



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: December 21, 2021

Agenda Item 9D
Approvals:
City Manager ES
Dept. Head [Signature]
Attorney [Signature]
Finance [Signature]

Department: Public Works
Prepared By: Shawn Ryan, Senior Civil Engineer
Kiel Koger, Public Works Director/City Engineer

Subject: *AWARD CONSTRUCTION CONTRACT TO THOMCO CONSTRUCTION, INC. AND APPROVE OFFICE FURNITURE, AND ELEVATOR RENOVATION PURCHASE ORDERS FOR THE CITY HALL COUNCIL CHAMBERS TENANT IMPROVEMENT, PROJECT NO. 12563*

Fiscal Impact: Yes. The project budget includes \$2,015,500 of approved funding from the Disaster Relief Fund (Account Number 016-804-45300-000-12563) and a supplemental appropriation in the amount of \$484,000 from the Local Cable Infrastructure Fund (Account Number 018-245-45500-0000) which will be used to construct the Audio/Video, and Broadcasting portion of the project only. The total expenditure for the project is \$2,499,500.

Summary: Staff recommends approval of a construction contract with Thomco Construction, Inc. in the amount of \$1,851,707 (Includes Audio/Vidio); approve a purchase order in the amount of \$144,400 for furniture; and approve a purchase order for \$65,500 for elevator improvements for the City Hall Council Chambers Tenant Improvement project.

Background At its May 18, 2021 meeting the City Council approved a First Amendment for the professional services of Gensler Architects for the design of new council chambers to be located on the second floor of City Hall (Attachment 1). The area is approximately 4,100 square feet and will share the second floor with the recently completed tenant remodel for the Orange County Sheriff's Department.

At its August 17, 2021 meeting, the City Council approved a supplemental appropriation in the amount of \$4.6 million for capital projects from the Disaster Relief Fund (Attachment 2). This appropriation of funds included funding for the Council Chambers.

Discussion: The scope of work involves the construction of a new council chambers, closed session room, and Audio/Video room (Attachment 3). The second floor renovation also includes the following key components:

- New Council Member Dais, with new Audio/Video appurtenances;
- A new public seating area that will seat 128 people as well as provide space for ADA usage;
- New ADA compliant restrooms located in the closed session area;

- New Audio and Video equipment for broadcasting and meeting presentations;
- New Title 24 energy compliant lighting throughout;
- Replacement of heating, ventilation and air conditioning units (HVAC);
- Replacement and upgrade of main line plumbing systems;
- New and relocated electrical wiring;
- New flooring, wall and ceiling treatments;
- New blinds that will operate mechanically to adjust with amount of available sunlight.

The project was advertised on November 11, 2021 for public bidding via the City's PlanetBids system and the San Clemente Times. Ten electronic bids were received on December 9, 2021 with costs ranging from \$1,848,000 to \$2,222,500 (refer to Bidder's listing in Attachment 4). The first bid of \$1,616.67 was not a complete bid and was determined to be non-responsive. The second lowest bidder with a cost of \$1,848,000 was also deemed non-responsive due to the bidder not submitting all the required documentation at the time of bid. The lowest responsive, responsible bid of \$1,851,707 (refer to Construction Contract in Attachment 5) was submitted by Thomco Construction, Inc. of Anaheim, California. Staff contacted and verified references and Thomco Construction, Inc has successfully completed many projects of similar size and scope including renovating the City of Fontana's Council Chambers.

Staff also requests City Council approval of a purchase order for new furniture required for the new City Hall Council Chambers Tenant Improvements. Office furnishings have been closely coordinated with City staff, and recommends the purchase of office furniture from G/M Business Interiors of Irvine, California under a County of Orange Regional Cooperative Agreement (refer to Attachment 6 for furniture quote cover sheet and County Regional Agreement): The County conducted a public bid process and executed a five-year regional cooperative agreement in November 2017 with Goforth & Marti (doing business as G/M Business Interiors) that is available for use by all public agencies in the County. Use of this agreement discounts the selected office furniture from the list prices and City Policy No. 201-2-1 allows for purchases under such cooperative agreements. However, the policy states that such agreements must have been awarded within the past year. Staff recommends that the City Council deviate from the policy in this case because the County agreement is still a valid, five-year agreement. Execution of the purchase order now will avoid a pending price increase at the start of the new calendar year.

Staff also requests City Council approve the purchase of new interiors for each of the elevators at City Hall. Both of the elevator interiors have met their useful life and are in need of upgrading. With the elevators being the conduit to the new Council Chambers, rehabilitating the elevators just after the completion Council Chambers is highly recommended. This purchase and installation will also be through a cooperative purchasing agreement with "Source Well" (refer to attachment 7 for elevator quote and Source Well Agreement).

Contracts or purchase orders for other work will be presented to the City Council as appropriate as those items proceed in parallel to the main City Hall Council Chambers tenant improvement project.

Based on the low bid, project costs are estimated as follows:

Construction Contract	\$1,851,707
Construction Contract Contingency (15%)	277,800
Construction Management and Inspection	150,000
Elevator Rehabilitation	65,500
Furniture	144,400
<u>Misc. items (permits, plan check, etc.)</u>	<u>10,000</u>

Total Estimated Construction Cost (Rounded Up) \$2,499,500

Note that in FY 2020-2021 the City Council approved an amendment up to \$176,000 for the design of the improvements plus as-needed consultant design support during the construction phase. Therefore, the grand total approved budget is \$2,675,500 (\$176,000 in FY 2020-2021 and \$2.5 million in FY 2021-2022).

As required by City Policy and State Law, the Contractor will be required to provide performance and payment bonds simultaneously with execution of the construction contract. A warranty bond will also be required prior to City Council acceptance of completion of the project.

Recommended

Action:

STAFF RECOMMENDS THAT the City Council:

1. Approve Plans and Specifications for the City Hall Council Chambers Tenant Improvement, Project No. 12563;
2. Approve a supplemental appropriation in the amount of \$484,000 from the Local Cable Infrastructure Fund to Account no. 018-245-45500-0000 (Machinery and Equipment) for Project No. 12563;
3. Approve and authorize the Public Works Director/City Engineer to execute, Contract No. _____, in the amount of \$1,851,707 by and between the City of San Clemente and Thomco Construction, Inc., for construction of the City Hall Council Chambers Tenant Improvement, Project No. 12563; and
4. Approve and authorize the Public Works Director/City Engineer to execute a purchase order with G/M Business Interiors for furniture in accordance with the County of Orange Regional Cooperative Agreement No. RCA-017-18010014 in the amount of \$144,400, for office furniture for the new City Hall Council Chambers Tenant Improvement, Project No. 12563.

5. Approve and authorize the Public Works Director/City Engineer to execute a purchase order with TK Elevator Corporation for interior rehabilitation in accordance with the Source Well Cooperative Agreement in the amount of \$65,500 for the new City Hall Council Chambers Tenant Improvement, Project No. 12563.

- Attachments:**
1. May 18, 2021 Staff Report
 2. August 17, 2020 Staff Report
 3. 3D Model of the Council Chambers
 4. Bidder's Listing
 5. Thomco Construction, Inc. Contract
 6. Furniture Quotation and County Master Agreement
 7. Elevator Quotation and Source Well Agreement

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AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: May 18, 2021

Attachment 1

Agenda Item 6E
 Approvals:
 City Manager ES 13
 Dept. Head NR
 Attorney _____
 Finance Jiu

Department: Public Works / Engineering Division
Prepared By: Shawn Ryan, Associate Civil Engineer

Subject: APPROVAL OF FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH GENSLER FOR THE CITY HALL SECOND FLOOR OCSD SUBSTATION FOR DESIGN OF A NEW SECOND FLOOR CITY COUNCIL CHAMBER.

Fiscal Impact: Yes. A supplemental appropriation in the amount of \$176,000 to Account No. 001-203-45800 will be required from the General Fund for the proposed First Amendment in the amount of \$176,000.

Summary: Staff recommends approval of the First Amendment to the Professional Services Agreement with Gensler for interior design and construction support for the City Hall Council Chambers Project.

Background: At its February 18th, 2020 meeting, the City Council approved a professional services agreement with Gensler (Attachment 1) in the amount of \$265,350 to design improvements on the second floor of City Hall for the Orange County Sheriff's Department (OCSD). The design space of the OCSD Substation encompassed all but approximately 4,500 square feet of the second floor, which remained for future City use. This available area was evaluated for use as a new permanent City Council Chamber. To expedite implementation and design efficiency, staff solicited a proposal from Gensler for the design of this remaining unimproved second floor area as a meeting chamber for consideration by the City Council.

Discussion: Gensler submitted a proposal including a conceptual plan for the proposed Council Chamber (Attachment 2) which includes a vestibule, seating for approximately 130 people, council dals, and city council office space. The vestibule leading to the Council Chambers will be a part of the OCSD Substation Project to avoid removing the built walls adjoining the substation. With Gensler's familiarity of the OCSD Substation and the design features of the City Hall building, staff recommends using Gensler for the proposed Council Chamber project.

Staff is recommending a First Amendment to the Gensler contract (Attachment 3) in the amount of \$176,000 for final design and construction support services for the City Hall Council Chambers Project. The proposed cost will increase the existing contract amount from \$265,350 to \$441,350.

Recommended

Action: STAFF RECOMMENDS THAT the City Council:

1. Approve and authorize the City Manager to execute, Amendment No. 1 to Contract No. C20-12 by and between the City of San Clemente and Gensler. This Amendment increases the contract amount from \$265,350 to \$441,350 and extends the contract term date to February 3, 2022 for the needed design and construction support services.
2. Approve a supplemental appropriation in the amount of \$176,000 to Account No. 001-203-45800

Attachments: 1. Staff Report Dated February 18th, 2020 and Executed Professional Services Agreement dated March 2nd, 2020
2. Gensler proposal and Conceptual Council Chamber Design
3. First Amendment to Professional Services Agreement

Notification: None.

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5-18-21 / 6E-2

12-21-21 / 9D-6



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: August 17, 2021

Attachment 2

Agenda Item BC

Approvals:

City Manager ES

Dept. Head _____

Attorney _____

Finance JLH

Department: City Manager, Finance and Administrative Services
Prepared By: Erik Sund, City Manager
Jake Rahn, Financial Services Officer

Subject: *AMERICAN RESCUE PLAN (ARP) ACT AND FUNDING*

Fiscal Impact: Yes, revenues of \$7.5 million will be directly allocated to the City.

Summary: The COVID-19 pandemic placed significant financial burdens on individuals, businesses, states, local governments, and communities nationwide. Recognizing the implications of the pandemic, President Biden signed into action Congress Bill H.R. 1319 also known as the "American Rescue Plan Act of 2021". The American Rescue Plan provides a total of \$1.9 trillion of assistance and offers a robust opportunity for communities, businesses, and other organizations to seek aid.

The bill's governmental assistance portion (\$350 billion) provides direct assistance to address state and local government impacts. This portion has four major funding objectives; to support urgent COVID-19 response efforts, replace lost public sector revenue, support immediate economic stabilization, and address systemic public health and economic challenges. The City of San Clemente, as part of the direct assistance for states and local governments, has been allocated \$7.5 million.

The ARP amount allows San Clemente the ability to address costs, pandemic revenue impacts, and ensure economic stability to support activities for its citizens. The ARP funding broadens eligible expenditure categories to allow for revenue loss, economic aid, infrastructure investment, and extends spending deadlines to December 31, 2024. Funds received can be used to retroactively offset cost from March 3, 2021. Utilizing these funds allows the City to address services and needs by deploying these in a variety of ways and consider current and future economic challenges.

Background: On March 27, 2020, Congress passed the Coronavirus Aid Relief Fund and Economic Security (CARES) Act. The CARES Act established the Coronavirus Relief Fund (CRF) which provided grant funds for certain eligible costs incurred in response to the COVID-19 pandemic. In aggregate, the City received \$1,368,142 in CARES grant funds to offset the response cost of the pandemic. The City of San Clemente has used the CARES Act allocations and has submitted final reports to the Department of Finance and County of Orange for review. Costs paid from these funds include sanitizing public facilities, PPE, staffing, certain OCSD contract costs, and reimbursement of other pandemic related costs. The City of San Clemente exhausted its CARES Act grant funding and is utilizing City funds to fund pandemic related costs.

On March 12, 2021 President Biden signed into law the "American Rescue Plan of 2021" which provides \$1.9 trillion dollars in federal assistance. This historical bill enacts an unprecedented direct allocation of federal funds to local governments. The \$350 billion COVID-19 relief package allocation to states, counties, tribal governments, territories, and local municipalities provides assistance for local entities. Approximately \$130 billion of the \$350 billion will provide assistance to over 19,000 local governments nationwide to address the estimated \$90 billion dollar revenue shortfall and additional impacts from the pandemic.

San Clemente is allocated \$7,491,798 which will be distributed in two tranches 12 months apart. The first distribution of \$3,745,899 has been received by the City. The second portion will be available in June 2022. Broadened definitions and guidelines for certification will be shared by the Department of Treasury in the weeks to come. The American Rescue Plan has a spending deadline of December 31, 2024, below is a general description of eligible uses:

- Respond to COVID-19 emergency and address its economic effect
- Provide premium pay to essential employees
- Support government services impacted by a COVID-19 revenue reduction
- Make necessary investments in water, sewer or broadband infrastructure
- Eligible transfer of funds to private nonprofit groups, public benefit corporations, state, and local governments.
- Cannot be used towards pensions

Discussion:

The pandemic restrictions imposed negative effects on the economy and burdened local governments to maintain service levels while revenues were impacted. The City of San Clemente realized revenue reductions and incurred additional response costs. The ARP funds may be used for a variety of purposes which include reimbursing past pandemic costs, funding pandemic related costs, assisting in funding non-profits, funding city services, and fund capital related activities.

The City supported non-profits, homeless services, and businesses through CDBG-CV funding with almost \$600,000. However, as part of the budget process, Council directed staff to address the annual Social Services grants when ARP funds became available. Based on that direction, staff is proposing allocating \$108,000 for social services grants to fund the FY 2022 budget and FY 2023 non-profit social service grants. Hence, there will be no reliance on General fund operating position in FY 2023 to fund these grants. Additionally, as emergency orders are removed which halted citizens utilities from being shut off, utilities assistance of \$50,000 is proposed to assist distressed individuals.

Additionally, City Council as part of the FY 2022 budget process approved a decision item for \$425,000 which is eligible for funding. Staff recommends using ARP funds to reimburse the project costs for widening the Avenida Victoria sidewalk to provide additional space for outdoor seating which will directly benefit nearby businesses and supports tourism in the Pier Bowl area.

The FY 2022 budget maintained seven General Fund positions unbudgeted and vacant. Now with the City facilities re-opening, there are 3 staff positions which can be funded by utilizing ARP funds to ensure citizen service levels are facilitated.

The 3 positions are in Human Resources, Recreation, and Public Works. Staff reductions during the pandemic has burdened Human Resources with approximately 30 positions that are either vacant or under recruitment. Filling these positions is a substantial undertaking and staff is needed to assist in this process. One vacant position in Human Resources should be funded to assist with recruitments. Beaches, Parks and Recreation has the highest level of public interaction and has staffing needs to assist with notifications and other administrative activity as services increase. Staffing this position will be instrumental in making sure operations, including classes, operations, and other activities continue with minimal effects. Public Works, as can be seen later in this report, has a need to address some capital projects that are proposed to be funded through ARP resources. The funding of one position will allow projects to progress, ensure project timelines are met, and maintain facilities in the city. Additionally, Community Development has been impacted by staffing considerations and has upcoming key projects, including the Trak-It upgrade. Funding of \$70,000 is requested to provide contract assistance so service impacts are minimized in this department. The \$370,000 funding would be an eligible use under the ARP guidelines.

One capital project being studied is a direct result of the pandemic. This project is a new Council Chambers. The previous Council Chambers stopped being used at the pandemic onset due to social distancing constraints. Modifications and construction to it addressing pandemic concerns are not feasible. The Community Center is being used on a temporary basis as a Council Chambers, however this is not a long term solution. The design and construction of the new Council Chambers is estimated at approximately \$2 million and will have technology and other considerations to mitigate any pandemic restrictions.

Staff, as part of the ARP revenue loss, reviewed calendar year 2020 revenue impacts based on the ARP guidance calculation formula that includes a revenue growth factor. The calculation includes all Funds (except the Water Fund) and shows a revenue loss of \$5.8 million during calendar year 2020. Revenue impacts were felt in multiple funds, but the largest revenue impacts were in the General fund from Service Charges, Permits and Fees, Rents, and Transient Occupancy Tax. Within those categories, the largest revenue impacts were related to recreation fees and facility rentals as pandemic restrictions were lengthened. The City did cut costs to offset a portion of the revenue impacts, but the General fund did not accumulate funds for capital projects as it has in the past.

One use of the American Rescue Plan can focus on capital projects. Accordingly, two significant recreation capital projects continued to be delayed. These deferred capital projects are the Steed Park lighting project (\$1.5 million) and the San Clemente Aquatics Center pool replaster project (\$1.1 million). These recreation projects will promote outside activities and a healthy lifestyle.

Other Disaster Relief funding is being requested in the amount of \$310,000 to address a variety of considerations, including staff costs for Covid sick leave, staff quarantine costs, staff vaccination leave, additional cleaning/sanitization, PPE, and minor maintenance costs to improve prevention or social distancing facility aspects.

Funds need to be obligated by December 2024 based on current guidance and routine reporting is required based on ARP requirements. The first reporting is anticipated on August 31st requiring planned use reporting and information on funding spent. Treasury Department guidance updates will continue to clarify allowable and eligible uses and staff will monitor changes and address them accordingly. Based on the current guidance, staff proposed recommendations are allocated as follows:

Use of ARP funds	Funding Amount
Social service grants – FY 2022 & FY 2023	\$ 108,000
Utilities assistance	50,000
Business assistance - Ave Victoria sidewalk widening	425,000
Salaries (3 positions)/contract assistance	370,000
Council Chambers	2,000,000
Capital projects	2,600,000
Other Disaster Relief funding	310,000
Future allocation (FY 2023)	1,628,798
Total ARP funding	\$ 7,491,798

* These costs are all eligible for funding under the ARP funds as a result based on existing guidance.

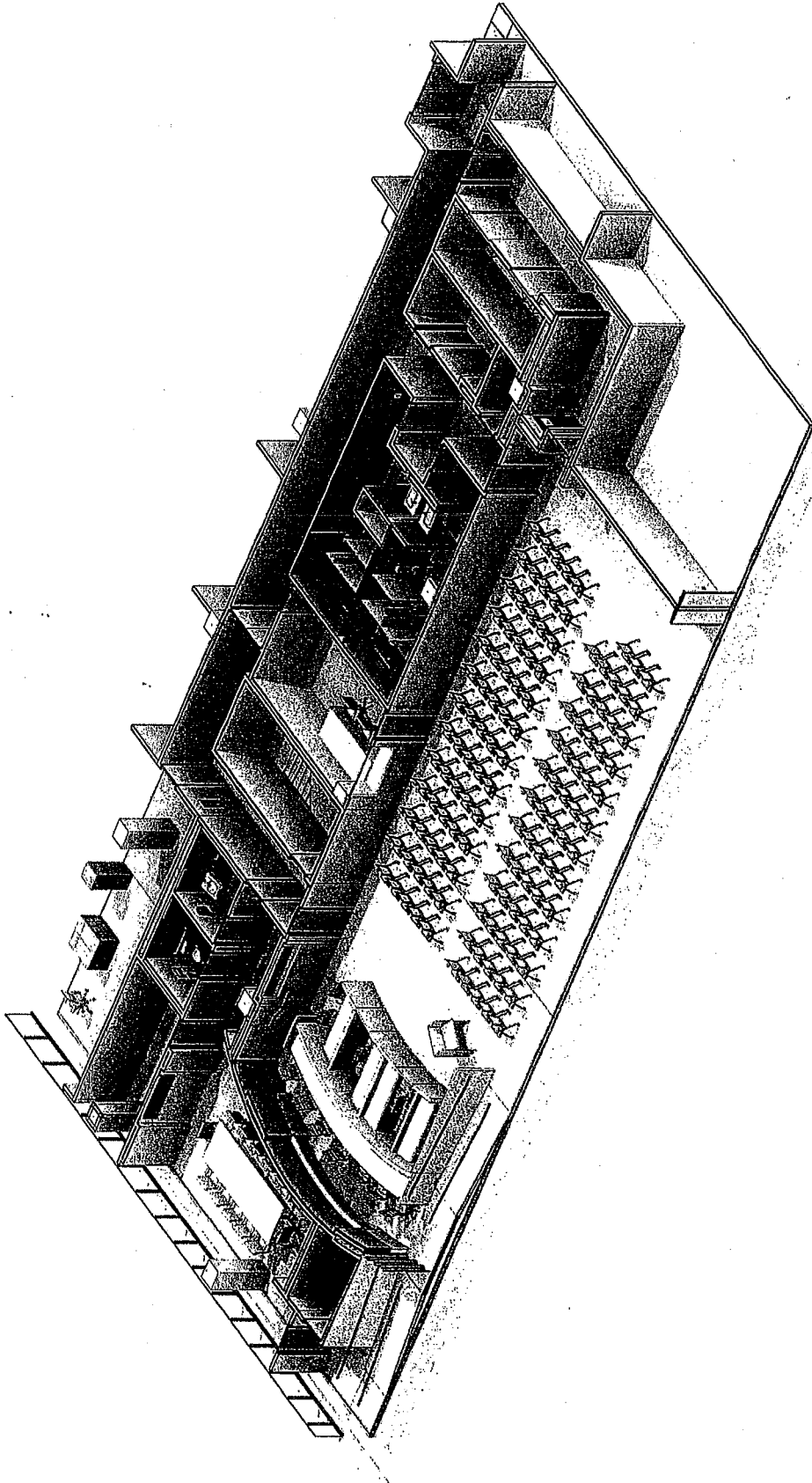
This above approach utilizes the \$3.7 million received and budgets \$2.1 million of the June 2022 allocation of \$3.7 million. As part of FY 2023 budget process, the unallocated \$1.6 million can be considered to address calendar year 2021 revenue impacts or fund other eligible costs. The unallocated \$1.6 million can be addressed through the Long Term Financial Plan and FY 2023 budget decision packages. Options include providing governmental services to the extent of the revenue loss. This would include offsetting governmental costs, such as the increased cost for the 4th paramedic/firefighter or other General fund public safety costs.

Recommended Action:

STAFF RECOMMENDS THAT the City Council

- 1) Accept American Rescue Plan Grant Revenues into the Disaster Relief Fund (Account # 016-000-33180) in the amount of \$7,491,800.
- 2) Approve a supplemental appropriation in the amount of \$108,000 in Social Services grants (Account # 016-804-44771) to provide FY 2022 and FY 2023 funding to non-profits.
- 3) Approve a supplemental appropriation in the amount of \$50,000 in Account # 016-804-44759 to provide funding for utilities assistance.
- 4) Approve a supplemental appropriation in the amount of \$370,000 to General Fund salaries and contract costs (\$90,000 Acct #001-171-41010, \$90,000 Acct #001-481-41010, \$120,000 Acct #001-414-41010, and \$70,000 Acct #001-441-43456).
- 5) Approve a transfer in the amount of \$795,000 to reimburse costs currently funded through the General Fund that are eligible for reimbursement (Acct # 016-804-47010 and 001-000-39290)
- 6) Approve a supplemental appropriation in the amount of \$4.6 million for capital projects (Account # 016-804-45300) to fund the Council Chambers; Steed Park lighting, and Vista Hermosa Aquatic Center pool replaster capital projects.
- 7) Approve a supplemental appropriation in the amount of \$310,000 to the Disaster Relief fund (Acct #'s 016-804-41010 for \$110,000 and 016-804-43890 for \$200,000) for costs to minimize and control the effects of the pandemic.

Attachment 3



Attachment 4

Bid Results for Project:

San Clemente City Hall Council Chambers Tenant Improvement PN 12563

Vendor Name	City	State	Bid Amount
Valspar Corp.	Cleveland	OH	\$1,616.67
JCOS DEVELOPMENT INC	BUENA PARK	CA	\$1,848,000.00
Thomco Construction, Inc	Anaheim	CA	\$1,851,707.00
JR Universal Construction, Inc.	Los Angeles	CA	\$1,982,750.00
Optima RPM	Irvine	CA	\$1,997,062.67
PCN3, INC.	Los Alamitos	CA	\$2,027,428.00
DALKE & SONS CONSTRUCTION, INC.	Riverside	CA	\$2,058,911.00
New Dynasty Construction, Co.	Tustin	CA	\$2,080,631.00
Marjani Builders, Inc.	Mission Viejo	CA	\$2,219,800.00
NEWMAN MIDLAND CORP	CYPRESS	CA	\$2,222,500.00

Attachment 5

SECTION 00500 CONTRACT

THIS CONTRACT is made this _____ day of _____, 2022, in the County of Orange, State of California, by and between the City of San Clemente hereinafter called City, and Thomco Construction, Inc., hereinafter called Contractor. City and the Contractor for the considerations stated herein agree as follows:

ARTICLE 1. SCOPE OF WORK. The Contractor shall perform all Work within the time stipulated the contract and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5 below for the following Project:

San Clemente City Hall Council Chambers Tenant Improvement, Project No. 12563

The Contractor and its surety shall be liable to City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION. The Work shall be commenced on the date stated in City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within One Hundred (100) working days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE. City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of One Hundred Eighty-Five Thousand Seven Hundred Seven Dollars (\$1,851,707). Payment shall be made as set forth in the General Conditions.

At any time during the term of the Contract, City may, pursuant to the terms and provisions of the Contract Documents, request that the Contractor perform additional work. Contractor shall not perform, nor be compensated for, additional work without written authorization from the City pursuant to the terms and provisions of the Contract Documents.

ARTICLE 4. LIQUIDATED DAMAGES/EARLY COMPLETION INCENTIVE. In accordance with Government Code section 53069.85, it is agreed that the Contractor will pay City the sum of One Thousand Dollars (\$1000.00) for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event that Liquidated Damages are not paid, the Contractor agrees City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not exclude recovery of other damages specified in the Contract Documents. The City desires to expedite construction on the Project to minimize the inconvenience to the public and to reduce the time of construction. In order to achieve this and in accordance with Government Code section 53069.85, it is agreed that the City will pay Contractor the sum of Five Hundred Dollars (\$500.00) for each and every calendar day the Project is completed earlier than the time prescribed in the Contract Documents for finishing the Work, as

SECTION 00500
CONTRACT

an early completion incentive not to exceed the total aggregate incentive amount of Fifteen Thousand Dollars (\$15,000.00).

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT. The "Contract Documents" include the following:

- Notice Inviting Bids
- Instructions to Bidders
- Bid Form
- Contractor's Certificate Regarding Workers' Compensation
- Bid Bond
- Designation of Subcontractors
- Information Required of Bidders
- Noncollusion Declaration form
- Iran Contracting Act Certification
- Public Works Contractor Registration Certification
- Contract
- Performance Bond
- Payment Bond
- General Conditions
- Special Conditions
- Technical Specifications
- Addenda
- Plans and Drawings
- Approved and fully executed change orders
- Any other documents contained in or incorporated into the Contract

The Contactor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW. Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Project.

ARTICLE 7. INDEMNIFICATION. Contractor shall provide indemnification as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES. Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at San Clemente Public Works Department or may be obtained online at <http://www.dir.ca.gov/dlsr>. and which must be posted at the job site.

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written:

SECTION 00500
CONTRACT

[NAME OF CONTRACTOR]

CITY OF SAN CLEMENTE

By _____

By _____

Name and Title: _____

License

No.

[[If Corporation, TWO SIGNATURES,
President **OR** Vice President **AND** Secretary
OR Treasurer REQUIRED]]

END OF CONTRACT



Project / Work Order	Date	Quotation
OCSD-SC-COUNCIL CHAMBERS SUITE 100	12/14/2021	198791

BUY TO:	SHIP TO:
CITY OF SAN CLEMENTE 910 CALLE NEGOCIO SAN CLEMENTE CA 92673 KIEL KOGER Phone: (949)361-6187 Fax:	CITY OF SAN CLEMENTE (NEGOCIO BUILDING) 910 CALLE NEGOCIO SAN CLEMENTE CA 92673 KIEL KOGER Phone: (949)361-6187 Fax:

Product Counts:	Systems	Desk Units	Tables	Files	Chairs	Storage	Ancillary
	0	0	0	0	0	0	1

GRAND TOTAL	
	\$144,340.47

Product Summary / Scope of Work

FROM BUDGET QUOTE - NOT AN ORDERABLE QUOTE, SUBJECT TO CHANGE PENDING FINAL FINISH SELECTION

NOTE: HERMAN MILLER 10% PRICE INCREASE TAKES EFFECT DEC. 29TH 2021

COUNTY OF ORANGE MASTER CONTRACT RCA-017-18010014

CLIENT PO NUMBER: TBD

G/M BUSINESS INTERIORS TAX ID: 95-2091271

PREVAILING WAGE

QUOTE FOR: OCSD-SC-COUNCIL CHAMBERS SUITE 100

FOR: HERMAN MILLER, DAVIS, STYLEX, SEDIA SEATING & TABLES
SEDIA SYSTEMS - OPEN MARKET

LEAD TIME: 8-12 WEEKS

SCOPE OF WORK:

- 1) G/M TO RECEIVE AND INSPECT ALL PRODUCT EXCEPT FOR THE SEDIA SEATING
- 2) G/M TO BRING TO SITE AND SET IN PLACE ALL PRODUCT EXCEPT FOR THE SEDIA SEATING.
- 3) SEDIA SEATING INSTALLERS WILL BE RESPONSIBLE TO RECEIVE, DELIVER AND INSTALL ALL STADIUM SEATING (128) PRICING INCLUDES THAT SERVICE.

Account Executive: Clarissa White (cwhite@gmbi.net)	Project PAS:
AMA: Kierstyn Sidor (ksidor@gmbi.net)	Page: 1

800-686-6583 800-686-6583 Fax: 951-684-0837
G/M Business Interiors
9750 Irvine Blvd, Suite 170, Irvine CA, 92618
<http://www.gmbi.net>

4) PLEASE CONTACT KIEL KOGER (949) 361-6187 TO SCHEDULE SERVICES

SECTION F ADDITIONAL PRODUCTS/SERVICES

1. SEDIA SYSTEMS - EXPRESS SHIPPING=\$12236.84

CUSTOMER NET TOTAL: \$144,340.47

**NOTE: QUOTE WILL NEED TO BE ADJUSTED IF SERVICES TO TAKE PLACE AFTER BUSINESS HOURS, OR DURING THE WEEKEND

G/M		Quotation # 198791			
BOM A		Who/What/Where			
		List	List Ext	Sell	Sell Ext
LOT	1 SEATING	184,573.40	184,573.40	116,721.32	116,721.32
Description:		Non-Tax Svcs	Taxable Svcs	Freight	Design Fee
		.00	.00	.00	.00
BOM: See Attached Bill of Materials					
Piece Count: 154					
BOM B		Who/What/Where			
		List	List Ext	Sell	Sell Ext
LOT	1 TABLES	12,582.00	12,582.00	5,000.51	5,000.51
Description:		Non-Tax Svcs	Taxable Svcs	Freight	Design Fee
		.00	.00	.00	.00
BOM: See Attached Bill of Materials					
Piece Count: 2					

Account Executive: Clarissa White (cwhite@gmbi.net)

Project PAS:

AMA: Kierstyn Sidor (ksidor@gmbi.net)

Page: 2

800-686-6583 800-686-6583 Fax: 951-684-0837

G/M Business Interiors

9750 Irvine Blvd, Suite 170, Irvine CA, 92618

<http://www.gmbi.net>

12-21-21 / 9D-17

BOM

C

Who/What/Where

			List	List Ext	Sell	Sell Ext
LOT	1	Z G/M Services	.00	.00	.00	.00

Description

	Non-Tax Svcs	Taxable Svcs	Freight	Design Fee
G/M Furniture Planning Services, if applicable, include field measurements, drawing AutoCAD building shells, developing typical workstations and private office standards, space planning typicals into the floorplan, developing furniture color schemes, order specifications and receiving client approvals for all drawings and color schemes for order entry.	.00	.00	.00	.00
G/M Project Management Services include drawings and field measure checks, order scheduling & routing, electrical consulting with contractors, field checks, monitoring construction progress along with delivery, assembly, punchlist coordination through final completion.				
G/M Project Services include receiving and inspecting of each product, shipping damage adjudication with vendors, transporting product if applicable, staging of products, delivery, setting in place of all furniture, level clean and polishing of all items, vacuum floors and recycling of all waste products associated with the furniture project.				
G/M Punchlist Services include formulation of the project punchlist, ordering and receiving of punchlist products, and delivery and assembly to finalize the punchlist and project.				
G/M Warranty Services Department is provided to offer clients our no-charge warranty service work for all furniture protected under valid factory warranties. G/M maintains electronic copies of our Client's invoices for warranty enforcement. For service requests, our Warranty Department may be contacted via e-mail at warranty@gmbi.net				

BOM: See Attached Bill of Materials

Piece Count:

Account Executive: Clarissa White (cwhite@gmbi.net)

Project PAS:

AMA: Kierstyn Sidor (ksidor@gmbi.net)

Page: 3

800-686-6583 800-686-6583 Fax: 951-684-0837

G/M Business Interiors

9750 Irvine Blvd, Suite 170, Irvine CA, 92618

<http://www.gmbi.net>

Product of the Month - Commend Nurses Stations



G/M accepts credit cards at 0% for purchases up to \$10,000
 Purchases over \$10,000 requires a surcharge of 2.75%

Product Subtotal	\$121,721.83
Services (Taxable)	\$0.00
Freight (Taxable)	\$12,236.84
Services (Non-Taxable)	\$0.00
Design Services (Non-Taxable)	\$0.00
Taxable Subtotal	\$133,958.67
Non-Taxable Subtotal	\$0.00
Sales Tax (7.75%)	\$10,381.80
Total	\$144,340.47

Terms:

Net 30 Days 100% \$144,340.47

I have reviewed the quote, the bill of materials, the drawings (if applicable), the color cards (if applicable), and other associated exhibits for my order.

- I approve the colors, fabrics, and finishes as previously selected and correct as shown on the attached exhibit.
- I am satisfied that the product I have selected is the correct size and is suitable and will perform for its intended purpose.
- I am aware this product is manufactured to order and is not returnable to G/M or to the manufacturer.
- I understand that legal title to the product will transfer upon delivery to my commercial or residential location and all associated labor is taxable until title transfers.
- I am aware additional costs charged for inside delivery, staging, setting in place, assembly, leveling, cleaning, polishing, recycling of waste materials are separately stated and are elected as an additional contract option.
- I am aware of the grand total price of this contract as shown on this quote.
- G/M is ordering your furniture from a variety of manufacturers to be aggregated and received into our G/M operated warehouse. Once the final portion of your order has been received, a "ready to deliver" notification will be sent to you. G/M, at this point, will graciously, store your complete order for up to two weeks at no charge. If for some reason you cannot accept a timely delivery within two weeks, a quote for one month's handling and storage shall be calculated and forwarded to you.

Approved by:

Signature

Print Name/Title

Date

Account Executive: Clarissa White (cwhite@gmbi.net)

Project PAS:

AMA: Kierstyn Sidor (ksidor@gmbi.net)

Page: 4

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REGIONAL COOPERATIVE AGREEMENT (RCA)
CONTRACT #RCA-017-18010014
BETWEEN
COUNTY OF ORANGE /COUNTY PROCUREMENT OFFICE
AND
GOFORTH & MARTI DBA G/M BUSINESS INTERIORS
FOR
OFFICE FURNITURE, INSTALLATION AND RELATED SERVICES

This Agreement, hereinafter referred to as "Contract", is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; hereinafter referred to as "County," and Goforth & Marti DBA G/M Business Interiors, with a place of business at 1099 West La Cadena Drive, Riverside, CA 92501-1413; hereinafter referred to as "Contractor," with County and Contractor sometimes referred to as "Party" or collectively as "Parties."

ATTACHMENTS

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

Attachment A – Scope of Work
Attachment B – Compensation, Payment and Invoicing Instructions
Attachment C – Pricing/Discount Schedule and Other Fees

RECITALS

WHEREAS, Contractor responded to a Request for Proposal ("RFP") for providing Office Furniture, Installation and Related Services as further set forth herein; and

WHEREAS, Contractor responded and represented that its proposed products/services shall meet or exceed the requirements and specifications of the RFP; and

WHEREAS, County of Orange Board of Supervisors has authorized the Purchasing Agent or his designee to enter into this Contract for Office Furniture, Installation and Related Services with Contractor;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

County General Terms and Conditions:

- A. Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California, without reference to conflicts of law provisions. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding California Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
- B. Entire Contract:** This Contract, when accepted by Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental

Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or his designee, hereinafter "Purchasing Agent."

- C. Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- E. Delivery:** Time of delivery of services is of the essence in this Contract. Time of the essence is not waived in any way by County's waiver of or failure to take action with respect to any one particular time of the essence breach. County reserves the right to refuse any services and to cancel all or any part of the descriptions or services that do not conform to the prescribed Attachment A, Scope of Work. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by County pursuant to paragraph "F".
- F. Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance by County and in accordance to Attachment B, Compensation, Payment and Invoice Instructions for Contracted Services.
- G. Warranty:** Contractor expressly represents and warrants that the goods/services covered by this Contract are fit for the particular purpose for which they are intended. Contractor will indemnify, defend and hold County and County Indemnities, as more fully described in paragraph "Z", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such representations and warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "HH" below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical

condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

- K. Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to terminate this Contract without penalty immediately with cause or after thirty (30) days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.
- L. Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. Performance Warranty:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by sub-contractors.
- O. Insurance Provision:** Prior to the provision of services under this Contract, Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any SIR in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and Contractor's SIR provision shall be interpreted as though Contractor was an insurer and County was the insured.

If Contractor fails to maintain insurance acceptable to County for the full term of this Contract, County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by Contractor shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

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

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the *County of Orange, its elected and appointed officials, officers, agents and employees* as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**

- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, agents and employees* or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which County may suspend or terminate this Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the department address listed in paragraph "36", Notices.

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

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- P. Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval.
- Q. Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.

County reserves the right to immediately terminate the Contract without penalty in the event County determines that the assignee is not qualified or is otherwise unacceptable to County for the provision of services under this Contract.

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

County within thirty-six (36) hours of the start of the delay and Contractor avails himself of any available remedies.

- S. Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "HH" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnities harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.
- U. Freight (F.O.B. Destination):** Prior to County's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- V. Severability:** If any term, covenant, condition, or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.
- X. Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of its own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that it has not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.
- Y. Employee Eligibility Verification:** Contractor represents and warrants that it is and will remain in full compliance with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Contractor shall obtain, from all employees, consultants and subcontractors performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 *et seq.*, as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employee, consultants and subcontractors for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and

employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

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

AA. Audits/Inspections: Contractor agrees to permit County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. County will provide reasonable notice of such an audit or inspection.

County reserves the right to audit and verify Contractor's records before final payment is made.

Contractor will maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor will allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor will include a similar right to County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should Contractor cease to exist as a legal entity, Contractor's records pertaining to this agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to County's project manager.

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

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

Additional Terms and Conditions

1. Scope of Contract: This Contract specifies the contractual terms and conditions by which County will procure goods from Contractor as further detailed in the Scope of Services, identified and incorporated herein by this reference as "Attachment A"

2. **Contract Term:** This Contract shall commence on November 15, 2017, upon all necessary signatures, and shall continue for five (5) calendar years from that date, through and including November 14, 2022, unless otherwise terminated by County. This Contract is non-renewable.

3. **Regional Cooperative Agreement (RCA):** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this Contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any Contract entered into with another agency or entity that is entered into as an extension of this Contract a Contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. County of Orange makes no guarantee of usage by other users of this Contract.

Contractor shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to County, at the County's request.

4. **Americans with Disabilities Act (ADA):** Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 22; California Government Code, Sections 11135 et seq; and other federal and state laws and executive orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities.

5. **Authorization Warranty:** Contractor represents and warrants that the person executing this Contract on behalf of and for the Contractor is an authorized agent who has actual authority to bind Contractor to each and every term, condition and obligation of this agreement and that all requirements of the Contractor have been fulfilled to provide such actual authority.

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

- i. Terminate the Contract immediately, pursuant to Section K herein;
- ii. Afford Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
- iii. Discontinue payment to Contractor for and during the period in which Contractor is in breach; and
- iv. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the above.
- v. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

7. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

8. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the

Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

9. **Compensation:** Contractor agrees to accept the specified compensation as set forth in Attachment B, Compensation, Payment and Invoice Instructions, as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder.
10. **Conditions Affecting Work:** Contractor shall be responsible for taking all steps reasonably necessary, to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to County. County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the county are expressly stated in the Contract.
11. **Contractor – Change in Ownership:** Contractor agrees that if there is a change in ownership prior to completion of this Contract, the new owner will be required, under terms of sale, to assume this Contract and complete it to the satisfaction of County.
12. **Conflict of Interest – Contractor’s Personnel:** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of County. This obligation shall apply to the Contractor; Contractor’s employees and agents, associated with accomplishing work and services hereunder. Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of County.
13. **Conflict of Interest – County Personnel:** County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
14. **Conflict with Existing Law:** Contractor and County agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of Contract shall remain in full force and effect. Either Party having knowledge of such term or provisions shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the Contract, Contract shall be terminated in a manner commensurate with interests of both Parties to the maximum extent reasonable.
15. **Contingent Fees:** Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of Contractor or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.

For breach or violation of this warranty, County shall have the right to terminate this Contract in accordance with the termination clause and at its sole discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from Contractor.

16. **Contractor's Expense:** Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. County will not provide free parking for any service in County Civic Center.
17. **Contractor Personnel-Reference Check:** Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the department issuing this Contract.
18. **Contractor Personnel-Uniform/Badges/Identification:** Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.
All Contractor's employees shall be required to wear uniforms, badges, or other means of identification which are to be furnished by Contractor and must be worn at all times while working on County property. The assigned buyer must be notified in writing, within seven days of notification of award of Contract of the uniform and /or badges and/or other notification to be worn by employees prior to beginning work and notified in writing seven days prior to any changes in this procedure.
19. **Contractor's Power and Authority:** Contractor warrants that it has the full power and authority to grant the rights herein granted and will hold County hereunder harmless from and against any loss, cost, liability and expense, including reasonable attorney fees, arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of County under this Contract.
20. **Contractor's Project Manager & Key Personnel:** Contractor shall appoint a project manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This project manager shall be subject to approval by the County and shall not be changed without the written consent of County's Project Manager, whose consent shall not be unreasonably withheld.
Contractor's Project Manager and key personnel shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who report directly to Contractor's project manager.
21. **Contractor's Records:** Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of seven (7) years after final payment is received from County. Storage of records in another county will require written approval from the County of Orange assigned DPA.
22. **Contractor Work Hours and Safety Standards:** Contractor shall ensure compliance with all safety and hourly requirements for employees in accordance with federal, state and County's safety regulations and laws.
23. **County Of Orange Child Support Enforcement:** Contractor certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from County shall constitute grounds for termination of the Contract."
24. **Data- Title To:** All materials, documents, data or information obtained from County data files or any County medium furnished to Contractor in the performance of this Contract will at

all times remain the property of County. Such data or information may not be used or copied for direct or indirect use by Contractor after completion or termination of this Contract without the express written consent of County. All materials, documents, data or information, including copies, must be returned to County at the end of this Contract.

25. **Debarment:** Contractor shall certify that neither Contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where Contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, Contractor must include an explanation with their proposal. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department or agency may result in the proposal being deemed non-responsible.
26. **Default:** In case of default by Contractor, County of Orange may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying County the difference between the Contract cost and the price paid, and County may deduct this cost from any unpaid balance due Contractor. The price paid by County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.
27. **Delivery Location – No Loading Dock:** Delivery locations may not have loading docks. Contractor is required to make all necessary arrangements for lift trucks or other means necessary to complete delivery. Inside delivery to secured facilities may be required.
28. **Disputes – Contract:**
 - a. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's project manager and the County's project manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:
 - i. Contractor shall submit to the department assigned DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless County, on its own initiative, has already rendered such a final decision.
 - ii. Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes County is liable.
 - b. Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor agrees to diligently proceed with the provision of services under this Contract. Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

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

29. **Drug-Free Workplace:** Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. Contractor will:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b. Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. The organization's policy of maintaining a drug-free workplace;
 - iii. Any available counseling, rehabilitation and employee assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
 - c. Provide as required by Government Code Section 8355(c) that every employee who works under this Contract:
 - i. Will receive a copy of the company's drug-free policy statement; and
 - ii. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

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

- a. Contractor has made false certification, or
- b. Contractor violates the certification by failing to carry out the requirements as noted above.

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

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

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

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

31. **Firm Price Quotes:** Prices quoted herein shall be firm for the duration of the Contract.
32. **Gratuities:** Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, County shall have the right to terminate the Contract, either

in whole or in part, and any loss or damage sustained by County in procuring on the open market any services which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

33. **Interpretation of Contract:** In the event of a conflict or question involving the provisions of any part of this Contract, interpretation and clarification as necessary shall be determined by County's assigned buyer. If disagreement exists between Contractor and County's assigned buyer in interpreting the provision(s), final interpretation and clarification shall be determined by County's Purchasing Agent or his designee.
34. **Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
35. **News/Information Release:** Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this agreement without first obtaining review and written approval of said news releases from County through County's Project Manager.
36. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

For Contractor: Goforth & Marti
DBA G/M Business Interiors
Attention: Chuck Asiodu
1099 West La Cadena Drive
Riverside, CA 92501
Phone No: (909) 556-2356
Email: Casiodu@gmbi.net

For County: County of Orange
County Procurement Office
Attention: Gabriela George
1300 S. Grand Ave., Bldg., A, 2nd Floor
Santa Ana, CA 92705
Phone No: (714) 567-7641
Email: Gabriela.George@ocgov.com

37. **Orders:** Contractor shall receive written or verbal requests from individual County departments on an as-needed basis form items in this Contract, subject to the terms, conditions, and pricing listed herein.

38. **Order Confirmation by Contractor:** Contractor shall be responsible for confirming specifications, quantities, and pricing with the contracting department contract person prior to order entry/delivery.
39. **Order Dates:** Orders may be placed during the term of the Contract even if delivery may not be made until the term of the Contract. Order dates take precedence over delivery dates. Contractor must clearly identify the order date on all invoices to County.
40. **Parking for Delivery Services:** County of Orange will not provide free parking for delivery services.
41. **Precedence:** The Contract documents consist of this Contract and its attachments and exhibits. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the exhibits and attachments.
42. **Prevailing Wage (Labor Code § 1773):** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>. The contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates. The contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.
43. **Price Increase/Decrease:** No price increases will be permitted during the first period of the Contract. All price decreases will automatically be extended to the County of Orange. County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of thirty (30)-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing Contractor's profit will not be allowed.
44. **Project Manager, County:** County shall appoint a project manager to act as liaison between County and Contractor during the term of this Contract. County's Project Manager shall coordinate the activities of County staff assigned to work with Contractor.
- County's Project Manager shall have the right to require the removal and replacement of Contractor's Project Manager and key personnel. County's Project Manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal within 14 calendar days after written notice by County's project manager. County's Project Manager shall review and approve the appointment of the replacement for Contractor's Project Manager and key personnel. Said approval shall not be unreasonably withheld.
45. **Project Schedule:** The services performed under this Contract shall be done in accordance with the approved project schedule incorporated herein which may be revised at the option of County with Contractor's concurrence. Contractor shall be responsible for schedule adherence as outlined herein.
46. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic at work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, a partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in

newspapers, magazines, etc., are to be administered only by County unless otherwise agreed to by both Parties.

47. **Reports/Meetings:** Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's project manager and Contractor's project manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, Contractor's project manager and other project personnel shall attend all meetings. Contractor shall provide such information that is requested by County for the purpose of monitoring progress under this Contract.
48. **Sub-Contracting:** In the event that Contractor is authorized by County to sub-contract, this Contract shall prevail and the terms of the sub-contract shall incorporate by reference and not conflict with the terms of this Contract. In the manner in which County expects to receive services, County shall look to Contractor for performance and not deal directly with any sub-Contractor. All matters related to this Contract shall be handled by Contractor with County; County will have no direct contact with the sub-Contractor in matters related to the performance of this Contract. All work must meet the approval of the County of Orange.
49. **Substitutions:** Contractor is required to meet all specifications and requirements contained herein. No substitutions will be accepted without prior County written approval.
50. **Tax ID Number:** Contractor shall include its taxpayer ID number on all invoices submitted to County for payment to ensure compliance with IRS requirements and to expedite payment processing.
51. **Transportation Charges:** Prices quoted shall include transportation charges governed by the minimum rate tariff established by the Public Utilities Commission (PUC) of the state of California. Should the prices be affected by the action of the PUC, the County of Orange will, with 30 days' notice and submission of proper evidence thereof by Contractor, make the necessary price adjustment during the term of this Contract.
52. **Usage:** No guarantee is given by County to Contractor regarding the discretionary components of this Contract. Usage figures, if provided, are approximate, based upon the last usage. Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
53. **Usage Reports:** Contractor shall submit usage reports as requested by County. Contractor shall provide usage reports within fourteen days of such request. The usage report shall include all information requested by County, in a format specified by County.
54. **Validity:** The invalidity in whole or in part of any provision of this Contract shall not void or affect the validity of any other provision of the Contract.
55. **Waivers - Contract:** The failure of County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

SIGNATURE PAGE FOLLOWS

CONTRACT SIGNATURE PAGE

Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

GOFORTH & MARTI DBA G/M BUSINESS SOLUTIONS

*If Contractor is a corporation, signatures of two specific corporate officers are required as further set forth. The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

Stephen L. Easley President
Print Name Title
Signature Date
11/13/2017

*The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.

Stephen L. Easley Secretary
Print Name Title
Signature Date
11/13/2017

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

Gabriela George Deputy Purchasing Agent
Print Name Title
Signature Date
11/13/17



Repair Work Order

Pricing and Terms and Conditions are per the Sourcewell agreement #080420-TKE

910 CALLE NEGOCIO

December 08, 2021

Purchaser: City Of San Clemente
 Address: 390 E Avenida Pico Bldg A
 San
 Clemente, CA 92672-3803

Location: 910 CALLE NEGOCIO
 Address: 910 Calle Negocio
 San
 Clemente, CA 92673-6268

Purchaser authorizes TK Elevator Corporation (referred to as "TK Elevator" hereafter) to perform the following work on the equipment and at the location described above, in exchange for the sum of **Sixty Five Thousand Four Hundred Forty Two Dollars and Thirty Eight Cents (\$65,442.38)** inclusive of all applicable sales and use taxes pursuant to the terms and conditions contained in this Work Order (the "Work Order").

Summary:

Elevator	Description	Repair category
ELEVATOR 1	Cab Interior	Aesthetic
ELEVATOR 2	Cab Interior	Aesthetic

For further information, please see a detailed Scope of Work on the pages that follow.
 Recommended by Service Technician: COOKE BRIAN

In the event you have any questions regarding the content of this Work Order please contact me at +1 714 9412317.

We appreciate your consideration.

Regards,

Katelyn Shepherd
 TK Elevator Corporation
 1601 S Sunkist St Ste A
 Anaheim CA 92806
 katelyn.shepherd@tkelevator.com | +1 714 9412317

Notice:

No permits or inspections by others are included in this work, unless otherwise indicated herein. Delivery and shipping is included. All work is to be performed during regular working days and hours as defined in this Work Order unless otherwise indicated herein.

Repair Work Order



Scope of Work

Cab Interior - Elevator #1 and #2 - Cypress

We propose to furnish and install the labor, materials, tools and supervision to perform the following work on two (2) passenger 3,000lb capacity elevators.

Scope of Work:

Install new "Cypress" model cab interior to include new plastic laminate stand-off panels on rear and sidewalls. New handrail on rear wall and drop ceiling fixture lighting system featuring premium LED lighting. Removal and discarding the existing wall panels, handrail and lighting fixtures in elevator cab is included.

See attached thyssenkrupp artistic rendering of new cab interior included with this quote.

Wall Panels

New horizontal stand-off panels made with fire rated substrate materials faced with plastic laminate finish surfaces. All panels are attached with concealed fasteners. Underneath the handrail is one patterned metal panel. New horizontal cab base material strips in either vented (if cab is provisioned) or solid non vented are included below the vertical stand off panels.

Handrail

New horizontal 1-1/2" round diameter handrail on rear wall shall be provided with concealed fasteners.

Ceiling

We will install a new (6) section island ceiling faced with satin (#4) finish steel drop in panels with premium LED lighting fixtures. Each section of the island ceiling shall have one light fixture centered.

Finishes

Plastic laminate is Wilson Art standard grade color choices. Satin stainless steel or black powdercoat reveals and base panels.

Work not Included in Base Bid

Flooring and front return doors and transom panel finishes. These finishes are not included for refinishing, resurfacing or replacement.

Additional notes regarding the new thyssenkrupp cab interior solution:

This proposal and rendering of new cab interior shall become the approved and final shop drawings for the work. Owner representative shall select cab colors, material color finishes for ceiling to finish off details to release into fabrication.

Scheduling of work is as follows:

Preparation/final survey/material order upon receipt of order to proceed: 2 weeks

Fabrication time from receipt of, fully executed contract, payment of pre-production and engineering invoice: (does not include shipping/transit for materials - allow up to 2 weeks in favorable weather): 2-4 weeks

Installation of cab system (Per Unit): 3 days

Payment terms:

50% deposit advance pay upon final execution of contracts to begin fabrication.

50% of contract amount with sign off by State and released for owners use. All invoices are due upon receipt.

Our price is based upon performing all work during the regular working hours of the elevator trade. We are to have uninterrupted use of the elevator while work is being performed. All work shall be scheduled and coordinated to minimize disruption of service to the building.

All material and workmanship shall be in strict accordance with (the original design of the equipment/TKE standard design requirements), utilizing a trained elevator technician and helper directly employed and supervised by TKE.

Repair Work Order



During the course of our work, should deficiencies, code violations, or other issues be discovered, we will promptly notify Purchaser and provide a separate quotation to correct these issues.

Payment Terms

50% of the price set forth in this Work Order will be due and payable as an initial progress payment within 10 days from TK Elevator's receipt of a fully executed copy of this Work Order. This initial progress payment will be applied to any applicable project management, permits, engineering, drawings and material procurement. Material will be ordered once this payment is received and the parties have both executed this Work Order.

The remaining 50% of the price set forth in this Work Order and any fully executed change orders shall be due and payable at the time TK Elevator commences the work described in the Work Order. TK Elevator's receipt of this final payment is a condition precedent to TK Elevator's return of the equipment described in this Work Order to the full operation and use and Purchaser agrees to waive any and all claims to such operation and use until such time as that payment is made in full.

Purchaser agrees that TK Elevator shall have no obligation to complete any steps necessary to provide Purchaser with full use and operation of the affected elevator(s) until such time as TK Elevator has been paid 100% both of the price reflected in this Work Order and for any other work performed by TK Elevator or its subcontractors in furtherance of this Work Order. Purchaser agrees to waive any and all claims to the turnover and/or use of that equipment until such time as those amounts are paid in full. TK Elevator reserves the right to assign payments owed to TK Elevator under this Work Order.

Work order price:		\$65,442.38
Initial progress payment:	(50%)	\$32,721.19
Total due upon completion:	(50%)	\$32,721.19

Pricing and Terms and Conditions are per the Sourcewell agreement #080420-TKE

Repair Work Order



Terms and Conditions

TK Elevator does not assume any responsibility for any part of the vertical transportation equipment other than the specific components that are described in this Work Order and then only to the extent TK Elevator has performed the work described above.

No work, service, examination or liability on the part of TK Elevator is intended, implied or included other than the work specifically described above. It is agreed that TK Elevator does not assume possession or control of any part of the vertical transportation equipment and that such remains Purchaser's exclusively as the owner, lessor, lessee, possessor, or manager thereof.

Unless otherwise stated herein, TK Elevator's performance of this Work Order is expressly contingent upon Purchaser securing permission or priority as required by all applicable governmental agencies and paying for any and all applicable permits or other similar documents.

It is agreed that TK Elevator's personnel shall be given a safe place in which to work. TK Elevator reserves the right to discontinue its work in the location above whenever, in its sole opinion, TK Elevator believes that any aspect of the location is in any way unsafe until such time as Purchaser has demonstrated, at its sole expense, that it has appropriately remedied the unsafe condition to TK Elevator's satisfaction. Unless otherwise agreed, it is understood that the work described above will be performed during regular working days and hours which are defined as Monday through Friday, 8:00 AM to 4:30 PM (except scheduled union holidays). If overtime is mutually agreed upon, an additional charge at TK Elevator's usual rates for such work shall be added to the price of this Work Order.

In consideration of TK Elevator performing the work described above Purchaser, to the fullest extent permitted by law, expressly agrees to indemnify, defend, save harmless, discharge, release and forever acquit TK Elevator, its employees, officers, agents, affiliates, and subsidiaries from and against any and all claims, demands, suits, and proceedings made or brought against TK Elevator, its employees, officers, agents, affiliates and subsidiaries for loss, property damage (including damage to the equipment which is the subject matter of this Work Order), personal injury or death that are alleged to have been caused by Purchaser or any others in connection with the presence, use, misuse, maintenance, installation, removal, manufacture, design, operation or condition of the vertical transportation equipment that is the subject of this Work Order, or the associated areas surrounding such equipment. Purchaser's duty to indemnify does not apply to the extent that the loss, property damage (including damage to the equipment which is the subject matter of this Work Order), personal injury or death is determined to be caused by or resulting from the negligence of TK Elevator and/or its employees. Purchaser recognizes, however, that its obligation to defend TK Elevator and its employees, officers, agents, affiliates and subsidiaries under this clause is broader and distinct from its duty to indemnify and specifically includes payment of all attorney's fees, court costs, interest and any other expenses of litigation arising out of such claims or lawsuits.

Purchaser expressly agrees to name TK Elevator along with its officers, agents, affiliates and subsidiaries as additional insureds in Purchaser's liability and any excess (umbrella) liability insurance policy(ies). Such insurance must insure TK Elevator, along with its officers, agents, affiliates and subsidiaries for those claims and/or losses referenced in the above paragraph, and for claims and/or losses arising from the negligence or legal responsibility of TK Elevator and/or its officers, agents, affiliates and subsidiaries. Such insurance must specify that its coverage is primary and non-contributory. Purchaser hereby waives the right of subrogation.

TK Elevator shall not be liable for any loss, damage or delay caused by acts of government, labor, troubles, strikes, lockouts, fire, explosions, theft, riot, civil commotion, war, malicious mischief, acts of God, or any cause beyond its control. TK Elevator Corporation shall automatically receive an extension of time commensurate with any delay regarding the work called for in this Work Order.

Should loss of or damage to TK Elevator's material, tools or work occur at the location that is the subject of this Work Order, Purchaser shall compensate TK Elevator therefor, unless such loss or damage results solely from TK Elevator's own acts or omissions.

If any drawings, illustrations or descriptive matter are furnished with this Work Order, they are approximate and are submitted only to show the general style and arrangement of equipment being offered. Work Order.

Purchaser shall bear all cost(s) for any reinspection of TK Elevator's work due to items outside the scope of this Work Order or for any inspection arising from the work of other trades requiring the assistance of TK Elevator.

Purchaser expressly agrees to waive any and all claims for consequential, special or indirect damages arising out of the performance of this Work Order and specifically releases TK Elevator from any and all such claims.

A service charge of 1.5% per month, or the highest legal rate, whichever is less, shall apply to delinquent accounts. In the event of any default of any of the payment provisions herein, Purchaser agrees to pay, in addition to any defaulted amount, any attorney fees, court costs and all other expenses, fees and costs incurred by TK Elevator in connection with the collection of that defaulted amount.

Purchaser agrees that this Work Order shall be construed and enforced in accordance with the laws of the state where the vertical transportation equipment that is the subject of this Work Order is located and consents to jurisdiction of the courts, both state and Federal, of that as to all matters and disputes arising out of this Work Order. Purchaser further agrees to waive trial by jury for all such matters and disputes.

The rights of TK Elevator under this Work Order shall be cumulative and the failure on the part of the TK Elevator to exercise any rights given hereunder shall not operate to forfeit or waive any of said rights and any extension, indulgence or change by TK Elevator in the method, mode or manner of payment or any of its other rights shall not be construed as a waiver of any of its rights under this Work Order.

In the event any portion of this Work Order is deemed invalid or unenforceable by a court of law, such finding shall not affect the validity or enforceability of any other portion of this Work Order. This Work Order shall be considered as having been drafted jointly by Purchaser and TK Elevator and shall not be construed or interpreted against either Purchaser or TK Elevator by reason of either Purchaser or TK Elevator's role in drafting same. In the event Purchaser's acceptance of the work called for in this Work Order is in the form of a purchase order or other kind of document, the provisions, terms and conditions of this Work Order shall exclusively govern the relationship between TK Elevator and Purchaser with respect to the work described herein.

Repair Work Order



Acceptance

This Work Order is submitted for acceptance within 30 days from the date executed by TK Elevator.

Purchaser's acceptance of this Work Order will constitute exclusively and entirely the agreement for the work herein described. All prior representations or agreements regarding this work, whether written or verbal, will be deemed to be merged herein, and no other changes in or additions to this Work Order will be recognized unless made in writing and properly executed by both parties. No agent or employee of TK Elevator shall have the authority to waive or modify any of the terms of this Work Order without the written approval of an authorized TK Elevator manager.

This Work Order specifically contemplates work outside the scope of any other contract currently in effect between the parties; any such contract shall be unaffected by this Work Order.

To indicate acceptance of this work order, please sign and return one (1) original of this agreement to the branch address shown below. Upon receipt of your written authorization and required materials and/or supplies, we shall implement the work called for in this Work Order.



By: _____ (Signature of Authorized Individual) Brian Fields	By: _____ (Signature of Branch Representative) Scott Jones Branch Manager
_____ (Print or Type Name)	
_____ (Print or Type Title)	
_____ (Date of Acceptance)	_____ (Date of Execution)

Please contact _____ to schedule work at the following phone number _____

Pricing and Terms and Conditions are per the Sourcewell agreement #080420-TKE



Attn: Brian Fields
City Of San Clemente
390 E Avenida Pico Bldg A
San Clemente CA, 92672-3803

Date	Terms	Reference ID	Customer Reference # / PO
December 08, 2021	Immediate	ACIA-1UQP5Z0	
Total Contract Price:			\$65,442.38
Down Payment:		(50%)	\$32,721.19

For inquiries regarding your contract or services provided by TK Elevator, please contact your local account manager at +1 714 9412317. To make a payment by phone, please call 770-799-0476 with the reference information provided below.

Current and former service customers can now pay online at:
<https://secure.billtrust.com/thyssenkruppelevator/ig/one-time-payment>

Thank you for choosing TK Elevator. We appreciate your business.

Please detach the below section and provide along with payment.

Customer Name:	City Of San Clemente	Remit To:	
Location Name:	910 CALLE NEGOCIO	TK Elevator	
Customer Number:	141292	PO Box 3796	
Quote Number:	2021-2-1200431	Carol Stream, IL	
		60132-3796	
Reference ID:	ACIA-1UQP5Z0		
Remittance Amount:	\$32,721.19		

Pricing and Terms and Conditions are per the Sourcwell agreement #080420-TKE



Repair Completion Notice to be signed at Job completion

Date: _____
Repair Job #: _____

Building Name: 910 CALLE NEGOCIO
Street Address: 910 Calle Negocio
City State, Zip: San Clemente, CA 92673-6268

Dear Brian Fields,

Thank you for allowing us the opportunity to perform the repair job listed above. We have completed the work as outlined in Job # _____ and the unit is now up and running. You will receive a final bill for this work shortly.

We hope your experience was exceptional and look forward to serving you in the future. If you have any questions about the repair work or your service agreement, please check one of the boxes under "Follow-Up Request" and the appropriate person will contact you soon.

Customer Representative

Customer Name: Brian Fields

Print or Type Name

Customer Signature: _____
Signature of Authorized Individual

Title: Facility Manager

Print or Type Title

Date: _____
Date of acceptance

Customer Email: fieldsb@san-clemente.org

Customer Email

TK Elevator Representative

Name: Katelyn Shepherd

Print or Type Name

Signature: _____
Signature of Authorized Individual

Title: Account Manager

Print or Type Title

Date: _____

Follow Up Request

If you would like a manager or department representative to contact you, please check one of the following:

- | | |
|---|---|
| <input type="checkbox"/> Sales Department | <input type="checkbox"/> Service Department |
| <input type="checkbox"/> Branch Manager
Phone Number | <input type="checkbox"/> Repair Department |

Comments: _____



Solicitation Number: RFP #080420

CONTRACT

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and thyssenkrupp Elevator, 3100 Interstate North Circle Suite 500, Atlanta, GA 30339 (Vendor).

Sourcewell is a State of Minnesota local government agency and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada.

Vendor desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires August 28, 2024, unless it is cancelled sooner pursuant to Article 24. This Contract may be extended up to one additional one-year period upon request of Sourcewell and with written agreement by Vendor.
- C. **SURVIVAL OF TERMS.** Articles 11 through 16 survive the expiration or cancellation of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Vendor will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above. Vendor's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new/current model. Vendor may offer close-out or refurbished Equipment or Products if they are clearly indicated in

Vendor's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Vendor warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Vendor warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Vendor's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that is effective past the expiration of the Vendor's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution, Vendor will make available to Sourcewell a means to validate or authenticate Vendor's authorized dealers, distributors, and/or resellers relative to the Equipment, Products, and Services related to this Contract. This list may be updated from time-to-time and is incorporated into this Contract by reference. It is the Vendor's responsibility to ensure Sourcewell receives the most current version of this list.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced as stated in Vendor's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Vendor must permit the Equipment and Products to be returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery.

Vendor must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Vendor in breach of this Contract if the Vendor intentionally delivers substandard or inferior Equipment or Products. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Vendor as soon as possible and the Vendor will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

B. SALES TAX. Each Participating Entity is responsible for supplying the Vendor with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Vendor may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Vendor determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Vendor may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Contract Administrator. This form is available from the assigned Sourcewell Contract Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;
- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Vendor understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Vendor is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential members to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Vendor's employees may be required to perform work at government-owned facilities, including schools. Vendor's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Vendor that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Vendor. Typically, a Participating Entity will issue an order directly to Vendor. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell contract number. All Participating Entity orders under this Contract must be issued prior to expiration of this Contract; however, Vendor performance, Participating Entity payment, and any applicable warranty periods or other Vendor or Participating Entity obligations may extend beyond the term of this Contract.

Vendor's acceptable forms of payment are included in Attachment A. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. **ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM.** Additional terms and conditions to a purchase order may be negotiated between a Participating Entity and Vendor, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be worked out directly between the Participating Entity and the Vendor. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. **PERFORMANCE BOND.** If requested by a Participating Entity, Vendor will provide a performance bond that meets the requirements set forth in the Participating Entity's order.

D. **SPECIALIZED SERVICE REQUIREMENTS.** In the event that the Participating Entity requires service or specialized performance requirements (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements) not addressed in this Contract, the Participating Entity and the Vendor may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

E. **TERMINATION OF ORDERS.** Participating Entities may terminate an order, in whole or in part, immediately upon notice to Vendor in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the goods to be purchased;
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements; or
3. Vendor commits any material breach of this Contract or the additional terms agreed to between the Vendor and a Participating Entity.

F. **GOVERNING LAW AND VENUE.** The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. **PRIMARY ACCOUNT REPRESENTATIVE.** Vendor will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. **BUSINESS REVIEWS.** Vendor must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. **CONTRACT SALES ACTIVITY REPORT.** Each calendar quarter, Vendor must provide a contract sales activity report (Report) to the Sourcewell Contract Administrator assigned to this Contract. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Vendor must submit a report indicating no sales were made).

The Report must contain the following fields:

- Customer Name (e.g., City of Staples Highway Department);
- Customer Physical Street Address;
- Customer City;
- Customer State/Province;
- Customer Zip Code;
- Customer Contact Name;
- Customer Contact Email Address;
- Customer Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Vendor.

B. **ADMINISTRATIVE FEE.** In consideration for the support and services provided by Sourcewell, the Vendor will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Vendor may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Vendor will submit a check payable to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased by Participating Entities under this Contract during each calendar quarter. Payments should note the Sourcewell-assigned contract number in the memo and must be mailed to the address above "Attn: Accounts Receivable." Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Vendor agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Vendor is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Vendor in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Vendor's Authorized Representative is the person named in the Vendor's Proposal. If Vendor's Authorized Representative changes at any time during this Contract, Vendor must promptly notify Sourcewell in writing.

10. ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

- A. **ASSIGNMENT.** Neither the Vendor nor Sourcewell may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed assignment agreement. Such consent will not be unreasonably withheld.
- B. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been fully executed by the parties.
- C. **WAIVER.** If either party fails to enforce any provision of this Contract, that failure does not waive the provision or the right to enforce it.
- D. **CONTRACT COMPLETE.** This Contract contains all negotiations and agreements between Sourcewell and Vendor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.
- E. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. LIABILITY

Vendor must indemnify, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees, arising out of the performance of this Contract by the Vendor or its agents or employees; this

Indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. No party shall be liable for consequential damages under this Contract.

12. AUDITS

Sourcewell reserves the right to review the books, records, documents, and accounting procedures and practices of the Vendor relevant to this Contract for a minimum of 6 years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

13. GOVERNMENT DATA PRACTICES

Vendor and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract.

If the Vendor receives a request to release the data referred to in this article, the Vendor must immediately notify Sourcewell and Sourcewell will assist with how the Vendor should respond to the request.

14. INDEMNIFICATION

As applicable, Vendor agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Vendor in violation of applicable patent or copyright laws.

15. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:
 - a. Sourcewell grants to Vendor a royalty-free, worldwide, non-exclusive right and license to use the Trademark(s) provided to Vendor by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Vendor.
 - b. Vendor grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Vendor's Trademarks in advertising and promotional materials for the purpose of marketing Vendor's relationship with Sourcewell.

2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to its and their respective distributors, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. *Use; Quality Control.*

- a. Sourcewell must not alter Vendor's Trademarks from the form provided by Vendor and must comply with Vendor's removal requests as to specific uses of its trademarks or logos.
- b. Vendor must not alter Sourcewell's Trademarks from the form provided by Sourcewell and must comply with Sourcewell's removal requests as to specific uses of its trademarks or logos.
- c. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's Trademarks only in good faith and in a dignified manner consistent with such party's use of the Trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. *Termination.* Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of vendors which may be used until the next printing). Vendor must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. **PUBLICITY.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. **MARKETING.** Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Materials should be sent to the Sourcewell Contract Administrator assigned to this Contract.

D. **ENDORSEMENT.** The Vendor must not claim that Sourcewell endorses its Equipment, Products, or Services.

16. GOVERNING LAW, JURISDICTION, AND VENUE

Minnesota law governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state court in Todd County or federal court in Fergus Falls, Minnesota.

17. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

18. SEVERABILITY

If any provision of this Contract is found to be illegal, unenforceable, or void then both Sourcewell and Vendor will be relieved of all obligations arising under such provisions. If the remainder of this Contract is capable of performance, it will not be affected by such declaration or finding and must be fully performed.

19. PERFORMANCE, DEFAULT, AND REMEDIES

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other in writing of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Vendor will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Vendor may escalate the resolution of the issue to a higher level of management. The Vendor will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed will be borne by the Vendor.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

Written notice of default and a reasonable opportunity to cure must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

20. INSURANCE

A. REQUIREMENTS. At its own expense, Vendor must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Vendor will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for Products-Completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Vendor will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms

no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance.* During the term of this Contract, Vendor will maintain umbrella coverage over Workers' Compensation, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

Failure of Vendor to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Vendor must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Contract Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf. All policies must include there will be no cancellation, suspension, non-renewal, or reduction of coverage without 30 days' prior written notice to the Vendor.

Failure to request certificates of insurance by Sourcewell, or failure of Vendor to provide certificates of insurance, in no way limits or relieves Vendor of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Vendor agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Vendor's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Vendor, and products and completed operations of Vendor. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. WAIVER OF SUBROGATION. Vendor waives and must require (by endorsement or otherwise) all its Insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Vendor or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Vendor or its subcontractors. Where permitted by law, Vendor must require

similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. **UMBRELLA/EXCESS LIABILITY.** The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies).

21. COMPLIANCE

A. **LAWS AND REGULATIONS.** All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. **LICENSES.** Vendor must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Vendor conducts with Sourcewell and Participating Entities.

22. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Vendor certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Vendor declares bankruptcy, Vendor must immediately notify Sourcewell in writing.

Vendor certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Vendor further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

23. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may also require additional requirements based on specific funding specifications. Within this Article, all references to "federal" should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Vendor's Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. § 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Vendor must be in compliance with all applicable Davis-Bacon Act provisions.

C. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements

do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Vendor certifies that during the term of an award for all contracts by Sourcwell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Vendor certifies that during the term of an award for all contracts by Sourcwell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Vendor certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that Implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Vendors must file any required certifications. Vendors must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Vendors must disclose any lobbying with non-federal funds that

takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Vendors must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Vendor must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Vendor further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Vendor must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Vendor must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Vendor agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

24. CANCELLATION

Sourcewell or Vendor may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Vendor's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

thyssenkrupp Elevator

DocuSigned by:
By: Jeremy Schwartz
C0FD2A139D08489...
Jeremy Schwartz
Title: Director of Operations &
Procurement/CPO
Date: 8/26/2020 | 9:50 AM CDT

DocuSigned by:
By: Mark Hintz
62E6088A89F2417...
Mark Hintz
Title: Vice President Contracts Department
Date: 8/26/2020 | 7:07 PM CEST

Approved:

DocuSigned by:
By: Chad Coquette
7E42BBF817A8400...
Chad Coquette
Title: Executive Director/CEO
Date: 8/26/2020 | 12:23 PM CDT

RFP 080420 - Elevators, Escalators, and Moving Walks with Related Equipment, Services, and Supplies

Vendor Details

Company Name: thyssenkrupp Elevator
Address: 3100 Interstate North Circle
Suite 500
Atlanta, GA 30339
Contact: Jamie Blackman
Email: jamie.blackman@thyssenkrupp.com
Phone: 770-799-0478
HST#: 62121126-7

Submission Details

Created On: Monday July 06, 2020 07:33:19
Submitted On: Friday July 31, 2020 01:48:41
Submitted By: Jamie Blackman
Email: jamie.blackman@thyssenkrupp.com
Transaction #: 32231029-e36b-494f-a111-141e907ae5cd
Submitter's IP Address: 96.77.92.138

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Please do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; mark "NA" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *
1	Proposer Legal Name (and applicable d/b/a, if any):	thyssenkrupp Elevator *
2	Proposer Address:	3100 Interstate North Circle Suite 500 Atlanta, GA 30339 *
3	Proposer website address:	www.thyssenkrupp.com *
4	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Regards, Mark Hintz Vice President, Contracts Department 70 799 0448, mark.hintz@thyssenkrupp.com thyssenkrupp Elevator Corporation, 3100 Interstate N Cir SE, Suite 500, Atlanta, GA 30339 *
5	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Jeff Jaudes, CEI National Account Manager Government contracts 972-365-6128 *
6	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Jamie Blackman National Accounts Coordinator, National Accounts 770-799-0478 *

Table 2: Company Information and Financial Strength

Line Item	Question	Response *
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7	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	<p>ThyssenKrupp Elevator is a US \$3.8 billion dollar company that manufactures, installs and services a wide variety of passenger and freight needs. Headquartered in Atlanta, Georgia, ThyssenKrupp Elevator Corporation provides a full range of elevators, lifts and escalators for all types of passenger and freight applications. Complete elevator systems, including all major components, are manufactured at our plants in Tennessee, Mississippi, Toronto and New York City. ThyssenKrupp Elevator is represented by over 135 branches and 546 local representatives in the United States and Canada and employs over 10,000 manufacturing, installation, service, repair, sales and management professionals. Most impressive is the fact that we individually service nearly 240,000 elevators, escalators and lifts in North America, over 50,000 of which were manufactured and installed by other companies.</p> <p>ThyssenKrupp Elevator's ultimate parent is ThyssenKrupp AG, a large German corporation headquartered in Düsseldorf. ThyssenKrupp AG's predecessor, Thyssen AG entered the North American vertical transportation market in the 1980's, and was growing its business, when it acquired Dover Elevator Company in July 1999. Dover was well established in the U.S. market, and the merger of these two companies created the largest vertical transportation company in North America. Thyssen and Dover Elevator joined forces as ThyssenKrupp Elevator with one purpose: to exceed member expectations with a powerful combination of products, services and technology</p>
8	What are your company's expectations in the event of an award?	Our expectation as an existing provider is to continue to grow both Sourcwell and our portfolios in providing unsurpassed services to our customers
9	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	<p>thyssenkrupp Elevator is a US \$3.8 billion dollar company that manufactures, installs and services a wide variety of passenger and freight needs. Headquartered in Atlanta, Georgia, thyssenkrupp Elevator Corporation provides a full range of elevators, Escalators, and Moving Walks with Related Equipment, Services, and Supplies. Complete elevator systems, including all major components, are manufactured at our plants in Tennessee, Mississippi, Toronto and New York City. thyssenkrupp Elevator is represented by over 135 branches and 564 local representatives in the United States and Canada and employs over 10,000 manufacturing, installation, service, repair, sales and management professionals. Most impressive is the fact that we individually service nearly 240,000 elevators, escalators and lifts in North America, over 50,000 of which were manufactured and installed by other companies</p> <p>**Please see the Attachment thyssenkrupp 2018-2019 Financial Report**</p> <p>***Please see the Attached DNB Rating Report***</p>
10	What is your US market share for the solutions that you are proposing?	US Market Share : 38%
11	What is your Canadian market share for the solutions that you are proposing?	• Canadian Market : 40%
12	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	Lawsuits do occur and exist; however, TKEC has adequate risk management, legal and insurance safeguards in place to protect itself and its customers when required. ThyssenKrupp Elevator has not been involved in bankruptcy or reorganization. Notwithstanding, ThyssenKrupp Elevator Corporation is a \$3.8 billion company.

13	<p>How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization.</p> <p>a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned?</p> <p>b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?</p>	<p>B- thyssenkrupp does not have a dealer network; all products and services are performed and manufactured by thyssenkrupp. Our network of employees across the US is states are individual employees and Union employees. Sales and distribution are performed by location</p>
14	<p>If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.</p>	<p>All of our elevator service technicians are licensed to perform services on all vertical transportation. Both by the IUEC and local authorities having jurisdiction. ***Please see Attachment for State Contractors Licenses ***</p>
15	<p>Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.</p>	<p>In the past 10 years thyssenkrupp has not had any suspensions or debarments.</p>

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *
16	<p>Describe any relevant industry awards or recognition that your company has received in the past five years</p>	<p>2015 ThyssenKrupp Recognized by MIT Technology Review as One of the 50 Smartest Companies - ThyssenKrupp Elevator Wins 2015 Tennessee Governor's Environmental Stewardship Award - ThyssenKrupp Elevator's Enviromax® Earns Top Awards from Environmental Leader - ThyssenKrupp Elevator's U.S. Factory Earns LEED ® Gold Certification Middleton - 2016 thyssenkrupp' s Installation of 53 elevators and 88 escalators in Rome's metro Line C In Italy has won of the "Project of the Year 2016" Award, in the Escalators category presented by international magazine Elevator World. ***All awards listed above are attached in our proposed documents***</p>
17	<p>What percentage of your sales are to the governmental sector in the past three years</p>	<p>We currently maintain a Federal Service Supply contract for the next 20 years and have for the last 20 years. Approximately 23% of our maintenance is with federal, state, local and city government.</p>
18	<p>What percentage of your sales are to the education sector in the past three years</p>	<p>Education: 15%</p>
19	<p>List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?</p>	<p>thyssenkrupp Elevator does business with multiple cooperative purchasing companies such as, Omnia, Vizient, Premier, Equals and Healthtrust. There are over 40,000 units attached to these cooperative organizations both government and commercial that thyssenkrupp maintains. The release of any other customers' information without their approval is against thyssenkrupp policy.</p>
20	<p>List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?</p>	<p>GSA - FSS 9M+ GSA - PBS 9M+</p>

Table 4: References/Testimonials

Line Item 21. Supply reference information from three customers who are eligible to be Sourcewell participating entities.

Entity Name *	Contact Name *	Phone Number *
The release of any other customers' information without their approval is against thyssenkrupp policy.	The release of any other customers' information without their approval is against thyssenkrupp policy.	The release of any other customers' information without their approval is against thyssenkrupp policy.
The release of any other customers' information without their approval is against thyssenkrupp policy.	The release of any other customers' information without their approval is against thyssenkrupp policy.	The release of any other customers' information without their approval is against thyssenkrupp policy.
The release of any other customers' information without their approval is against thyssenkrupp policy.	The release of any other customers' information without their approval is against thyssenkrupp policy.	The release of any other customers' information without their approval is against thyssenkrupp policy.

Table 5: Top Five Government or Education Customers

Line Item 22. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *
Various States	Government	Georgia - GA	Vertical Transportation	100+ locations	Approximately 669K - Annual
Various States	Government	Georgia - GA	Vertical Transportation	148 Locations	Approximately 3.2M - Annual
University	Education	Florida - FL	Vertical Transportation	138 Units	Approximately 1M - Annual
University	Education	North Carolina - NC	Vertical Transportation	357 Units	Approximately 1.3M Annually
University	Education	Colorado - CO	Vertical Transportation	167 Units	Approximately \$313K Annually

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcewell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *

23	Sales force.	<p>thyssenkrupp Elevator's North American Division is separated into three regions, consisting over 6,000 employees working directly at our branch and regional offices. These locations are as listed below. See Attachments Question #17 Sales Force Map & Branch location Map for the listing of over 135 offices across the US. Our local customer service is supported by our call center, TK Communications which is operational 24/7 if the local branch is not available.</p> <p>Total number and location of sales persons employed by Supplier.</p> <ul style="list-style-type: none"> • Pacific Northwest - 52 • California - 59 • Southwest - 47 • Midwest - 73 • Central US - 52 • South - 50 • Southeast - 53 • Florida - 56 • Mid-Atlantic - 48 • Northeast - 53 • TOTAL - 546 Sales employees
24	Dealer network or other distribution methods.	<p>Services are scheduled and provided at a local branch level. Distribution of products will be managed at the local level, we have branches/locations in North America..</p>
25	Service force.	<p>Service Force:</p> <ul style="list-style-type: none"> • Thyssenkrupp has 3200+ service technicians in the US and Canada. All service technicians are IUEC members and employees of thyssenkrupp Elevator
26	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	<p>We provide Regular and Routine Maintenance 7/24/365. All maintenance programs are code compliant and if needed adjusted to meet our member needs. You can always count on our:</p> <ul style="list-style-type: none"> • 2,600 highly-trained service technicians, experts in thyssenkrupp and third-party (OEM) equipment • 24/7 emergency service availability from technicians who are always nearby • 24/7 thyssenkrupp call center, standing by to quickly take your call • Customer Portal, an online tool for managing your elevator account and placing service requests • Global network of engineers and experts, International Technical Services • Advanced diagnostic tools for communicating with thyssenkrupp and third-party equipment • Predictive maintenance solution, MAX, which dramatically improves elevator uptime using Internet of Things (IoT) technology • Dedicated account managers, your point of contact for account-related issues • Capital planning services to help you budget for future expenses <p>For an emergency such as an entrapment our goal is to get respond in 30 minutes or less, however due to locations outside of our control including but not limited to traffic, environment, location and access. hour during normal business hours, if not sooner. For an entrapment after normal business hours, we would strive for onsite response in less than 2 hours. For non-emergencies service requests during normal business hours, we should meet same day response. For non-emergency service requests after normal business hours, we will strive to provide response by the following business day.</p> <p>** Please see the Attachment: Service Brochure**</p>

