

# Ontario Refrigeration

(858) 675-6300

## PROJECT AGREEMENT FOR BUILDING ENVIRONMENTAL SYSTEMS

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### AGREEMENT BETWEEN:

San Diego

Jeremy Murphy  
Literacy First Charter Schools  
1012 East Bradley  
El Cajon, CA 92021

AND

**Ontario Refrigeration Service, Inc.**  
11305 Rancho Bernardo RD. Suite 113  
San Diego, CA 92127

hereinafter CUSTOMER

hereinafter Ontario Refrigeration

### SERVICES WILL BE PROVIDED AT THE FOLLOWING LOCATION(S):

Same

### ONTARIO REFRIGERATION WILL PROVIDE THE FOLLOWING TO CUSTOMER:

All labor, equipment, materials and hoisting to replace (4) split heat pump systems- Units 27, 28, 29 & 30.

- Demo, remove and recycle (4) 31-year-old heat pumps and fan coils.
- Provide and install (4) new Carrier 4-ton heat pump condensers on the roof, reuse existing platforms.
- Provide and install (4) Carrier matching fan coils, reuse the existing hangars and secondary drain pan.
- Chemically flush the existing refrigerant lines to accept the new refrigerant.
- Provide and install (4) new NEMA3R fused disconnect switches.
- Provide and install new plenums as necessary and connect to existing ductwork.
- Provide and install new condensate traps and overflow safety switches, connect to existing drains.
- Provide and install (4) new T-24 digital thermostats.
- Charge, startup and test systems.

Total Price: \$42,929.00

As a condition of performance, payments are to be made on a progress basis. Invoice payment must be made within ten (10) days of receipt. Any alteration or deviation from the above proposal involving extra cost or material or labor will become an extra charge over the sum stated above. This proposal will become a binding Agreement only after acceptance by Customer and approval by the President of Ontario Refrigeration as evidence by their signatures below. This Agreement sets forth all of the terms and conditions binding upon the parties hereto on the reverse hereof; and no person has authority to make any claim, representation, promise or condition on behalf of Ontario Refrigeration which is not expressed herein. Proposal valid for 45 days from original proposal date.

### CUSTOMER

### Ontario Refrigeration

\_\_\_\_\_  
Signature (Authorized Representative)

*Bill Addy*  
\_\_\_\_\_  
Signature (Sales Representative) Bill Addy

### Approved by Contractor:

\_\_\_\_\_  
Name (Print/Type)

\_\_\_\_\_  
Signature **Phil Talleur**

\_\_\_\_\_  
Title

\_\_\_\_\_  
**President**  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

SCOPE OF SERVICE

**PROJECT AGREEMENT FOR BUILDING ENVIRONMENTAL SYSTEMS**

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CONTRACTOR WILL PROVIDE THE FOLLOWING TO CUSTOMER (continued):

Exclusions:

1. Overtime labor
2. Ductwork
3. Air balancing
4. Engineering, permits and fees
5. Multiple phases and crane lifts
6. Roofing

# Additional Agreement Terms and Conditions

1. Ontario is obligated to perform only the items of project work listed on page 1 of this Agreement and any items described in any written change order hereafter signed by Customer and Ontario. As reasonably necessary to perform the specified work, Customer shall provide Ontario access to all equipment and work areas and shall allow Ontario to start and stop any equipment. Customer shall also provide Ontario's personnel with all Material Safety Data Sheets (MSDS) applicable to Ontario's work and as required by OSHA's Hazard Communication Standard Regulations. All work shall be performed during Ontario's normal working hours unless otherwise indicated on page 1.

2. Ontario warrants its workmanship to be free from defect for a period of thirty (30) days from the date said work is performed. If Ontario's workmanship proves to be defective within said thirty days, Ontario will repair or replace its work, at Ontario's option, and at no cost to Customer, provided, Customer has given Ontario written notice of said defect within 35 days of the date the defective work was originally performed. If any replacement item, materials, or equipment listed on page 1 should prove to be defective, Ontario shall assign to Customer the benefits of any manufacturer's warranty to the fullest extent.

any such warranty may be assigned by Ontario. Removal and replacement of any equipment or materials covered under a manufacturer's warranty will be at Customer's expense and at Ontario's then current rates.

3. Except as set forth in paragraph 2 of this Agreement, Ontario makes **NO WARRANTIES, EXPRESS OR IMPLIED**, concerning the work, labor, materials or equipment being provided by it under this Agreement, **and hereby excludes and disclaims all express and implied warranties**, including the implied warranties of merchantability and fitness for any particular purpose or use.

4. The price stated on page 1 is a discounted price contingent upon Ontario's receipt of payment by cash or check. The cash discount reflected in this price is five percent. Customer agrees to pay all invoices within ten (10) days of the invoice date. If payment in full is not received by Ontario within 15 days of the invoice date, all unpaid amounts shall accrue interest at the rate of 1.5% per month from the date of the invoice until paid in full. Ontario shall have the right to stop all work, including any warranty work, to the extent any invoice concerning the work described on page 1 has not been paid in full.

5. Ontario shall only perform the work specified on page 1 and no other work shall be performed without prior written authorization from Customer that is accepted, in writing, by Ontario and which sets forth the additional cost to be paid for such extra work.

6. It is understood and agreed that Ontario has NO responsibility for performing, completing or paying for any of the following items: a: Moving, modifying, or altering the building structure in any manner in order to carry out its obligations under this Agreement;

b. Identifying, abating, handling, encapsulating or removing any hazardous substance or material, except any refrigerant specially identified on page 1 for removal by Ontario;

c. Indemnifying Customer from any liability or damage related to Ontario's work, except for such liability or damage caused by the sole negligence of willful misconduct of Ontario or its employees that is not limited or waived under paragraph 8.

d. All taxes or other governmental charges relating to the Services, transfer, use, ownership, servicing or possession of any equipment relating to this Agreement.

7. To the fullest extent permitted by law, Customer shall indemnify, defend and hold harmless Ontario and its agents and

employees from and against all claims, damages, losses, and expenses, of every nature, including but not limited to attorney's fees, arising from or in any way related to the work, labor, equipment and materials being provided by Ontario under this Agreement, except that Customer shall not have any obligation to indemnify Ontario from such claims, damages, losses, and/or expenses that are attributable to the sole negligence of willful misconduct of Ontario or its employees.

8. In the event of any breach of contract by Ontario or damage or loss attributable to the tortious conduct of Ontario or one or more of its agents or employees, or any damage or loss for which Ontario might be held strictly liable, Ontario's liability for such damage or loss shall be limited to the dollar amount of this Agreement. Customer further agrees that Ontario does not have any liability to Customer, or Customer's agents, employees, tenants, lessees, or invitees, for any loss of use, loss of profit, delay damages, increased operating or maintenance costs, or any other special or consequential damages resulting from Ontario's performance of, or failure to perform, its obligations under this Agreement, all such damages being hereby waived and released by Customer. Customer also agrees that Ontario is not responsible for any loss or compensatory damages of Customer, or increased cost(s) for Ontario to perform this Agreement, where any such loss, damage or increased cost is attributable to Acts of God or other circumstances not reasonably foreseeable by the parties at the time they entered into this Agreement.

9. In the event of legal action or arbitration proceedings to enforce the terms of this Agreement, or any provisions herein, the successful and prevailing party shall be entitled to recover its reasonable attorney's fees and expert witness fees and expenses, in addition to any other relief to which that party may be entitled, at law or in equity. Any legal action or arbitration proceeding concerning any rights and liabilities relating to, or arising from, this Agreement or the work being performed under this Agreement, with the exception of any legal action for collection of amounts due, must be filed within one (1) year of the date of the event giving rise to any such claim under this Agreement.

10. The parties agree to resort to binding arbitration for the resolution of any claim either party may have against the other where the total value of either party's claim against the other, exclusive of interest, attorney's fees, and arbitration fees and costs, is less than \$75,000. Any arbitration under this agreement shall be conducted before the American Arbitration Association in accordance with its Fast Track Procedures in effect on the date this Agreement is signed. Under no circumstances shall any arbitrator have authority to issue any award in excess of \$75,000, exclusive of interest, attorney's fees, and arbitration fees and costs. All claims of either party in excess of \$75,000 shall be resolved through litigation within a court of competent jurisdiction in the county in which the work is performed.

11. Customer acknowledges that Ontario's employees are valuable assets to Ontario and Customer agrees that it will not hire any employee of Ontario for a period of 180 days after completion of the work described in this Agreement. In the event of a breach of this provision by Customer, Customer shall pay to Ontario the salary Ontario paid to that employee during the twelve months preceding Customer's breach of this provision, plus all expenses paid by Ontario to train that employee during the preceding two-year period.

12. Any notice that is required to be given under this Agreement must be in writing and sent via certified or registered mail to the address set forth on the first page of this Agreement for the party intended to receive such notice.

13. This document represents the entire agreement between Ontario and Customer and supersedes any prior or contemporaneous oral and written communications or agreements. This Agreement can only be modified in a writing that is signed by both parties. Any purchase order or other document hereafter issued by Customer shall only be for purposes of identification and/or billing and shall not serve to modify this Agreement in any respect.