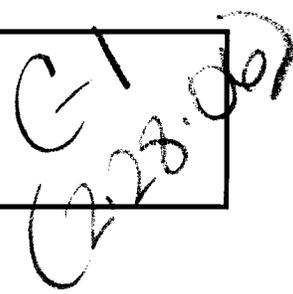


**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT General Services		(2) MEETING DATE February 28, 2006		(3) CONTACT/PHONE Duane P. Leib (805) 781-5200 mam	
(4) SUBJECT					
1. Hearing to approve a Contract for the design and installation of HVAC energy improvements as part of the newly created project. 2. Creation of a new Maintenance Project to upgrade heating, ventilating and air-conditioning (HVAC) systems and controls at Department of Social Services (DSS) in San Luis Obispo, approval of a related Budget Adjustment to fund the work.					
(5) SUMMARY OF REQUEST					
General Services requests:					
1. Your Board approve the creation of a new Maintenance Project to replace existing HVAC equipment, modify zoning, and upgrade controls at 3433 S. Higuera Street. 2. Approve a Budget Adjustment from Federal and State revenues, and unanticipated revenue currently budgeted by DSS. 3. Approve a Contract with an Energy Service Provider (ESP) under the provisions of the California Government Code to design and install these energy improvements.					
(6) RECOMMENDED ACTION					
General Services recommends:					
1. Your Board create the Maintenance Project, SLO- DSS - Install Energy Improvements, 350018 and approve a Budget Adjustment in the amount of \$603,600 from the Federal and State revenues and unanticipated revenue from DSS budget, by four-fifths vote. 2. General Services recommends your Board: <ul style="list-style-type: none"> • Approve the attached Energy Services Design and Installation Agreement with Aircon Energy, Inc., and direct the Chair to sign the agreement in the amount of \$550,780.00. • Approve preliminary energy audit findings indicating the projected energy savings and the capital off-set improvements of this project. 					
(7) FUNDING SOURCE(S)		(8) CURRENT YEAR COST		(9) ANNUAL COST	(10) BUDGETED?
Federal: \$368,196 State: \$181,080, County: \$54,324 in unanticipated revenue from DSS 05-06 fiscal budget		Total Project Cost: \$603,600 ESCO Agreement: \$550,780		N/A	<input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/> NO
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST):					
County Administrative Offices, Department of Social Services, County Counsel, The Environmental Division of the County Planning and Building Department					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____					
<input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____					
(13) SUPERVISOR DISTRICT(S)			(14) LOCATION MAP		
1st, 2nd, 3rd, 4th, 5th, All <u>3</u>			<input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A		
(15) AGENDA PLACEMENT			(16) EXECUTED DOCUMENTS		
<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Hearing (Time Est. <u>3 min.</u>) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			<input type="checkbox"/> Resolutions (Orig + 4 copies) <input checked="" type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> N/A <input type="checkbox"/> Ordinances (Orig + 4 copies)		
(17) NEED EXTRA EXECUTED COPIES?			(18) APPROPRIATION TRANSFER REQUIRED?		
<input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A			<input type="checkbox"/> Submitted <input checked="" type="checkbox"/> 4/5th's Vote Required <input type="checkbox"/> N/A		

(19) ADMINISTRATIVE OFFICE REVIEW	 
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COUNTY OF SAN LUIS OBISPO

Department of general services

COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO, CALIFORNIA 93408 • (805) 781-5200
DUANE P. LEIB, DIRECTOR

TO: BOARD OF SUPERVISORS
FROM:  DUANE P. LEIB, GENERAL SERVICES DIRECTOR
DATE: FEBRUARY 28, 2006

SUBJECT: HEARING TO APPROVE AN AGREEMENT WITH AN ENERGY SERVICE PROVIDER (ESP) TO DESIGN AND INSTALL ENERGY IMPROVEMENTS FOR THE DEPARTMENT OF SOCIAL SERVICES BUILDING LOCATED AT 3433 S. HIGUERA STREET, SAN LUIS OBISPO.

CREATION OF A NEW MAINTENANCE PROJECT, SLO -DSS - INSTALL ENERGY IMPROVEMENTS, 350018 AND APPROVAL OF A BUDGET ADJUSTMENT IN THE AMOUNT OF \$603,600 FROM FEDERAL AND STATE REVENUES AND DEPARTMENT OF SOCIAL SERVICES 05-06 FISCAL BUDGET, BY FOUR-FIFTHS VOTE, and

RECOMMENDATION

1. General Services recommends your Board create a new Maintenance Project entitled, SLO - DSS - Install Energy Improvements, 350018 and approve a Budget Adjustment in the amount of \$603,600 from Federal and State revenues and unanticipated revenue from DSS 05-06 fiscal budget, by four-fifths vote.
2. General Services recommends your Board:
 - Approve an energy services design and installation Agreement with Aircon Energy, Inc. of Sacramento, CA, and direct the Chair to sign the agreement in the amount of \$550,780 for installation of energy efficient replacements of HVAC equipment and controls for the DSS office building located at 3433 S. Higuera Street.
 - Approve findings of the preliminary energy audit that the projected energy savings and the capital off-set costs under this agreement meets the requirement of Government Code Section 4217.12 which, as defined in the Public Utilities Code, is a payback term not exceeding 35 years.

DISCUSSION

1. The scope of this project includes the replacement of 2 rooftop HVAC package units, replacement of the existing hot water boiler and installation of a backup boiler including pipes and pumps, installation of 2 new 3-ton ductless split system package units with dedicated cooling for the second floor computer room, installation of Delta controls and valve actuators, design and implement new heating and cooling zones with new variable air volume (VAV) boxes. The equipment being replaced has reached the end of its useful life. The additional zones and control upgrades provide energy savings and a more comfortable work environment for the public and staff.

The cost estimate for this project was prepared by General Services and amounts to \$603,600.

2. The scope of this project makes it a natural and prudent choice to utilize an Energy Services Provider (ESP), where the engineering design and construction is combined for joint savings of time and costs in engineering services, and focuses on long term savings in energy and maintenance.

The County is aware of the many benefits of utilizing an ESP. The renovation of the Health Campus is the most recent energy services agreement the County has undertaken. In addition, the recent installation of air-conditioning at the old Courthouse, the establishment of a Co-Generation plant at the Government Center, and the 2001 upgrade and retrofit of utilities at the Probation and Health Facilities in San Luis Obispo were all successfully completed under previous ESP agreements. Government Code Section 4217.12(a) authorizes public agencies to enter into a sole source agreement with a single ESP company. This Government Code section also requires a "hearing" for award of this type of agreement. Aircon Energy, Inc., a State of California prequalified ESCO firm, was selected to enter into negotiations with the County for the prescribed work. In this case two companies were solicited for Request for Proposals (RFP), however, one declined, citing the size of the project as being too small.

The most attractive feature of the Aircon Energy, Inc. proposal is the timely delivery of the project implementation through a process of performing the engineering design and construction by a single entity, which typically improves constructability, and reduces the County's cost overrun risk and conflicts between other work.

OTHER AGENCY INVOLVEMENT

The Administrative Office supports this project and the "turnkey" approach to project delivery. County Counsel reviewed the agreement for form and legal effect. The Environmental Division of the Planning and Building Department determined this type of project to be exempt from CEQA.

FINANCIAL CONSIDERATIONS

This project shall be financed by:

- Federal Revenue: \$368,194
- State Revenue: \$181,080
- County: \$ 54,324
\$603,600

The Federal and State revenues must be spent prior to the end of the 05-06 fiscal year. The County share is from unanticipated revenue currently budgeted by DSS for the 05-06 fiscal year. The requested Budget Adjustment in the amount of \$603,600 is expected to fully fund the project as described below:

ITEM	AMOUNT
Aircon Energy, Inc. Contract	\$550,780
Project Administration & Support	\$23,000
Project Contingencies	\$29,820
TOTAL PROJECT COST	\$603,600

RESULTS

Replacement of the aging HVAC units, hot water boiler and installing a backup boiler, upgrading the controls, providing additional heating and cooling zones, and using an ESCO agreement for delivering this project will enhance the energy conservation of the building, lower life cycle costs of the building, contribute to the Board energy policy enacted last year, and will provide the staff an efficient and comfortable environment from which to serve a large public population.

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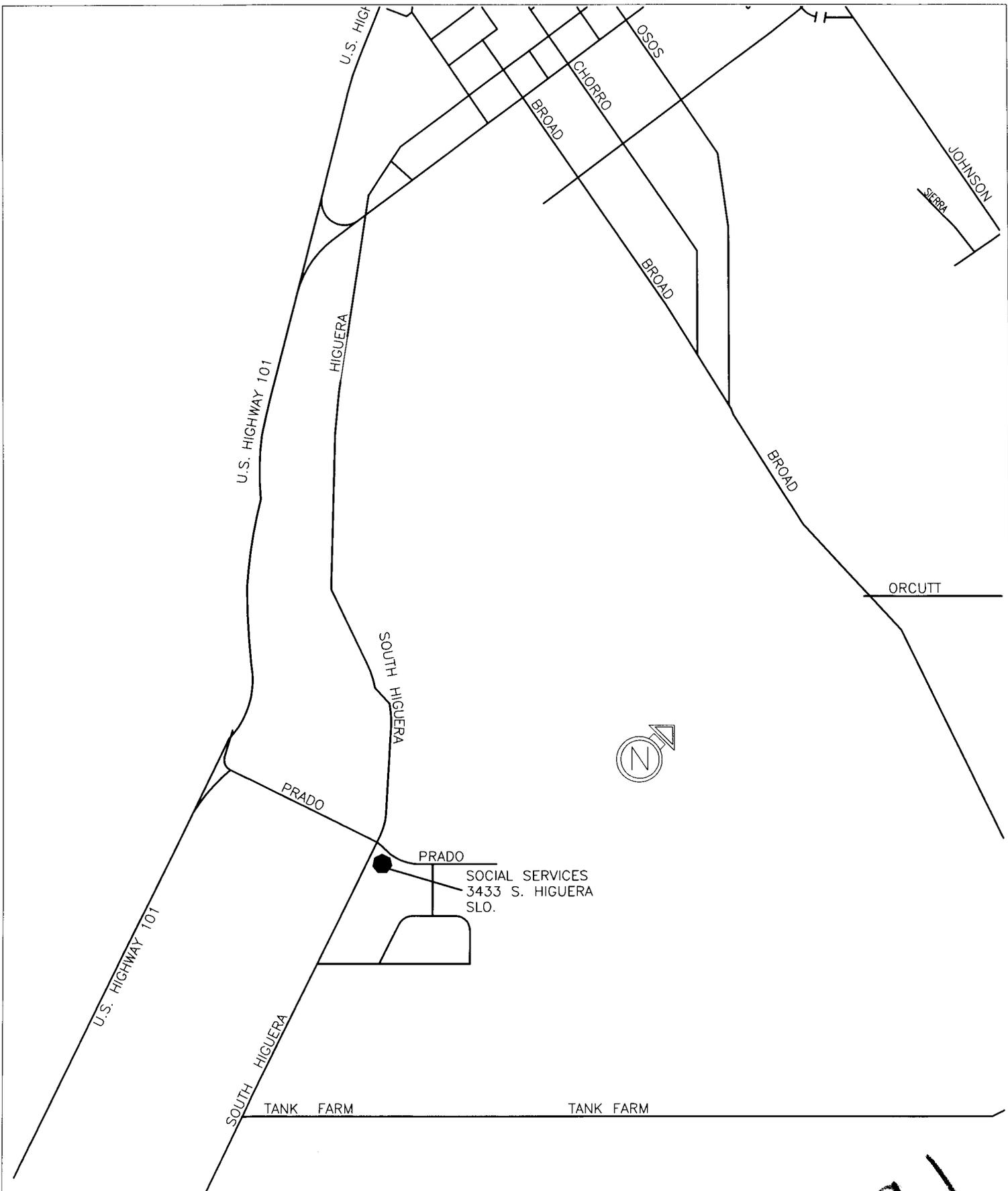


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ENERGY EFFICIENCY MEASURES

MEASURE NUMBER	INCLUDED IN PROJECT	MEASURE DESCRIPTION	PROJECT COST	ANNUAL ENERGY SAVINGS (Calculations Only) <small>for calculation only</small>	ANNUAL ENERGY SAVINGS	REBATE	REPAIR AND REPLACEMENT SAVINGS (Annual)	CAPITOL COST AVOIDANCE (One Time)	SIMPLE PAYBACK All Savings
1	Y	Replace 2 Rooftop Package Units with Trane Units	\$245,000	\$16,225	\$15,414	\$2,800	\$7,500	\$0	10.6
2	Y	Replace Natural Gas Boiler	\$60,000	\$6,700	\$6,365	\$750	\$1,800	\$0	7.3
3	Y	Install Delta Controls Building Automation System	\$120,000	\$7,000	\$6,650	\$1,100	\$2,000	\$0	13.7
4	Y	Provide Insulated Stat Backs for Outside Walls, Relocate Thermostats and Sensors, Add Sensors	\$3,000	\$0	\$0	\$0	\$0	\$0	0.0
5	Y	Add 11 New VAV Boxes With Reheat Coils	\$33,000	\$0	\$0	\$0	\$0	\$0	0.0
6	Y	Replace All Existing Control Cable with Shielded Cable	\$6,500	\$0	\$0	\$0	\$0	\$0	0.0
7	Y	Replace Existing Computer A/C Unit with New 7.5 Ton ADP Computer Unit	\$20,000	\$1,800	\$1,550	\$0	\$500	\$0	9.8
TOTAL			\$487,500	\$31,725	\$29,979	\$4,650	\$11,800	\$0	11.6
MISCELLANEOUS									
Project Management			\$35,000						
Engineering/Energy Study Cost			\$20,000						
Bonds			\$8,288						
PROJECT TOTALS			\$550,788	\$31,725	\$29,979	\$4,650	\$11,800	\$0	13.1

Notes: Y - Depicts measures that are included in the project
 Rebates are based on current PG&E programs and are subject to changes outside the control of Aircon



SOCIAL SERVICES
3433 S. HIGUERA
SAN LUIS OBISPO

010

**ENERGY SERVICES DESIGN AND
INSTALLATION AGREEMENT**

between

AIRCON ENERGY, INC.

and

COUNTY OF SAN LUIS OBISPO

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Section 23 Appendix

ENERGY SERVICES DESIGN AND INSTALLATION AGREEMENT

This ENERGY SERVICES DESIGN AND INSTALLATION Agreement (the "Agreement") is made and entered into as of _____, by and between Aircon Energy, Inc., a California corporation, having its principal offices at Sacramento, California, (the "Company") and San Luis Obispo, a political subdivision of the State of California, having its principal offices at San Luis Obispo, California (the "County") for the purpose of developing and implementing cost effective energy conservation measures (ECM's) and providing other services designed to reduce the County's energy consumption at buildings which are described in Schedule A attached hereto (the "Premises").

RECITALS:

WHEREAS, the Company provides a service for reducing energy consumption and costs through the use of engineering analyses which properly balances Energy Consumption, Personnel Comfort and Equipment Quality and, as applicable, through energy saving devices acquired, designed for installation, installed, operated, managed and maintained by the Company; and

WHEREAS, the Company has made a preliminary assessment of the energy consumption characteristics of the Premises and will acquire, design the installation, and install upon a portion of the Premises certain energy efficiency equipment and systems described in Schedule B attached hereto, which description is subject to revision (by addition or deletion) at a later date on a supplemental schedule or schedules as hereinafter described (all such equipment hereafter collectively referred to as the "Equipment"); and

WHEREAS, the Company warrants that it has fully investigated all relevant site conditions including asbestos, lead paint and other potentially hazardous materials/substances which may be encountered in performance of the work, and that County has provided full and complete access to all areas where work is to be performed, and that the Company knows these areas to contain significant amounts of asbestos and asbestos containing materials, and that the County accepts complete responsibility for the removal and/or remediation of asbestos, lead paint and other potentially hazardous materials as such relate to the work unless specifically addressed in Section B; and

WHEREAS, the County has retained the Company to acquire, design the installation and install the Equipment, and to provide other services, all as more fully set forth herein, subject to all the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the County and the Company agree as follows:

Section 1 Equipment Installation

Section 1.1 Installation. The Company shall complete the design of and install the Equipment and implement the related procedures, if any, described in Schedule B within 480 calendar days from the Notice to Proceed. The Company will be authorized to commence work on the project once financing has been secured. This determination will commence from the issuance of a Notice to Proceed from the County to the Company.

Section 1.2 Installation Procedures. During installation of the Equipment, the County agrees that it shall not in any manner modify, change, inhibit or otherwise tamper with the Equipment; provided, that in the case of an emergency and with telephonic or other oral or written notice to the Company, if feasible under the circumstances, the County may take such steps as it deems necessary under the circumstances and shall be entirely responsible for such steps.

Section 1.3 Risk of Loss. Until each item of Equipment has been physically installed into the proper County owned facility the County shall not be responsible for any damage, mutilation, destruction or other loss to the Equipment except for any such loss directly caused by the negligence or intentional acts of the County.

Section 1.4 Change Orders. The County and the Company agree that any material changes, modifications, supplements, or other adjustments to the Equipment, not mandated by an emergency, shall only be made pursuant to a writing executed by both parties hereto.

Section 1.5 Permits. The Company will obtain all required permits. The County will issue fee-exempt permits on County-owned facilities.

Section 2 Ownership of Property

Section 2.1 Ownership of Equipment. Upon issuance of the Final Notice of Completion for Completion of Work by the County as provided herein, the County shall own the Equipment.

Section 3 Equipment Location and Access

The County shall provide without charge to the Company mutually satisfactory space for the installation and operation of the Equipment. The County shall provide access to the Premises for the Company and its contractors, subcontractors, agents, employees or other designees during regular business hours, or such other hours as may be requested by either the Company or the County and approved by the County, to provide the services specified herein. Such approval shall not be unreasonably withheld.

Section 4 Equipment Service and Operation

Section 4.1 Actions by the Company. The Company shall provide all routine and special services, including adjustments to the Equipment during the first year following completion of the program, as necessary to perform all work described in Schedule B.

- a) The Company shall prepare, to the satisfaction of the County, Operating and Maintenance manuals for all of the Equipment. These manuals shall specify parameters within which County personnel can operate, maintain, adjust and alter the equipment for optimum operation consistent with energy conservation objectives and human comfort needs.
- b) Individually bound Operating manuals shall include B-size "as-built" mechanical and control drawings for the installed Equipment. The Company shall furnish to the County five (5) copies of all such manuals on or before the commencement of the training of the County's personnel which the Company will provide as described in Schedule D.

Section 4.2 Malfunctions and Emergencies. The County shall make its best efforts to notify the Company within five (5) hours if it knows of (a) any material malfunction in the operation of the Equipment or any other facility for which the Company has any responsibility under Schedule B, or (b) any interruption or alteration of existing electrical circuits. The Company will respond via computer link within two (2) hours, and if an immediate site visit is necessary, within (24) hours, following such notification. When the Company has responded to problems which are not related, directly or indirectly, to the equipment or systems installed under this Agreement for which Company continues to have ongoing responsibility, the County agrees to reimburse the Company for the cost to respond at the Company's then current published rates.

Section 4.3 Actions by County. County staff is expected to operate any controls or systems installed under this Agreement consistent with tenant needs. Any changes made to the controls or systems must be documented in a work order such that Company is aware of changes which were made. The County shall reasonably act to protect the Equipment, Premises, and Personnel from damage or injury if, due to an emergency, it is not possible to notify the Company before so acting.

Section 4.4 Hazardous Waste and Asbestos. Certain of the structures on which the work described herein will be performed contain hazardous waste and hazardous materials, including, but not limited to, asbestos, lead paint, or other materials (collectively, the "hazardous materials"). It shall be the joint responsibility of the County and Company to determine whether or not such hazardous materials need to be removed or otherwise remediated prior to or during, the implementation of any (ECM) listed in Schedule B. All costs associated with such investigation, removal and/or remediation shall be paid for by the County unless specifically mentioned in Schedule B to be the Company's responsibility. Further, the County shall be solely responsible for providing any and all notice, safety, containment, clean-up or other requirements, legal or otherwise, arising out of or in connection with the removal and/or remediation of hazardous materials not covered by the Company in Schedule B.

- a) The County and the Company do hereby acknowledge and agree that, in the course of installing the Equipment in accordance herewith, the Company shall remove from the ceiling of the Premises certain fluorescent lighting ballasts which may contain Polychlorinated Biphenyls (PCBs) and fluorescent lamps. The Company shall be solely responsible for undertaking any and all notice, safety, containment, clean-up or other requirements, legal or otherwise, arising in connection with removal of the lighting ballasts and any PCBs and fluorescent lamps. The Company shall have all rights, duties, obligations and liabilities with respect to the receptacles into which such lighting ballasts and PCBs, if any, and fluorescent lamps are deposited and the ultimate removal from the Premises and disposition of such lighting ballasts and any PCBs and fluorescent lamps. The County shall have no obligation, duty or responsibility in connection therewith.
- b) In no event shall the Company be deemed to be a generator of hazardous materials or PCBs removed from the Premises with regard to this Agreement. The County shall provide the Company with the necessary EPA and State Generator Numbers for Manifesting purposes and the Company shall comply with County regulations pertaining to such manifesting.

Section 4.5 Rebates from Public Utilities. Any rebate for energy savings or other payment to be claimed from or paid by any public utility is to be applied for by the County. The Company shall, in a timely manner, prepare and coordinate all rebate applications with the Project Manager. An appropriately licensed California Registered Professional Engineer employed by the Company or its subcontractor shall sign such applications on behalf of the County. The Company will provide ALL necessary documentation which utility companies may require to enable the County to obtain applicable rebates.

Section 5 Responsibilities of the Company

Section 5.1 Work by Company. Without limitation the Company will design and install the Equipment in a manner that will conform to the standards described in Schedule C and perform all such other services and work as called for in this Agreement. To assure the applicability, economic viability and compliance of each ECM, the Company will perform a detailed review for each building listed in Schedule A, which will include as a minimum:

- a) A review of the mechanical, electrical, and control drawings. The County does not guarantee the completeness or accuracy of any information contained on the drawings it provides.
- b) Interviews with the building management staff, maintenance personnel, and representative occupants in each building included in this Agreement.
- c) Physical verification of existing equipment and conditions, and applicability of proposed modifications.

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- d) Utilizing DOE2.1, an analysis of the heating and air conditioning system and its control operation, and an analysis of the energy usage considering factors such as tenant load, working hours, building materials, etc.
- e) A review of prior energy management efforts as discussed in information provided by the County.
- f) Attention to specific problem areas. Chronic problems are to be addressed and identified for incorporation into an ECM where appropriate. Otherwise the Company will prepare a document on chronic problems not included in the ECM's giving full particulars and recommendations.
- g) Detailed drawings and specifications showing engineering and design solutions for the ECM's including compliance with applicable codes, rules, laws and regulations.
- h) Calculations of the estimated costs, savings, rebates and simple payback for each ECM.
- i) Comments, as appropriate, regarding the feasibility and/or limitations and concerns for the ECM's.
- j) Complete information on all proposed Equipment in sufficient detail to allow the County to properly evaluate the suitability and quality of such Equipment.

For each individual ECM, the results of each of the foregoing activities with all relevant data, drawings and specifications are to be presented in written report form to the Project Manager before the specific ECM is implemented. The Company shall obtain written authorization from the Project Manager prior to proceeding with such ECM.

Section 5.2 Approval of Equipment. The Company shall submit to the County for approval, not less than thirty (30) days before the start of installation, all equipment to be installed under each ECM. Within fourteen (14) days after receiving the submittal, the County will inform the Company in writing whether the piece of equipment is approved or rejected. If rejected the Company shall re-submit alternate equipment until approved.

Section 5.3 Subcontractors. Company agrees that if it contracts with any other contractors or subcontractors to undertake any activities hereunder or otherwise in connection with the Equipment, it shall be solely responsible for the employment and work performed by such contractors/subcontractors and the County shall have no responsibility whatsoever therefore. In employing any such contractors/subcontractors hereunder, the Company agrees to comply with all laws, rules and regulations and other requirements concerning such employment of contractors/subcontractors and agrees that the County shall have no responsibility whatsoever therefor. Accordingly, any repairs, maintenance, damages or other acts caused by any such Contractors/subcontractor shall be the sole responsibility of the Company.

Section 6 Acceptance of Equipment

Section 6.1 Final Notice of Completion. Following the completion of each ECM as listed in Schedule B, the Company shall obtain final inspection approval by the San Luis Obispo County General Services Department, as necessary. Additionally, the Company and the County contract administrator and/or project manager will conduct a walk-through to verify the completeness and acceptability of the work. Deficiencies, if any, will be noted and the Company will provide a schedule for their correction. The County will provide timely responses to the corrective actions taken. Subsequent walk-throughs, as necessary, will verify proper corrective action has been taken. After the Company has demonstrated that the Equipment has satisfied, or can reasonably be expected to satisfy the performance standards described in Schedule C, and upon completion of the training specified in Schedule D, and after the Company has furnished all reports, drawings and other documents called for herein, the Company shall request a Notice of Completion for that ECM. The County shall execute and deliver in not more than thirty (30) days after the request, a Notice of Completion as set forth in Schedule E. Upon completion of all ECMs the Company shall request a Final Notice of Completion. The County shall execute and deliver in not more than thirty (30) days after the request, a Final Notice of Completion as set forth in Schedule E.

Section 7 Compensation

As compensation to the Company for its complete performance hereunder, including the installation of the Equipment and other described services, the County agrees to pay FIVE HUNDRED FIFTY THOUSAND SEVEN HUNDRED EIGHTY DOLLARS (\$550,780.00) in accordance with the billing and payment procedures set forth in Schedule F, Section 15 and Schedule G.

Section 8 Casualty or Condemnation of Premises

If any fire, flood, other casualty, or condemnation renders a substantial portion of the Premises incapable of being occupied for a significant length of time and, in the case of a casualty, the affected portion is not designated to be reconstructed or restored within a reasonable period of time from the date of such casualty, the Company may terminate that portion of the Agreement which relates to the affected Premises, by delivery of a written notice to the County. Upon such termination, the Company shall be paid in full all amounts then due and payable to Company in accordance with the provisions of this agreement and shall have the rights specified in Section 10.

Section 9 Events of Default

Section 9.1 Events of Default by the County. Each of the following events or conditions shall constitute an "Event of Default" by the County:

- a) Any failure by the County to promptly pay the Company its compensation when due, as required under Schedule F, General Conditions, Paragraph 15.1

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- b) Any other failure by the County to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to the County demanding that such failure to perform be cured.

Section 9.2 Events of Default by the Company. Each of the following events or conditions shall constitute an "Event of Default" by the Company:

- a) Any representation or warranty furnished by the Company in this Agreement or pursuant to its performance hereunder that is or becomes false or misleading in any respect; or
- b) Any failure of the Company to perform or comply with any of the terms and conditions of this Agreement, including, without limitation, breach of any covenant contained herein, provided that such failure continues for thirty (30) days after delivery of written notice to the Company demanding that such failure to perform be cured.

Section 10 Remedies Upon Default By the County

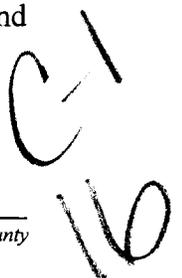
In the event any Event of Default by the County occurs, the Company may, without an election of remedies:

- a) Without recourse to legal process, terminate this Agreement by delivery of a written notice declaring termination; and
- b) Exercise all remedies available at law or at equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by the County, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy (including reasonable attorney's fees).

Section 11 Remedies Upon Default by the Company

In the event any Event of Default by the Company occurs, the County may, without an election of remedies:

- a) Without recourse to legal process, terminate this Agreement by delivery of a written notice declaring termination; and
- b) Exercise all remedies available at law or at equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by the Company, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy (including reasonable attorney's fees).



- c) The County's right under this section shall be in addition to, and shall not affect or limit in any way, any termination rights granted to County under Schedule F.

Section 12 Representations and Warranties

Each party warrants and represents to the other that:

- a) It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- b) Its execution, delivery, and performance of this Agreement have been duly authorized by, and is in accordance with, its organic instruments or statutes, this Agreement has been duly executed and delivered for it by the signatories so authorized, and constitutes its legal, valid and binding obligation;
- c) Its execution, delivery, and performance of this Agreement will not result in a breach or violation of, or constitute a default under, any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- d) It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially adversely affect its ability to perform hereunder.

Section 13 Applicable Law

This Agreement and the construction and enforceability thereof shall be interpreted under the laws of the State of California.

Section 14 Compliance with Law and Standard Practices

Section 14.1 Laws, Ordinances, Codes and Regulations. The Company shall observe and comply with all applicable laws, ordinances, codes, and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services or any part hereof, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations including reasonable rules of the County relative to the services provided under this Agreement. All services performed by the Company must be in accordance with sound engineering practices and these laws, ordinances, codes, and regulations. The Company shall indemnify and save the County harmless from any and all liability, fines, penalties, and consequences from any noncompliance or violations of such laws, ordinances, codes and regulations as related to the services provided under this Agreement.

Section 14.2 Accidents. If a death, personal injury or property damage occurs in connection with the performance of this agreement, the Company shall immediately notify the County and the County Risk Manager's Office by telephone. The Company shall promptly submit to the County a written report, in such form as may be required by the County which must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of the Company's subcontractor, if any; (3) name and address of the Company's liability insurance carrier; and (4) a detailed description of accident and whether any of County's equipment, tools, material, or staff were involved.

Section 15 Indemnity and Hold Harmless

The Company shall indemnify and save harmless, the County, its officers, employees, and agents, and each and everyone of them, from and against all actions, damages, costs, liability, claims, losses, judgments and expenses of every type and description (hereafter collectively referred to as "liability"), including any liability attributable to death, personal injury or property damage, to which any or all of them may be subjected, by reason of, or resulting from, directly or indirectly, any act or omission of the Company, its officers, employees or agents in connection with the performance or nonperformance of this Agreement, excepting only such liability as may be caused solely by the active negligence or willful misconduct of a party indemnified hereunder. The foregoing shall include, but shall not be limited to, any attorney fees reasonably incurred by County. Company shall, upon request, defend at its sole cost any action, claim or suit which asserts or alleges any claim that is allegedly based, in whole or in part, directly or indirectly, upon any act or omission of Company, its officers, employees or agents in connection with performance or nonperformance of this Agreement. In the event that a final decision or judgment allocates liability by determining that any portion of damages awarded is attributable solely to the County's active negligence or willful misconduct, the County shall pay the portion of damages which is allocated to the County's active negligence or willful misconduct.

Section 16 Notices and Changes of Address

All notices to be given by either party to the other shall be in writing and must be either delivered or mailed by registered or certified mail, return receipt requested, addressed as follows:

If to the Company: Aircon Energy, Inc.
 830 West Stadium Lane
 Sacramento, CA 95834
 Attention: Don Rasberry, President CEO

If to the County: County of San Luis Obispo
 1087 Santa Rosa Street
 San Luis Obispo, CA 93408
 Attention: Robert Botta, C.S.I.



or such other addresses as either party may hereinafter designate by notice to the other. Notices are deemed given and become effective upon mailing if mailed as aforesaid and upon actual receipt if otherwise delivered.

Section 17 No Waiver

The failure of the Company or the County to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of the Company or the County.

Section 18 Severability

In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement.

Section 19 Approval of Subcontractors

In the execution of this Agreement it may be necessary for the Company to subcontract part of the work to others; however, the Company shall not award any work to any subcontractor without prior written approval of the County, after the Company submits a written request to the County.

Section 20 Right-of-Way

All rights-of-way, easements, licenses for entry or other access necessary for the installation to be performed by the Company hereunder will be obtained by the Company with the County assisting on an as needed basis.

Section 21 Complete Agreement

This Agreement, when executed, together with all Schedules attached hereto, including, without limitation:

- Schedule A Description of The Premises
- Schedule B Scope of Work
- Schedule C Description of Performance Standards
- Schedule D Description of Training Program
- Schedule E Certificate of Acceptance
- Schedule F General Conditions
- Schedule G Payment Schedule

which are fully incorporated by reference herein, shall constitute the entire Agreement between the parties and this Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto.

Section 22 Limitation of Rights to Parties

Except as may be provided in Section 15 above, nothing herein is intended or shall be construed to give any person other than the Company and the County any legal or equitable right, remedy or claim under or in respect of this Agreement, which is solely for the benefit of the Company and the County.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement on the date first above written.

SAN LUIS OBISPO COUNTY

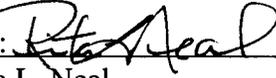
CONSULTANT: Aircon Energy

Approved As To Form and Legal Effect:

JAMES B. LINDHOLM, JR.
County Counsel



Don Rasberry
President CEO

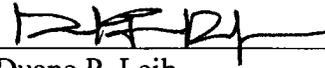
BY: 

Rita L. Neal
Deputy County Counsel

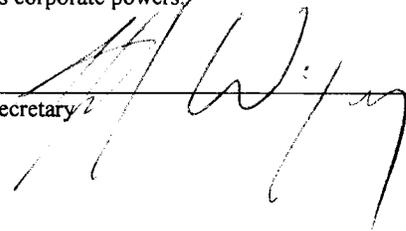
CORPORATE CERTIFICATE

I, Jeff Wagner certify that I am the Secretary of the Corporation named as Contractor in the foregoing Contract; that Don Rasberry who signed said Contract on behalf of the Contractor, was then President of said Corporation, that said Contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

RECOMMENDED BY:



Duane P. Leib
General Services Director



Secretary

BY: _____
Chairperson, Board of Supervisors

Approved by Board action on _____, 2006

ATTEST:

Clerk of the Board of Supervisors

By: _____
Deputy Clerk



SCHEDULE A Description Of The Premises

The building is located at 3433 S. Higuera Street in San Luis Obispo California. The three story building has a stucco exterior with a glazing that is light green over aluminum frames. The stucco finish is applied over a building paper that serves as a vapor barrier that is applied to the exterior shear panels on the building. There is no outsulation but there is insulation between the metal studs. The roof deck is of concrete construction and the air conditioning equipment is located on the roof. The building is painted a light color and the roof deck is a medium color.

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SCHEDULE B *Scope Of Work*

Scope of Work

Heating Equipment

Aircon Energy shall provide all labor and materials related to the replacement of the existing boiler on the roof.

1. Remove the existing rooftop boiler,
2. Remove the existing Bell & Gossett circulating pumps,
3. Install two 750 MBH high efficiency boiler (outdoor).
 - A. These boilers shall be Thermal Solutions unless the Patterson + Kelley boilers are available for outdoor installation.
4. Install two new circulating pumps so either pump can serve either boiler,
 - A. Pumps shall be Bell & Gossett close coupled
5. Install piping system including isolation valves at each pump related to the new boiler and pump system on the roof,
 - A. Boiler shall be anchored to the roof per seismic requirements of the current building codes.
6. Plans provided in AutoCAD format for review by the County staff.
 - A. Plans to indicate the heating water volumes at each Variable Air Volume (VAV) box.
 - I. Hydronic balance the heating water supply to each variable air volume box hot water coil and at the boiler after completion of the work.
 - II. Submit hydronic balance report prior to final billing of the project.
7. Install new gas piping from the existing location to the new boiler location.
8. Provide insulation on the piping on the roof. Insulation jacket shall be aluminum to prevent degradation of the insulation materials due to weather.
9. The one year warranty on the boiler begins on the date that the boiler is available to provide heat to the building.
10. Delta Controls to provide control of the boiler supply water temperature and operation of the circulating pump(s) as required by the ambient conditions.

Air Conditioning Equipment

Aircon Energy shall provide all labor and materials related to the replacement of the rooftop air conditioning equipment. This project requires two separate crane lift dates and will be conducted during hours when the building is unoccupied.

11. Remove the 60-ton rooftop variable air volume unit,
12. Install a new Trane Company 60-ton extended capacity rooftop variable air volume unit model number SXHFC604,
 - A. Reuse the existing equipment curb,
 - B. Reuse the existing electrical service,
 - C. 40 HP Supply Fan,
 - D. 15 HP Exhaust Fan,
 - E. 100% economizer control with dry-bulb control,
 - F. UL approved unit,
 - G. Non-fused disconnect switch,
 - H. Low leakage outside air dampers,
 - I. Variable Frequency Drives (VFD) factory installed,
 - J. Extended capacity evaporator coil,
 - K. Building Automation System module,
 - L. Extended grease lines,
 - M. Access doors
 - N. Factory startup included,
 - O. One year parts and labor warranty,
 - I. Warranty on the rooftop equipment begins on the date that the system is providing comfort cooling to the building.
13. Remove the 75-ton rooftop variable air volume unit,
14. Install a new Trane Company 75-ton extended capacity rooftop variable air volume unit model number SXHFC754,
 - A. Reuse the existing equipment curb,
 - B. Reuse the existing electrical service.

- C. 40 HP Supply Fan,
 - D. 20 HP Exhaust Fan,
 - E. 100% economizer control with dry-bulb control,
 - F. UL approved unit,
 - G. Non-fused disconnect switch,
 - H. Low leakage outside air dampers,
 - I. Variable Frequency Drives (VFD) factory installed,
 - J. Extended capacity evaporator coil,
 - K. Building Automation System module,
 - L. Extended grease lines,
 - M. Access doors
 - N. Factory startup included,
 - O. One year parts and labor warranty,
 - I. Warranty on the rooftop equipment begins on the date that the system is providing comfort cooling to the building.
15. Provide comprehensive evaluation of the building air conditioning loads to establish required air volumes in each space.
- A. Load calculations provided by either Trace 600 or eQUEST.
16. Drawings shall be provided in AutoCAD format, prior to beginning construction for review by San Luis Obispo County staff.
- A. Plans to indicate the supply and return air volumes from each diffuser for air balance purposes.
 - I. Air balance the supply and return air system after completion of the work.
 - II. Submit air balance report prior to final billing of the project.
17. Engineer solutions to the 16 problem areas identified by Bob Eckman. These include:
- A. Room Temperature sensors on exterior walls need mounting so as not to sense the exterior wall temperature extremes. This is typical of zones 2, 13, 18, 26, 31, 34, 41 and 50.
 - I. Solution 1: provide insulated stand-off bases at each of these thermostats

- II. Alternate Solution 2: relocate the thermostat to an interior wall where possible.
- B. Zones 3, 14, 25, 32, 40, and 49 have no reheat coils in the VAV boxes.
 - I. Install six new VAV boxes with reheat coils,
 - II. Extend the hot water supply and return lines to the new coils,
- C. Zone 10 room temperature sensor should be moved to a different office for better occupant temperature control. Suggest room 135, 129, 120, or 119. The temperature sensor now is in a room with office equipment that gives off heat.
 - I. Solution: move the sensor location.
- D. Zone 17 room temperature sensor location needs to be moved to another location.
 - I. Solution: installed sensor in return air grille with remote override for occupants.
- E. Zone 16 room temperature sensor needs to be moved out from behind the Herman Miller wall and set in another location.
 - I. Solution: relocate sensor to another wall.
- F. Zones 5, 6, 10 – install reheat coils for these zones. Zone 5 offices generally cold (rooms 159, 160 and 161). Zone 6 offices (136 and 137) are generally cold. Other rooms in these zones are interview rooms not usually occupied causing an imbalance. Zone 10 offices do not have heat loading need for heat gain during minimal air flow.
 - I. Solution: install 3 additional VAV boxes with hot water coils.
 - II. Extend the hot water supply and return lines to the new coils,
- G. Zone 21: add reheat to this zone. Heat load inadequate to bring up space temperatures.
 - I. Solution: install additional VAV box with hot water coil.
 - II. Extend the hot water supply and return lines to the new coils,
- H. Zone 23: move room temperature sensor. Hall temperature is affecting it.
 - I. Solution: relocate sensor.
- I. Zone 53: move temperature sensor from behind Herman Miller panel.
 - I. Solution: relocate sensor.

- J. Zone 51: sensor was moved from room 342 to 229 to provide better temperature control. Might want to consider splitting this zone and adding another VAV box.
 - I. Solution: install one additional VAV box with hot water coil.
- K. Heating water loop needs to be checked and new pumps installed to accommodate the new additional reheat coils.
 - I. This work will be included in this scope of work. The peak flow rate will remain about the same while increasing the temperature differential at the boiler.
- L. Zone 1 appears to be starved for hot water. Difficult to heat this area.
 - I. Solution: Increased pump size will overcome differential pressure needed to get water flow rate at the end of the piping system.
- M. Boiler: backflow and pressure reducing valve needs to be replaced when new boiler is installed.
 - I. Solution: install new Febco or Watts ¾" reduced pressure backflow preventer and Watts water pressure regulator. Set regulator pressure for 15 PSI.
- N. Remove and replace all SA, RA and OSA and Room Sensors. Install new to match Delta Controls system. At the last replacement, they left all sensors in place.
 - I. Solution: control sensors and mounting plates to be removed. Wiring to be abandoned in place.
- O. Remove and replace all valve actuators to match Delta Controls system.
 - I. Solution: this project includes all new hot water control valves.
- P. Remove and replace all cabling. Provide shielded cable.
 - I. Solution: new control wires are going to be provided. Shielded-plenum rated cables will be provided as requested by the County.
- 18. Install a new Floor 2 Computer Room HVAC equipment with dedicated cooling only equipment.
 - A. Two – 3-ton ductless split system units similar to Trane or Carrier, as acceptable to the County.

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- B. This space to be monitored by the direct digital controls system only.
 - C. Condensate drain will connect to the existing condensate drain in the room.
 - D. A new branch electrical service will be provided for this equipment.
19. Startup of the equipment including commissioning of each system is part of this scope.

Controls System

Aircon Energy is proposing the installation of a direct digital control (DDC) system manufactured by Delta Controls.

18. Wiring above the ceiling shall be shielded-plenum rated cabling,
19. The Delta Controls system shall be tied into the building heating and cooling systems.
This includes:
- A. Variable air volume boxes,
 - B. Hot water control valves,
 - C. Rooftop cooling only units,
 - D. Rooftop boilers,
 - E. Rooftop hot water circulating pumps,
 - F. Computer room cooling only unit.
20. One software key shall be included as well as one laptop computer for use at the site or by one of the County maintenance staff.
21. Commission the controls on all systems prior to the deliver of the system to the County of San Luis Obispo.

Electrical System

Aircon Energy shall provide all labor and materials for the electrical work related to this project.

22. Electrically disconnect the rooftop Trane Company equipment prior to removal by the mechanical contractor.
23. Electrically reconnect the rooftop Trane Company equipment after being set on the roof.
- A. Verify correct rotation of the rooftop equipment fans and compressors.

- 24. Electrically disconnect the boiler and pumps on the roof prior to removal by the mechanical contractor.
- 25. Electrically reconnect the boilers and pumps after being set and anchored by the mechanical contractor.
 - A. Verify correct motor rotation for both hot water circulating pumps.
- 26. Install branch circuit to the new cooling only split system unit serving the computer room on the second floor.
 - A. Power is required for the indoor unit on the second floor and the condenser on the roof.
 - B. The equipment supplier shall provide the disconnect switch and it shall be installed by the electrical contractor.

Engineering and Project Management

Aircon Energy shall provide all engineering related to this work. This includes mechanical, plumbing and electrical services. No structural engineering is required by this scope since the total weight of the equipment is the same or less than the existing.

Project management is included for this project that is anticipated to be completed in about 45 days after receipt of the new equipment. The long lead item for this job is the rooftop equipment, requiring about nine to ten weeks for delivery once the submittal information is approved by San Luis Obispo County.

This concludes the items covered by this scope of work. No additional services are provided beyond this scope of work.

SCHEDULE C *Description Of Performance Standards*

1. All installation engineering designs are to be documented as being in compliance with all applicable codes, laws, rules and regulations.
2. All Equipment is to be installed in a workmanlike manner and in compliance with all applicable codes, laws, rules, and regulations. All Equipment shall be fully warranted against defects, including malfunction, for a minimum one (1) year period from the date of the Notice of Completion for each ECM. Extended manufacturers' warranties (e.g., electronic ballasts) shall be passed through to County for the County's benefit.
3. The Equipment shall be demonstrated to be performing in a manner that satisfies manufacturer's specifications and the application requirements. Satisfactory operation of both the new and modified equipment must be demonstrated before the Final Notice of Completion.

SCHEDULE D *Description Of Training Program****Energy Services Project Training***

Aircon Energy will work closely with the County's building maintenance staff to provide initial training to all operation and maintenance personnel.

The initial training, which will occur during the implementation of the project, will consist of an overview of the project. The intent of the project and how the operations of the buildings will change will be explained. The emphasis will be on achieving the energy savings of the project while maintaining or improving the comfort of the occupants.

SCHEDULE E Certificate of Acceptance

Certificate of Acceptance

COMPLETION OF WORK

The undersigned, a duly authorized officer of San Luis Obispo County, does hereby execute and deliver this Certificate of Acceptance for completion of all work associated with the ___ phase of the _____ building to Aircon Energy, Inc. under and pursuant to Section 6 of the Energy Services and Design Installation Agreement between Aircon Energy, Inc. and San Luis Obispo County.

The County does hereby agree to pay in full, for the above described work all amounts due and owing to the Company in accordance with the agreement.

SAN LUIS OBISPO COUNTY

By: _____
Authorized Officer

Date: _____, 20____

Final Certificate of Acceptance

COMPLETION OF WORK

The undersigned, a duly authorized officer of San Luis Obispo County, does hereby execute and deliver this Final Certificate of Acceptance for completion of all work listed in Schedule B, under and pursuant to Section 6 of the Energy Services and Design Installation Agreement between Aircon Energy, Inc. and San Luis Obispo County.

SAN LUIS OBISPO COUNTY

By: _____
Authorized Officer

Date: _____, 20____

SCHEDULE F *General Conditions*

1. INTENT:

1.1 It is the intent of this Agreement that the Company furnish a job complete in all respects, and that the Company shall do and finish everything called for, implied or indicated as necessary to properly complete the job.

2. DEFINITIONS:

2.1 Except as otherwise provided in this Schedule F, all the terms defined in the Energy Services Design and Installation Agreement between Aircon Energy, Inc. and San Luis Obispo County, of which this Schedule F is a part, are incorporated by reference herein.

2.2 County: The term "County" or pronouns in place of the same where used herein shall mean San Luis Obispo County, a Charter County in the State of California.

2.3 Board: The term "Board" shall mean the San Luis Obispo County Board or Supervisors or its designated representatives.

2.4 County Representatives:

A. Contract Administrator. The term "Contract Administrator" shall mean the Public Works Director of the County.

B. Project Manager: The term "Project Manager" shall mean the Facility Manager of the County who shall be the County's person responsible for the coordination and supervision of the Project.

2.5 Company: The term "Company" or pronouns in place of the same where used herein shall mean the company to whom the Agreement for the work described and specified herein has been awarded by the County's Board of Supervisors.

2.6 Change Order: The term "Change Order" shall mean a County-approved authorization document that alters, adds to or deducts from the Agreement work.

2.7 Inspector: The term "Inspector" shall mean the Project Manager or his or her designee who shall review, inspect and approve all work performed by the Company before it is accepted by the County.

2.8 Days: The term "Days" shall mean calendar days.

3. BONDS REQUIRED:

3.1 Before commencing any work under the Agreement, the Company shall file a Performance Bond and a Payment Bond, each for a sum equal to 100% of the Agreement Price, with the County. These bonds shall be subject to the approval of the County Counsel. They shall be surety bonds; shall be issued by corporations duly and legally licensed and admitted to transact business in the State of California as a surety insurer, shall be issued at the expense of the Company; and shall be maintained by it and at its expense until the issuance of a Final Notice of Completion and release of final payment to Company by the County, or later as specified in section 5.1 hereof.

4. INSURANCE REQUIREMENTS:

Attention is invited to the provisions of the Insurance Code of the State of California with reference to the writing of insurance policies and bonds covering risks located in this state, and the premiums and commissions thereon. The Contractor shall obtain, and maintain, at his own expense, all the insurance required by this section. The insurance requirements must be met within the time period allowed for contract execution as defined in the 00300 BID FORM herein.

The Notice to Proceed with the work under this contract will not be issued, and the Contractor shall not commence work, until such insurance has been approved by the Owner. The Contractor shall not allow any subcontractor to commence work on his subcontract until all similar insurance required for the subcontractor has been obtained. Such insurance shall be maintained in full force and effect at all times during the prosecution of the work and until the final completion and acceptance thereof.

4.1 Commercial General Liability (CGL)

Contractor shall maintain in full force and effect, for the period covered by this Contract, Commercial General Liability insurance with the following coverage's.

- (a) Personal Injury and Bodily Injury, including death resulting there from.
- (b) Property Damage.
- (c) Automobile coverage which shall include owned, non-owned and hired vehicles.

The amount of insurance shall not be less than the following: single limit coverage applying to bodily and personal injury, including death resulting there from, property damage, and automobile coverage in the total amount of \$2,000,000.00.

The following endorsements must be provided in the policy:

If the insurance policy covers an "accident" basis, it must be changed to "occurrence".

- A. The policy must cover personal injury as well as bodily injury.
- B. Blanket contractual liability must be afforded and the policy must be afforded and the policy must contain a cross liability or severability of interest endorsement.
- C. The County of San Luis Obispo, its officers, employees and agents shall be named as additional insured under the policy. The policy shall provide that the insurance will operate as primary insurance. No other insurance effected by the County, whether commercial or self-insurance will be called upon to contribute to a loss hereunder. Nothing contained in this contract shall be construed to require Contractor's insurance to indemnify County in contravention of Insurance Code 11580.04.

4.2 Workers' Compensation and Employer's Liability Insurance: In accordance with the provisions of Section 3700 of the California Labor Code, the Contractor will be required to secure the payment of compensation to his employees.

The Contractor shall sign and file with the Owner the following certification:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

Notwithstanding the foregoing provision, before the Contract is executed on behalf of the Owner, a bidder to whom a contract has been awarded shall furnish certificate of insurance or certificate of permission to self-insure. Said certificates shall provide that 30 days notice of cancellation or change shall be afforded Owner.

- 4.3 The following requirements apply to all insurance to be provided by Contractor:
- A. A certificate of insurance shall be furnished to County prior to commencement of work. Upon request by the County, Contractor shall provide a certified copy of any insurance policy to the County within ten (10) work days.
 - B. Certificates and policies shall state that the policies not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to County.
 - C. Approval of the insurance by County shall not relieve or decrease the extent to which the Contractor may be held responsible for payment of damages resulting from Contractor's services or operations pursuant to this contract.

4.4 The parties expressly agree that the indemnification and insurance clauses in this contract are an integral part of the performance exchanged in this contract. The compensation stated in this contract includes compensation for the risks transferred to Contractor by the indemnification and insurance clauses.

Handwritten initials or signature in the bottom right corner of the page.

GUARANTEE FOR TOTAL WORK:

5.1 Prior to acceptance of the Work by the County, the Contractor shall submit a guarantee in the form of a written warranty on Contractor's own letterhead as follows:

WARRANTY FOR _____
(insert project title and number)

This work has been constructed in accordance with the Contract Documents, and the work as installed will fulfill the requirements of this warranty, and any other warranty therefor, included in the Contract Documents. We agree to repair or replace any and all of our work together with any other adjacent work which may be displaced by so doing, that prove to be defective in its workmanship or material for the period of one (1) year (except when otherwise required in this Contract to be for a longer period) from date of acceptance of the above mentioned structure by Owner, ordinary wear and tear and unusual abuse or neglect excepted. Said date of acceptance shall be the date of acceptance and filing of the Notice of Completion by the Board Of Supervisors.

In the event of our failure to comply with the above mentioned conditions within seven (7) days after being notified in writing we, collectively or separately, do hereby authorize the Owner to proceed to have said defects repaired and made good at our expense and we will honor and pay the cost and charges therefor on demand.

Signed: _____
Contractor License Number

5.2 ADDITIONAL GUARANTEES

Additional guarantees shall be provided as required in the technical sections of the Contract Documents.

6. PAYMENT OF FEDERAL, STATE OR CITY TAXES:

6.1 Any federal, state or city tax payable on articles furnished by the Company, under the Agreement, shall be included in the Agreement price and paid for by the Company.

7. ASSIGNMENT OF AGREEMENT:

7.1 Neither party to the Agreement shall assign the Agreement without the written consent of the other party, nor may the Company assign any moneys due or to become due it thereunder without the written consent of the County.

8. SEPARATE AGREEMENTS:

8.1 The County reserves the right to let other Agreements in connection with this work. The Company shall afford all such other contractors reasonable opportunity for storage of their materials; shall provide that the execution of their work properly connects and coordinates with the Company's work; and shall fully cooperate with them to the end of facilitating the work.

9. ALTERATIONS, ADDITIONS OR DEDUCTIONS/CHANGE OF AGREEMENT:

9.1 All drawings and specifications shall be subject to approval of the Project Manager. No modification or deviation from the drawings and specifications will be permitted. However, within the limits allowed by law, the County without invalidating the Agreement, may request extra work or make changes by altering, adding to, or deducting from the work, the Agreement sum being adjusted accordingly. Such modification of the Agreement (Agreement Change Order) shall be signed by the Company and approved by the County in accordance with its established procedures and specifications for public works contract modifications. Any modifications made at the request of the County, which impact electrical consumption, may result in a change in the amount of energy savings guaranteed.

9.2 All Change Order work shall be executed under the conditions of the original Agreement except that any claim for extension of time caused thereby shall be addressed at the time of such Change Order.

9.3 The County shall have the authority to order changes in an emergency endangering life or property. Requests for all other modifications shall be in the form of a written order from the County. Change orders executed by all parties shall be the only basis of a claim for an addition to the Agreement sum.

9.4 Both parties agree that either credit to or charges against the County shall be determined as follows:

- A. If the Agreement change is deductive, the County shall be given credit equal to the actual value of such labor and material plus 15% for associated overhead.
- B. If the Agreement change is additive, the County shall pay the Company:
 - (1) The value of additional labor, material and equipment.
 - (2) 15% for overhead and 10% for profit.
- C. If the Agreement change is both deductive and additive, the Company's percentage for overhead and profit shall be added to the net additive amount only. Likewise the percentage for associated indirects will be added to the net deductive

amount only.

9.5 If the Company claims that any instruction by drawings or otherwise involves extra cost under the agreement, it shall give the Contract Administrator and Project Manager written notice thereof within ten (10) days after receipt of such instructions, and in any event before proceeding to execute the work except in emergencies endangering life or property, and the procedure shall then be as provided for changes in the work. No such claim shall be valid unless so made.

9.6 When the County and Company are unable to agree upon the cost or time change of any change, the County's estimate of such cost or time change shall be used unless the Company presents proof to the County's satisfaction that the County's estimate is in error prior to the final payment.

9.7 Documents Issued After Contract Award

A. Cost Request Bulletins: The Owner may, from time to time during the course of the Work, issue Cost Request Bulletins describing additional Work that may be desirable to include or delete from the Contract, by subsequent Change Order. The Contractor shall respond to Cost Request Bulletins in a thorough and timely manner, identifying separately and fully the costs of the proposed additional or deleted work as described in the Change Order provisions. Failure by the Contractor to respond in a timely manner or adequately describe the costs fully to Cost Request Bulletins and as a result, delaying the timely performance of the Contract shall not constitute justification for time extension.

B. Field Orders: The Owner shall retain the right to issue Field Orders to the Contractor describing changes necessary or desirable to the work that may not involve additional cost or extension of the Contract time. Field Orders shall be promptly executed and are not grounds for adjustment to the time or cost of Contract. Should the Contractor determine that there is cost or time impact to the Work due to the Field Order, he shall immediately notify that fact in writing to the Owner, describing the anticipated impacts, and request issuance of a Change Order. Each Field Order shall receive a written response from the Contractor, acknowledging receipt, describing the action and time of completion for the work. A subsequent written notice shall be submitted by the Contractor to the Owner upon completion of the Work required by the Field Order stating that the work is complete and ready for inspection.

C. Change Orders: The Owner reserves the right to require the Contractor to process and implement Change Orders in a timely fashion to add to or delete from the Work of the Contract.

D. Owner's Directives: The Owner reserves the right to issue Owner's

Directives to require correction or repairs to the Work, or to require the contractor to bring into conformity with any laws, codes, ordinances, safety orders or practices determined to be deficient at the work site and surrounding areas affected by the Work, or to correct deficiencies in the Work in regard to compliance with the Contract Documents. Owner's Directives shall be promptly executed and are not grounds for adjustment to the time or cost of Contract. Each Owner's Directive shall receive a written response from the Contractor, acknowledging receipt, describing the action and the time of completion for the Work. A subsequent written notice shall be submitted by the Contractor to the Owner upon completion of the Work required stating that the Work is complete and ready for inspection.

E. Requests for Information: The Contractor will address all Requests for Information (RFI) and questions to the project manager. The Owner will respond with clarifications in a reasonable time. It is incumbent upon the Contractor to submit RFIs in a timely manner. RFIs shall not constitute justification for time extension to the contract.

9.8 The Board of Supervisors as Owner has authorized the County Director of General Services to order changes or additions in the work being performed under construction contracts, pursuant to Public Contract Code Section 20142. This authorization allows any change or addition in the work to be ordered in writing by the County General Services Director if the extra cost to County for any such change or addition shall not exceed five thousand dollars (\$5,000) when the total amount of the original contract does not exceed fifty thousand dollars (\$50,000), nor ten percent (10%) of the amount of any original contract which exceeds fifty thousand dollars (\$50,000) but does not exceed two hundred fifty thousand dollars (\$250,000). For contracts whose original cost exceeds two hundred fifty thousand dollars (\$250,00), the extra cost for any change or addition to the work so ordered shall not exceed twenty-five thousand dollars (\$25,000), plus 1 percent (1%) of the amount of the original contract cost in excess of two hundred fifty thousand dollars (\$250,000). In no event shall such change or alteration exceed \$150,000 (per new Public Contract Code).

10. DELAYS IN COMPLETION:

10.1 The Company shall not be held responsible for delays in the completion of the work caused by strikes, labor disturbances, lack or failure of transportation, war, inability to obtain materials due to war conditions, perils of the sea, insurrection, riot, acts of any government (whether foreign or domestic, federal or state) delays in work being completed by the County, delays in approval of plans, specifications, submittals, by the County and/or any other causes similar to the foregoing which are beyond the control of and are not the fault of the Company, or if prevented by conditions directly resulting from the execution of agreements or the placing of orders by the federal government or its authorized agencies or representatives, which are required by law to be given priority but provided that whenever the Company shall claim that delays are due to any or all of the above-named causes, it shall within five (5) days after the occurrence of such cause or causes of delay notify the County in writing of the cause(s) for delay, the expected length of such delay(s), and shall request an extension of time. If the County finds that such

cause or causes of delay exist, it shall grant the Company an extension of time equal to the delay resulting from such cause or causes or the County may, at its option, rescind said Agreement and pay the Company the reasonable value of the work completed. No claim for extra compensation due to any delay shall be submitted by the Company or granted by the County.

11. TERMINATION FOR CONVENIENCE:

11.1 County may, for its convenience and without cause, terminate the work in whole or in part at any time by written notice to Company stating the extent and effective date of such termination, whereupon Company shall (1) stop all Work and place no further orders or subagreements for materials, services, equipment, or supplies, except as may be necessary to complete portions of the Work not terminated; (2) assign to County, in the manner and to the extent directed by County, work orders, purchase orders and subagreements outstanding; (3) terminate work orders, purchase orders, and subagreements outstanding to the extent that they relate to the terminated portion of Work and are not assigned to County; (4) take any necessary action to protect property in Company's possession in which County has or may acquire an interest; (5) complete performance of the unterminated portion of the Work; and (6) take any other action toward termination of the Work which County may direct.

11.2 Owner's Right to Carry Out the Work: If the Owner determines that the Contractor, without just cause, fails or refuses to employ an adequate working force, or to employ them for the maximum number of hours per day as permitted by law or by shifts of his working forces as would be sufficient, in the opinion of the Owner to complete the Work in accordance with the approved project schedule or within the time previously approved by the Owner for extension thereto, then after formal notice to the Contractor, the Owner shall have right to complete the Work or have the Work completed by such means and in such manner, by contract or otherwise as permitted by law, as the Owner may deem necessary and deduct the actual costs, including additional administrative cost, from the Contract by Change Order.

11.3 After receipt of a notice of termination, Company shall submit to County a written termination claim setting Company's claim for final compensation due, if any, in the form and with the certification which County may prescribe. Such claim shall be submitted promptly, but in no event more than thirty (30) days after the effective date of termination. County shall compensate Company for the reasonable value of all work performed by Company prior to the effective date of termination as determined by County. The parties shall use their best efforts to resolve any dispute over the amount of such final compensation.

12. TERMINATION OF THE AGREEMENT; LIQUIDATED DAMAGES:

12.1 Each of the cited conditions in this agreement, whether preceding or following this paragraph, is to be considered material and failure to comply with any of such conditions by the Company will be deemed a breach of the Agreement.

12.2 Should the Company fail to perform any of the provisions of the Agreement, the County shall have the right, whether or not an alternative right is provided, to declare the Agreement terminated.

12.3 On the Agreement being so terminated, the Company shall immediately remove from the premises all or any materials and personal property belonging to it which have not been used in the construction of the work, or which is not in place in the work.

12.4 The parties agree that it would be impracticable and extremely difficult to determine the actual amount of damages if the work is not completed as required herein by the Completion Date. Accordingly, subject to the provisions of this Agreement, should the Company fail to complete the installation and the works provided herein by the Completion Date, due allowance being made for unavoidable delays in accordance with Section 10 hereof, Company shall become liable to the County in the amount of Five Hundred, Dollars (\$500.00) per calendar day for each day said work remains uncompleted beyond the time fixed for completion, as and for liquidated damages and not as a penalty. As soon as it becomes evident, or should have become evident, to the Company that it will not complete the work specified in this Agreement in the time agreed, but in any case within twenty-one (21) days of such evidence, it shall notify the Contract Administrator and may make written application to the County through the Contract Administrator stating the reason why and any amount of extension which it believes should be granted. The County may in its discretion grant or deny such extension. Any claim for an extension under this subsection shall be subject to the requirements of section 10 hereof.

12.5 Any money due or to become due the Company may be retained to cover the said liquidated damages: and should such money not be sufficient to cover such damages, the County will have the right to recover the balance from the Company or its sureties.

13. OWNERSHIP OF DATA:

13.1 The ownership of all data collected for use by Consultant under this Agreement, together with working papers, drawings, and other material necessary to a complete understanding of the plans and necessary for the practical use of plans shall be vested in County following compensation to Consultant for services. Consultant may retain a copy of all work for his own use.

Consultant shall provide copies for each Deliverable item, in quantities as specified in Exhibit "A", to County as part of this Agreement.

13.2 The Consultant shall perform the work required under this Agreement with the assistance of Computer Aided Design and Drafting (CADD) Technology. At any time, the Consultant shall deliver to the County, on request, the diskette or CD that contains the files in ".dwg format" (minimum R14 AutoCad), and the supplier of the software and hardware necessary to use the design files.

14. DRAWINGS:

14.1 Interface: Company will prepare lighting, mechanical, plumbing, electrical, control and any other type of required interface drawing (i.e., structural, etc.) for each building before beginning work. These drawings shall be of sufficient detail to identify the Company's and the County's responsibilities for material, equipment, etc. at each interface point.

14.2 Shop: The Company shall submit, with such promptness as to cause no delay in its own work or in that of any other contractor, ONE set of all shop or setting drawings and schedules for the work of the various trades and the Project Manager will review them with reasonable promptness. The Company shall make any corrections required by the Project Manager, and file with the Project Manager two corrected copies and furnish such other copies as may be needed. The review and approval of the Project Manager of such drawings or schedules shall not relieve the Company from its responsibility not to deviate from drawings or specifications, nor shall it relieve the Company of the responsibility for errors of any sort in shop drawings or schedules.

14.3 Final: One complete set of full-size mechanical and control drawings (as-builts) for the completed installations shall be provided. The drawings shall be on mylar and must be submitted in a timely manner to avoid any delays in training (Schedule D). These final drawings must have all the required approvals and contain the following note or its approved equivalent:

"Design and installation are in compliance with all applicable codes, laws, rules and regulations in effect or scheduled for implementation as of the date of installation."

Three (3) complete sets of full-size blue lines shall also be provided to the County.

15. PAYMENT AND COMPLETION:

15.1 PAYMENTS:

A. Schedule of Major Parts: Before any payment under this Contract becomes due, Contractor shall prepare a schedule of the estimated values of each of the various major parts of the job and the total of all parts which shall equal the contract sum. Said schedule shall be on a Payment Request Form supplied by the Owner and shall be subject to Owner's approval. The values in said schedule shall then be used by the Owner for verifying the amount of each progress payment.

B. Application for Payment: Once each month, Contractor shall prepare and forward to Owner a statement in writing, updating the approved Schedule of Major Parts, indicating the total amount of the work done and the acceptable materials furnished and delivered by Contractor on the ground and not used, or acceptable materials furnished and stored (if such storage is subject to or under the control of Owner), for use in the performance of this Contract to the time of such statement and the value thereof. Payment of undisputed contract amounts is contingent upon the Contractor furnishing the Owner with a release of all claims against the County arising by virtue of this contract related to those amounts. Disputed contract claims in stated amounts may be specifically excluded by the Contractor from the question of the release as provided upon the Schedule of Major Parts.

C. Per section 20104.50 of the Public Contract Code:

(1) Each payment request shall be reviewed by the local agency as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

The number of days available to a local agency to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which a local agency exceeds the seven-day return requirement.

A "progress payment" includes all payment due contractors, except the portion of the final payment designated by the contract as "Security."

D. Retaining Ten Percent As Security: Owner shall retain ten (10%) of the value of the work done, and ten percent (10%) of the value of the materials so estimated to have been furnished and delivered and unused or furnished and stored as aforesaid as part security for the fulfillment of this Contract by Contractor.

Upon General Services Director's written approval of Contractor's statement, the County shall, within 30 days of receipt, pay to Contractor, while carrying on the Work, the balance not retained, as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of law or of this Contract. No such statement or payment shall be construed to be an acceptance of any defective work or improper materials.

E. Correction of Statement and Withholding of Payment: No inaccuracy or error in said statement shall operate to release Contractor or any surety from damages

arising from such work or from enforcing each and every provision of this Contract. The Owner shall have the right to adjust any payment request, or to recover any payment made for work performed, so long as any lawful or proper direction concerning the Work or any portion thereof given by Owner shall remain uncompleted.

F. **Withholding Additional Amounts:** In addition to the amounts which Owner may retain as provided hereinabove, Owner may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor as in its judgment may be necessary to cover:

1. Payments which may be past due and payable for just claims against Contractor or any subcontractor for labor or materials furnished in or about the performance of the work on the project under this Contract;
2. For defective work not remedied;
3. For failure of Contractor to make proper payments to any of his subcontractors; and
4. Reasonable doubt that the contract can be completed for the balance then unpaid.

G. **Disbursement of Withheld Amounts:** Owner may apply such withheld amount or amounts to the payment of such claims, in its discretion. In so doing, Owner shall be deemed the agent of Contractor and any payment so made by Owner shall be considered as a payment made under this Contract by Owner to Contractor, and Owner shall not be liable to Contractor for such payment made in good faith. Such payment may be made without prior judicial determination of the claim or claims. Owner will render to Contractor a proper accounting of such funds disbursed on behalf of Contractor.

H. **Liens and Stop Notices:**

1. Should Stop Notices be filed with the Board of Supervisors or County Auditor/Controller, the County shall withhold the amount required from payments until such claims shall have been resolved pursuant to law, (Civil Code Section 3179, et seq). General Services will not be responsible for the filing of Stop Notice on behalf of any Claimant.
2. Upon filing a Stop Notice, the Claimants shall provide a certified copy of the copy of the Stop Notice to the Department of General Services as prescribed in General Conditions Section 10.2, Notices. Failure to provide a copy to General Services may impact the effectiveness of the ability of the County to withhold funds in a timely or effective manner.

At the election of the County, Contractor shall provide, within ten (10) days of receipt of each progress payment, unconditional waivers and release of lien rights, signed by Contractor and each of its subcontractors and materials suppliers, in the form established therefor by Section 3262 of the Civil Code of the State of California.

15.2 PROJECT COMPLETION

Substantial Completion: The Contractor shall, in writing, submit a request for an inspection for Substantial Completion of the Work when he feels that the Work is substantially complete and at least 30 days prior to the completion date established in the Notice to Proceed plus any extensions granted in approved Change Orders. The Owner shall determine the validity of the request and respond stating a time and date of the inspection, including for attendance by any Consultants responsible for review of the Work and other parties as the Owner may desire in attendance. A Punch List of items to be completed and/or corrected shall be prepared by the Contractor and presented to the Owner with the request for inspection. The Contractor shall certify that the remaining items of work shall be completed within 30 days and that the remaining items of work do not in any way negatively impact the Owner's full and complete use of the Work. Failure to include any items on the punch lists shall not alter the responsibility of the Contractor to complete all the Work in accordance with the Contract Documents.

Prior to the Substantial Completion Inspection and within sufficient time for review by the Owner and his Consultants, the Contractor shall submit all record drawings, catalog data, complete operating and maintenance instructions, certificates, warranties, written guarantees and related documents as required by the Contract. The Owner and his consultants shall review the submittals, and if the request for the inspection is valid, conduct an inspection of the Work. The Owner shall review the Punch List, incorporating additional comments from the inspection for completion and/or correction by the Contractor for a Final Punch List.

Within 30 days of the request for inspection and upon completion of all of the Final Punch List items, the Contractor shall submit a "Contractor's Notice of Final Completion" in conformance with the Final Close Out Procedures within the Contract Documents. Failure by the Contractor to complete any items on the Final Punch List within 30 days of the request for Substantial Completion Inspection enables the Owner to require performance of same by the Contractor's Surety or otherwise arrange for completion of those items of work and to deduct all costs thereof, as well as any liquidated damages or actual damages incurred from the Final Payment by means of deductive Change Order.

The General Services Director, upon agreeing that the Work is complete after completion of all Final Punch List items, and upon receipt of the fully executed Affidavit of Final Payment and the required Maintenance Bond and in accordance with all other provisions for project close out described in 9.2B. Final Completion and Acceptance, shall issue a Certificate of Completion to the Contractor and present a recommendation for acceptance and filing of a Notice of Completion at the next regularly scheduled meeting of the Board of Supervisors

15.3. FINAL COMPLETION AND ACCEPTANCE OF THE WORK: Final Completion and acceptance of the Work shall be made in accordance with the following steps and conditions:

1. Contractor's Notice of Final Completion: Contractor shall submit to Owner written notice that the Work is complete and ready for final inspection and acceptance.
2. Final Inspection: Upon receipt of "Contractor's Notice of Final Completion" the Owner shall promptly make final inspection.
3. Contractor Submittals: Contractor shall submit the following to the Owner before final inspection and after required corrections and/or repairs have been made:
 - A. Affidavit for Final Payment: After the completion of the work of this Contract, the Contractor shall file with the Owner his affidavit sworn to before a notary public stating that all workmen and persons employed, all firms supplying the materials and all subcontractors upon the project have been paid in full and that there are no bills outstanding against the project for either labor or materials except certain items, if any, to be set forth in connection with which notices to withhold have been filed under the statutes of the State of California. The filing of such affidavits by the Contractor shall be condition precedent to Contractor's receipt of the final payment on this Contract.
 - B. Guarantees: Contractor shall submit a guarantee in accordance with Division 00600 Guarantee for Total Work of these Contract Documents, and any additional Guarantees required by the technical provisions of the Contract Documents.
 - C. Drawings and Specifications: Contractor shall submit As-Built Drawings and Specifications in accordance with article 3.19 As-built Drawings and Specifications of Division 00700 General Conditions of these Contract Documents.
 - D. Surety Company Bond: Contractor shall submit a surety company bond (Maintenance Bond) for a one year Maintenance period in accordance with of divisions 00100 Instructions to Bidders and 00600 Bond Requirements and Forms, Insurance and Guarantees of these Contract Documents.
4. Owner's Final Certificate of Completion: Following completion of the above the Owner shall file a certificate, over the County Director of General Services signature, stating the Work has been given a final inspection and approval by him, that the above required documents have been submitted, and that the Work provided for in this Contract has been completed and is accepted by him under the terms and conditions thereof.

5. Notice of Completion and Acceptance: This notice shall be submitted by the County Director of General Services for approval by the Board of Supervisors stating the substantial completion date and defining the project and the parties of the project Agreement. The notice will then be submitted to the Board of Supervisors for acceptance of the Work by the Board as Owner in regular session.

6. Resolution Authorizing Execution of Notice of Completion and Acceptance of Contract by Owner: Acceptance of the Work by Owner, and the recording of the "Resolution Authorizing Execution of Notice of Completion and Acceptance of Contract by Owner" by the County Recorder, provided the Work shall be then fully completed and the provisions of this Contract fully performed in all completed respects will be made only by action of the Board of Supervisors for Owner in regular session.

7. Certificate of Final Payment: Thirty-five (35) days after the filing of the above described resolution, the County General Services Director shall present a "Certificate of Payment" to the County Auditor stating that the entire balance found to be due Contractor, and noted in said certificate, is due and payable.

8. Approval of Final Payment: Following receipt of said "Certificate of Final Payment" by the County Auditor, said Auditor will issue final payment to be paid on account thereof to the Contractor.

16. PAYMENT OF WITHHELD FUNDS:

16.1 In accordance with the provisions of Section 22300 of the Public Contract Code, the Company will be permitted to substitute securities for any moneys withheld by the County to insure performance under the agreement. This section shall not apply to money withheld by County in response to claims filed pursuant to Civil Code 3179, et. seq. or as liquidated damages.

17. INSPECTION AND PAYMENTS/DEFECTIVE WORK:

17.1 The fact that the work and materials have been inspected from time to time and payments on account have been made, does not relieve the Company from the responsibility of replacing and making good any defective work or materials that may be discovered within one year from the date of the completion of the work by the Company and issuance of a Final Notice of Completion by the County.

18. COMPLIANCE WITH LAWS AND REGULATIONS:

18.1 Compliance with Laws and Regulations - Indemnity: Contractor shall keep himself fully informed of the ordinances and regulations of Owner, and of all Federal and State laws in any manner affecting the performance of this Contract or those engaged therein, and any and all orders and decrees of governmental bodies or officials having any authority or jurisdiction over the same. Contractor shall himself observe and comply with and shall cause all his agents, employees and subcontractors to observe and comply with all such ordinances, regulations, laws, orders, and decrees. Contractor shall save harmless and indemnify Owner and all its officers and employees against any liability or claim arising from or based upon the violation of any such ordinance, regulation, law, order, or decree, whether by himself, his agents, employees, or his subcontractors.

18.2 Federal and State Laws and Regulations: The project shall be constructed under the complete jurisdiction of all applicable laws of the United States and State of California governing construction including, without limitation, the following:

- A. The California Health and Safety Code and all applicable administrative code regulations pursuant thereto.
- B. All laws governing the employment of labor, qualifications for employment of aliens, payment of employees, convict-made materials, domestic and foreign materials and accident prevention.
- C. Title 19 of the California Administrative Code entitled "Public Safety" 1, State Fire Marshall, Sub-Chapter 1, "General Fire and Panic Safety".

D. General Industrial Safety Orders: Each and every Contractor shall observe and conform to the provisions of Title 8, California Administrative Code bearing upon safe and proper use, construction, disposal, etc., of materials, machinery, and building appurtenances as therein set forth.

E. Code Rules and Safety Orders: All work and materials shall be in full accordance with the latest substantive rules and regulations of the State Fire Marshall, the safety orders of the Division of Industrial Safety, Department of Industrial Relations; the Uniform Building Code, National Electric Code, Uniform Mechanical Code, Uniform Plumbing Code, and other applicable State Laws or Regulations. Nothing in these plans and specifications is to be construed to permit work not conforming to these codes.

Note: The procedural aspects of the Uniform Codes referred to above may not apply to the Work of this Contract, but the substantive provisions do apply.

All of the above laws and regulations, though referred to herein, are as much a part of the Contract as if they were incorporated in their entirety in these General Conditions.

18.3 LAW; VENUE: This agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in SAN LUIS OBISPO COUNTY and such COUNTY shall be the venue for any action of proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

19. PATENT RIGHTS, COPYRIGHTS, TRADE NAMES AND ROYALTIES:

19.1 The Company shall indemnify and save harmless San Luis Obispo County and all persons acting under it for all liability on account of any patent rights, copyrights or trade names which may affect the articles or materials or their application under the specifications. The Company shall pay all royalties or other charges that may arise, due to methods, types of construction, processes, materials or use of equipment and shall hold San Luis Obispo County harmless from any charges whatsoever which may arise, and shall furnish written assurance satisfactory to the County that such charges have been paid.

20. QUALITY OF MATERIALS AND LABOR:

20.1 All materials used on this Agreement shall be new and the best market quality unless otherwise approved in writing by County. All labor used on this Agreement shall be competent and skilled for the work. All work executed under this Agreement shall be done in the best, most thorough, substantial and workerlike manner and in accordance with all applicable codes. All material and labor shall be subject to the approval of the County as to its quality and fitness, and shall be immediately removed if it does not meet with approval. The County may refuse to issue any Notice of Completion until all defective materials or work have been removed

and other material of proper quality substituted therefor.

21. USE OF OLD MATERIAL:

21.1 Old material removed from buildings in the execution of this Agreement may be used provided that it be put in first class condition and appearance and is fully equal to new. But no old material shall be so used until it has been specifically examined and approved in writing by the County.

22. STAKES AND BENCHMARKS:

22.1 All stakes, boundary lines, benchmarks or survey marks, etc., which have been or may be established in the building, or in any part of the site, shall be carefully preserved and respected by the Company.

23. LAYING OUT WORK:

23.1 All work pertaining to this Agreement shall be laid out on the premises by the Company who shall be held responsible for its correctness.

24. CARE OF EXISTING BUILDINGS, SITES, WORK AREAS, AND PUBLIC PROPERTY:

24.1 The Company shall take all actions and provisions necessary to prevent and preserve all existing structures and facilities. The Company shall be held responsible for the care and preservation of adjacent premises and coterminous property. Any parts of them injured, damaged, or disturbed because of its work, shall be repaired, replaced or cleaned by the Company at its expense to the original or better condition.

24.2 The Company and/or its subcontractors are solely responsible for the protection of existing equipment (desk, chairs, computers, etc.) in the area where work is being performed. Broken or damaged equipment, articles, etc. shall be recorded and notification given to the Project Manager. The Company and/or its subcontractors shall be solely responsible for the cost and/or replacement of any damaged or broken equipment, articles, etc.

24.3 Protection of the Public and Adjacent Public Property: All laws and ordinances for the protection of the public shall be complied with. The Contractor shall be responsible for any damage of any kind to adjacent property. The Owner may reject any means, methods, techniques, sequences or procedures proposed by the Contractor which might constitute or create a hazard to the Work or to persons or property, or which will not provide Work in accordance with the Contract Documents. However, neither the acceptance nor the failure to

reject any means, techniques, sequences and procedures by the Owner shall relieve the Contractor of his responsibilities to safely and properly complete the Work.

24.4 Safety Precaution and Programs: The Contractor expressly undertakes, both directly and through his subcontractors, to take every precaution at all times for the protection of persons, including employees, and property. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

24.5 Emergency Safety Action: In an emergency affecting the safety of life or property, including adjoining property, Contractor, without special instructions or authorization from Owner, is authorized to act at Contractor's discretion to prevent such threatened loss or injury. Contractor shall also so act if instructed to do so by Owner.

24.6 Use of Streets and Sidewalks

A. Obstruction or Interference with Travel: Contractor shall not unnecessarily, in the judgment of Owner, obstruct or otherwise interfere with travel over any public streets, way or sidewalk, nor shall Contractor store, stockpile or place thereon any equipment, materials or supplies without first obtaining the authorization of Owner, and then only within such limits as Owner may designate.

B. Vacate for Public Use: Those parts of public streets, ways and sidewalks that are occupied by Contractor shall be immediately vacated by Contractor and returned to public use when Contractor's use thereof is no longer necessary for the prosecution of the Work.

25. MAINTENANCE OF EXISTING STRUCTURES AND CONDUITS:

25.1 The Company shall take all actions and precautions necessary to protect and preserve all existing structures and facilities. The removal and/or replacing of any existing structures, pipes, conduits, pavements, etc., necessary for the proper completion of any work herein specified shall be performed by the Company and no claim for extra work shall be made for such removal and replacement.

25.2 In case it shall be necessary to remove any telephone, telegraph or electric power transmission poles, water pipes, electrical conduits, or underground structures of any character or any portions thereof, the owner or owners or their agents or superintendents shall be notified by the Company and the Company shall make the necessary arrangements for such removal. The right is reserved to the County and to the gas, water, telephone, telegraph and electrical power transmission companies to enter upon the work for the purpose of making repairs and changes that have become necessary by reason of the work specified herein.

26. DECISIONS:

26.1 The Contract Administrator shall, in all cases, determine whether the amount and quality of the several kinds of work which are to be paid for under this Agreement are in accordance with this agreement.

26.2 The County of San Luis Obispo, through the Contract Administrator and/or Project Manager, shall have power to cause all or any part of the work to be pushed with greater diligence when delayed or stopped. Such power shall include requesting overtime work as necessary to make up for delayed work at the Company's expense.

27. INSPECTION OF WORK:

27.1 The Company shall provide sufficient safe and proper facilities at all times for the full inspection of the work by the representatives of San Luis Obispo County, both at the building and at various shops where it may be going on.

27.2 All work shall be inspected and approved by the San Luis Obispo County Building Inspection Department and/or Project Manager or other designated County representative before it is covered up in such a manner as to prevent proper inspection. The Company shall give the County adequate notice to conduct inspections. Failure by the Company to provide adequate notice shall not constitute a cause for delay.

28. CONFERENCES:

28.1 At any time during the progress of the work, the Contract Administrator or Project Manager shall have authority to require the Company to attend a conference of any or all of the contractors engaged in the work; and any notice of such conference shall be duly observed and complied with by the Company.

28.2 Weekly conferences between the Company and the County shall be held to review the project status. This will also review the work projected to be completed before the next meeting. The conferences may be held at different intervals if requested by either the Company or the County and agreed to by both parties. The Company will take minutes of each meeting and distribute them as appropriate within five (5) days of the meeting.

29. SUBCONTRACTORS:

29.1 The Company shall be solely responsible for any and all of the work done by its subcontractors or other employees.

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29.2 The Company shall be solely responsible to assure that the work performed by its subcontractors conforms to all applicable laws, rules, codes and regulations -with respect to design, installations, safety, etc. The Company shall be solely responsible for its subcontractors to minimize interference's and disruptions to the building tenants, to perform their work in a worker-like manner, and to properly protect the surroundings from damage while they are working.

29.3 It shall be the Company's duty to see that all of its subcontractors commence their work properly at the proper time, and carry it on with due diligence so that they do not delay or injure either work or materials; and that all damage caused by them or their workers is properly made good by them or by the Company at no cost to the County.

29.4 Contractor's License: A Contractor is required to be licensed in accordance with the provisions of Chapter 9, Division III of the Business and Professions Code.

Pursuant to Section 3300, of the Public Contract Code, the classification of the bidder's Contractor's License shall be "C-20" . Failure of a bidder to obtain adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the Bidder's Bond.

29.5 Payment of General Prevailing Rate: Pursuant to the provisions of Section 1770 of the Labor Code of the State of California, the Director of Industrial Relations of the State of California has ascertained the general prevailing rates of wages and employer payments for health and welfare, vacations, pensions, and similar purposes applicable to the work to be done. Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in Section 1771 of the Labor Code, shall be paid to all workmen employed on public works, including employer payments as defined in Section 1773.1 of the Labor Code. The Prevailing wage rate determination is on file with the Clerk of the Board of Supervisors and is available for public inspection and is considered a part of this Specification.

29.6 Classification Not Covered by Prevailing Rate: Any laborer or mechanic employed to perform work on the project under this contract, which work is not covered by any of the stipulated classifications, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds to the work to be performed by him and such minimum wage rate shall be retroactive to the time of initial employment of such person in such classification. In the event of any dispute on that question, the question and the information shall be referred for determination to the Board of Supervisors or to any official designated by the Board of Supervisors, whose decision on the question shall be conclusive on the parties to this contract with the same effect as if the work performed by such laborer or mechanic had been classified and the minimum rate specified herein.

29.7 Overtime, Sundays, and Holidays: Not less than one and one-half (1-1/2) times the basic hourly rate plus applicable employer payments. The holidays upon which such rates

shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workman employed on the project.

29.8 Apprentices: Attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any sub-contractor under him.

29.9 Federal Funds are being used on this project and is subject to Davis-Bacon Act Provisions (29 C.F.R. Section 5.5). Federally determined minimum rates may exceed the prevailing wage rates found by the State of California Director of Industrial Relations. In case of a difference in the minimum rates, the Contractor must comply with each by paying not less than higher rates.

BY ORDER OF THE BOARD OF SUPERVISORS of the County of San Luis Obispo,

California, this _____ day of _____, 2006

Clerk of the Board of Supervisors

By: _____
Deputy Clerk

30. VIOLATIONS OF PROVISIONS OF THE WORK/NOTICE TO DISCONTINUE:

30.1 Should the Company abandon the work called for under this Agreement, or assign its Agreement other than as specified herein, or if at any time the Contract Administrator shall be of the opinion that the said Company is unnecessarily and unreasonably delaying the work, or that the Company is willfully violating any of the conditions or provisions of this agreement, or is performing this work in bad faith, the Contract Administrator shall have the power to notify the Company to discontinue all work or any part thereof under its agreement. Thereupon the Company shall cease to continue said work or such part thereof as the Contract Administrator may designate, and the Contract Administrator shall thereupon have the power to place such and so many persons, and to obtain by agreement, purchase, or hire, such vehicles, equipment, implements, tools, material or materials by Agreement or otherwise, as said Contract Administrator may deem advisable, to work at and be used to complete the work herein described, or such part thereof as the Contract Administrator shall certify has not been completed, and to use such material as it may find upon the line of said work and to charge the expense of such labor and material, vehicles, equipment, implements and tools to the Company. The expense so charged shall be deducted and paid by the Contract Administrator out of such moneys as may be either due or may at any time thereafter become due to the Company under and by virtue of this Agreement or any part thereof.

30.2 In case such expense is less than the sum which would have been payable under this Agreement, if the same had been completed by the Company, the Company shall be entitled to receive the difference, and in case such expense shall exceed the last said amount, then the Company or its sureties shall pay the amount of such excess to San Luis Obispo County.

31. PREVENTION OF ACCIDENTS:

31.1 The Company shall furnish and place proper guards for the prevention of accidents. It shall provide and maintain any other necessary construction required to secure safety of life or property. It shall maintain during all night hours sufficient lights to prevent accidents or damage to life or property.

32. INSPECTION OF MATERIALS BY THE COMPANY:

32.1 The Company shall make a close inspection of all materials as delivered, and shall promptly return all defective materials without waiting for their rejection by the Project Manager or Inspector(s).

33. STORAGE OF MATERIALS, TOOLS AND EQUIPMENT:

33.1 During the progress of the work, materials, tools and equipment shall be neatly

stacked at such points as the Project Manager may direct and shall be properly cared for and protected from the weather. In the case where there are several contractors operating at one time, the Company must make arrangements to allow the joint use of storage space so that the progress of the work will be expedited and other contractors/subcontractors not delayed or inconvenienced unnecessarily. Regardless of the storage space provided to the Company by the County, the Company shall be solely responsible for the safety and security of the materials, tools and equipment stored therein by the Company or its subcontractors. The Company may, at its option and expense, elect to provide vans or other means for the storage of its materials, tools, and equipment.

33.2 Contractor's Use of Site: Contractor shall confine all apparatus, material, and equipment required in the performance of this Contract to the limits indicated by law, ordinances, permits, or directions of Owner, and shall not unreasonably encumber the premises therewith. Material and equipment shall be brought and used upon the premises in such manner as to leave driveways and parking areas for regular use of the public and employees of Owner.

34. SAMPLES:

34.1 When so required by the Project Manager, the Company shall submit for approval samples of the various materials, together with the finish thereon, as specified for and intended to be used in the work. All materials, and workmanship shall be equal in every respect to that of the samples so submitted and approved. These samples shall be sent to the office of the Project Manager or to the building site, as the Project Manager may direct. In all cases, carriage must be prepaid. These samples will be returned to the Company, if requested, carriage collect.

35. TESTS:

35.1 The Company shall furnish to the Project Manager, in triplicate, certified copies of all required factory and mill test reports. Any test required by the County and not otherwise provided for or specified, shall be made under the supervision of the Project Manager or his designee and at the Company's expense.

36. CUTTING AND FITTING:

36.1 The Company shall do all cutting, fitting and patching of its work that may be required to make its several parts come together properly and prepare it to join or be joined by the work of other contractors/subcontractors and the Company shall correct to the County's satisfaction. The Company shall not endanger any work by cutting, digging, or otherwise; and shall not cut or alter the work of any other contractor/subcontractor without the written consent of the Project Manager.

36.2 No beam, timber or support of any kind shall be cut without the consent of the Project Manager, and under no circumstances shall any principal brace, timber, truss, support or

other structural member be cut or in any way structurally weakened.

37. CONNECTING WITH AND MATCHING EXISTING WORK:

37.1 Where the construction provided for herein or shown on the drawings is to join with or match existing work, it shall be finished exactly similar to the existing work so as to form a complete, unified and finished job.

38. TOOLS, APPLIANCES, SCAFFOLDING, ETC.:

38.1 The Company shall furnish at its own cost and expense all tools, and appliances, materials, scaffolding, etc., necessary for the entire completion of the work and shall be responsible for their care and guarding of the same.

38.2 The Company shall erect and maintain, where necessary to the progress and completion of the work, all exterior and interior scaffolding, which scaffolding shall be erected in accordance with the safety rules of the State of California.

39. PROTECTION OF WORK:

39.1 The Company shall amply protect all work set in the building from any possible damage; and shall furnish all necessary building paper, tarps, rough boarding or other materials necessary to accomplish this result.

40. SUPERVISION AND CONSTRUCTION PROCEDURES:

40.1 Unless personally present on the premises where the work is to be done Contractor shall designate and keep a Superintendent on the Work at all times during its progress. The Superintendent shall not be changed except with the consent of the Owner, acting through the General Services Director unless the Superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The Superintendent shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor. Important decisions shall be confirmed in writing to the Contractor. If the Superintendent proves to be unsatisfactory to the Owner, he shall be replaced within ten (10) days after written notice from the Owner to the Contractor.

The Contractor shall supervise and direct the Work, using the best skill and attention. He shall be solely responsible for all construction, methods, techniques, sequences and procedures and for coordinating all portions of Work under the Contract.

41. RIGHT TO OCCUPY OR USE:

41.1 The County of San Luis Obispo reserves the right to occupy or use any part or parts, or the entirety of the building and/or grounds when the Project Manager deems the same may be safe for use or occupancy. The exercising of this right shall in no way constitute an acceptance of such parts, or any part of the work, nor shall it in any way affect the dates and times when payments shall become due from the County, nor shall it in any way prejudice the County's rights in the Agreement or any bonds guaranteeing the same.

42. REMOVAL OF RUBBISH, CLEANING, ETC.:

42.1 From time to time, and as directed by the Project Manager, the Company shall clean the building, windows, premises, streets and adjacent property of accumulated rubbish, debris, unnecessary appliances, or any other unused rubbish or material which may constitute an obstruction to the progress or completion of the work, whether the same was caused by its work or the work of other crafts. At the completion of the work, and as one of the requisites thereof, the Company shall remove any and all tools, appliances, rubbish, packing or debris, etc., of any kind from the building, premises, sidewalks, streets or adjacent premises; it shall go over all of its work and put the same in perfect order and condition, and in strict accordance with the terms of this Agreement; and shall repair or replace all damaged, broken or stained parts of its work, whether so injured by its workers or by anybody else.

42.2 Cleaning Up: If a dispute arise between separate contractors as to their responsibility for cleaning up, or the Contractor fails to maintain the Work in a clean and safe manner in the opinion of the Owner, the Owner may clean up and charge the cost thereof to the Contractor.

43. COMMENCEMENT OF WORK:

43.1 The Company shall begin work within ten (10) days of the date of the County's Notice to Proceed.

44. SEQUENCE OF WORK:

44.1 Commencement of work shall begin with a job conference between the Company and the County representatives and any other administratively involved person for the purpose of compliance with the Agreement; also, for determination of and agreement to the work schedule and its progress so as to minimize misunderstandings, disruptions and delays.

45. CONSTRUCTION SCHEDULE:

45.1 The Company shall prepare and submit to the Project Manager for approval a master project schedule within 10 days after the date of the Notice to Proceed with the work. This schedule will identify the major work packages for each building and will indicate the time phase relationships to assure design, installation, completion, check-out, and acceptance by the

required dates. The schedule will be used to coordinate Company activities with the staff of each building to minimize work disruptions. The Company shall modify the schedule as required to obtain Project Manager approval.

45.2 Schedule updates will be prepared monthly or more frequently as required by the status of the work in process. Changes, modifications, etc. which impact the then current schedule shall be immediately communicated to the Project Manager.

45.3 Work arounds or adjustments to other scheduled activities to maintain the completion schedule shall be provided by the Company subject to approval by the Project Manager.

45.4 The Company shall keep the building tenants informed of upcoming work scheduled in their area. This coordination shall be enough in advance to develop work-arounds if a conflict is discovered.

46. NOTIFICATION:

46.1 All correspondence from the Company shall be directed to the County in accordance with Section 16 of Energy Services and Design Installation Agreement. All communications to or from the subcontractors shall be directed through the Company.

46.2 The Company shall make notification forty-eight (48) hours prior to commencement of work.

46.3 The Company shall make notification forty-eight (48) hours prior to shut downs or requested inspections.

47. DRUG-FREE WORKPLACE:

47.1 It is the policy of San Luis Obispo County to maintain a drug-free workplace. The unlawful manufacture, distribution, dispensation, possession and/or use of controlled substances in the workplace is prohibited. Controlled substances are those defined in 21 USC Section 812 and include, but are not limited to, such substances as marijuana, heroin, cocaine and amphetamines. The workplace is presumed to include all San Luis Obispo County facilities and premises where San Luis Obispo County employees may visit in the execution of their job duties such as homes, schools, hospitals, etc. All San Luis Obispo County employees are required to comply with this policy as an essential condition of employment.

47.2 Individuals who are not considered San Luis Obispo County employees, but who perform work at County worksites for the County's benefit, are required to comply with this policy. Such individuals who unlawfully manufacture, distribute, dispense, possess or use controlled substances in the County workplace may be barred from further work for and in the

County's facilities as well as from future consideration.

48. EQUAL OPPORTUNITY:

48.1 During the performance of this Agreement, Company, for itself, its assignees and successors in interest, agrees as follows:

Nondiscrimination: Company, with regard to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, martial status, physical handicap or sexual orientation in the selection and retention of subcontractors, including procurement of materials and leases or equipment. Company shall not participate either directly or indirectly in discrimination prohibited by the any law or regulation.

49. LABOR AND WAGES:

49.1 Unacceptable Employee of Contractor: Upon written notice to Contractor that any Superintendent, Foreman, Leadman, Workman, or other person is unacceptable to Owner, Contractor shall, if there is good and sufficient reason, immediately terminate the services of any such person on this project. Only competent and skilled workers shall be employed. If, in the opinion of the Owner, any worker is incompetent, unfaithful, disorderly or otherwise unsatisfactory, such person shall be dismissed from the work and shall not again be employed on it, except with the Owner's written consent.

49.2 Restriction of Employees: No person under the age of 16 years, or currently serving sentence in a penal or correctional institution, or an inmate of an institution for mental defective, or whose age or physical condition is such as to make his employment dangerous to his health or safety or the health or safety of others shall be employed to perform any work under this Contract, except that physically handicapped persons otherwise employable may be employed under this Contract where such persons may be safely assigned to work which they can ably perform. Any person who may be in the employ of Contractor and whom Owner may deem incompetent or unfit shall be dismissed from the Work and shall not again be employed on it except by the express written consent of Owner.

49.3 Legal Day's Work and Standard Work Week: Eight hours of labor shall constitute a legal day's work upon all work done under this Contract, and forty hours per week shall constitute a standard work week.

49.4 Classification of Labor: Claims and disputes pertaining to classification of labor employed on the Work under this Contract shall be decided by Owner whose decision shall be final and binding on parties hereto.

49.5 Penalties: Contractor shall comply with Articles 2 and 3 of Chapter 1, Part 7, Division 2 of the California Labor Code regulating wages and working hours on public works. In accordance with Articles 2 and 3, Contractor shall forfeit to Owner as a penalty \$50.00:

A. For each calendar day, or portion thereof, for each workman paid less than the stipulated prevailing rates for any public work done under this Contract by him or by any subcontractor under him;

B. For each workman employed in the execution of this Contract by Contractor or by any subcontractor for each calendar day during which such workman is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week in violation of the provisions of said Article 3.

49.6 Prevailing Rate of Locality: Pursuant to the statutes of the State of California, the Director of Industrial Relations of the State of California has ascertained the general prevailing rate of wages in the locality in which the Work on the project is to be performed for each craft, classification or type of workman needed to execute this Contract. The prevailing rates so determined are on file with the County Clerk available for public inspection and said rates are hereby made a part of this specification.

49.7 Payment of Minimum Rates: It shall be mandatory upon Contractor and upon any subcontractor under him to pay not less than the specified prevailing rates of wages to all workman employed by them in the execution of this Contract.

49.8 Classification Not Covered by Prevailing Rate: Any laborer or mechanic employed to perform work on the project under this contract, which work is not covered by any of the stipulated classifications, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds to the work to be performed by him, and such minimum wage rate shall be retroactive to the time of initial employment of such person in such classification. In the event of any dispute on that question, the question and the information, shall be referred for determination to the Board of Supervisors or to any person designated by the Board of Supervisors whose decision on the question shall be conclusive on the parties to this Contract with the same effect as if the work performed by such laborer or mechanic has been classified and the minimum rate specified herein.

49.9 Claims for Additional Compensation: The specified wage rates are minimum only, and Owner will not consider any claims for additional compensation made by Contractor because of payment by Contractor of any wage rate in excess of the applicable rate contained in the Contract Documents. All disputes in regard to the payment of wages in excess of those specified in the Contract Documents shall be adjusted by Contractor.

49.10. Underpayment of Wages: Contractor agrees that in case of underpayment of wages to any worker on the project under this Contract by Contractor or any subcontractor, Owner may withhold from Contractor out of payments due, an amount sufficient to pay such

worker the difference between the wages required to be paid under this Contract and the wages actually paid such worker for the total number of hours worked, and Owner may disburse such amount so withheld by it for and on account of Contractor to the employee to whom such amount is due. Contractor further agrees that any amount withheld pursuant to this paragraph shall be in addition to the percentages or amounts which may be retained by Owner pursuant to law or other provisions of this Contract.

49.11. Wage Rate for Craft Not Listed: In case Owner orders Contractor to perform extra or additional work which may make it necessary for Contractor or any subcontractor under this Contract to employ in the performance of such work any craft, classification or type of workman for which no prevailing wage rate is herein specified, Owner will include in the Change Order for such extra or additional work the prevailing wage rate for such craft, classification or type, and, insofar as such extra or additional work is concerned, there shall be paid each workman engaged in the work in such craft, classification or type not less than the prevailing wage rate so included.

49.12. Employees on Payrolls: Contractor shall not carry on his payrolls any person not employed by him, nor shall he carry on his payrolls employees of a subcontractor. Subcontractor's employees must be carried only on the payrolls of the employing subcontractor.

49.13. Work After Regular Working Hours: Any work necessary to be performed after regular working hours or on Sundays or other legal holidays shall be performed without additional expense to Owner, unless Owner, by Change Order, shall have expressly directed Contractor to perform said work at said time.

49.14. Records of Hours Worked and Wages: Contractor shall maintain records of the hours and wages of his employees, and such records shall be open at all times for inspection by the Owner and/or the Division of Labor Statistics and Law Enforcement, in accordance with Section 1812 and 1776 of the California Labor Code.

49.15. Employment of Apprentices: Attention is directed to the provisions in Section 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under him.

The Contractor and subcontractor under him shall comply with the requirements of Sections 1776, 1777.5 and 1777.6 in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

49.16. Travel and Subsistence Pay: Travel and subsistence payments shall be in accordance with Section 1773.8 of the Labor Code.

49.17 Labor Disputes: Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Work of the Contract, the Contractor shall immediately give notice thereof to the Owner. The Contractor shall then confirm the notice in writing within 24 hours of giving thereof, and shall include all relevant information with respect thereto. No claims will be accepted or costs incurred as a result of jurisdictional or labor practice disputes.

50. MISCELLANEOUS PROVISIONS

50.1 Anti-Trust Assignment: By entering into this contract or subcontract, Contractor, or subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 commencing with Section 16700 of Part 2 of Division 7 of the Business and Professions Code, arising from purchases of goods, services or materials pursuant to this public works contract or sub-contract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment to the parties.

50.2 Notices: Any formal Notice from one party to the other under this Contract shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner:

A. If the notice is given to Owner, it must be personal delivery thereof to General Services Director or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to General Services Director for the attention of signer of "Notice to Contractor to Proceed" at the return address indicated on that letterhead, with postage prepaid.

B. If the notice is given to Contractor, it must be by personal delivery thereof to Contractor, or to Contractor's superintendent at the site of the Work, or by depositing the same in the United States mail, enclosed in a sealed envelope addressed to his regular place of business, or at such other address as may have been established for the conduct of the Work, with postage prepaid ; or

C. If the notice is given to the surety or any other person, it must be by personal delivery to such surety or depositing the same in the United States mail, enclosed in a sealed envelope, addressed to such surety or person at the address of such surety or person last communicated by him to the party giving the notice, with postage prepaid.

50.3 Notice of Potential Claims

A. The Contractor shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the Owner, or

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the happening of any event, thing or occurrence, unless he shall have given the Owner due written Notice of Potential Claims as hereinafter specified, provided, however, that compliance with the Article shall not be a prerequisite as to matters within the scope of the notice provisions of article 8.1.B Work Not Completed in Time.

B. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, and, insofar as possible, the amount of the potential claim. The Notice of Potential Claim must have been given to the Owner prior to the time that the Contractor shall have performed the work giving rise to the potential claim for additional compensation if based on an act or failure to act by the Owner, or in all other cases within fifteen (15) days after the happening of the event, thing or occurrence giving rise to the potential claim.

C. It is the intention of this article that differences between the parties arising under and by virtue of the contract be brought to the attention of the Owner at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The Contractor hereby agrees that he shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing or occurrence for which no written Notice of Potential Claim as herein required was filed.

50.4 Non-Waiver: Neither acceptance of, nor payment for, the Work or any part thereof, nor any extension of time nor any possession taken by Owner, shall operate as a waiver of any of the provisions of this Contract, nor shall a waiver of any breach of this Contract, be held to be a waiver of any other or subsequent breach. In addition, recordation of Notice of Completion shall not be deemed an acceptance of latent defects nor shall it constitute a waiver of any of the provisions of this Contract.

51. RESOLUTION OF CONSTRUCTION CLAIMS:

51.1 The State of California Public Contract Code makes certain provisions for resolving disputes on construction claims of \$375,000 or less. Those provisions, contained in Public Contract Code, section 20104, et seq., and all amendments made thereto, is incorporated herein by reference as if fully set forth at this point. Written claims and responses are required by the Public Contract Code, and lead, via intermediate steps, to resolution of the claim, ultimately by judicial arbitration.

SCHEDULE G Payment Schedule

Aircon Energy will be reimbursed on a progress payment basis. A Schedule of Values will be provided each month that shows the projected billing schedule. This schedule will be updated monthly and submitted with each month's invoices.





ENERGY EFFICIENCY MEASURES										
MEASURE NUMBER	INCLUDED IN PROJECT	MEASURE DESCRIPTION	PROJECT COST	ANNUAL SAVINGS (Calculations Only)	ANNUAL ENERGY SAVINGS	REBATE	REPAIR AND REPLACEMENT SAVINGS (Annual)	CAPITOL COST AVOIDANCE (One Time)	SIMPLE PAYBACK	ALL SAVINGS
1	Y	Replace 2 Rooftop Package Units with Trane Units	\$245,000	\$16,225	\$15,414	\$2,800	\$7,500	\$0	10.6	
2	Y	Replace Natural Gas Boiler	\$60,000	\$6,700	\$6,365	\$750	\$1,800	\$0	7.3	
3	Y	Install Delta Controls Building Automation System	\$120,000	\$7,000	\$6,650	\$1,100	\$2,000	\$0	13.7	
4	Y	Provide Insulated Stat Backs for Outside Walls, Relocate Thermostats and Sensors, Add Sensors	\$3,000	\$0	\$0	\$0	\$0	\$0	0.0	
5	Y	Add 11 New VAV Boxes With Reheat Coils	\$33,000	\$0	\$0	\$0	\$0	\$0	0.0	
6	Y	Replace All Existing Control Cable with Shielded Cable	\$6,500	\$0	\$0	\$0	\$0	\$0	0.0	
7	Y	Replace Existing Computer A/C Unit with New 7.5 Ton ADP Computer Unit	\$20,000	\$1,800	\$1,550	\$0	\$500	\$0	9.8	
		TOTAL	\$487,500	\$31,725	\$29,979	\$4,650	\$11,800	\$0	11.6	
MISCELLANEOUS										
		Project Management	\$35,000							
		Engineering/Energy Study Cost	\$20,000							
		Bonds	\$8,288							
PROJECT TOTALS			\$550,788	\$31,725	\$29,979	\$4,650	\$11,800	\$0	13.1	

Notes: Y - Depicts measures that are included in the project
 Rebates are based on current PG&E programs and are subject to changes outside the control of Aircon