

PESL 3448
 REQ# 26463
 V = 103412

PERSONAL SERVICES CONTRACT

County of Nevada, California

This Personal Services Contract is made between the COUNTY OF NEVADA (herein "County"), and

All Weather Inc.

(herein "Contractor"), wherein County desires to retain a person or entity to provide the following services, materials and products generally described as follows:

(§1) **Automated Weather Observation System (AWOS) Inspection and Maintenance**

SUMMARY OF MATERIAL TERMS

(§2) **Maximum Contract Price:** \$21,850
 (§3) **Contract Beginning Date:** 7/1/2017 **Contract Termination Date:** 6/30/2019
 (§4) **Liquidated Damages:** \$0

INSURANCE POLICIES

Designate all required policies:

		Req'd	Not Req'd
(§6)	Commercial General Liability (\$1,000,000)	<u> x </u>	<u> </u>
(§7)	Automobile Liability (\$ 300,000) Personal Auto	<u> </u>	<u> x </u>
	(\$1,000,000) Business Rated	<u> x </u>	<u> </u>
	(\$1,000,000) Commercial Policy	<u> </u>	<u> x </u>
(§8)	Worker's Compensation	<u> x </u>	<u> </u>
(§9)	Errors and Omissions (\$1,000,000)	<u> </u>	<u> x </u>

LICENSES AND PREVAILING WAGES

(§14) Designate all required licenses: N/A

NOTICE & IDENTIFICATION

(§26) **Contractor:** All Weather Inc.
 1165 National Drive
 Sacramento, CA 95834

County of Nevada:
 Airport
 13083 John Bauer Avenue
 Grass Valley, CA 95945

Contact Person: Gurjit Grewal
 (916) 719-1542
 e-mail: GGrewal@allweatherinc.com

Contact Person: Lee Ocker
 (530) 273-3374
 e-mail: Lee.Ocker@co.nevada.ca.us

Contractor is a: (check all that apply)

Corporation: x Calif., Other, LLC, Non-profit
 Partnership: Calif., Other, LLP, Limited
 Person: Individ., Dba, Ass'n, Other

EDD: Independent Contractor Worksheet Required: Yes x No
HIPAA: Schedule of Required Provisions (Exhibit D): Yes x No

ATTACHMENTS

Designate all required attachments:

	Req'd	Not Req'd
Exhibit A: Schedule of Services (Provided by Contractor)	<u> x </u>	<u> </u>
Exhibit B: Schedule of Charges and Payments (Paid by County)	<u> x </u>	<u> </u>
Exhibit C: Schedule of Changes (Additions, Deletions & Amendments)	<u> x </u>	<u> </u>
Exhibit D: Schedule of HIPAA Provisions (Protected Health Information)	<u> </u>	<u> x </u>

Terms

Each term of this Contract below specifically incorporates the information set forth in the Summary at page one (1) above as to each respective section (§) therein, as the case may be.

Services

1. **Scope of Services:**

Contractor shall provide all of the services, materials and products (herein "Services") generally described in **Exhibit "A"**, according to a performance schedule, if applicable, as set forth in said exhibit (herein "Performance Schedule"). If requested, Contractor agrees to serve as an expert witness for County in any third party action or proceeding arising out of this Contract.

Payment

2. **Charges and Payments:**

The charges (herein "Charges") for furnishing the aforesaid Services under this Contract are set forth in **Exhibit "B"**, including, if applicable, hourly rates, unit pricing, and expense, mileage and cost limits. Said Charges shall be presented monthly by invoice, and shall be due within thirty (30) days of receipt unless payment is otherwise set forth in said **Exhibit "B"**, and shall remain in effect for the entire term of this Contract, and any extension hereof. In no event will the cost to County for Services to be provided under this Contract, including direct non-salary expenses, exceed the **Maximum Contract Price** set forth at §2, page one (1), above.

Time for Performance

3. **Contract Term:**

This Contract shall commence on the **Contract Beginning Date** set forth at §3, page one (1), above. All Services required to be provided by this Contract shall be completed and ready for acceptance no later than the **Contract Termination Date** set forth at §3, page one (1), above.

4. **Liquidated Damages:**

County and Contractor agree that damages to County due to delays in timely providing Services in accordance with the aforesaid Performance Schedule and Contract Termination Date are impractical and difficult to ascertain. Therefore, if §4 at page one (1) hereof shall indicate a daily amount as **Liquidated Damages**, County shall have the right to assess said daily sum, not as a penalty, but as and for damages to County due to delays in providing Services not in accordance with the said Performance Schedule, or later than the Contract Termination Date (herein "Delay"). Liquidated Damages shall be offset against amounts owing to Contractor, including retention sums.

To the extent that any Delay is a result of matters or circumstances wholly beyond the control of Contractor, County may excuse said Liquidated Damages; provided however, that County may condition such excuse upon Contractor having given prompt notice to County of such delay immediately by telephone and thereafter by written explanation within a reasonable time. The time for Contractor's performance shall be extended by the period of delay, or such other period as County may elect.

5. **Time of the Essence:**

Time is of the essence with respect to Contractor's performance under this Contract. Delay in meeting the time commitments contemplated herein will result in the assessment of liquidated damages, if indicated at §4 at page one (1), hereof. If Liquidated Damages are not so indicated, damages shall be as otherwise provided by law.

Insurance

6. **Commercial General Liability Insurance:** (County Resolution No. 90674)

If §6 at page one (1) hereof shall indicate a **Commercial General Liability** insurance policy is required, Contractor shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following:

- (i) Broad form coverage for liability for death or bodily injury to a person or persons, and for property damage, combined single limit coverage, in the minimum amount indicated at said §6;

- (ii) An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from the Services provided or the relationships created under this Contract;
- (iii) A provision that said insurance shall be primary and other insurance maintained by the County of Nevada shall be excess only and not contributing with Contractor's insurance;
- (iv) A provision that said insurance shall provide for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium).

7. Automobile Liability Insurance: (County Resolution No. 90676)

If §7 at page one (1) hereof shall require either a Business Rated or a Commercial Automobile Liability insurance policy, for each vehicle used including non-owned and hired automobiles, Contractor shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following provisions:

- (i) Liability protection for death or bodily injury to a person or persons, property damage, and uninsured and underinsured coverage, combined single limit coverage, in the minimum amount indicated at said §7;
- (ii) An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from the Services provided or the relationships created under this Contract;
- (iii) A provision that said insurance shall be primary and other insurance maintained by the County of Nevada shall be excess only and not contributing with Contractor's insurance;
- (iv) A provision that said insurance shall provide for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium).

If §7 at page one (1) hereof shall require a Personal Auto policy, for each vehicle used including non-owned and hired automobiles, Contractor shall promptly provide proof of such insurance for a minimum of three hundred thousand dollars, (\$300,000), in combined single limits, and naming the County as additionally insured.

8. Worker's Compensation: (County Resolution No. 90674)

If §8 at page one (1) hereof shall indicate a **Worker's Compensation** insurance policy is required, Contractor shall maintain said policy as required by law, and shall promptly provide proof of such insurance evidenced by a certificate of insurance, or other documentation acceptable to County.

Before commencing to utilize employees in providing Services under this Contract, Contractor warrants that it will comply with the provisions of the California Labor Code, requiring Contractor to be insured for worker's compensation liability or to undertake a program of self-insurance therefor.

9. Errors and Omissions:

If §9 at page one (1) hereof shall indicate **Errors and Omissions** insurance is required, Contractor shall maintain either a professional liability or errors & omissions policy in the minimum amount indicated, and shall promptly provide proof of such insurance evidenced by a certificate of insurance, or other documentation acceptable to County.

10. Miscellaneous Insurance Provisions: (County Resolution No. 90675)

All policies of insurance required by this Contract shall remain in full force and effect throughout the life of this Contract and shall be payable on a "per occurrence" basis unless County specifically consents to "claims made" coverage. If the County does consent to "claims made" coverage and if Contractor changes insurance carriers during the term of this Contract or any extensions hereof, then Contractor shall carry prior acts coverage.

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by County, its officers, agents and/or employees, shall be excess only and not contributing with insurance required or provided under this agreement.

At all times, Contractor shall keep and maintain in full force and effect throughout the duration of this Contract, policies of insurance required by this Contract which policies shall be issued by companies

with a Best's Rating of B+ or higher (B+, B++, A-, A, A+ or A++), or a Best's Financial Performance Rating (FPR) of 6 or higher (6, 7, 8 or 9) according to the current Best's Key Rating Guide, or shall be issued by companies approved by the County Risk Manager. In the event the Best's Rating or Best's FPR shall fall below the rating required by this paragraph, Contractor shall be required to forthwith secure alternate policies which comply with the rating required by this paragraph, or be in material breach of this Contract.

Failure to provide and maintain the insurance policies (including Best's ratings), endorsements, or certificates of insurance required by this Contract shall constitute a material breach of this agreement (herein "Material Breach"); and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both. (See §13, ¶2, below, as these provisions additionally apply to subcontractors.)

11. Indemnity:

Nothing herein shall be construed as a limitation of Contractor's liability, and Contractor shall indemnify, defend and hold harmless the County and its officers, officials, employees, agents and volunteers from any and all liabilities, claims, demands, damages, losses and expenses (including, without limitation, defense costs and attorney fees of litigation) which result from the negligent act, willful misconduct, or error or omission of Contractor, except such loss or damage which was caused by the sole negligence or willful misconduct of County or its officers, officials, employees, agents and volunteers.

Personal Services

12. Contractor as Independent:

In providing services herein, Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as agents or employees of County.

13. Assignment and Subcontracting:

Except as specifically provided herein, the rights, responsibilities, duties and Services to be performed under this Contract are personal to the Contractor and may not be transferred, subcontracted, or assigned without the prior written consent of County. Contractor shall not substitute nor replace any personnel for those specifically named herein or in its proposal without the prior written consent of County.

Contractor shall cause and require each transferee, subcontractor and assignee to comply with the insurance provisions set forth herein at §§6, 7, 8, 9 and 10, to the extent such insurance provisions are required of Contractor under this Contract. Failure of Contractor to so cause and require such compliance by each transferee, subcontractor and assignee shall constitute a Material Breach of this agreement, and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both.

14. Licensing and Permits:

Contractor warrants (i) Contractor is qualified and competent to provide all Services under this contract; (ii) Contractor and all employees of Contractor hold all necessary and appropriate licenses therefor, including those licenses set forth at §14, page one (1) hereof; and, (iii) Contractor shall obtain, and remain in compliance with, all permits necessary and appropriate to provide said Services. Contractor shall cause said licenses and permits to be maintained throughout the life of this Contract. Failure to do so shall constitute a Material Breach of this agreement, and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both.

Public Contracts

15. Prevailing Wage and Apprentices:

To the extent made applicable by law, performance of this Contract shall be in conformity with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, commencing with Section 1720 relating to prevailing wages which must be paid to workers employed on a public work as defined in Labor Code §§1720, et seq.; and shall be in conformity with Title 8 of the California Code of Regulations §§200 et seq., relating to apprenticeship. Where applicable:

- (i) Contractor shall comply with the provisions thereof at the commencement of Services to be provided herein, and thereafter during the term of this Contract. A breach of the requirements of this section shall be deemed a material breach of this contract. Applicable prevailing wage

determinations are available on the California Department of Industrial Relations website at <http://www.dir.ca.gov/OPRL/PWD>.

(ii) Contractor and all subcontractors must comply with the requirements of Labor Code Section 1771.1(a) pertaining to registration of contractors pursuant to Section 1725.5. Registration and all related requirements of those Sections must be maintained throughout the performance of the Contract.

(iii) Contracts to which these prevailing wage requirements apply are subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each contractor and subcontractor must furnish certified payroll records to the Labor Commissioner at least monthly.

(iv) The County is required to provide notice to the Department of Industrial Relations of any public work contract subject to prevailing wages within five (5) days of award.

16. Accessibility (County Resolution No. 00190):

It is the policy of the County of Nevada that all County services, programs, meetings, activities and facilities shall be accessible to all persons, and shall be in compliance with the provisions of the Americans With Disabilities Act and Title 24, California Code of Regulations. To the extent this Contract shall call for Contractor to provide County contracted services directly to the public, Contractor shall certify that said direct Services are and shall be accessible to all persons.

17. Nondiscriminatory Employment:

In providing Services hereunder, Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, political affiliation, ancestry, marital status or disability. This policy does not require the employment of unqualified persons.

18. Prior Nevada County Employment (County Resolution No. 03-353):

Effective July 22, 2003, it is the policy of the County of Nevada that former members of the Board of Supervisors, a former CEO, or a former Purchasing Agent, for a period of twelve (12) months following the last day of employment, shall not enter into any relationship wherein that former employee or former Board member receives direct remuneration from a legal entity that, during the last twelve (12) months of said employment or Board member's service, entered into a contract with, or received a grant from the County of Nevada. Provided however, that this prohibition shall not apply to any employee that did not personally approve a contract with or grant to said legal entity during the last twelve (12) months of said employment, and shall not apply when the Board of Supervisors did not approve a contract with or grant to said legal entity during the last twelve (12) months of said Board member's service.

A violation of this policy shall subject Contractor to all of the remedies enumerated in said resolution and as otherwise provided in law, which remedies shall include but not be limited to injunctive relief, cancellation and voiding of this contract by County, a return of grant money, a cause of action for breach of contract, and entitlement to costs and reasonable attorney fees in any action based upon a breach of contract under this provision.

19. Cost Disclosure:

In accordance with Government Code Section 7550, should a written report be prepared under or required by the provisions of this Contract, Contractor agrees to state in a separate section of said report the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of said report.

Default and Termination

20. Termination:

A Material Breach of this Contract pursuant to the terms hereof or otherwise, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to immediately suspend payments hereunder, or terminate this contract, or both, **without notice**.

If Contractor fails to timely provide in any manner the services materials and products required under this Contract, or otherwise fails to promptly comply with the terms of this Contract, or violates any ordinance, regulation or other law which applies to its performance herein, County may terminate this Contract by giving **five (5) days written notice** to Contractor.

Either party may terminate this Contract for any reason, or without cause, by giving **thirty (30) calendar days written notice** to the other, which notice shall be sent by registered mail in conformity with the notice provisions, below. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract. Contractor shall be excused for failure to perform services herein if such performance is prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.

County, upon giving **sixty (60) calendar days written notice** to Contractor, shall have the right to terminate its obligations under this Contract at the end of any fiscal year if the County or the State of California, as the case may be, does not appropriate funds sufficient to discharge County's obligations coming due under this contract.

Miscellaneous

21. Books of Record and Audit Provision:

Contractor shall maintain complete records relating to this Contract for a period of five (5) years from the completion of Services hereunder. Said records shall include but not be limited to bids and all supporting documents, original entry books, canceled checks, receipts, invoices, payroll records including subsistence, travel and field expenses, together with a general ledger itemizing all debits and credits

Contractor shall permit County to audit said records as well as such related records of any business entity controlled by Contractor. Said audit may be conducted on Contractor's premises or at a location designated by County, upon fifteen (15) days notice. Contractor shall promptly refund any moneys erroneously charged and shall be liable for the costs of audit if the audit establishes an over-charged of five percent (5%) or more of the Maximum Contract Price.

22. Intellectual Property:

All original photographs, diagrams, plans, documents, information, reports, computer code and all recordable media together with all copyright interests thereto (herein "Intellectual Property"), which concern or relate to this Contract and which have been prepared by, for or submitted to Contractor, shall be the property of County, and upon fifteen (15) days demand therefor, shall be promptly delivered to County without exception. Provided however, for personal purposes only and not for commercial, economic or any other purpose, Contractor may retain a copy of Contractor's work product hereunder.

23. Entire Agreement:

This Contract represents the entire agreement of the parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by written, fully executed agreement of the parties.

24. Jurisdiction and Venue:

This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Nevada County, California.

25. Compliance with Applicable Laws:

The Contractor shall comply with any and all federal, state and local laws, codes, ordinances, rules and regulations which relate to, concern or affect the Services to be provided by this Contract.

26. Notices:

This Contract shall be managed and administered on County's behalf by the department and the person set forth at §26, page one (1) of this Contract, and all invoices shall be submitted to and approved by this Department. In addition to personal service, all notices may be given to County and to Contractor by first class mail addressed as set forth at said §26 Said notices shall be deemed received the fifth (5th) day following the date of mailing or the earlier date of personal service, as the case may be.

27. Authority:

All individuals executing this Contract on behalf of Contractor represent and warrant that they are authorized to execute and deliver this Contract on behalf of Contractor.

IN WITNESS WHEREOF, the parties have executed this Contract effective on the Beginning Date, above.

CONTRACTOR:

Bob Perrin

Name:
Title:

Dated:

Sept 29, 2017

COUNTY OF NEVADA:

Mary Hall Ross

Mary Hall Ross
Purchasing Agent

Dated:

10/17/17

BP

EXHIBIT "A"

SCHEDULE OF SERVICES

Contractor will provide inspection and maintenance services for the Nevada County Airport's AWOS as follows:

- Three visits per year that include the annual FAA inspection/certification and two maintenance inspection visits. The FAA technician will verify FAA system requirements. Contractor's maintenance program includes all labor, travel, standard consumable materials.
- All of Contractor's Field Service Technicians are factory trained and certified, FCC licensed and FAA approved. All of Contractor's Field Service Technicians operate within Contractor's ISO9001:2008 Quality Management System certified requirements.
- All required equipment is calibrated with standards traceable to the NIST.
- All inspections include cleaning, lubrication, adjustment, and calibration of equipment according to Contractor's applicable maintenance procedures and FAA requirements.
- Electro-mechanical work external to the equipment or work on attached devices not furnished by Contractor are excluded.
- Where applicable, Contractor will coordinate the Annual Validation with the FAA, but will not be responsible for their actions.
- Telephone customer service support on business days from 8:00am to 4:30pm PST.

Service Eligibility

- All Contractor supplied equipment for your AWOS is eligible for this Maintenance Service Contract.
- If the equipment has not been under Contractor's care for a period of one year or more, Contractor may require inspection of the customer's equipment to determine if it is in a good operation condition before commencing a Maintenance Service Contract. Any required work or material required repairing, upgrading, or to install engineering changes will be performed prior to commencement of any Maintenance Services and will be billed at Contractor's time and material rates then in effect.

Availability

- Maintenance Services are provided by Contractor personnel during normal business hours, Monday through Friday, or weekends by mutual agreement, holidays are normally excluded.

Repairs Not Covered by this Contract

- The items listed below are not included in the Maintenance Services contract. These repairs will be done on a time, expense, and materials basis and will be billed at Contractor's rates then in effect.
 - Acts of God
 - Lightning or Weather
 - Vandalism
 - Moving of any equipment related to the AWOS
 - Other damage caused by humans, fauna, plants, or site environment

County Responsibilities

- The customer will allow Contractor personnel full and free access to the equipment during pre-scheduled inspection visits, subject to reasonable safety and security restrictions.
- The customer is required to perform or cause to be performed, the monthly scheduled services as outlined in Contractor's AWOS maintenance manual.

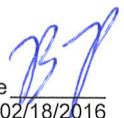


EXHIBIT "B"

SCHEDULE OF CHARGES AND PAYMENTS

County will pay Contractor as follows for each year (July 1 – June 30) of this contract:

Semi- annual inspections and annual validation	\$5,325 (\$1,775 per contract visit)
Allowance for additional service and repairs*	\$5,000
NADIN service fee	\$600

*Additional service and repairs must be authorized in advance by the Airport Manager. The service labor rates for appointments scheduled a minimum of two weeks in advance are \$120/hour and \$175/hour for work requested less than two weeks in advance.

EXHIBIT "C"

SCHEDULE OF CHANGES

(Amendments and Additions to Contract)

Additional Terms and Conditions

1. *Orders:* By submitting an order to Contractor, County agrees to be subject to these Terms and Conditions of Sale in their entirety. All orders must be bona fide commitments showing mutually agreed to prices, quantities and shipping dates. If an order is submitted to Contractor in response to a written Contractor quotation, the order must contain the Contractor quotation number. No order or other commitment, whether or not submitted in response to a quotation by Contractor, shall be binding upon Contractor until such order or other commitment is accepted in writing by Contractor.

2. *Prices and Taxes:* Prices do not include federal, state or local taxes, including, without limitations, sales, use or excise taxes, now or hereafter enacted, applicable to the products sold in this transaction, which taxes may, in Contractor's discretion, be added by Contractor to the sales price or may be billed separately and which taxes will, in any event, be paid by County unless County provides Contractor with a proper tax exemption certificate.

3. *Delivery and Shipment:* All products will be tendered and shipped F.O.B. Ex Works in California, and may be so tendered in several lots. In the absence of specific instructions, Contractor may select the carrier and ship, but shall not be deemed thereby to assume any liability in connection with the shipment nor shall the carrier be construed to be the agent of Contractor. County must provide its own insurance. Title and risk of loss or damage to all products sold hereunder shall pass from Contractor to County upon delivery by Contractor to the possession of the carrier, provided that Contractor reserves a purchase money security interest in the products. Any claims for loss, damage or miss delivery thereafter shall be filed with the carrier.

4. *Terms of Credit and Payments:* County shall furnish to Contractor all financial information reasonably requested by Contractor from time to time for the purpose of establishing or continuing County's credit limit. County agrees that Contractor shall have the right to decline to extend credit to County and to require that the applicable purchase price be paid prior to shipment. Contractor shall have the right from time to time, without notice, to change or revoke County's credit limit on the basis of changes in Contractor's credit policies or County's financial condition and /or payment record. Unless otherwise stated in Contractor's proposal, payment terms are:

- a. Components, sub-assemblies and repairs for hire (including separate spares orders):
 - i. All orders totaling less than \$1,000:
 - 100% at order placement using Check, Wire, or Credit Card (VISA, MasterCard, or Discover).
 - ii. Upon credit approval and within 30 days from invoice date
 - 100% of total price of shipment
 - iii. Without credit approval
 - 100% at order placement using Check, Wire, or Credit Card (VISA, MasterCard, or Discover)
- b. Systems installed within the United States of America:
 - i. Upon credit approval and within 30 days from invoice date
 - 100% of total price of equipment shipped;
 - 100% of total price of installation, maintenance, training, site preparations, factory acceptance testing, site acceptance testing, FCC licensing etc., as applicable, at time of completion of said items

- If retention has been agreed upon by both parties, 5% of the total price may be withheld until system has been commissioned. The 5% withhold will be due within 30 days of system commissioning.
 - In the case of commissioning extending beyond 120 days from shipment with no fault by Contractor, final payment is due at 120 days
 - If County's credit account is delinquent at any point Contractor may withhold its services and equipment until Buyers account is current
- ii. Without credit approval:
- 30% of total price when order is placed
 - 70% of total price prior to shipment of equipment
- c. Forfeit of Rights
- i. If the Seller is not given an opportunity to complete follow-on work (such as installation or training) within 12 months from shipment, the Seller can decline to perform the work and the County forfeits any amounts already paid to the Seller.

County shall not deduct any amount from any Contractor invoice without Contractor's express written approval, which approval shall be contingent upon County providing all supporting documentation for such deduction as required by Contractor. If County fails to pay the price or any other payment due hereunder when due, Contractor may recover, in addition to the price or payment, interest thereon at the rate of not less than 1.5% per month where lawful, but subject to the maximum allowable lawful monthly interest rate, and reasonable attorney's fees. Terms of payment hereunder may be changed by Contractor at any time.

5. *Security Interest:* County hereby grants to Contractor a security interest in all Contractor products sold to County as security for the due and punctual performance by County of all of its obligations hereunder. County agrees to execute such documents to evidence and perfect said security interest as Contractor may require. County hereby appoints an officer of Contractor as its duly authorized agent for the purpose of executing all such documents on County's behalf, including, without limitation, financing statements on Form UCC-1, and for the purpose of taking any and all other action deemed necessary by Contractor, in its sole discretion, for the perfection and enforcement of the security interest granted hereby.

6. *Contingencies:* Contractor shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control of Contractor, including, by way of illustration but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, accident, fire, explosion, floods, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure where Contractor has exercised ordinary care in the prevention thereof.

7. *Equipment:* Equipment furnished under the contract (the "equipment") will be newly manufactured or assembled by Contractor from new parts unless prior written permission is obtained from County. Where allowed by law, Contractor may modify specifications of equipment designed by Contractor, provided the modifications do not adversely affect the performance of the equipment. In addition, Contractor may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by government authority, or non-availability of materials from suppliers.

8. *Software:* Contractor shall at all times have and retain title and full ownership of all software, firmware programming routines, and documentation thereof supplied by Contractor for use with the equipment, and of all copies thereof made by County (collectively "software"). Contractor grants County a non-exclusive and non-transferable license to use such software solely for use with the equipment. County shall take all reasonable steps to protect Contractor's proprietary interest in the software and shall not transfer or otherwise provide the software to any third party without prior written consent.

9. *Warranties:*

i. Components/Spares and Systems: The term of warranty for Components/Spares is one (1) year from the date of shipment. The term of warranty for Systems is (18) months from the date of shipment or (1) year from the date of commissioning, whichever is shorter. If any equipment

covered by this warranty shall be returned to the original shipping point, transportation charges prepaid, and upon examination Contractor determines to its satisfaction that such equipment is defective in material or workmanship and such defect was not caused by accident, misuse, neglect, alteration, improper installation, improper adjustment, improper repair, or improper testing, Contractor shall at its option repair or replace the equipment, with shipment to County prepaid. Contractor shall have reasonable time to make such repairs or to replace such equipment.

- ii. Repairs: Components/Spares and Systems repaired after the expiration date of the new product warranty, the warranty is limited to the repaired portion and is valid for ninety days from the date of its reshipment.
- iii. County must obtain a valid Return Material Authorization ("RMA") number from Contractor for all returns. RMAs will be issued at Contractor's sole discretion, in accordance with these terms and conditions. RMA are valid for thirty calendar days from the date of issuance. Contractor must physically receive the return within the thirty (30) calendar day window.
- iv. If County shall fail to pay when due any portion of the purchase price or any other payment required from County to Contractor under this contract or otherwise, all warranties and remedies granted under this Section 8 and 9 and all warranties and obligations of Contractor to service, repair, replace, correct or otherwise remedy defects, errors of failures under any other contract between County and Contractor may, at Contractor's option, be terminated.
- v. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS AND ANY DEFECTS THEREIN OF ANY NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AWI'S SOLE AND EXCLUSIVE LIABILITY, AND BUYER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY NONCONFORMITY OR DEFECT IN THE PRODUCTS, IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, SHALL BE AS SET FORTH IN SECTION 9i AND 9ii HEREOF AS LIMITED BY SUBSECTION 9iv HEREOF.
- vi. Contractor MAKES NO WARRANTIES (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) WITHOUT RESPECT TO EQUIPMENT SOLD TO BUYER BY Contractor AND NOT MANUFACTURED BY Contractor. Contractor shall assign the manufacturer's warranty, to the extent permitted, to County upon County's timely written request.

10. *Patents:* Contractor shall defend any suit or proceeding brought against County to the extent that it is based on a claim that any equipment manufactured by Contractor (hereinafter "warranted equipment") infringes in construction or design a United States patent, and shall indemnify County against all costs, damages and expenses finally awarded against County provided that County notifies Contractor promptly in writing of any such claim and gives Contractor full and complete authority, information and assistance for the defense of such claim and provided further that Contractor shall have sole control of the defense and of the negotiations for settlement, if any, of such claim. If any warranted equipment is held in construction or design directly to infringe any United States patent and the use of said warranted equipment is enjoined, or in case any warranted equipment may, in the opinion of Contractor, be held to constitute such infringement, Contractor may, at its expense and option either (a) procure for County the right to continue using said warranted equipment, (b) replace said warranted equipment with a suitable non-infringing product, (c) suitably modify said warranted equipment, or (d) refund the purchase price of said warranted equipment, less depreciation at twenty percent (20%) per year and accept its return. Contractor shall not be liable for any infringement arising from the combination of any warranted equipment with any system or product other than warranted equipment or from the modification of any warranted equipment unless such modification was made by Contractor. Contractor shall not be liable for any cost or expense incurred without Contractor's written authorization. THE FOREGOING STATES THE ENTIRE LIABILITY OF Contractor, AND THE EXCLUSIVE REMEDY OF BUYER, WITH RESPECT TO ANY ALLEGED PATENT INFRINGEMENT BY THE WARRANTED EQUIPMENT.

11. *Limitation of Liability:* UNDER NO CIRCUMSTANCES SHALL Contractor's LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT OR Contractor's PERFORMANCE OR ASSERTED FAILURE TO PERFORM THEREUNDER, IN CONTRACT, IN TORT (INCLUDING

NEGLIGENCE), OR OTHERWISE, EXCEED THE LIMITS OF CONTRACTOR'S COMMERCIAL GENERAL LIABILITY INSURANCE, EXCEPT AS PROVIDED SPECIFICALLY IN SECTION 10 HEREOF PERTAINING TO PATENTS; AND IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR TORT DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, LOSS OF PROFITS, LOSS OF BUSINESS, OR LOSS OF GOODWILL.

12. *Compliance with Public Records Law:* All information County receives from Contractor, whether received in connection with Contractor's proposal or in connection with any services performed by Contractor, will be disclosed upon receipt of a request for disclosure pursuant to the California Public Records Act; provided, however, that if any information is set apart and clearly marked "Confidential Information" pursuant to Section 9, above, when it is provided to County, County shall give notice of Contractor of any request for disclosure of such information. Contractor shall then have five (5) days from the date it receives such notice to enter into an agreement with the County, satisfactory to the County Counsel, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by County in any legal action to compel the disclosure of such information under the California Public Records Act. Contractor shall have sole responsibility for defense of the actual "Confidential" designation of such information.

Contractor and County understand and agree that any failure by Contractor to respond to the notice provided by County and/or to enter into an agreement with County, in accordance with the provisions above, shall constitute a complete waiver by Contractor of any rights regarding the information designated "Confidential" by Contractor, and County shall disclose such information pursuant to applicable procedures required by the Public Records Act.

13. *Cancellation and Rescheduling:* Orders accepted by Contractor may be canceled or rescheduled by County only with the written consent of Contractor (which consent Contractor may withhold for any reason) and upon payment of any cancellation fees, or rescheduling charges. Restocking fee for canceled orders will equal 10% of the equipment value of restocked items. Contractor shall have the right without penalty or payment to cancel any order accepted, or to refuse or delay the shipment thereof, (i) if County fails to make promptly any payment due Contractor or to meet any other reasonable requirements established by Contractor, (ii) if any act or omission on the part of County delays Contractor's performance, or (iii) if County's credit becomes impaired. In any such event Contractor shall be entitled to receive reimbursement for its reasonable and proper cancellation charges.

14. *Non-Waiver of Default; Remedies:* In the event of any default by County under this or any other contract between Contractor and County, Contractor may decline to make further shipments. If Contractor elects to continue to make shipments, Contractor's action shall not constitute a waiver of any default by County or in any way affect Contractor's legal remedies for any such default. All Contractor's rights and remedies, whether evidenced hereby or by any other contract or document, shall be cumulative and nonexclusive and may be exercised singularly or concurrently.

15. *U.S. Government Contracts:* If the products to be furnished under the contract are to be used in the performance of a U.S. Government contract or subcontract, the Government contract number and a statement to that effect shall appear on County's purchase order. If County's purchase order includes all of said information and if said order is accepted in writing by an authorized officer of Contractor with knowledge of said information, then those clauses of the applicable Government procurement regulations which are mandatorily required by Federal statute or regulation to be included in this contract (and only such mandatory clauses) shall be incorporated herein by reference provided, however, that in the case of items to be delivered hereunder that constitute "Commercial Items" as defined in Section 2.101 of the Federal Acquisition Regulation ("FAR"), no such clauses set forth in the Government procurement regulations other than FAR 52.232-33, FAR 52.232.34, and those set forth in Paragraph (e) of the clause set forth at FAR 52.212-5 shall be incorporated in and apply to this contract, and provided, further, that in no event shall this contract be deemed to incorporate by reference any clause set forth in the Government procurement regulations that would in any way impair or diminish Contractor's rights and prerogatives under Paragraphs 8, 9, 11 or 12 hereof.

16. *Export:* Regardless of any disclosure made by County to Contractor of an ultimate destination of Contractor products, County will not export either directly or indirectly any Contractor product, or any system incorporating said product, without first obtaining all required licenses and permits from the United States Department of Commerce and any other relevant agencies or departments of the United States government.



Approved by County Counsel