Mechanical insulation	P&E Insulation	5455 Vine St, Chino, CA 91710	763803	1000001774
Electrical and DDC controls	TBD			
Test and balance	American Air Balance	4721 E. Hunter Ave., Anaheim, CA 92807	583562	1000003722
Roofing	Letner Roofing Co.	1490 N. Glassell Street, Orange, CA 92867	689961	1000002763
Duct cleaning	Air Management Industries	8351 Elm Ave. Ste #102 Rancho Cucamonga, CA 91730	783245	1000000491

County hereby consents to the use of the aforementioned Subcontractor(s). Any lower tier subcontractors to be engaged by the aforementioned Subcontractor(s) after execution of this Work Order shall be submitted to the County for its review and approval prior to such lower tier subcontractors commencing work on County property. County's approval shall not be unreasonably withheld.

- e. Environmental Incentives. Environmental incentives may be available in relation to the Work performed under this Work Order and will be subject to mutual approval by the Parties. The Parties shall mutually agree to account for the value of any applicable environmental incentives in the Work Order Purchase Amount.
- f. Warranty. Warranty obligations are as set forth in **Attachment 9** which is attached hereto and incorporated herein by reference.
- g. Operation Guarantee. Provider shall provide County with the maintenance services set forth in **Attachment 3**, attached hereto and incorporated herein by reference, from and after the date of Substantial Completion.

- h. Site Specific Provider Responsibilities. Provider's Site-specific responsibilities are set forth in **Attachment 4** attached hereto and incorporated herein by reference.
- i. Performance Tracking and Energy Savings Guarantee. Metering/ performance tracking services are set forth in **Attachments 12 and 13**, attached hereto and incorporated herein by reference. The energy savings guarantee is set forth in **Attachment 14**, attached hereto and incorporated herein by reference.
- j. Training Program. The training program to be provided is set forth in **Attachment 8** attached hereto and incorporated herein by reference.

10. Changes in the Work.

- a. Change Order. If the Parties cannot agree on a lump sum price for ordered changes to the Work, then the County may, by written Change Order, direct Provider to commence with such changes in the Work. The costs of such Work shall be determined on the basis of reasonable actual costs and savings of performing the Work attributable to the change, plus five percent (5%) for Provider self-performed Work, ten percent (10%) for work performed by first tier Subcontractors, five percent (5%) for work performed by second-tier Sub-subcontractor, nothing (0%) for work performed by lower tier Sub-subcontractors; and a reasonable ESA funding rate not to exceed 6.95% in the event that County elects to fund the work under this Work Order. In such case, Provider shall keep and present, in such form as County may reasonably require, an itemized accounting, together with appropriate supporting data, which form the basis for an adjustment to the Work Order Purchase Amount.

11. County Remedies.

- a. County's Right to Carry Out the Work. Pursuant to Section 3.12 of the Agreement, Provider shall promptly and diligently correct any such default or neglect in any System immediately upon receipt of notice from the County. If the Provider defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within thirty (30) days following receipt of notice from the County to correct such default or neglect unless it is anticipated to take longer in accordance with a work plan approved by the County ("**Correction Period**"), the County may, without prejudice to other remedies the County may have, correct such default or neglect. County may, withhold or nullify a payment in whole or in part, to the extent reasonably necessary to reimburse the County for the reasonable cost of correcting such deficiencies.
- b. Non-Compensable Extraordinary Measures. Pursuant to Section 3.13 of the Agreement, Provider or its Subcontractors shall promptly and diligently commence Extraordinary Measures upon receipt of notice from the County. If Provider or its Subcontractors fail to effectuate the requisite Extraordinary Measures within thirty (30) days, or such other commercially reasonable amount of time as set forth in a

written work plan acceptable to the County that demonstrates why a longer time period is needed to complete the cure, from County's written demand ("**Extraordinary Measure Period**"), County may, without prejudice to other remedies, take corrective action at the expense of Provider.

12. Substantial Completion and Final Acceptance.

- a. Substantial Completion Date. The Provider will commence the Work no later than the Date of Commencement and will successfully achieve Substantial Completion of the Work for each System within the number of days from the Date of Commencement ("**Substantial Completion Date**") set forth in the Construction Schedule. Provider shall diligently perform the Work of the Project and each System in accordance with the Construction Schedule in **Attachment 2**.
- b. Request for Inspection, Punch List and Notice of Substantial Completion. When the Provider believes that the Work associated with a System has achieved Substantial Completion, the Provider will notify County in writing. Unless the County determines that the Work is not sufficiently complete to warrant an inspection, County, the Inspector of Record, and such others as may be designated by the County will inspect the Work. If the County concurs that the described portion of the Work as performed has achieved Substantial Completion, the County sign the Notice of Substantial Completion on the County's form, attached hereto as **Attachment 7**, returning it to the Provider, attaching a Final Completion Punch List of Work and establishing a deadline for completion of the Final Completion Punch List items prior to County's Final Acceptance ("**Final Completion Date**"). If the County does not concur that the Work has achieved Substantial Completion, then the County shall within ten (10) business days of such inspection prepare and give to Provider a Substantial Completion Punch List of any discrepancies or incomplete items to be completed or corrected for Substantial Completion. Failure by County to include an item on the Substantial Completion Punch List does not alter the responsibility of Provider to perform the Work in accordance with the Contract Documents. If the Provider disagrees with the discrepancies raised by the County, the Provider shall notify the County of a dispute, and such dispute shall be resolved in accordance with the Agreement. Provider shall promptly commence and diligently correct or complete such items of Work to conform to the description of the Work set forth herein including, without limitation, any disputed items, and notify the County when it is ready for re-inspection. County will then make such further inspections and Provider shall complete or correct such items as are necessary for County to issue a Notice of Substantial Completion, which shall attach the Final Completion Punch List. Regardless of the date the Notice of Substantial Completion is issued, Substantial Completion shall be deemed to have occurred on the date stated in the Notice of Substantial Completion. Substantial Completion may occur on a System-by-System basis, and the date of Substantial Completion shall trigger the commencement of billing for each System.

- c. Final Completion Punch List. Provider shall prepare and submit to County at the time that Provider requests inspection for Substantial Completion of the entire Work, a draft proposed Final Completion Punch List of items of Work that will be required to be completed or corrected for Final Completion. Items identified in the course of any inspection for Substantial Completion that are required to achieve Final Completion the Work following Substantial Completion shall be added to the proposed Final Completion Punch List and the revised Final Completion Punch List attached to the Notice of Substantial Completion. If Provider disputes any of the items included, it shall so note its objection on the Final Completion Punch List. When Provider considers the Final Completion Punch List to be complete, it shall promptly sign and deliver the Final Completion Punch List to the County. Failure by County, Inspector of Record or Provider to include an item on the Final Completion Punch List does not alter the responsibility of Provider to perform the Work in accordance with the Contract Documents. Items of Work necessary for Final Completion that, for any reason, have been omitted from the Final Completion Punch List shall be added to the Final Completion Punch List upon request by the County made at any time prior to Final Payment and completion of such items shall be made promptly and before the Work will be considered Finally Complete.
- d. Performance of Final Completion Punch List. Provider shall proceed promptly and no later than the Final Completion Date established in the Notice of Substantial Completion to correct and complete the items on the Final Completion Punch List, including, without limitation, any disputed items, and all such items of Work shall be completed by Provider before the Work will be considered to have achieved Final Completion.
- e. Request for Final Inspection. Provider shall notify County when Provider believes that the Work is Finally Complete. County, Inspector of Record, and such others as County deems necessary or appropriate will then make a further inspection to determine whether such Work has achieved Final Completion. If such inspection, or any subsequent re-inspection required pursuant hereto, discloses any item, whether or not included on the Final Completion Punch List, which must be completed or corrected before Final Completion, Provider shall, as, a condition of Final Completion, complete or correct such item, which shall then be re-inspected to confirm that such Work is Finally Completed. Provider shall reimburse County, or County may at its option withhold from Provider's payments, amounts incurred by County to the Inspector of Record, County Consultants or others whose services, for reasons within the control or responsibility of Provider or the Subcontractors, are necessary for more than two (2) inspections to determine Final Completion.
- f. Notice of Final Completion. When County determines that the Work is Finally Complete, County will prepare a Notice of Final Completion on the County's form, which shall state the date of Final Completion. Regardless of the date the Notice

of Final Completion is issued, Final Completion shall be deemed to have occurred on the date stated in the Notice of Final Completion.

- g. Final Acceptance by County. Acceptance may be exercised by County, in its sole and absolute discretion, either after Final Completion or, without waiving or releasing Provider from any of its obligations under the Contract Documents, at any time after Substantial Completion and prior to Final Completion.
- h. Notice of Completion. In addition to issuance of the Notice of Substantial Completion and Notice of Final Completion, County shall have the right, exercised in its sole and absolute discretion, to record a Notice of Completion pursuant to California Civil Code §9204.
- i. No Waiver by County. No inspections conducted pursuant to this Section nor any approvals or certificates issued by County or Inspector of Record shall be deemed to be a waiver or limitation on County's right to insist on Final Completion and full performance of all other conditions to Final Payment under the Contract Documents prior to issuance of Final Payment to Provider.
- j. **Attachment 10**, attached hereto and incorporated herein by reference, sets forth information regarding the performance acceptance test and commissioning activities which must be completed prior to Substantial Completion of the last System.

13. Liquidated Delay Damages. The Parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to fix with precision the actual damages the County would incur in the event of delays in achieving Substantial Completion, or the milestones specified below, and that the liquidated damages identified in this paragraph are a good faith and reasonable estimate of the damages and loss the County would suffer, not a penalty. Notwithstanding anything herein to the contrary, in no event shall Provider's liability for liquidated delay damages exceed an aggregate of \$250,000.

- a. **Scheduled Unavailability.** As part of the Services provided, Provider and the County will agree on schedules of work, some of which will impact the availability of rooms within the Medical Center for direct patient care, including inpatient rooms, outpatient treatment areas and operating rooms (direct patient care rooms). Specifically, scheduled unavailability of portions of these areas will be required during the following times: (1) change overs between temporary and permanent air handling units (AHUs), (2) cleaning of ducting connected to the AHUs being replaced, and (3) air balancing of the areas served by each AHU being replaced. Scheduled unavailability of these areas is expected – and will not be a basis for liquidated damages. It is also expected that changes in such schedules may be necessary and agreed to between the Provider and County to respond to

unanticipated circumstances – and such agreed to changes would not be a basis for liquidated damages.

- b. **Unscheduled Unavailability.** It is also possible that changes in these schedules not agreed to by the Provider and County may occur.
 - i. In that situation the County shall be entitled to recover as liquidated damages the sum of \$4,000 per day for each direct patient care area that is not returned, as scheduled, to patient care. A “direct patient care area” for this purpose will consist of either one or a block of rooms within an inpatient unit, an operating room, or one or a block of rooms within an outpatient unit. Unavailability, even according to the agreed schedule, of areas that are not used for direct patient care will not be a basis for assessing liquidated damages. If Provider is able to complete work in a patient care area ahead of an agreed-upon scheduled date any “unused” days of unavailability will roll over to the next scheduled block of unavailability and can be used by Provider to avoid liquidated damages relating to unavailability in that subsequent area.
 - ii. Unscheduled Unavailability liquidated damages, as set forth in Section 13(b)(i) will be calculated on a running basis throughout the Services and assessed against, if at all, the amount due to the Provider at the time of Substantial Completion of each System, provided, however, that Liquidated Damages shall not exceed the aggregate limit of \$250,000.
- c. **Work Order Substantial Completion Damages.** In addition to damages for unscheduled unavailability, the County shall be entitled to recover as liquidated damages the sum of \$100 for each day Substantial Completion of the Work Order is delayed beyond the Substantial Completion Date for the entire Work Order.

14. Default and Termination.

- a. Termination Cure Period. In accordance with Section 13.2 of the Agreement, Provider shall immediately commence to cure a default and shall prosecute such cure with due diligence. If the Provider has not cured a default within thirty (30) days from receipt of the County’s notice (“Termination Cure Period”) or provided a plan for doing so that is acceptable to the County, County may terminate this Work Order as set forth in Section 13.4 of the Agreement herein.
- b. County’s Termination of Work Order for Convenience. If County desires to terminate this Work Order for convenience prior to completion of installation and Acceptance of the System, it shall pay a Site Closure Fee as calculated in accordance with **Attachment 6**, attached hereto and incorporated herein by reference (“Pre-Acceptance Site Closure Fee”). If County desires to terminate this Work Order for convenience in accordance with the Agreement following completion of the installation and Acceptance of the System, it shall pay a Site

Closure Fee as calculated in accordance with **Attachment 6** (“Post-Acceptance Site Closure Fee”) with respect to such Closed Systems on the termination date.

- c. Effect of Termination. Termination or expiration of this Work Order shall be in accordance with the effect of termination provisions in the Agreement.

15. Modification or Amendment of Work Order; Operating Memoranda. No amendment of this Work Order shall be effective until and unless reduced to writing, either as an amendmenet or an Operating Memorandum, and executed by the Parties.

16. Assignment. The Parties acknowledge that that Provider may assign this Work Order to Redaptive Sustainability Services, LLC once Provider’s CSLB contractor’s license has been successfully transferred from Redaptive, Inc. to Redaptive Sustainability Services, LLC provided that the performance and payment bonds are revised and restated to reflect Redaptive Sustainability Services, LLC as the principal under the bonds.

17. Except as amended or supplemented herein or in previous task orders, the terms and conditions of the Agreement shall remain in full force and effect. Notwithstanding the immediately preceding sentence, the Agreement shall be interpreted in a manner consistent with the intent of this Work Order.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR WORK ORDER NO. 1

IN WITNESS WHEREOF, Provider and County have caused this Work Order No. 1 to be executed as of the day and year first above written.

REDAPTIVE, INC.

COUNTY OF RIVERSIDE, a public agency

By: _____

By: _____

Name: _____

Name: _____

Its: _____

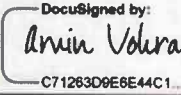
Its: _____

SIGNATURE PAGE FOR WORK ORDER NO. 1

IN WITNESS WHEREOF, Provider and County have caused this Work Order No. 1 to be executed as of the day and year first above written.

REDAPTIVE, INC.

COUNTY OF RIVERSIDE, a public agency

By: 
Name: Arvin Vohra
Its: Chief Executive Officer

By: 
Name: KAREN SPIEGEL
Its: CHAIR, BOARD OF SUPERVISORS

FORM APPROVED COUNTY COUNSEL
BY:  9/23/21
MARTHA ANN KNUTSON DATE

ATTEST:
KECIA R. HARPER, Clerk
By 
DEPUTY

Attachment 1

Scope of Services

1) Overview

- a) The scope of services is for the replacement and upgrade of the four (4) Air Handlers (AHU), associated AHU duct cleaning, and roof replacement on Building "F" at the RUHS Medical Center in Moreno Valley, CA.
 - b) The equipment shall be replaced as per the 100% approved OSHPD construction drawings which are listed in Exhibit A to this Attachment 1 and shall be inclusive of any items shown, specified and reasonably inferable for such drawings and the technical and functional specifications for installation of systems that incorporate System components from the technology manufacturers listed in Exhibit B to this Attachment 1.
 - c) Installation shall meet the requirements of OSHPD and the Inspector of Record (IOR).
 - d) The AHU controls will be upgraded and converted to digital control to replace the pneumatic controls. Complete control drawings will be provided during the submittal process unless required as part of the OSHPD drawings approval process.
 - e) All Work shall be completed by workers skilled in the appropriate trades in a manner that will provide a safe, effective and quality installation.
 - f) Materials and equipment installed in the Facilities at the Site will comply with applicable national, state and local standards for safety and building code compliance in all material respects. System solutions shall be installed in accordance with component specifications applicable to the System components.
 - g) Provider shall conduct completion of Site walkthroughs with appropriate County personnel to confirm that System installation conforms to the Contract Documents and shall document that System is functionally-equipped and programmed to begin delivering Service on a consistent and recurring basis for the Work Order Term.
- 2) Provider will provide and install the following as per the information obtained during the PSA and development of OSHPD ready construction drawings. The 100% OSHPD ready drawings shall be an attachment to this scope of services as a reference for the specifics of the scope required. Additional details of the services provided are included as attachments to this work order.

a) Equipment

- i) Provide and install four new rooftop air handling units. The new units will be custom manufactured as per the equipment schedule shown on the drawings. The new units will have an OSP certification. The air handlers will have the following additional design characteristics:

- (1) High Efficiency motors
- (2) Differential pressure meters to measure pressure drop and CFM.
- (3) Copper / aluminum coils
- (4) Filter pressure differential monitors
- (5) Fan wall fan system
- (6) OSHPD pre-approved OSP# OSP-0069-10
- (7) Redundant VFDs
- (8) UV Lights

b) Temporary Equipment

- i) Provide temporary cooling, heating and relief air handlers.

- (1) Internally isolated fans
- (2) Temporary hose for connection to chilled and hot water coils
- (3) Temporary cables for power to existing MCC.

c) Crane and Rigging

- i) Provide crane rental and rigging for the following activities

- (1) Setting temporary AHUs
- (2) Removal and replacement of existing AHUs
- (3) Loading roof with materials

d) Sheet Metal Ductwork

- i) Provide new sheet metal ductwork as required for the installation of the new AHUs and installation of the temporary AHUs.

- (1) New rooftop ductwork
- (2) New transitions to existing POC.
- (3) Removal of the existing rooftop ductwork as shown on the drawings.

- (4) New sheet metal shall be provided and installed as per the drawings and SMACNA standards.
 - (5) Ductwork will be double-walled.
- e) Piping
 - i) Provide new chilled and hot water piping from the existing POC to the new AHUs.
 - ii) Provide new supports as required.
 - iii) Removal of existing piping as required.
- f) Plumbing Piping
 - i) Provide condensate drainage for new and temporary air handling units
- g) Intentionally Omitted
- h) Valves
 - i) Provide and install new electronic BAS controlled valves for the chilled and hot water at the four air handlers. The new valves will be Belimo Energy Valves.
- i) Building Automation System (BAS)
 - i) Upgrade of the BAS for proper control and monitoring of the four AHUs.
 - (1) New controllers and panels
 - (2) New actuators and valves for the AHUs
 - (3) Air flow monitoring stations as required.
 - (4) Connection to the existing BAS front end
 - (5) Startup and testing for proper operation
- j) Fire Alarm
 - i) Update existing fire alarm system to integrate new air handlers
- k) Structural
 - i) Provide structural anchorage, support and seismic bracing for new air handlers, ductwork and piping.
- l) Miscellaneous Metal

- i) Provide access grating, ladder and catwalk to access upper hot-deck section of new air handlers. Installation shall be pursuant to the drawings.

m) Labor

- i) Provide labor for the scope of work during normal work hours.
- ii) Provide labor for shutdowns after normal working hours.

n) Demolition

- i) Demo and remove the existing air handlers and associated materials as per the demolition plan.
- ii) Removal and disposal off site.
- iii) Provider retains all salvage rights to the materials removed.

o) Roofing

- i) Provide replacement of the existing 3rd and 4th floor roof with a new PVC roofing system. The roofing system will be installed at the completion of the project and include a 20-year warranty.
- ii) The new roofing system will be applied over the existing roofing system.
- iii) Includes replacement of the 3rd floor roof. Scope for the initial roof repair to stop the existing leaks is NOT included.

p) Duct Cleaning

- i) Provide labor and materials for the cleaning of the ductwork connected to air handlers 1 thru 4. Ductwork not associated with these air handlers is specifically excluded.
- ii) Duct cleaning will require a 2 week per floor per AHU of the areas served for completion.
- iii) Filter media will be installed over supply air registers prior to start of cleaning.
- iv) Mold remediation is specifically excluded from this proposal and scope of work.
- v) Pre- TAB with the duct cleaning
- vi) Ductwork will be cleaned per NADCA Duct Cleaning standards

q) Structural Improvements

- i) Provide new structural supports for piping and the air handlers as shown on the drawings.
- ii) A temporary structural frame will be provided and used for the temporary equipment.
- iii) The pad for AHU #1 will be extended as per the drawings.

r) Fire/Life Safety

- i) Provide installation of duct smoke detectors as required.
- ii) Connect the duct smoke detectors and the new AHUs to the existing fire life safety system.

- s) Humidifier Repairs
 - i) The existing 36 humidifiers located in Build F will be serviced for proper operation.
 - ii) The steam traps and steam valves will be replaced.
 - iii) The operation will be confirmed through the Building Automation System.
 - iv) Provide and install infectious control containment as required.
 - v) Replacement of piping system is specifically excluded.
 - vi) Any repairs above those list above as included will be quoted and submitted for approval.
- t) Electrical
 - i) Provide new electrical wiring and conduit as per the drawings.
 - ii) New disconnects as required.
 - iii) New breakers and starters as shown on the drawings.
 - iv) Demo and removal of existing electrical as required.
- u) Air and Water Balancing (TAB)
 - i) Provide final air balance and final TAB report per design drawings for the AHUs
- v) General Conditions
 - i) Provide the following construction support items
 - (1) Jobsite construction office trailer
 - (2) Construction restrooms
 - (3) Temporary Fencing
 - (4) Equipment rentals
 - (5) Project Management and Supervision
 - (a) Project Executive
 - (b) On-Site Project Manager
 - (c) Site Foreman / Safety Manager
 - (d) Project Administrator
 - ii) Provide and maintain a project schedule
 - (1) Monthly full schedule updates.
 - (2) Weekly 3-week look ahead.
 - iii) Attend and schedule construction meetings with County staff and subcontractors

iv) Generate and submit the following items as required

- (1) Submittals
- (2) MOPs
- (3) ICRA permit requests
- (4) TAB reports
- (5) Startup reports
- (6) Close out documents

w) Commissioning

- i) Provide commissioning of the new equipment as detailed in the included Attachment.

x) Warranty

- i) Provide warranty of the new equipment as detailed in the included Attachment.

Exhibit A to Attachment 1
OSHPD Construction Drawings

The OSHPD construction drawings include the following:

Sheet Number	Title	Issue	Date
T1.1	TITLE SHEET - INDEX TO DRAWINGS	OSHPD SUBMITTAL	7.23.21
T1.2	GENERAL NOTES	OSHPD SUBMITTAL	7.23.21
A0.7	SPECIFICATIONS	OSHPD SUBMITTAL	7.23.21
A0.8	SPECIFICATIONS	OSHPD SUBMITTAL	7.23.21
A1.1	OVERALL FIRST FLOOR - EXISTING AND ADA COMPLIANCE PLAN	OSHPD SUBMITTAL	7.23.21
D6.1	4TH FLOOR DEMO ROOF FLAN	OSHPD SUBMITTAL	7.23.21
A6.1	ROOF PLAN	OSHPD SUBMITTAL	7.23.21
S0.1	GENERAL NOTES	OSHPD SUBMITTAL	7.23.21
S0.2	SPECIAL INSPECTION	OSHPD SUBMITTAL	7.23.21
S0.7	SPECIFICATION	OSHPD SUBMITTAL	7.23.21
S0.8	SPECIFICATION	OSHPD SUBMITTAL	7.23.21
S0.9	SPECIFICATION	OSHPD SUBMITTAL	7.23.21
S0.10	SPECIFICATION	OSHPD SUBMITTAL	7.23.21
S0.11	SPECIFICATION	OSHPD SUBMITTAL	7.23.21
S2.0	ROOF FRAMING PLAN	OSHPD SUBMITTAL	7.23.21
S7.0	SCREEN WALL SECTIONS AND DETAILS	OSHPD SUBMITTAL	7.23.21
S8.0	EQUIPMENT ANCHORAGE SECTIONS AND DETAILS	OSHPD SUBMITTAL	7.23.21
S8.1	EQUIPMENT ANCHORAGE SECTIONS AND DETAILS	OSHPD SUBMITTAL	7.23.21
S8.2	EQUIPMENT ANCHORAGE SECTIONS AND DETAILS	OSHPD SUBMITTAL	7.23.21
M0.1	MECHANICAL COVERSHEET	OSHPD SUBMITTAL	7.23.21
M0.2	SCHEDULES	OSHPD SUBMITTAL	7.23.21
M0.3	AIR BALANCE TABLE - AHU-1	OSHPD SUBMITTAL	7.23.21
M0.4	AIR BALANCE TABLE - AHU-2	OSHPD SUBMITTAL	7.23.21
M0.5	AIR BALANCE TABLE - AHU-3	OSHPD SUBMITTAL	7.23.21
M0.6	AIR BALANCE TABLE - AHU-4 & OTHER SYSTEMS	OSHPD SUBMITTAL	7.23.21
M0.7	SPECIFICATIONS	OSHPD SUBMITTAL	7.23.21
M.1	LOWER FLOOR PLAN - VENTILATION	OSHPD SUBMITTAL	7.23.21
M.2	FIRST FLOOR PLAN - VENTILATION	OSHPD SUBMITTAL	7.23.21
M.3	SECOND FLOOR PLAN - VENTILATION	OSHPD SUBMITTAL	7.23.21
M.4	THIRD FLOOR PLAN - VENTILATION	OSHPD SUBMITTAL	7.23.21
MP1.1	LOWER FLOOR PLAN - PIPING	OSHPD SUBMITTAL	7.23.21
MP1.2	FIRST FLOOR PLAN - PIPING	OSHPD SUBMITTAL	7.23.21

MP1.3	SECOND FLOOR PLAN - PIPING	OSHPD SUBMITTAL	7.23.21
MP1.4	THIRD FLOOR PLAN - PIPING	OSHPD SUBMITTAL	7.23.21
M2.1	PHASE 1 - ROOF PLAN - TEMP MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.2	PHASE 1 - ROOF PLAN - DEMO MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.3	PHASE 1 - ROOF PLAN - REMODEL MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.4	PHASE 1 - ROOF PLAN - TEMP DEMO MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.5	PHASE 1 - ROOF PLAN - FINAL MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.6	PHASE 2 - ROOF PLAN - TEMP MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.7	PHASE 2 - ROOF PLAN - DEMO MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.8	PHASE 2 - ROOF PLAN - REMODEL MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.9	PHASE 2 - ROOF PLAN - TEMP DEMO MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.10	PHASE 2 - ROOF PLAN - FINAL MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.11	PHASE 3 - ROOF PLAN - TEMP MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.12	PHASE 3 - ROOF PLAN - DEMO MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.13	PHASE 3 - ROOF PLAN - REMODEL MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.14	PHASE 3 - ROOF PLAN - TEMP DEMO MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.15	PHASE 3 - ROOF PLAN - FINAL MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.16	PHASE 4 - ROOF PLAN - TEMP MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.17	PHASE 4 - ROOF PLAN - DEMO MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.18	PHASE 4 - ROOF PLAN - REMODEL MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.19	PHASE 4 - ROOF PLAN - TEMP DEMO MECHANICAL	OSHPD SUBMITTAL	7.23.21
M2.20	PHASE 4 - ROOF PLAN - FINAL MECHANICAL	OSHPD SUBMITTAL	7.23.21
M5.1	SECTIONS	OSHPD SUBMITTAL	7.23.21
M6.1	DETAILS	OSHPD SUBMITTAL	7.23.21
M6.2	CONTROLS	OSHPD SUBMITTAL	7.23.21
E0.1	ELECTRICAL COVERSHEET	OSHPD SUBMITTAL	7.23.21
E0.2	DEMOLITION - SINGLE LINE DIAGRAM	OSHPD SUBMITTAL	7.23.21
E0.3	REMODEL - SINGLE LINE DIAGRAM	OSHPD SUBMITTAL	7.23.21
E0.4	TEMPORARY SINGLE LINE DIAGRAM	OSHPD SUBMITTAL	7.23.21
E0.5	PANEL SCHEDULES	OSHPD SUBMITTAL	7.23.21
E0.7	SPECIFICATIONS	OSHPD SUBMITTAL	7.23.21
E2.1	PHASE 1 - ROOF PLAN - TEMP ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.2	PHASE 1 - ROOF PLAN - DEMO ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.3	PHASE 1 - ROOF PLAN - REMODEL ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.4	PHASE 1 - ROOF PLAN - TEMP DEMO ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.5	PHASE 1 - ROOF PLAN - FINAL ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.6	PHASE 2 - ROOF PLAN - TEMP ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.7	PHASE 2 - ROOF PLAN - DEMO ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.8	PHASE 2 - ROOF PLAN - REMODEL ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.9	PHASE 2 - ROOF PLAN - TEMP DEMO ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.10	PHASE 2 - ROOF PLAN - FINAL ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.11	PHASE 3 - ROOF PLAN - TEMP ELECTRICAL	OSHPD SUBMITTAL	7.23.21

E2.12	PHASE 3 - ROOF PLAN - DEMO ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.13	PHASE 3 - ROOF PLAN - REMODEL ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.14	PHASE 3 - ROOF PLAN - TEMP DEMO ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.15	PHASE 3 - ROOF PLAN - FINAL ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.16	PHASE 3 - ROOF PLAN - TEMP ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.17	PHASE 3 - ROOF PLAN - DEMO ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.18	PHASE 3 - ROOF PLAN - REMODEL ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.19	PHASE 3 - ROOF PLAN - TEMP DEMO ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E2.20	PHASE 3 - ROOF PLAN - FINAL ELECTRICAL	OSHPD SUBMITTAL	7.23.21
E3.1	DETAILS	OSHPD SUBMITTAL	7.23.21
FA-101	BUILDING INFO, SCOPE OF WORK, NOTES, LEGEND, EX. SEQUENCE OF OPERATIONS, & VICINITY MAP	OSHPD SUBMITTAL	7.23.21
FA-201	CALCULATIONS AND DETAILS	OSHPD SUBMITTAL	7.23.21
FA-301	PARTIAL ROOF FLOOR PLAN, ROOF KEY MAP & PARTIAL RISER DIAGRAM	OSHPD SUBMITTAL	7.23.21

Exhibit B to Attachment 1

Specifications

The minimum technical and functional performance specifications shall be in accordance with the OSHPD submittal, dated July 23, 2021.

Discipline	Reference	Sheet Number	Date
Architectural	OSHPD SUBMITTAL	A0.7	7.23.21
Architectural	OSHPD SUBMITTAL	A0.8	7.23.21
Structural	OSHPD SUBMITTAL	S0.7	7.23.21
Structural	OSHPD SUBMITTAL	S0.8	7.23.21
Structural	OSHPD SUBMITTAL	S0.9	7.23.21
Structural	OSHPD SUBMITTAL	S0.10	7.23.21
Structural	OSHPD SUBMITTAL	S0.11	7.23.21
Mechanical	OSHPD SUBMITTAL	M0.7	7.23.21
Mechanical	OSHPD SUBMITTAL	E0.7	7.23.21

Attachment 2

Construction Schedule and Construction Operations Phasing Plan

- 1) The Provider will develop a complete and detailed schedule showing the phasing of the project.
- 2) The schedule shall include the following.
 - a) Preconstruction Activities
 - b) Detailed list of construction activities for each trade
 - i) General contracting
 - ii) Mechanical
 - iii) Electrical
 - iv) Controls
 - v) Roofing
 - vi) Others not listed
 - c) Details for scheduled shutdowns
 - i) Shutdowns shall include a detailed MOP submitted at least 3 weeks prior to the shutdown for approval.
 - ii) MOP must be approved at least 2 weeks prior to the shutdown.
 - d) Project Milestones and critical paths
 - e) Project date slippage
 - i) Provide documentation and justification for slippage.
 - f) Document in the schedule County Responsibilities and completion dates
 - i) Traffic control
 - ii) Patient relocation
 - iii) Relocation of furniture
- 3) Project coordination meetings will be scheduled on a weekly basis to discuss progress and milestones.
 - a) Shutdown and processes to minimize shutdowns shall be discussed at least 30 days prior to scheduled date.
- 4) The schedule shall show that every possible construction process is taken and completed to minimize hospital disruption and reduce downtime.
 - a) Perform only minimal amounts of work during the shutdown
- 5) If patient rooms are required for access during construction, Provider shall coordinate with County to minimize disruption and schedule the event. As described in Section 13 of this Work Order, the schedule will include all Scheduled Unavailability.
- 6) Method of Construction
 - a) Provider will perform work in a manner that will limit disruption to hospital operations and minimize shut down time. It is understood between Provider and County that the replacement of the AHUs cannot be performed without some type of shutdown and possible patient relocation. As described in Section 13 of this Work Order, the schedule will include all Scheduled Unavailability.

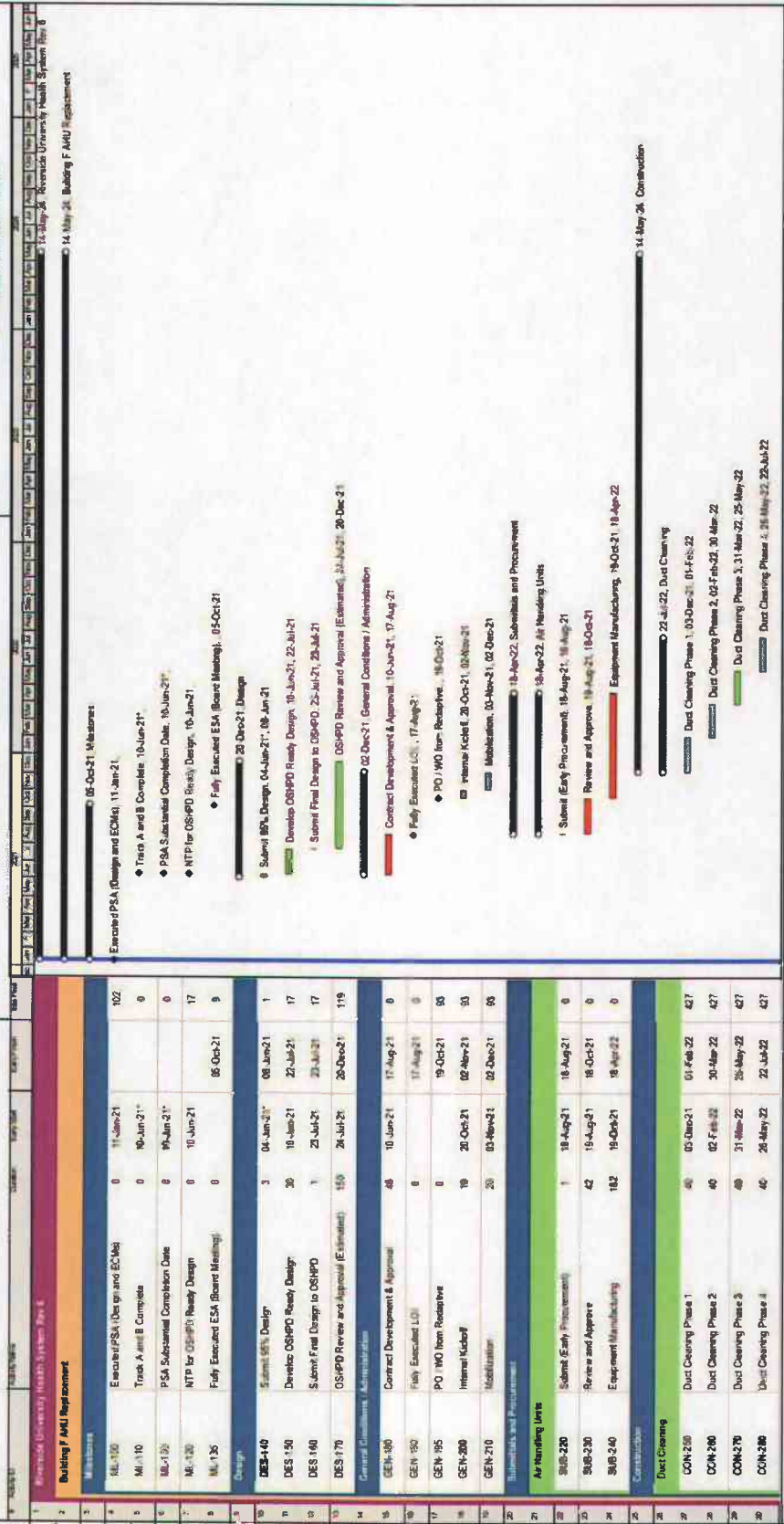
- b) Provider anticipates the following process to minimize this disruption. Final process will be delivered after the completion of the OSHPD approved drawings.
- c) All equipment and long lead time materials required for the construction in each phase shall be delivered to the job site or Provider's staging site/warehouse prior to starting work.
- d) Phase 1 (after preconstruction phase, see attached preliminary schedule)
 - i) Mobilize on site and stage materials to begin construction.
 - ii) Load the roof with materials using a crane and minimize moving within the hospital.
 - iii) Set the temporary equipment and set up for operation.
 - iv) Prefabricate new piping connections off site for installation after new AHU is set.
 - v) Begin installation of new electrical as possible
 - vi) Test temporary equipment for proper operation and validate.
 - vii) Perform cutover of AHU after hours or over a predetermined mutually agreed upon date.
 - viii) Demo and remove existing equipment
 - ix) Set and place new equipment.
 - x) Install fabricated ductwork as required for connection of the new units.
 - xi) Provide electrical wiring and piping installation (portions of this will be completed prior to shutdown)
 - xii) Install BAS controls (portions of this will be completed prior to shutdown)
 - xiii) Start-up and test the new AHU
 - xiv) Perform cut over to new AHU and disconnect of temp AHUs
 - xv) Begin Commissioning of new AHU.
 - xvi) Air balance at zone level.
 - (1) This item may require relocation of patients and furniture for proper access. Scheduling and coordination shall begin prior to shutdown of existing AHU.
 - xvii) Prepare for phase 2 process.
- e) Phase 2 thru 4 shall duplicate those defined in Phase 1.
- f) At the completion of each Phase a debriefing shall be held to determine lessons learned for improved scheduling during the remaining phases.

[Note: Draft project schedule and phasing plan follows on next page]

Preliminary Construction Schedule Rev 5, dated August 30, 2021



BUILDING F AHU REPLACEMENT
RIVERSIDE UNIVERSITY HEALTH SYSTEM



PRINT DATE: 23-Sep-21

PRELIMINARY CONSTRUCTION SCHEDULE REV. 6
Page 1 of 3



BUILDING F AHU REPLACEMENT
RIVERSIDE UNIVERSITY HEALTH SYSTEM



Activity	Start	End	Duration	Resources	Notes
North Air Handling Units Phase 1 (AHU-1)					
CON-100 Temporary AHU Install	15-Apr-22	09-May-22	0		
CON-110 Changeover to Temp AHU (Shutdown)	16-May-22	10-May-22	0		
CON-120 Demolition	11-May-22	24-May-22	0		
CON-130 AHU Install	26-May-22	22-Jun-22	0		
CON-140 AHU DDC Controls	23-Jun-22	07-Jul-22	0		
CON-150 Start-up	28-Jul-22	14-Jul-22	0		
CON-160 Changeover to New AHU (Shutdown)	15-Jul-22	15-Jul-22	0		
CON-170 AHU Traverse Readings (Phase 1)	18-Jul-22	22-Jul-22	156		
CON-180 Substantial Completion - Phase 1	25-Jul-22	25-Jul-22	156		
Phase 2 (AHU-4)					
CON-190 Temporary Air Relocation and Install	15-Jul-22	05-Aug-22	0		
CON-110 Changeover to Temp AHU (Shutdown)	08-Aug-22	08-Aug-22	0		
CON-120 Demolition	09-Aug-22	22-Aug-22	1		
CON-130 AHU Install	20-Aug-22	25-Sep-22	0		
CON-140 AHU DDC Controls	10-Sep-22	04-Oct-22	0		
CON-150 Start-up	05-Oct-22	11-Oct-22	0		
CON-160 Changeover to New AHU (Shutdown)	12-Oct-22	12-Oct-22	0		
CON-170 AHU Traverse Readings (Phase 2)	13-Oct-22	19-Oct-22	164		
CON-180 Substantial Completion - Phase 2	20-Oct-22	28-Oct-22	164		
Phase 3 (AHU-5)					
CON-190 Temporary AHU Install	13-Oct-22	02-Nov-22	0		
CON-110 Changeover to Temp AHU (Shutdown)	03-Nov-22	03-Nov-22	0		
CON-120 Demolition	04-Nov-22	17-Nov-22	0		
CON-130 AHU Install	20-Nov-22	19-Dec-22	0		
CON-140 AHU DDC Controls	16-Dec-22	04-Jan-23	0		
CON-150 Start-up	05-Jan-23	11-Jan-23	0		
CON-160 Changeover to New AHU (Shutdown)	12-Jan-23	12-Jan-23	0		
CON-170 AHU Traverse Readings (Phase 3)	13-Jan-23	20-Jan-23	52		

Legend:
■ Annual Work
■ Remaining Work
■ Critical Remaining Work
■ Milestone
■ Summary

Legend:
■ 25-Jul-22, Phase 1 (AHU-1)
■ Temporary AHU Install: 18-Apr-22, 09-May-22
■ Changeover to Temp AHU (Shutdown): 10-May-22, 16-May-22
■ Demolition: 11-May-22, 24-May-22
■ AHU Install: 26-May-22, 22-Jun-22
■ AHU DDC Controls: 23-Jun-22, 07-Jul-22
■ Start-up: 08-Jul-22, 14-Jul-22
■ Changeover to New AHU (Shutdown): 16-Jul-22, 15-Jul-22
■ AHU Traverse Readings (Phase 1): 18-Jul-22, 22-Jul-22
■ Substantial Completion - Phase 1: 25-Jul-22, 25-Jul-22
■ 28-Oct-22, Phase 2 (AHU-4)
■ Temporary Air Relocation and Install: 16-Jul-22, 05-Aug-22
■ Changeover to Temp AHU (Shutdown): 08-Aug-22, 08-Aug-22
■ Demolition: 09-Aug-22, 22-Aug-22
■ AHU Install: 20-Aug-22, 25-Sep-22
■ AHU DDC Controls: 10-Sep-22, 04-Oct-22
■ Start-up: 05-Oct-22, 11-Oct-22
■ Changeover to New AHU (Shutdown): 12-Oct-22, 12-Oct-22
■ AHU Traverse Readings (Phase 2): 13-Oct-22, 19-Oct-22
■ Substantial Completion - Phase 2: 20-Oct-22, 28-Oct-22
■ 27-Jan-23, Phase 3 (AHU-5)
■ Temporary AHU Install: 13-Oct-22, 02-Nov-22
■ Changeover to Temp AHU (Shutdown): 03-Nov-22, 03-Nov-22
■ Demolition: 04-Nov-22, 17-Nov-22
■ AHU Install: 20-Nov-22, 19-Dec-22
■ AHU DDC Controls: 16-Dec-22, 04-Jan-23
■ Start-up: 05-Jan-23, 11-Jan-23
■ Changeover to New AHU (Shutdown): 12-Jan-23, 12-Jan-23
■ AHU Traverse Readings (Phase 3): 13-Jan-23, 20-Jan-23

Attachment 3

Operation Guarantee

Pursuant to Section 13.3 of the Agreement, Provider's Cure Period for this Operation Guarantee shall commence immediately on receipt of any notice to cure from the County and shall be completed within thirty (30) days unless Provider presents a written work plan acceptable to the County that demonstrates why and how a longer time period is needed to complete the cure.

Pre-Final Acceptance

The System will operate and perform as per the approved construction drawings and specifications. The operation of the System will be verified through a functional performance and verification test. The test shall be developed and completed as per Performance Acceptance Test On Completion as defined in Attachment 10. The County, or its agent, will be required to witness and verify the operation. Prior to Final Acceptance, if the System does not meet the operational design Specifications, Provider will adjust/repair/replace components to ensure compliance (parts and labor); provided, however, deficiencies due to items outside of Provider's scope of work (including but not limited to upstream and downstream equipment) that prevent proper operation of the System will not be the responsibility of Provider.

The following items will be evaluated in accordance with the design specifications (M0.2 through M0.6) for operational performance:

1. Air Flow (CFM) Supply, Return, Mixed Air and Exhaust.
2. Supply Air and Return Air Duct Static Pressure
3. Chilled and Hot Water Coil Temperature Differential
4. Chilled and Hot Water Coil Pressure Differential
5. Humidity Entering and Leaving %
6. Temperature Readings

Post Final Acceptance (Base Level Operation Guarantee)

After Final Acceptance, Provider shall deliver replacement System components at its own cost and notify equipment providers regarding such non-working components (the "**Support Services**").

Response times for County support needs are set forth in Attachment 9.

A case will be opened and Provider shall be obligated to provide the Support Services after Provider has confirmed that the County has provided Provider with all reasonably necessary information regarding the case (the "**Case Opening Time**"), including but not limited to: County's name, Site, County point of contact, phone number, and email address, fixture ID(s) and description of the issue.

For any Support Services, County shall provide reasonable assistance at the Site to assist Provider in troubleshooting and solving System issues, which such assistance may require the Provider or its agents or subcontractors to have reasonably agreed access to the Site, the System

and any ancillary equipment. If additional information is required from the County or a Site visit needs to be scheduled, and County does not respond after three consecutive contact attempts confirmed in writing with proof of receipt by County, one per consecutive day, the case may be closed by Provider and Provider shall not be obligated to provide the Support Services associated with such case. For the avoidance of doubt, Provider will at all times be responsible for any parts required to perform the Support Services.

In its performance of the Support Services, Provider shall make the initial notification to the equipment provider within 1 business day of the Case Opening. At any time prior to Acceptance with respect to the above System, Provider may update this Schedule in consultation with County to reflect deviations from this Work Order that occurred during installation. Each Party represents and warrants that each of the representations and warranties set forth in the Agreement are true as of the date of this Work Order.

In the event that modifications to the facility exceed the following guidelines, Provider and County agree that the Parties will modify the equipment performance guarantee to account for such modifications:

- Modifications to the air distribution system that increase total air flow requirements by more than a total of 7%, or
- Changes in occupancy that increase head loads by 5%, humidity levels by 3% or increase the outside air requirements by 3%.

Post Final Acceptance ([Extended Operation Guarantee Option Provided at Extra Cost])

Provider will offer an extended Operation Guarantee for a term of eight (8) years ("Extended Operation Guarantee"). During the term of the Extended Operation Guarantee, Provider will (i) adjust/repair/replace failed System components (parts and labor) and (ii) as part of the Annual Review (defined below), adjust/repair/replace System components (parts and labor) to ensure compliance with operational design Specifications and no more than a 0.5% degradation rate per year; provided, however, deficiencies due to items outside of Provider's scope of work (including but not limited to upstream and downstream equipment) that prevent proper operation of the System will not be the responsibility of Provider.

As part of the Extended Operation Guarantee, the following items will be evaluated for operational performance on an annual basis ("Annual Review"):

1. Air Flow (CFM) Supply, Return, Mixed Air and Exhaust.
2. Chilled and Hot Water Coil Temperature Differential
3. Chilled and Hot Water Coil Pressure Differential
4. Humidity Entering and Leaving %
5. Temperature Readings

As part of the Extended Operation Guarantee, the following items will be included as a preventative maintenance program:

1. Regularly scheduled inspections and visits.
2. Emergency service calls.

3. Annual testing of the operation and performance of the equipment
4. Filter and belt replacement
5. Adjusting and lubricating System Components as necessary
6. A detailed list of tasks to be completed at each inspection.

Provide quarterly inspections to include the following scope of work.

Air Handlers

1. Inspect fan assembly and report any abnormalities.
2. Lubricate fan bearings per manufacturer's recommendation.
3. Lubricate motor bearings per manufacturer's recommendation.
4. Check motor mounts and vibration pads.
5. Check motor operating conditions.
6. Inspect electrical connections and contactors.
7. Lubricate and adjust associated dampers and linkage.
8. Check fan operation.
9. Clean outside air intake screen.
10. Check and clean drains and drain pans.
11. Check heating and cooling coils for proper operation

Variable Frequency Drives

1. Inspect and tighten nuts, bolts, and retaining devices on mechanical assemblies and mounting brackets.
2. Verify electrical connections are at proper torque settings.
3. Clean/ cooling filters and grills if applicable.
4. Remove dirt and dust that has penetrated the unit interior or accumulated on the processor boards using high-pressure nitrogen.
5. Verify and record inverter settings.
6. Verify internal power supplies, and logic outputs. Record as applicable.
7. Check proper operation of DC buss capacitors.
8. Check external controls related to the operation of the inverter.

Air Handler Controls

1. Investigate of reported problems from trouble log.
2. Control sequence evaluation, modification, and enhancement.
3. Historical Log Review.
4. Field sensor verification and calibration spot checks.
5. Hardware communication tests and functional verification.
6. Control Program and loop evaluation, modification, and enhancement
7. An electronic work order documenting the services provided.
8. Priority response time for emergency calls.
9. Preferred labor rates.
10. Primary assigned technician and a backup for emergency response and preventative maintenance.

Attachment 4

Site Specific Provider Responsibilities

- 1) The following is a general list of responsibilities of the Provider and County. Items listed are meant to be an overview of responsibilities and may not inclusive of all required tasks.
- 2) PROVIDER RESPONSIBILITIES
 - a) Preconstruction Activities
 - i) Project documentation
 - (1) Survey and evaluation reports
 - (2) Development of Method of Procedures (MOP)
 - (3) Development and submission of Infection Control Risk Assessment (ICRA) Forms
 - ii) Detailed Project Schedule
 - (1) Detailed list of activities and milestones
 - (2) Highlighting planned shutdowns
 - (3) Weekly updates to the schedule
 - iii) Submittals
 - (1) Materials
 - (2) Equipment
 - iv) Coordination Meetings with County staff
 - b) Project Management
 - i) Dedicated on site project manager during construction activities
 - ii) Responsible for maintaining project schedule
 - iii) Supervision of construction crews and subcontractors
 - iv) Coordination with County staff
 - v) Submission of Daily Reports to County
 - c) Materials and labor for construction
 - i) New Equipment (AHUs)
 - ii) Equipment rentals
 - iii) Piping
 - iv) Building Automation
 - v) Sheetmetal Ductwork
 - vi) Roof and facility protection related to construction
 - vii) Labor
 - viii) Prevailing wage labor reporting
 - ix) Daily reports
 - d) Construction Jobsite Equipment
 - i) Job site trailer
 - ii) Construction restrooms
 - iii) Construction fencing
 - iv) Office equipment and furniture for onsite office
 - v) Cranes, Forklifts and scissor lifts.

- e) Infectious Control
 - i) Preparation of ICRA permits
 - ii) Installation of containments as required for the scope of work.
 - iii) Negative air machines
 - iv) Proper PPE and training for workers
 - v) Cleaning of work areas at the conclusion of each workday.
- f) Quality Control
 - i) Inspections of work progress
 - ii) Scheduling inspections with the Inspector of Record (IOR)
 - iii) Participation in Commissioning Activities
 - iv) Operator training
- g) Maintaining a clean and safe work environment
 - i) Weekly tailgate safety meetings
 - ii) Jobsite specific safety plan COVID-19 Plan
 - iii) Fencing and safety barriers as required
 - iv) Dust control
 - v) Daily clean-up

Construction Phasing and Logistic Plan. Identify when and where work will be performed, when Hospital needs to vacate areas, staging areas, and communications plan to ensure Host Site/Hospital staff knows all the details on a daily/weekly/monthly basis using floor plans, elevations and sections and site layout. If planned locations on an approved MOP become unavailable, impact will be reflected in the schedule.

Communications Plan. Identify roles, responsibilities of Provider key personnel, County representatives, OSHPD and authorities. having jurisdiction over the Project Monitoring and reporting strategies. Weekly schedule bulletins for distribution to patients and staff.

Minimizing Noise and Vibration Impacts to County. Through a MOP the Provider will identify requirements and restrictions on drilling, jackhammering, and other intrusive work . Identify work that will be performed during off-hour. Every effort should be made by the contractor to minimize disruption to the hospital. *During normal business hours, some level of noise and vibration should be expected from the floor directly below the roof for the duration of the Project.*

Work Stoppage Protocols. Specify protocols for on-call as-needed work stoppages directed by County (see, e.g., Red-Light Directive Work Stoppage Form) relating to noise, vibration, fumes, dust, access and emergencies.

Wayfinding Plans. Provide safe path-of travel corridors throughout construction as shown on the OSHPD approved drawings. Training for contractors and hospital staff to direct staff, patients and visitors around closed areas.

Unforeseen Conditions. Plan for dealing with unknown conditions to maintain schedule and control costs

3) County Responsibilities

- a) Site Access and Security
 - i) Employees of Provider
 - ii) Subcontractors
 - iii) Delivery Drivers
 - iv) Site Security
- b) A dedicated project manager
 - i) To assist with access
 - ii) Access to specific rooms
 - iii) Coordinate shutdowns
 - iv) Notification and scheduling with RUHS Staff
 - v) Responses to RFIs
 - vi) Schedule Review and comments
- c) Construction laydown area
 - i) Job trailer area
 - ii) Construction restroom area
 - iii) Dedicated construction employee parking area
 - iv) Construction material storage area
 - v) Temporary power for trailer and construction facilities
- d) Permits and fees
 - i) ICRA permits (requested by Provider issued by RUHS)
 - ii) Burn permits (requested by Provider issued by RUHS)
 - iii) Hospital specific permits issued by RUHS
 - iv) OSHPD permit fees
 - v) Inspector Of Record (IOR) fees
- e) Access and passwords for existing Building Automation Systems (BAS)
 - i) Siemens
 - ii) Johnson Controls
 - iii) Others
- f) Disclosure of any known Hazardous Materials or conditions in the work areas
 - i) Asbestos
 - ii) Explosive materials
 - iii) Radioactive materials
 - iv) Any items that may affect the safety of workers.
- g) Relocation of furniture
 - i) Desks
 - ii) Testing equipment
 - iii) Beds
- h) Patient and restricted area access

- i) Relocation of patients as required to complete scope of work
- ii) Badges for access to restricted access areas or fulltime personnel to provide escort
- i) Certification of spaces
 - i) Clean room certification or validation
 - ii) Operating room certification or validation
 - iii) Isolation room certification or validation
 - iv) Any spaces that require third party or hospital certification or validation and not listed as included in the Provider's scope of work.
- j) Traffic Control
 - i) Secure and block off areas for rigging and cranes
 - ii) Provide traffic control as required for construction
 - iii) Secure and restrict parking as required for construction activities.

Attachment 5

County's Preventative Maintenance Obligations

The County shall be responsible for maintaining upstream and downstream systems that provide chilled water, hot water and return air ("County Systems") to the System:

- County acknowledges and agrees that Provider's ability and obligation to provide the Systems and Services pursuant to this Work Order (including the Support Services) is dependent upon County's performance of maintenance to the County Systems in such a way as to provide chilled water, hot water and return air to the System per the specified design in the equipment schedule (M0.2 through M0.6).
- County will perform preventative maintenance on County Systems as prescribed by industry standard maintenance standards.
- County will maintain and monitor its water treatment to ensure that proper chemistry is maintained.

County will maintain preventative maintenance records in its Facility Management Information System and will share such information with Provider upon Provider's reasonable request, and County's failure to perform preventative maintenance as required hereunder in a manner that materially impacts Provider's cost and/or ability to provide the Services will allow Provider to seek an equitable adjustment to the Agreement and/or Work Order, including but not limited to temporary suspension of the Services related to the failure and additional compensation until such time that County remedies such failure.

Attachment 6

Method for Computing Site Closure Fee

Notwithstanding anything to the contrary herein or in the Agreement, for purposes of this Schedule only, “**Site Closure Fee**” means, for all Closed Systems of a particular type at a Closed Site, the positive cash amount equal to the present value of the difference between the Work Order Purchase Amounts for all Closed Systems of that type installed at such Site and the payments made by County to Provider for such Closed Systems as of the date of termination (such difference, the “**Remaining Commitment**”). For the Site Closure Fee, the present value shall be derived by amortizing the Remaining Commitment on a monthly straight-line basis, discounted at a per annum rate of interest equal to a spread of 50 basis points (0.50%) plus the like term treasury equal to the term remaining as of the date of termination.

Post-Acceptance Site Closure Fee:

An example calculation of how the Site Closure Fee will be calculated in the event of termination occurring post-Acceptance is below. In this example, the site closure is occurring during year 4 of an Agreement with an 8-year term.

Site Closure Fee Calc - Year 4	\$000s
Original Term (mos)	96
Time of Termination (mos)	48
Purchase Amount	25,166
Paid to Date	(12,583)
Remaining Commitment	12,583
Remaining Term (mos)	48
Commitment/Month	262
4Y Treasury (as of 8/18/21, interpolated)	0.61%
Spread	0.50%
<i>Discount Rate</i>	<i>1.11%</i>
Site Closure Fee	12,302

Pre-Acceptance Site Closure Fee:

The same calculation is used to calculate the Site Closure Fee as for termination in Month 0, but it is multiplied by the percent of project costs incurred by the Provider. An example calculation of how the Site Closure Fee will be calculated in the event of termination occurring pre-Acceptance is below. In this example, construction is fifty percent (50%) complete:

Site Closure Fee Calc - Year 0	\$000s
Original Term (mos)	96
Time of Termination (mos)	0
Purchase Amount	
	25,166
Paid to Date	-
Remaining Commitment	25,166
Remaining Term (mos)	96
Commitment/Month	262
8Y Treasury (as of 8/18/21, interpolated)	1.13%
Spread	0.50%
Discount Rate	1.63%
Site Closure Fee at 100% Construction	23,579
% Project Cost Complete	50%
Site Closure Fee at 50% Construction	11,790

Attachment 7

Form of Certificate of Substantial Completion

CERTIFICATE OF SUBSTANTIAL COMPLETION

Date Issued: _____, 20__

Project: _____

Contractor: _____

Contract#: _____

1. DESCRIPTION OF THE WORK OR DESIGNATED PORTION INSPECTED

The following Work performed under the Contract for the above-referenced Project has been inspected by the **Engineer** and found to be substantially complete:

2. DATE OF SUBSTANTIAL COMPLETION

The Date of Substantial Completion of the Work or portion thereof designated above is hereby established as _____, 20__.

3. DEFINITION OF SUBSTANTIAL COMPLETION

Substantial Completion is defined to mean the stage in the progress of the Work when: (1) the Work is sufficiently complete in accordance with the Contract Documents as determined by the County so that the County can occupy or utilize the Work for its intended use; (2) a temporary certificate of occupancy or equivalent building inspector sign-off has been issued by the applicable governmental authority; (3) all systems included in the Work are operational as designed, tested and adjusted; and (4) all final finishes required by the Contract Documents are in place and final cleaning is completed.

4. PUNCH LIST

A Punch List of items of Work to be completed or corrected is attached hereto as **Exhibit A and dated** _____. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The date of commencement of warranties for items on the attached list will be the date of Final Completion of the Work.

5. FINAL COMPLETION

Without limiting the Contractor's Obligation to complete the Work within the Contract Time, Contractor shall complete or correct the Work items on the attached Punch List and provide all closeout documentation required by the Contract Documents within _____ **calendar days** after the date of Substantial Completion established above, on or before _____, 20__

6. RESPONSIBILITIES OF PARTIES FOR OCCUPANCY OR USE

The Contractor will be responsible for: [preventative maintenance, correction or replacement of non-conforming Work].

The Contractor will be responsible for all Contract requirements except items or requirements of County set forth in the prior sentence.

7. NO ACCEPTANCE OF WORK OR RELEASE OF CONTRACTOR

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

COUNTY REPRESENTATIVE:

(print company name)

By: _____
(signature)

(print name)

Its: _____
(title)

Date: _____

Encl. (Ex. A – Punch List)

Attachment 8

Training Program

1) TRAINING

- a) After Substantial Completion, Provider shall conduct training courses for designated personnel in the maintenance, service, and operation of the system as specified, including specified hardware and software. The training must be oriented to the specific systems provided under this contract. Provide audiovisual equipment and other training material and supplies required for the training. When training is conducted at County facilities, County may record the training sessions for later use. A training day is defined as 8 hours of instruction, excluding lunchtime, Monday through Friday, during the daytime shift in effect at the training facility. For guidance in planning the required instruction, the Provider assumes that attendees will be tradesmen such as HVAC technicians, electricians or boiler operators. Provider shall obtain approval of the training schedule from County at least 30 days prior to the first day of training. All training sessions shall be video recorded and provided in digital format as part of the final training manual.

2) TRAINING REQUIREMENTS

- a) Training Session 1
 - i) Provide a minimum of 4 hours of training per Air Handler to meet the training requirements specified herein. The 4 hours of training shall be provided within a one-week period as approved by County and shall meet all training requirements.
- b) Training Session 2
 - i) Within 2 months of completion of the last Training Session 1, provide 4 hours for each Air Handler of follow up training. Training may be segmented into two separate sessions provided within the 2-month period.

3) TRAINING SESSION 1 DOCUMENTATION

- a) Prepare and submit three sets of Training Manuals for the training session where each set of documentation consist of:
 - i) Sign-in Sheet
 - ii) Agenda
 - iii) Warranty Letter
 - iv) As-built Drawings (11" x 17" stapled set)
 - v) Controls Sequence of Operations
 - vi) Operation Manuals
 - vii) Audio visual print-outs and electronic files

4) TRAINING SESSION 1 REQUIREMENTS

- a) Conduct a Training session at the project site on the installed system for a period of no less than 4 hours and up to 8 hours as appropriate to meet the training requirements. Training shall include training in a conference room to review documentation, and in the project

building/roof to walk through areas where the work was performed. Time shall be allowed for final questions and answers for each session.

- b) A maximum of ten personnel may attend this session. Training will be designed to target towards training personnel in the day-to-day operation and basic operation of the systems. Upon completion of this course, each student, using appropriate documentation, should be able to start the system, operate the system, recover the system after a failure, perform routine maintenance and describe the specific hardware and operation of the system. Include the following topics at a minimum:
 - i) General system overview.
 - ii) Functional operation of the system, including Building Automation.
 - iii) System start-up procedures.
 - iv) Failure recovery procedures.
 - v) Maintenance procedures

5) TRAINING SESSION 2 REQUIREMENTS

- a) Provide a follow up visit to review the Warranty Logbook issues and address the issues and questions related to the building project. The session includes training on how to diagnose problems, make adjustments, troubleshooting Building Automation, and any other aspect for configuring and operating the system. Provide the following:
 - i) Sign-in Sheet identifying the date, project name, and Training Session number.
 - ii) Provide a section to provide a brief description of the topics covered in the training session.

Identify any ongoing training for County's future new hires and future equipment or software upgrades. Specify fees for additional training.

Attachment 9

Warranty/Correction Period

1) MATERIAL AND WORKMANSHIP

- a) In accordance with Section 5.11 of the Agreement, the materials and equipment shall be free from defects in material and workmanship under normal use and service conform with the requirements of the Contract Documents. If within twelve (12) months from the date of beneficial use of any of the material or equipment furnished under the Contract Documents is defective in operation, workmanship or materials, it will be replaced, repaired or adjusted at the option of the Provider free of charge, provided that the defect is reported within thirty (30) days of County's discovery of the failure occurrence.
- b) Guarantee shall extend to materials and equipment that is supplied and installed by or on behalf of the Provider.
- c) Installation: In accordance with Section 5.11 of the Agreement, the installation of the Work shall be free from defects in installation workmanship conform with the requirements of the Contract Documents. If within a period of one year from date of beneficial use the installation is defective, Provider shall, free of charge, correct any defects in workmanship after notification in writing by the County.

2) FOR SECTION 1 WARRANTIES

- a) Normal Service
 - i) Any malfunction, failure, or defect in Equipment that would not result in property damage or loss of temperature and humidity needs and control shall be corrected and repaired following notification by the County to the Provider.
 - ii) Response to any request for normal service shall be provided within two (2) working days of the County's initial request for service.
- b) Emergency Service
 - i) Any malfunction, failure, or defect in any component that would result in property damage or loss of comfort control shall be corrected and repaired following notification by the County to the Provider.
 - ii) Telephoned requests for service shall be answered by a live dispatcher 24 hours per day, 7 days per week, and 365 days per year. A representative will be dispatched within thirty (30) minutes, and Provider will make every effort to ensure the representative is on site as soon as possible.
- c) County's Telephonic Request for Service:

- i) Provider shall specify a maximum of two (2) telephone numbers for County to call in the event of a need for service. At least one of the lines will be attended by a representative of the Provider's firm 24 hours per day, 7 days per week, and 365 days per year. The representative shall be an employee of the Provider and can directly dispatch a technician qualified to work on the equipment. Use of an answering service or voicemail system is not acceptable.
- ii) Normal Service can be requested through email or telephone.

Attachment 10

Performance Acceptance Test on Completion

1) DESCRIPTION

- a) Upon completion of the installation of each air handling unit (AHU) and prior to County acceptance, Provider shall complete and certify using a Commissioning Agent (CxA) the functionality of the new AHUs. A complete Commissioning Plan (CP) will be created defining documentation of roles and responsibilities along with, providing structured means of scheduling, coordination and documentation for the commissioning process.

2) COMMISSIONING TEAM

- a) The Commissioning Team (CT) is comprised of representatives from the project team who shall be the primary contact for commissioning activities. All members of the Commissioning Team work together to fulfill contracted responsibilities and objectives of the Contract Documents. The CT shall consist of:
 - i) Commissioning Agent (CxA)
 - ii) County's Representative(s) (OR)
 - iii) Provider
 - iv) Design Professional (A/E)
 - v) Test and Balance Subcontractor (TAB)
 - vi) Controls Contractor (CC)

3) COORDINATION

- a) The CxA shall witness test activities of the Functional Performance Test (FPT) as well as select construction tests (e.g. piping pressure tests, duct leakage test, etc.) and equipment start-up tests. The OR shall witness commissioning activities as appropriate.
- b) Meetings
 - i) The CxA shall plan, schedule, and conduct a commissioning kickoff meeting with designated project team commissioning representatives in attendance. Responsibilities of the commissioning team shall be clarified at this meeting. The CxA shall distribute meeting minutes to all parties.
 - ii) Commissioning meetings shall be held periodically during the construction installation phase of work for commissioned systems. The frequency of these meetings shall increase as construction and acceptance activities require.
- c) Scheduling
 - i) Approximately 6 to 8 weeks prior to the commencement of equipment start-ups, the CxA shall conduct a commissioning functional testing schedule workshop with all commissioning team representatives. The purpose of this workshop is to establish a coordinated approach to the integration of the functional testing activities with the master construction schedule to ensure substantial completion can be achieved as scheduled.

- ii) In cooperation with the CxA, the Provider shall integrate commissioning activities into the master construction schedule.
 - iii) Scheduling issues shall be resolved at commissioning meetings.
 - iv) The CxA shall provide an initial schedule of primary commissioning events at the commissioning kick-off meeting. As construction progresses, more specific activities and milestones shall be incorporated into the master construction schedule.
- d) Submittals
- i) Start-up plan: For each piece of equipment or system the Provider shall submit a start-up plan. Obtain approval of the plan prior to beginning activities. The plan should include, but not be limited to, the following:
 - (1) Start-up schedule
 - (2) Names of firms/individuals required to participate
 - (3) Detailed manufacturer start-up procedures
 - (4) Manufacturer start-up data forms
 - ii) Prior to Functional Performance Testing, Provider shall provide CxA with documentation required for commissioning activities. At minimum, documentation shall include manufacturer and model number, manufacturer's printed installation and detailed start-up procedures, full sequences of operation, O&M data, performance data, any performance test procedures, control drawings, and details of Owner contracted tests.

4) RESPONSIBILITIES

- a) Provider
- i) Attend commissioning kick-off meeting and other commissioning team meetings.
 - ii) Perform required review of submittals.
 - iii) Submit copy of approved submittals with startup, operating and maintenance criteria to CxA.
 - iv) Facilitate coordination of commissioning activities with the CxA.
 - v) Incorporate commissioning activities including functional performance testing into master construction schedule. Provider shall be responsible for maintaining schedule document such that it is an accurate representation of construction progress through the completion of functional performance testing and resolution of all punch list issues.
 - vi) Incorporate milestone durations into construction schedule to review system installation progress.
 - vii) Review Commissioning Plan and Functional Performance Test procedures developed by CxA.
 - viii) Provide certified and calibrated instrumentation required to take measurements of system and equipment performance during Functional Performance Testing.
 - ix) Ensure installation work is complete, as in compliance with Contract Documents, and ready for Functional Performance Testing.
 - x) Execute inspections, tests, and Functional Performance Tests as described in contract documents and Commissioning Plan. Operate systems and equipment to demonstrate proper sequences of operation.
 - xi) Review Commissioning Plan and Functional Performance Test procedures.
 - xii) Provide required training for Owner personnel.
 - xiii) Provide documentation according to contract documents.
- b) Commissioning Agent (CxA)
- i) Schedule and coordinate commissioning kick-off meeting and other commissioning team

- meetings.
- ii) CxA completes development of Functional Performance Tests based on submitted documentation and submits to Commissioning Team for review and comment, approximately two weeks prior to Functional Performance testing. Final format of testing protocols, based on review comments, are prepared by CxA and distributed.
- iii) CxA recommends acceptance of performance and functionality or recommends remedial action and re-testing.

5) FUNCTIONAL PERFORMANCE TESTING

a) Functions / Modes to Be Tested

- i) Test each sequence in the sequence of operations, and other significant modes and sequences to include but not be limited to: startup, shutdown, occupied, unoccupied, manual modes and power failure. Test all alarm devices. Test functionality of this piece of equipment or system in all control strategies or interlocks with which it is associated.
- ii) Discharge temperature control functions.
- iii) Economizer functions.
- iv) Supply Fan (SF) / Return Fan (RF) interlocks.
- v) Duct static pressure (SP) control.
- vi) Return or exhaust fan tracking and building SP.
- vii) Damper interlock and correct modulation in all modes.
- viii) Temperature difference across HC & CC per Specifications.
- ix) Verification of minimum outside air control.
- x) Verify TAB reported SF cfm with control system reading.
- xi) BAS alarms (low limits, high static, etc.).
- xii) Sensor and actuator calibration checks: On duct static pressure sensor, SAT, MAT, OSAT, OSA & RA damper and valve positions, SF cfm reading with TAB, and other random checks. (BMS readout against hand-held calibrated instrument or observation must be within specified tolerances)
- xiii) Verify schedules and setpoints to be reasonable and appropriate
- xiv) Simulate fan failure and verify that alarm is generated.

b) Required Monitoring

- i) All points listed below which are control system monitored points shall be trended by the controls Subcontractor. Other points shall be monitored by the CxA using data loggers. Prior to starting Functional Testing, start trend log sampling of the following points on the BAS system. Trend only those points that are pertinent to the specific unit being tested. The list below may contain trend points that are not available on some units. Sample rate shall be set at a minimum of five (5) minute intervals.
 - (1) Outdoor air temperature
 - (2) Mixed air temperature
 - (3) Supply discharge air temperature
 - (4) Return air temperature
 - (5) Minimum outside air damper position
 - (6) Outside air damper position
 - (7) Return air damper position
 - (8) Relief air damper position
 - (9) Cooling coil control valve position
 - (10) Supply fan speed
 - (11) Supply fan status

- (12) Return fan speed
 - (13) Return fan status
 - (14) Outdoor air humidity
 - (15) Supply air humidity
 - (16) Return air humidity
 - (17) Supply static pressure
 - (18) Return static pressure
 - (19) Economizer Status
 - (20) Fan Motor power consumption (kW)
- c) Trend Logs
 - i) Upon completion of successful functional performance testing, Provider shall submit graphic trend logs to CxA.
 - ii) Submit graphic trend log for each piece of controlled equipment for each controlled parameter.
 - iii) Trend logs shall demonstrate successful performance for a seven-day period, unless the controlled process requires a longer timeline.
 - iv) Trend logs shall be color graphic, with legend, date, units, and scale, submitted to CxA in printout form.
 - d) Non-Conformance
 - i) Corrections of minor deficiencies identified may be made during the tests at the discretion of the CxA. In such cases the deficiency and resolution will be documented on the functional test script procedure form or on an attached sheet.
 - ii) As tests progress and deficiencies are identified, the CxA shall discuss the issue with the commissioning team, and the Provider.
 - (1) When there is no dispute about a deficiency and the Provider accepts responsibility to correct it:
 - (a) The CxA will document the deficiency and the Provider's response and intentions. The Provider corrects the deficiency, signs the statement of correction at the bottom of the non-compliance form certifying that the equipment is ready to be retested and sends it back to the CxA.
 - (b) The Provider shall reschedule the test; and the test is repeated.
 - (2) If there is a dispute about a deficiency, regarding whether or not it is a deficiency:
 - (a) The dispute shall be documented on the non-compliance form with the Provider's response.
 - (b) Resolutions are made at the lowest management level possible. Other parties are brought into the discussions as needed. Final interpretive authority is with the A/E. Final acceptance authority is with the Owner.
 - (c) The CxA documents the resolution process.
 - (d) Once the interpretation and resolution have been decided, the Provider corrects the deficiency, signs the statement of correction on the non-compliance form and provides it to the CxA, through the GC. The Provider shall reschedule the test and the test is repeated until satisfactory performance is achieved.
- 6) Final Reporting
 - a) CxA will be responsible for providing three (3) bound copies of final approved FPT reports and documentation.
 - b) CxA will provide record keeping as required to document final completion, non-conformance and dispute resolution.
 - c) Provider shall include CxA reports and documentation in close-out documentation.

Attachment 11

Purchase Amount Calculation

9-24-21 UPDATE										
<i>Riverside University Healthcare System - ESA Financial Overview (8yr Term)</i>										
	FY 21/22	FY 22/23	FY 23/24	FY 24/25	FY 25/26	FY 26/27	FY 27/28	FY 28/29	FY 29/30	FY30/31
RUHS - ESA Payments										
Bond Reimbursement	\$ (464,523)									
ESA Payments		\$ (1,448,646)	\$ (2,835,566)	\$ (2,835,566)	\$ (2,835,566)	\$ (2,835,566)	\$ (2,835,566)	\$ (2,835,566)	\$ (2,835,566)	\$ (2,126,675)
Operational Guarantee		\$ (66,085)	\$ (134,393)	\$ (134,393)	\$ (134,393)	\$ (134,393)	\$ (139,431)	\$ (142,454)	\$ (142,454)	\$ (106,841)
Total Payments	\$ (464,523)	\$ (1,514,731)	\$ (2,969,959)	\$ (2,969,959)	\$ (2,969,959)	\$ (2,969,959)	\$ (2,974,997)	\$ (2,978,020)	\$ (2,978,020)	\$ (2,233,515)
Notes										
1. Payments for each AHU begin in the month following OSHPD sign off for beneficial use of the area served by that AHU, and signed Notice of Substantial Completion from County. (see Project Schedule dated 23-Sep-21)										
2. ESA Payments during beneficial use period incorporate 20% payment holdback by County until final air balancing of all AHUs has been accepted by OSHPD and County. Holdback amount added to future payments.										
3. Operational Guarantee payments in FY22/23 incorporate 25% reduced cost during AHU 1 - 4 beneficial use period.										
4. ESA Payment amounts will not change in the event of any unauthorized schedule delays by Provider.										
5. Operation Guarantee payments increase slightly over time due to increased system age & extended operational warranty costs.										
6. Bond reimbursement amount will be based upon County receipt of actual bond premium paid invoices for both Prime and Subcontractor bonds.										
7. ESA final payment is 96 months following the completion of AHU Air Balancing - All Floors (see Project Schedule)										

ITEM NO.	DESCRIPTION OF WORK	Unit	Price	Comments	Notes
	Submittals		\$ 175,000		
	Mobilization		\$ 250,000		
	Project General Conditions		\$ 654,507		
	EQUIPMENT (Early Procurement)				
	Air Handling Units - Equipment		\$ 3,720,800		
	Temporary Air - Equipment	214,600	\$ 858,400		
	Temporary Air - Installation	192,000	\$ 768,000		
	Demolition	84,800	\$ 339,200		
	Structural Steel	289,000	\$ 1,156,000		
	Crane Service	195,000	\$ 780,000		
	Air Handling Units and Piping	216,000	\$ 864,000		
	Rooftop Ductwork - Material	117,000	\$ 468,000		
	Rooftop Ductwork - Installation	234,000	\$ 936,000		
	Mechanical Insulation	95,520	\$ 382,080		
	Electrical and DDC Controls	283,000	\$ 1,132,000		
	Equipment Start-up	22,000	\$ 88,000		
	Test and Balance	142,200	\$ 568,800		
	Humidifier Repair		\$ 562,400		
	GC - Structural Steel / Masonry / Patch & Paint		\$ 535,000		
	Roofing		\$ 540,660		
	DDC/BAS Final Programming		\$ 120,000		
	Functional Performance Testing		\$ 80,000		
	Commissioning Assistance		\$ 162,200		
	Duct Cleaning		\$ 603,460		
	Closeout and Demobilization		\$ 250,000		
	Fire / Life Safety		\$ 57,000		
	OSHPD Construction Cost	Stipulated Sum	\$ 16,051,507	Subtotal	1
	Project Installation Contingency	Guaranteed NTE Amount	\$ 802,575	Reduces Construction Stipulated Sum if not used and subject to the Guaranteed NTE Amount.	2
	Installation GMP		\$ 16,854,082	Subtotal	
	Construction Interest		\$ 884,239	24 month duration	
	Maintenance & Operation Guarantee Services (24/7 Operational Coverage)		\$ 1,134,835	96 month duration	
	Financing Costs		\$ 3,360,717	96 month duration	
	Ownership Cost & Risk Coverage		\$ 2,325,246	96 month duration	
	Purchase Amount		\$ 24,559,119	TOTAL	
	OTHER COUNTY PAYMENTS - NOT PART OF ESA PAYMENTS				
	CxA		\$XX,00	County to obtain their own estimates for these services, which are in addition to included training for start-up, programming and functional testing as part of Provider's	
	OSHPD Fees	Allowance	\$XX,00		
	Inspector of Record	Allowance	\$XX,00		
	Reimbursement of Prime (Redaptive) and Subcontractor (Mesa) bond premium	Fixed	\$ 464,523	% of Construction Cost	
	NOTES				
	1	Cost submitted to OSHPD is Emcor contract value			
	2	Contingency is 5% of cost, as allowance per ESA			

Attachment 12

Proposed Metering/Performance Tracking

1. AHU Fan Motor

1.1. Method: Individual AHU fan motors to be monitored via the VFDs using the BMS. Additional whole fanwall energy consumption will be metered using circuit level, current transformer power meters. Meters to be installed during design phase and remain in place for term of the agreement.

1.2. Meter Specs:

1.2.1. The meter shall be a transducer-based meter with IoT data capability.

1.2.2. The meter shall be revenue grade

1.2.3. The meter shall measure all the following parameters:

1.2.3.1. Current, Voltage, Active Power, Reactive Power, Apparent Power, Fundamental Power, Active Energy, Reactive Energy, Apparent Energy, Power Factor, Frequency, Phase Angle, Peak Demand.

1.2.3.2. The meter shall directly sense AC voltage on all phases in use.

1.2.4. The meter shall have data-logging capability

1.2.4.1. Meter shall have unlimited data-logging capability in the "Cloud"

1.2.4.2. Meter must be able to maintain 180 days of logging on the meter.

1.2.5. The meter shall be permanently positioned inside electrical sub-panels.

1.2.5.1. Meter dimensions shall be no larger than 10" x 4" x 1" to allow positioning inside electrical panels for safety, security and tamper-resistance.

1.2.5.2. All settings shall be remotely configured. There shall be no buttons, switches, DIP switches or displays on the meter which could enable tampering.

1.2.6. The meter shall have the following data security features:

1.2.6.1. The metering device shall be isolated from and shall not interface with any in-building customer network.

1.2.6.2. The meter shall transmit data over a private cellular wireless connection via an internal cellular modem native to the device and operate on its own backbone and infrastructure.

1.2.6.3. Energy data shall be encrypted and not contain labels identifiable as the customer's.

1.2.6.4. The meter shall NOT transmit data via 802.11 WiFi or be accessible via WiFi or any other local wireless technologies for security reasons.

1.3. Monitoring: Web based UI access provided to County personnel with real time access to fan motor energy consumption. Live tracking of 13 electrical parameters available in csv format via ad hoc request from County personnel. Allow ten (10) business day turn-around for delivery of reports.

1.4. Performance Tracking: To support selected performance or savings guarantee options, trended meter data will be analyzed to demonstrate power consumption and relative performance to baseline and/or design spec.

2. AHU Economizers

2.1. Method: Provided via annual performance guarantee and savings guarantee add alternates. Without these add alternates savings and performance of AHU economizers will be stipulated based on design calcs.

Attachment 13
Reduction of payments based on EGC System availability shortfall

AHU is not a generation system, section is n/a. See savings guarantee section for AHU guarantee payment language.

**Attachment 14
Energy Savings Guarantee**

This Attachment 14 is not applicable to this Work Order.