

AGREEMENT FOR THE INSTALLATION OF AN AIR CONDITIONING UNIT FOR
THE CITY OF REDLANDS' EOC UTILITY ROOM

This agreement for the installation of an air conditioning unit and appurtenances for the City of Redlands' EOC Utility Room ("Agreement") is made and entered into this 16th day of March, 2010 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City"), and Burgeson's Heating and Air Conditioning, Inc. ("Contractor"). City and Contractor are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

In consideration of the mutual promises contained herein, City and Contractor agree as follows:

ARTICLE 1 - ENGAGEMENT OF CONTRACTOR

- 1.1 City hereby retains Contractor for the installation of an air conditioning unit and appurtenances for City's EOC Utility Room located at City's Corporation Yard, 1270 W. Park, Redlands, CA 92373 (the "Work"). The details and scope of the Work to be performed by Contractor are specified in Exhibit "A," which is attached hereto and incorporated herein by this reference.
- 1.2 Contractor and its subcontractors shall possess all appropriate State contractors' licenses required for the Work to, and shall not be debarred pursuant to Labor Code sections 1777.1 and 1777.7.

ARTICLE 2 - RESPONSIBILITIES OF CONTRACTOR

- 2.1 Contractor shall comply with all applicable federal, state and local laws and regulations in the performance of the Work including, but not limited, to all Labor Code and prevailing wage laws and non-discrimination laws, including the Americans with Disabilities Act. Pursuant to Labor Code section 1773.2, copies of the prevailing rates of per diem wages as determined by the Director of the California Department of Industrial Relations for each craft, classification or type of worker needed to undertake the Work are on file at City's Municipal Utilities and Engineering Department, located at the Civic Center, 35 Cajon Street, Suite 15A (Mailing: P.O. Box 3005), Redlands, California 92373.
- 2.2 Contractor acknowledges that if it violates the Labor Code provisions relating to prevailing wages that City may enforce such provisions by withholding payments to Contractor or its subcontractors pursuant to Labor Code section 1771.6.
- 2.3 If Contractor executes an agreement with a subcontractor to perform any portion of the Work, Contractor shall comply with Labor Code sections 1775 and 1777.7, and shall provide the subcontractor with copies of the provisions of Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815. Contractor acknowledges that the statutory provisions establishing penalties for failure to comply with state wage and hour laws and to pay prevailing wages may be enforced by City pursuant to Labor Code sections 1775 and 1813.
- 2.4 Contractor and its subcontractors shall comply with the provisions of Labor Code section 1776 regarding payroll records maintenance, certifications, retention and inspection.

- 2.5 Contractor acknowledges that eight (8) hours constitutes a legal day's work pursuant to Labor Code section 1810.
- 2.6 Contractor shall comply with the provisions of Labor Code section 1777.5 as to apprenticeships, and Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815.
- 2.7 Prior to and during any excavation, Contractor shall comply with Government Code section 4216 et seq.
- 2.8 Pursuant to Public Contract Code section 7103.5(b), Contractor offers and agrees to assign to City 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 Agreement

ARTICLE 3 - PERIOD OF SERVICE

- 3.1 Contractor shall commence the Work upon City's delivery to Contractor of a written "Notice to Proceed."
- 3.2 Contractor shall complete the Work within forty (40) calendar days from and after the date of the City's issuance to Contractor of the Notice to Proceed.

ARTICLE 4 - PAYMENT AND NOTICE

- 4.1 City shall pay Contractor the sum of Ten Thousand Four Hundred Ninety-Five Dollars (\$10,495.00) as complete compensation for the Work.
- 4.2 Payments by City to Contractor shall be made within thirty (30) days after City's receipt and approval of Contractor's invoice, by warrant payable to Contractor.
- 4.3 All notices shall be made in writing and shall be given by personal delivery or by mail. Notices sent by mail shall be addressed as follows:

City:

Tim Wilson, PE RA
Municipal Utilities and Engineering Department
City of Redlands Suite 15A
P.O. Box 3005,
Redlands, CA 92373

Contractor:

Bob Evans, Manager
Burgeson's Heating and Air Conditioning Inc.
420 Tennessee Street
Redlands, CA 92374-2952

When so addressed, such notices shall be deemed given upon deposit in the United States mail; in all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this section 4.3.

- 4.4 Pursuant to Public Contract Code section 22300, Contractor has the option to deposit securities with an Escrow Agent as a substitute for any monies withheld by City to ensure Contractor's performance pursuant to Public Contract Code section 22300.
- 4.5 Pursuant to Government Code section 4215, City assumes the responsibility for the timely removal, relocation or protection of existing main or trunkline utility facilities located on the site of the Work, if such utilities are not identified by City in the plans and specifications attached as part of Exhibit "A." City shall compensate Contractor for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy and for equipment on the Project necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay in completion of the Work, when such delay was caused by the failure of City or the owner of the utility to provide for removal or relocation of such utility facilities. However, City is not required to indicate the presence of existing service laterals or appurtenances whenever presence of such utilities on the Work site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the Work site, provided that City must identify main or trunklines in the plans and specifications

ARTICLE 5 - INSURANCE AND INDEMNIFICATION

- 5.1 Contractor's Insurance to be Primary. All insurance required by this Agreement shall be maintained by Contractor throughout Contractor's performance of the Work, and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City.
- 5.2 Workers' Compensation and Employer's Liability Contractor shall secure and maintain Workers' Compensation and Employer's Liability insurance for its employees throughout the performance of the Work pursuant to Labor Code sections 3700 and 1860, in an amount which meets statutory requirements, with an insurance carrier acceptable to City. The insurance policy shall include a provision prohibiting the policy's cancellation except upon thirty (30) days prior written notice to City. Contractor shall execute and deliver to City a Worker's Compensation Insurance Certification in the form attached hereto as Exhibit "B" prior to commencement of any Work.
- 5.3 Hold Harmless and Indemnification. Contractor shall indemnify, hold harmless and defend City and its elected officials, employees and agents from and against any and all claims, losses and liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by any negligent or intentionally wrongful act or omission of Contractor, and its officers, employees and agents, in performing the Project.

- 5.4 Assignment. Contractor is expressly prohibited from assigning any of the work associated with the Work without the express prior written consent of City. In the event of agreement by the Parties to assign a portion of the Work, Contractor shall add the assignee as an additional insured to its insurance policies and provide City with the insurance endorsements prior to any work being performed by the assignee. Assignment does not include printing or other customary reimbursable expenses that may be provided for in this Agreement.
- 5.5 Comprehensive General Liability Insurance. Contractor shall secure and maintain in force throughout the duration of the Work comprehensive general liability insurance, with carriers acceptable to City, with minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for public liability, property damage and personal injury. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City. A certificate of insurance and endorsements shall be delivered to City prior to commencement of the Work.
- 5.6 Business Auto Liability Insurance. Contractor shall secure and maintain in force throughout the duration of the Project business automobile liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall include all Contractor owned vehicles used on the Project, hired and non-owned vehicles, and employee non-ownership vehicles. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City. A certificate of insurance and endorsements shall be delivered to City prior to commencement of the Work.
- 5.7 Liquidated Damages. The failure of Contractor to complete the work within the time allowed will result in damages being sustained by City. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Contractor shall pay to City, or have withheld from monies due it, the sum of \$500 for each consecutive calendar day in excess of the specified time for completion of the Work. Execution of this Agreement shall constitute agreement by City and Contractor that \$500 per day is the estimated damage to City caused by the failure of Contractor to complete the Work within the allowed time. Such sum represents liquidated damages and shall not be construed as a penalty, and may be deducted from payments due the Contractor if such delay occurs.

ARTICLE 6 - GENERAL CONSIDERATIONS

- 6.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to recover its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.
- 6.2 All documents, records, drawings, electronic data files and data base, photographic prints and negatives, designs and specifications, cost estimates, and other documents developed by Contractor for the Work shall become the property of City and shall be delivered to City upon

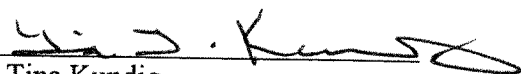
completion of the Work.

- 6.3 Contractor is, for all purposes under this Agreement, an independent contractor with respect to the performance of the Work and not an employee of City. All personnel employed by Contractor to perform the Work are for its account only, and in no event shall Contractor or any personnel retained by it be deemed to have been employed by City or engaged by City for the account of, or on behalf of, City. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the Parties.
- 6.4 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Work by City.
- 6.5 City may terminate this Agreement for any reason, at any time at its sole discretion, upon five (5) calendar days' prior written notice to Contractor.
- 6.6 Upon receipt of a termination notice, Contractor shall (1) promptly discontinue all work and (2) deliver or otherwise make available to City, copies of any data, design calculations, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by Contractor in performing the Work. Contractor shall be compensated on a pro-rata basis for any work completed up until notice of termination.
- 6.7 This Agreement, including the exhibits incorporated by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein and any prior negotiations, proposals and agreements relating to the subject matter hereof are superseded by this Agreement. Any amendment to this Agreement shall be in writing and approved by City and Contractor.
- 6.8 This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 6.9 Claims by Contractor in the amount of Three Hundred Seventy-Five Thousand Dollars (\$375,000) or less shall be made by Contractor and processed by City pursuant to the provisions of Part 3, Chapter 1, Article 1.5 of the Public Contract Code (commencing with section 20104). All claims shall be in writing and include the documents necessary to substantiate the claim.
- 6.10 If any provision or of this Agreement is held to be void or unenforceable under any law or regulation, it shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor.

IN WITNESS WHEREOF, duly authorized representatives of the Parties have signed in confirmation of this Agreement.

CITY OF REDLANDS

ATTEST:

By 
Tina Kundig
Finance Director / Treasurer


City Clerk

Burgeson's Heating and Air Conditioning Inc.

By 
Bob Evans, Manager

Date 3/10/2010



620 TENNESSEE ST., REDLANDS, CA 92374-2952
(909) 793-3685 • Lic. No. 263871

PROPOSAL SUBMITTED TO City Of Redlands		PHONE 909-798-7585	DATE January 19, 2010
STREET 35 Cajon St.		JOB NAME Redlands Police Dept IT Room	
CITY, STATE, AND ZIP CODE Redlands, Ca 92373		JOB LOCATION 1270 W. Park Bldg Redlands, Ca	
ARCHITECT	DATE OF PLANS	DATE PROMISED	JOB PHONE

We hereby submit specifications and estimates for:

Furnish and install air conditioning system as follows.

A YORK model # XP060C00N1AAA2 5 ton 230 volt single phase packaged air conditioning unit using R-410 refrigerant shall be installed on the roof on a shop fabricated roof curb.

Unit to include a field installed low ambient control to allow the unit to properly operate in low ambient conditions.

Installation shall include 4 supply registers and 2 return grilles.

The supply and return air ductwork shall be R-8 flexible fiberglass duct with insulated galvanized iron fittings.

Job to include low voltage wiring, line voltage wiring, condensate piping, single phase fused service disconnect, Totaline 7 day Title 24 approved programmable thermostat, startup of equipment.

Also to include removal of old equipment.

Note: This proposal is based on prevailing wages.

Burgeson's Heating and Air Conditioning Incorporated provides a one-year guarantee on material and workmanship. Extended warranties provided by manufacture do not include labor beyond first year.

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

TEN THOUSAND FOUR HUNDRED NINETY FIVE AND 00/100----- dollars (\$ 10,495.00).

Payment to be made as follows:

NET UPON COMPLETION

All payments delinquent over thirty days shall bear an interest and service charge of 1 1/2% per month. Should suit be necessary to collect any amount due hereunder owner agrees to pay such sum as the court deems reasonable as and for attorney's fees. Contractors are required by law to be licensed and regulated by the Contractors State Board. Any questions concerning a contractor may be referred to the registrar of the board whose address is: Contractors' State Board - 1020 N Street, Sacramento, California 95814. Phone (916) 366-5153.

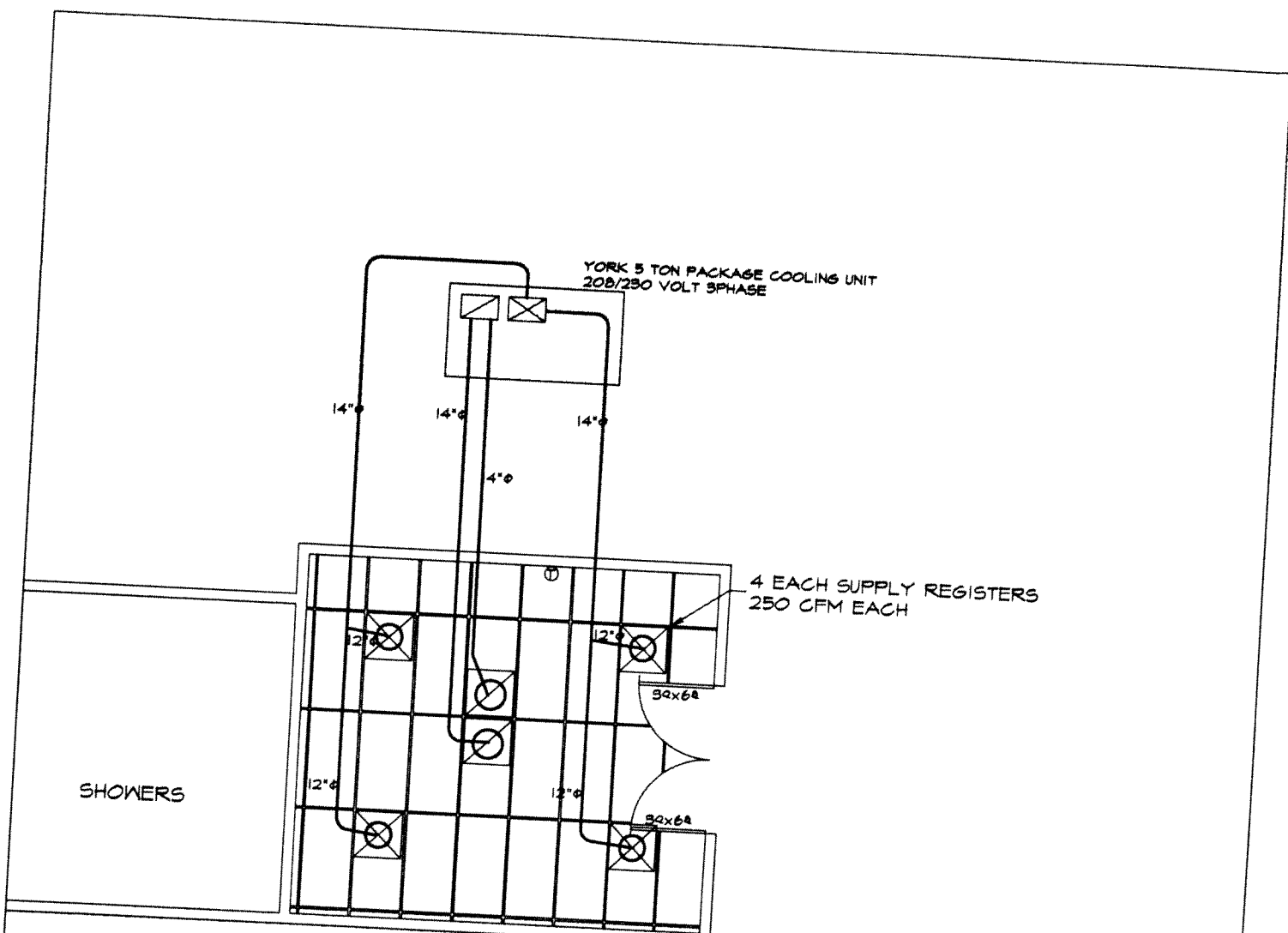
Authorized Signature: Bob Evans
Note: This proposal may be withdrawn by us if not accepted within 10 days.

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____
Signature _____

Date of Acceptance: _____

EXHIBIT "B"



REDLANDS POLICE DEPARTMENT
1270 W. PARK AVE.
REDLANDS, CA 92373
IT ROOM A/C SYSTEM

BURGESON'S
HEATING & AIR CONDITIONING INC.
620 TENNESSEE ST.
REDLANDS, CA 92374
OFC 909-793-3685 FAX 909-792-2149
WWW.BURGESONS.COM

WORKERS' COMPENSATION INSURANCE CERTIFICATION

Project: AC unit and appurtenances for the EOC Utility Room at 1270 W. Park, Redlands, CA 92373

Every employer except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurer duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

I am aware of the provisions of Section 3700 of the Labor Code which requires 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 Agreement. (Labor Code §1861).

Burgeson's Heating and Air Conditioning Inc.

Date: _____

By: _____
Bob Evans, Manager

263871
Contractor's License No.