

**DESIGN-BUILD AGREEMENT
FOR
FIRE VEHICLE EXHAUST EXTRACTION SYSTEM,
GENERAL SERVICES – FIRE STATION NOS. 13 & 14**

This Agreement for Construction (“Agreement”) is entered into on this _____ day of _____, 2024, by and between the CITY OF RIVERSIDE, a California charter city and a municipal corporation (“City”) and AIR EXCHANGE, INC., a California corporation, 1141 E. Philadelphia Avenue, Ontario, CA 91761, State Contractor’s License No. 664135, (“Design-Build Entity”). Hereinafter, the City and the Design-Build Entity may be referred to collectively as the “Parties.”

ARTICLE 1 – SCOPE OF WORK AND DESIGN SERVICES

1.1 Scope of Work. Design-Build Entity shall furnish all engineering design, labor, equipment and materials for, and perform the work of Fire Vehicle Source Exhaust Extraction System, General Services – Fire Station Nos. 13 & 14, which is located in Riverside, CA, which is covered in Design-Build Entity’s Proposal (the “Work”).

1.2 Contract Documents. Design-Build Entity shall perform the Work in accordance with the provisions and requirements of the following Contract Documents:

- (1) Design-Build Entity’s Proposal attached hereto as Exhibit “B;”
- (2) This Agreement, as signed by the Parties, including Exhibit “A” – Workers’ Compensation Certification, and all documents, maps, texts and items referred to in the foregoing documents;
- (3) Change Orders and other modifications issued after execution of this Agreement;
- (4) Permits from the City’s Building, Fire, Planning, Public Works and Public Utilities Departments and similar governmental approvals for the Work required by applicable law;
- (5) The 2018 Edition of the Standard Specifications for Public Works Construction (“Standard Specifications”) written by Public Works Standards, Inc., and any special provisions;

The provisions of the Special Provisions (“Special Provisions”) shall take precedence over any conflicting provisions in the Standard Specifications and the specific terms and conditions of this Agreement shall control and have precedence over any contradictory or inconsistent terms or conditions included in any of the Contract Documents and shall be controlling in questions of interpretation.

These Contract Documents are incorporated herein and are intended to be correlative and constitute Design-Build Entity’s performance obligations.

Equalization Operations Memo 1023. Design-Build Entity shall provide City with proof of such filing prior to City's issuance of the Notice to Proceed.

In accordance with Section 22300 of the California Public Contract Code, Design-Build Entity may substitute securities for any monies withheld by City to ensure performance of the Contract. Such substitution shall be made at the request and expense of Design-Build Entity. Securities equivalent to the amount withheld may be deposited with City or with a state or federally chartered bank as escrow agent. Securities eligible for substitution shall include those listed in Section 16430 of the Government Code, bank or saving and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Design-Build Entity and City.

2.2 Changes to the Contract Price. Design-Build Entity shall not be compensated for any extra materials used or time expended over and above the Contract Price, unless prior written approval for the same has been granted by the City.

2.3 Payment Procedures.

Within sixty (60) calendar days after City accepts final completion of the work and issues the Notice of Completion, excluding Plant Establishment, if applicable, City shall pay Design-Build Entity the amounts City deducted and retained from Design-Build Entity's progress payments, except such sums which are required by applicable law or authorized by the Contract to be further retained. In the event of a dispute between City and Design-Build Entity concerning the amount of final payment due, the City may withhold from final payment, including Liquidated Damages provided forth in the Contract Documents, together with an amount not to exceed 150% of the value of disputed amounts for incomplete or non-conforming work.

ARTICLE 3 – TIME FOR PERFORMANCE

3.1 Date of Commencement/Notice to Proceed. The date of commencement of the Work shall be established in a written Notice to Proceed issued by the City. The City will not issue a Notice to Proceed to the Design-Build Entity until this Agreement, bonds and insurance documents have been executed and/or approved by the City.

3.2 Contract Term. Design-Build Entity shall perform the Work in a diligent manner and shall complete all of the Work of the Contract, excluding any Plant Establishment, if applicable, one hundred twenty (120) working days after the Notice to Proceed has been issued.

ARTICLE 4 – LIQUIDATED DAMAGES

[INTENTIONALLY LEFT BLANK]

ARTICLE 5 – CLAIMS AND DISPUTES

5.1 Notice of Claims. Design-Build Entity acknowledges and agrees that its failure to submit any claim arising under this Contract in accordance with the Special Provisions, shall

certified statement that Design-Build Entity has no employees, and acknowledging that if Design-Build Entity does employ any person, the necessary certificate of insurance will immediately be filed with City. Any Certificate filed with the City shall provide that City shall be given ten (10) days prior written notice before modification or cancellation thereof.

8.3 **Carrier Rating.** Design-Build Entity's workers' compensation insurance carrier shall be authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger.

8.4 **Subcontractor Worker's Compensation Insurance.** Design-Build Entity shall require each of its Subcontractors to obtain and maintain for the duration of this Agreement, complete workers' compensation insurance, meeting or exceeding the coverage's and amounts that California law requires.

ARTICLE 9 – DESIGN-BUILD ENTITY'S LIABILITY INSURANCE

9.1 **Minimum Scope.** Prior to City's execution of this Agreement and Design-Build Entity's commencement of Work, Design-Build Entity shall secure, submit proof of and shall thereafter maintain without interruption, until completion of the Design-Build Entity, such commercial general, automobile liability, professional liability, builders risk and/or installation floater insurance as shall protect Design-Build Entity, its Subcontractors and the Additional Insured's from any and all claims for damages for personal injury, including accidental death, as well as any and all claims for property damage which may arise from or which may concern operations under the Contract, whether such operations be by or on behalf of Design-Build Entity, any subcontractor or anyone directly or indirectly employed by, connected with or acting for or on behalf of any of them.

9.2 **Carrier Ratings.** All liability insurance shall be issued by an insurance company or companies authorized to transact liability insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger.

9.3 **Minimum Limits.** Design-Build Entity shall maintain minimum limits of insurance as follows:

9.3.1 Commercial General Liability: Design-Build Entity's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence, an aggregate limit for products/completed operations in the amount not less than \$2,000,000.

Commercial General Liability. Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001). This coverage shall include:

- i. Manufacturers and Contractors liability,

The Design-Build Entity shall require that each Design Consultant maintain professional liability coverage. Each Design-Consultant's professional liability policy must provide coverage for claims arising from the negligent acts, errors or omissions from professional design services performed by Design Consultant, including liability assumed under and arising from the Agreement.

Each Design-Consultant's professional liability policy must provide limits of liability in an amount not less than: one million dollars (\$1,000,000) per claim; and two million dollars (\$2,000,000) in the aggregate. Design Consultant shall be responsible for the full amount of all deductibles/self-insured retention per claim for coverage under the Professional Liability Insurance policy.

9.3.5 Pollution Liability and Excess Liability Insurance. Prior to City's execution of the Agreement Design-Build Entity shall secure, and shall thereafter maintain without lapse of coverage until completion of the Agreement, pollution liability insurance and/or Excess/Umbrella Liability coverage in the minimum amount of \$1,000,000. Design-Build's Pollution Liability and Excess/Umbrella Liability coverages shall be maintained continuously for a minimum of five (5) years after final completion and acceptance of all Work under this Agreement.

9.4 **Notice of Cancellation and Renewals.** The policies shall not be canceled unless thirty (30) days prior written notification of intended cancellation has been given to City by certified or registered mail (this obligation may be satisfied in the alternative by requiring such notice to be provided by Design-Build Entity's insurance broker and set forth on its Certificate of Insurance provided to City). Design-Build Entity agrees that upon receipt of any notice of cancellation or alteration of the policies, Design-Build Entity shall procure within five (5) days, other policies of insurance similar in all respects to the policy or policies to be cancelled or altered. Design-Build Entity shall furnish to the City copies of any endorsements that are subsequently issued amending coverage or limits within fourteen (14) days of the amendment.

9.5 **All Coverage's.** The insurance policy or policies shall also comply with the following provisions:

- a. Policies shall include premises/operations, products completed operations, independent contractors, owners and contractors' protection, explosion, collapse, underground hazard, broad form contractual, personal injury with employment exclusion deleted, and broad form property damage.
- b. The policy shall be endorsed to waive any right of subrogation against the City and its subconsultants, employees, officers, agents and directors for work performed under this Agreement.
- c. If policies are written on a claims made basis, the certificate should so specify and the policy must continue in force for **five (5) years** after completion of the Project. The retroactive date of the coverage must also be listed.

Contract; or (3) the availability, or affordability, or both, of increased liability insurance coverage.

9.10 Design-Build Entity's Insurance for Other Losses. The Design-Build Entity and its Subcontractors of every tier shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Design-Build Entity's (or Subcontractors') employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Design-Build Entity, or the Design-Build Entity's agents, suppliers or Subcontractors as well as to any temporary structures, scaffolding and protective fences.

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

9.12 Subcontractors' Insurance. The Design-Build Entity's shall include in all subcontracts a requirement that the Subcontractors of every tier shall obtain and maintain, at a minimum, all insurance required by Articles 9 and 10 of this Agreement except that the limits of liability and deductibles shall be in amounts determined by the Design-Build Entity, based on the degree of hazardous exposure according to the Work performed by each Subcontractor and the size of each subcontract.

Design-Build Entity's shall ensure that any professional engineer retained on its behalf to provide supplemental plans and engineering calculations required in conjunction with the Work, maintains professional liability insurance during the entire term of this Agreement. Such insurance shall be in the minimum amount of \$1,000,000 to protect City from claims resulting from the engineer(s) activities. This minimum amount of coverage shall not constitute any limitation or cap on Design-Build Entity's indemnification obligations set forth herein.

The City reserves the right to request certificates of insurance from the Design-Build Entity for each Subcontractor. The Design-Build Entity acknowledges that regardless of insurance obtained by its Subcontractors, the Design-Build Entity will be responsible to the City for any and all acts of its Subcontractors.

ARTICLE 10 - INDEMNITY/DUTY TO DEFEND

10.1 Indemnity. Except as to the sole negligence, active negligence or willful misconduct of the City, Design-Build Entity assumes liability for and agrees, at Design-Build Entity's sole cost and expense, to promptly and fully indemnify and hold the City, its City Council, and all of its respective officials, officers, directors, employees, managers, commission members, representatives, agents, council members, ("Indemnitees"), harmless from and against any and all loss, damage, claims, allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceedings, causes of action, demands, costs, judgments, liens, stop notices, penalties, damages, losses, anticipated losses of revenue, expenses (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, or investigation expenses), costs, including attorneys' fees, or losses of any kind or nature whatsoever, whether actual, threatened or alleged, arising out of, resulting from or is in any way

set forth in the Agreement and do not limit, in any way, the applicability, scope, or obligations set forth in such insurance provisions. The purchase of insurance by the Design-Build Entity with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations. In any and all claims against the Indemnitees by any employee of the Design-Build Entity, any Subcontractor, any supplier of the Design-Build Entity or Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the obligations under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Design-Build Entity or any Subcontractor or any supplier of either of them, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Failure of the City to monitor compliance with these requirements imposes no additional obligations on the City and will in no way act as a waiver of any rights hereunder.

10.5 Withholding to Secure Obligations. In the event an Indemnity Claim arises prior to final payment to Design-Build Entity, the City may, in its sole discretion, reserve, retain or apply any monies due Design-Build Entity for the purpose of resolving such Indemnity Claims; provided, however, the City may release such funds if the Design-Build Entity provides the City with reasonable assurances of protection of the Indemnitees' interests. The City shall, in its sole discretion, determine whether such assurances are reasonable.

10.6 Survival of Indemnity Obligations. Design-Build Entity's obligations under this Article are binding on Design-Build Entity's and its Subcontractors' successors, heirs and assigns and shall survive the completion of the Work or termination of the Design-Build Entity's performance of the Work.

10.7 Independent Contractor. Design-Build Entity shall at all times during its performance of the Work retain its status as an independent contractor. Design-Build Entity's employees and agents shall under no circumstances be considered or held to be employees or agents of City and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of Design-Build Entity or its employees and agents.

ARTICLE 11 – PREVAILING WAGES

11.1 Public Work Project.

This Project is a public work as defined in California Labor Code Section 1720. Design-Build Entity and all Subcontractors of any tier are required to pay all workers employed in the execution of the Work not less than the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations ("DIR") under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination of prevailing rates is available on-line at www.dir.ca.gov/dlsr/DPreWageDetermination.htm and is referred to and made a part hereof; the wage rates therein ascertained, determined and specified are referred to and made a part hereof as though fully set forth herein. Per Senate Bill 854 (2014), Design-Build Entity and subcontractors shall register with the Department of

12.3 City's Right to Access and Audit Design-Build Entity's Project Documents.

12.3.1 If the Design-Build Entity submits a claim to the City for additional compensation, the City shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the Design-Build Entity's books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted. The right to audit shall include the right to inspect the Design-Build Entity's plant, or such parts thereof, as may be or have been engaged in the performance of the Work. The Design-Build Entity further agrees that the right to audit encompasses all subcontracts and is binding upon Subcontractors. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the City deems desirable during the Design-Build Entity's normal business hours at the office of the Design-Build Entity. The Design-Build Entity shall make available to the City for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the City.

12.3.2 The City and/or its authorized auditors or representatives, shall have access to and the right to examine, audit, excerpt, transcribe, and reproduce any of the Design-Build Entity's records for a period of at least three (3) years after termination of the Design-Build Entity and/or Final Payment. Such records include without limitation, journals, ledgers, records of accounts payable and receivable, profit and loss statements, bank statements, invoices, receipts, subcontracts, agreements, notes, correspondence, memoranda, and any documents generated and received in Design-Build Entity's performance of this Contract. Upon written notice by the City, Design-Build Entity shall promptly make all such records available to Owner and/or its authorized auditors or representatives and cooperate with the Owner and its authorized auditors or representatives in examining, auditing, excerpting, transcribing and reproducing the records.

12.4 **Venue.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the Superior Court of California, County of Riverside, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

12.5 **No Estoppel or Waiver by City.** No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be otherwise agreed in writing. The waiver by the City of any breach or violation of any term, covenant or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent payment of any monies or fee by the City which may become due hereunder shall not be deemed to be a waiver of any preceding

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

CITY OF RIVERSIDE, a California and municipal corporation

AIR EXCHANGE, INC., a California corporation

By: _____
City Manager

By: _____
Dennia Salindo Contract Administrator
[Printed Name and Title]

Attest: _____
City Clerk

By: _____
[Printed Name and Title]

Certified as to Availability of Funds:

By: *[Signature]*
Chief Financial Officer

APPROVED AS TO FORM:

By: *[Signature]*
Susan Wilson
Assistant City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Bernardino)

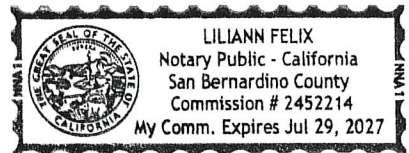
On May 23rd, 2024 before me, Liliann Felix, notary public
(insert name and title of the officer)

personally appeared Dennia Galindo,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Liliann Felix (Seal)



Doc: agreement for construction 13 & 14. Station.
Date: 5/23/24

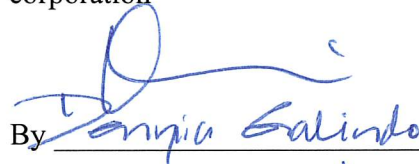
Exhibit "A"

WORKERS' COMPENSATION 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.

DATED: _____

AIR EXCHANGE, INC., a California corporation


By 
Contract Administrator

Printed Name and Title

Quotation

Page: 2/4
Quotation Number: 6048011



Quantity	Item	Description	Net amount
2 Piece	0000201730	Ducting small	30,731.00
			
2 Each	0000201717	Rental costs platform / climb material	7,500.00
2 Each	0000000007	Shipping and Handling	5,750.00
2 Each	0000201717	Tax @ 8.75%	10,071.08
2 Each	0000004387	Labor	56,265.72
2 Each	0000201717	Bonding	6,259.50
Sub total			187,694.46
Net total			187,694.46

VEHICLE EXHAUST SOURCE CAPTURING SYSTEM - RIVERSIDE CITY FIRE STATIONS 13 & 14

Scope of Work: Installation of (2) MRP-40 with Crab Return system to include OS3 operating system, 5HP TEV fan, Filter Scrubber Box with filters, Silencer, Silencer cap, Ducting, Transmitter, Receiver, Pressure switch, Tailpipe adapter, Labor @ prevailing wages, Freight /Shipping, Rentals and Tax

*****DOES NOT INCLUDE, electrical load calculations, structural calculations, Bonds (can be added if required) Blocking & painting of any kind, Carbon monoxide sensors, Structural or electrical Engineering costs of any kind or any material or labor as the result of any required Structural or electrical Engineering calculations, Any other Engineering fees or drawings of any kind beyond what is supplied with the quote tailpipe conversions, permits for project. Terms are also listed at end of proposal*****

Delivery of system will be within 12 weeks of proposal acceptance.

Payment to be made as follows: Progressive Invoicing

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Workman's compensation Insurance. "Air Exchange

Authorized Signature:"

Title:

Note: This proposal may be withdrawn by Air Exchange if not accepted within 90 days.

Quotation

Page: 4/4
Quotation Number: 6048011



Air Exchange, Inc.

7. Any/all materials and labor not listed on this proposal.
8. Any VFD's, Fans or Interlocks.
9. Remote Control Receiver and Transmitter option.
10. Blocking, Roof Curbs, Roof Jacks.
11. Electrical labor and materials.
12. Air Testing, Air Balancing.
13. Painting.
14. Bonds and permit fees of any kind.
15. Engineering fees of any kind including structural calculations or any labor or materials resulting from any structural calculations.
16. Engineered Drawings

Best Regards,

John Whitney
Air Exchange
john.whitney@airexchange.com

Our general conditions of sales and delivery shall apply.

Signature when agreed (if appropriate)
