

AGREEMENT

FOR

FARMERSVILLE UNIFIED SCHOOL
DISTRICT

HVAC UNIT FABRICATION
AND INSTALLATION

AGREEMENT

This Agreement ("Agreement") dated _____ ("Effective Date") is made by and between:

Farmersville Unified School District
("District") with its principal place of business at
571 E. Citrus, Farmersville, CA 93223

and

With its principal place of business at
_____, _____, CA _____

Farmersville Unified School District and _____ agree as follows:

WHEREAS, the Governing Board of the Farmersville Unified School District has determined that the HVAC unit at the High School cafeteria facility has failed and needs to be replaced. Therefore, the parties enter into this Agreement as to the following:

1. **INSTALLATION.** _____ shall provide District with energy efficient unit(s), as identified in **Attachment A**, which is incorporated herein by reference (hereinafter referred to as the "Work"), at the total fixed price of _____ including required taxes and statutory payment bond (the "Contract Amount").

_____ is responsible for the design, engineering, permits, fees, approvals, project management, installation, startup, training, checkout, warranty, and insurance specifically associated with the Work to be performed. Except as specified in the Scope of Work statement, _____ is not responsible for any equipment, systems, controls, comfort problems, balancing, duct cleaning, etc. not specifically included in this Agreement. _____ will provide submittals and engineered drawings (if required), for District's technical review and written approval, prior to initiating construction. All construction and associated cleanup shall be performed and scheduled so as to minimize any disruption with any ongoing District and High School activities.

2. **SCOPE OF WORK.** This agreement is based upon the use of straight time labor only unless stated otherwise in this Agreement. _____ agrees to keep the jobsite clean of debris arising out of its own operations. Unless specifically noted in the statement of the scope of the work or services undertaken by _____ under this Agreement, _____'s obligations under this agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, clean up, control, removal or disposal of environment Hazards or dangerous substances, to include but not to be limited to asbestos, PCBs, or mold discovered in or on the premises. Any language or provision of the agreement elsewhere contained which may authorize or empower the District to change, modify or alter the scope of work or services to be performed by _____ shall not operate to compel _____ to perform any work relating to Hazards without _____'s express written consent.
3. **INVOICING & PAYMENTS.** _____ may invoice the Purchaser for the specified equipment and/or materials installed at the job site. Purchaser agrees to pay _____ amounts invoiced upon receipt of invoice. Waivers of lien will be furnished upon request, as the work progresses, to the extent payments are received. If _____'s invoice is not paid

within 30 days of its issuance, it is delinquent and _____ may add 1% per month interest onto delinquent amounts.

4. **INDEPENDENT CONTRACT.** It is agreed between Purchaser and _____ that _____ shall perform the Work as an independent contractor. _____ may use subcontractors to perform work hereunder, provided _____ shall fully pay said subcontractors and in all instances remain fully responsible for (a) the proper completion of this agreement and (b) supervising such subcontractor's work and for the quality of the work they produce.
5. **MATERIALS.** All materials shall be new, in compliance with all applicable laws and codes, and shall be covered by a manufacturer's warranty, if appropriate. If the materials or equipment included in this agreement become temporarily or permanently unavailable, the time for performance of the work shall be extended to the extent thereof, and in case of permanent unavailability, _____ shall (a) be excused from furnishing said materials or equipment, and (b) be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonable substitute therefore.
6. **COMPLETION.** The work specified in Section 1 shall be considered completed upon approval by the Purchaser, provided that the Purchaser's approval shall not be unreasonably withheld.
7. **WARRANTY.** _____ warrants that the equipment manufactured by it shall be free from defects in material and workmanship arising from normal usage for a minimum period of one year from delivery of said equipment, or if installed by _____, for a period of two (2) years from the installation date. _____ warrants that for equipment furnished and/or installed but NOT manufactured by _____, _____ will extend the same warranty and terms and conditions, which _____ receives from the manufacturer of said equipment. Within the warranty period, for equipment installed by _____, if Purchaser provides written notice to _____ of any such defects within thirty (30) days after the appearance or discovery of such defect, _____ shall, at its option, repair or replace the defective equipment and return said equipment to Purchaser. All transportation charges incurred in connection with the warranty for equipment not installed by _____ shall be borne by Purchaser. These warranties do not extend to any equipment which has been repaired by others, abused, altered or misused, or which has not been properly and reasonably maintained. These warranties are in lieu of all other warranties, expressed or implied, including, but not limited to those of merchantability and fitness for a specific purpose.
8. **TAXES.** The price of this agreement does include duties, sale, use, excise or other similar taxes required by federal, state or local laws in effect at the time of agreement execution.
9. **DELAYS.** _____ shall not be liable for any delay in the performance of the work resulting from or attributed to acts of circumstance beyond _____'s control, including but not limited to acts of God, riots, labor disputes, conditions of the premises, acts or omissions of the Purchaser, or other Contractors or delays caused by suppliers or subcontractors of _____, etc. If the District delays completion for greater than 60 days, _____ can recover any cost inflation on un-billed materials that were either stored or yet to be purchased.
10. **PROJECT COMPLETION DATE.** _____ shall complete the fabrication and installation contemplated herein by **April 30, 2017.**
11. **COMPLIANCE WITH LAWS.** _____ shall comply with all applicable federal, state, and local laws and regulations. All licenses and permits required for the prosecution of the work shall be obtained and paid for by _____.

12. **DISPUTES.** Written notice of any Dispute must be provided to the other party, describing specific details of the dispute relating to changes in Work or claim for additional compensation, within seven (7) days of the occurrence of the condition. This notice must be provided via certified mail. For a reasonable period commencing on the day written notice of Dispute was provided, but not to exceed 10 (10) days, the parties shall in good faith attempt to resolve the Dispute. If the parties are unable to resolve the Dispute during this period, the parties shall proceed to advisory arbitration. The arbitrator shall be neutral and mutually acceptable, but said arbitration shall not exceed one (1) day. In the event arbitration is unable to resolve the dispute, the parties may initiate a court action. All venues shall be in the County where the project is located.
13. **CHANGE ORDER (Mid-Performance Amendments).** _____ and the District recognize that:
- If events beyond the control of the parties reasonably require adjustments to this agreement, the parties shall make a good faith attempt to agree on all necessary particulars. Such agreements shall be put in writing, signed by the parties and added to this agreement. Failure to reach agreement shall be deemed a dispute to be resolved as agreed in section 12 of this agreement.
14. **INSURANCE.** _____ will maintain comprehensive liability and other insurance in amounts not less than those set forth below. Such insurance shall protect _____ and the District against any claims, losses, liabilities and expenses arising from the Work, whether performed by _____ or any subcontractor of _____. The coverage shall include:
- a. Workmen's Compensation and Employers Liability Insurance - \$500,000 each accident; \$500,000 each employee/disease; and \$1,000,000 policy limit.
 - b. Comprehensive or Commercial General Liability - Bodily injury liability of \$1,000,000 per occurrence and general aggregate liability of \$2,000,000 per occurrence.
 - c. Comprehensive Automobile Insurance – Combined single limit of \$1,000,000 per occurrence.
15. **INDEMNITY.** _____ ("Indemnifying Party") shall indemnify the District, its Governing Board, officers, employees, and agents from and against any and all liabilities, claims, expenses, losses or damages, including attorney's fees, which may arise in connection with the execution of the work herein specified and which are caused, in whole or in part by the negligent act or omission of the indemnifying Party.
16. **OCCUPATIONAL SAFETY AND HEALTH.** The Parties hereto agree to notify each other immediately upon becoming aware of any alleged violation of, the Occupational Safety and Health Act (OSHA) relating in any way to the project or project site.
17. **FINGERPRINTING.** The services provided hereunder shall occur on an active school site. As such, _____ shall ensure that its services on and around the school site comply with all applicable laws, regulations and standards including but not limited to, the fingerprinting requirements of the Education Code and any other legal requirements which may be applicable to _____'s activities on or about the school sites. While the Farmersville Unified School District shall reasonably assist _____ in determining the applicable requirements, it shall be _____'s sole responsibility for determining and complying with all applicable laws, regulations, and standards.

18. **PREVAILING WAGES.** Wage rates for this Project shall be in accordance with the general prevailing rate of holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of work needed to execute the Contract as determined by the Director of the Department of Industrial Relations. Copies of schedules of rates so determined by the Director of the Department of Industrial Relations are on file at the administrative office of the Purchaser and are also available from the Director of the Department of Industrial Relations. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).

19. The following are hereby referenced and made a part of this Agreement and _____ stipulates to the provisions contained therein.

1. Chapter 1 of Part 7 of Division 2 of the Labor Code (Section 1720 *et seq.*)
2. California Code of Regulations, Title 8, Chapter 8, Subchapters 3 through 6 (Section 16000 *et seq.*)

20. **CORRECTION OF WORK.** _____ shall promptly correct work rejected by District for failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, and shall correct any Work found to be not in accordance with the requirements of the Contract Documents within a period of one year from the date of Substantial Completion of the contract or by terms as an applicable special warranty required by the Contract Documents. The provisions of this Section 18 apply to Work done by Subcontractors as well as to Work done by direct employees of _____.

Nothing contained in this Section 18 shall be construed to establish a period of limitation with respect to other obligations, which _____ might have under the Contract Documents. Establishment of the time period of one year as described in Section 18 relates only to the specific obligation of _____ to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish _____'s liability with respect to _____'s obligations other than specifically to correct the Work.

21. **FAILURE TO CARRY OUT WORK.** If _____ defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform a provision of the Contract, District, after seven (7) days' written notice to _____ and without prejudice to any other remedy District may have, may make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due _____.

22. **ENTIRE AGREEMENT.** This Agreement, upon acceptance, shall constitute the entire agreement between the parties and supersedes any prior representations or understandings.

23. **CHANGES.** No change or modification of any of the terms and conditions stated herein shall be binding upon _____ unless accepted by _____ in writing.

24. **SEVERABILITY.** If one or more of the provisions of this Agreement are held to be unenforceable under laws, such provision(s) shall be excluded from these terms and conditions and the remaining terms and conditions shall be interpreted as if such provision were so excluded and shall be enforced in accordance to their terms and conditions.

25. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A signature on a copy of this agreement received by either party by facsimile or portable document

format (PDF) is binding upon the other party as an original. The parties shall treat a photocopy of such facsimile as a duplicate original.

- 26. **ASSIGNMENT.** _____ retains the right to assign its rights and obligations of this agreement with written consent of the District.
- 27. **ACKNOWLEDGMENT.** Both _____ and the District acknowledge having read this Agreement and all contract documents incorporated herein and have executed this Agreement on the date written above.
- 28. **APPROVAL.** Each party represents that the person that has executed this Agreement on its behalf is authorized to do so.
- 29. **CONTRACT.** This Agreement in addition to all of the Bid Documents (Instructions to Bidders *et al.*) constitute the Contract for purposes of the Project.

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

Farmersville Unified School District

Signature

Signature

Print Name

Print Name

Title

Title

Date

Date

Attachment “A”

Scope of Work

Replace HVAC Equipment

- Provide new Reznor PCDH-85 rooftop indirect make up air unit, or equivalent, to replace 15,000 [cfm @0.50](#) ESP to match existing equipment performance. Unit is to have a gas-fired heat exchanger and evaporative cooling module with 12” celdeck media. The work also includes adapting existing curb to fit the new unit, ductwork transition/modification inside the existing curb, modifications and connections of utilities, start-up and testing of new equipment, and training, as needed.