

**AGENDA  
REGULAR MEETING  
CITY OF BANNING  
BANNING, CALIFORNIA**

January 13, 2015  
5:00 p.m.

Banning Civic Center  
Council Chambers  
99 E. Ramsey St.

*The following information comprises the agenda for a regular meeting of the City Council and a Joint Meeting of the City Council and the Banning Utility Authority.*

*Per City Council Resolution No. 2010-38 matters taken up by the Council before 9:00 p.m. may be concluded, but no new matters shall be taken up after 9:00 p.m. except upon a unanimous vote of the council members present and voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.*

**I. CALL TO ORDER**

- Invocation – Pastor Jona Campos with Canaan Assembly of God
- Pledge of Allegiance
- Roll Call – Councilmembers Miller, Peterson, Welch, Westholder, Mayor Franklin

**II. REPORT ON CLOSED SESSION**

**III. PUBLIC COMMENTS/CORRESPONDENCE**

PUBLIC COMMENTS – *On Items Not on the Agenda*

*A three-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to "share" his/her three minutes with any other member of the public. (Usually, any items received under this heading are referred to staff or future study, research, completion and/or future Council Action.) (See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.*

CORRESPONDENCE: Items received under this category may be received and filed or referred to staff for future research or a future agenda.

*The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsive, fair treatment to all and is the pride of its citizens.*

PRESENTATIONS:

1. Riverside County Fair & National Date Festival Queen & Court (ORAL)
2. Introduction of New Oak Glen Division Chief Steven Beach  
- by Battalion Chief Tim Chavez (ORAL)

APPOINTMENTS

1. City Council Committee Assignments . . . . . 1

**IV. CONSENT ITEMS**

*(The following items have been recommended for approval and will be acted upon simultaneously, unless a member of the City Council wishes to remove an item for separate consideration.)*

**Motion: That the City Council approve Consent Item 1 through 10**

**Items to be pulled \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ for discussion.**

*(Resolutions require a recorded majority vote of the total membership of the City Council)*

1. Approval of Minutes – Special Meeting – 12/09/14 (Closed Session) . . . . . 4
2. Approval of Minutes – Regular Meeting – 12/09/14 . . . . . 5
3. Approval of Minutes – Special Meeting – 12/16/14 (Closed Session) . . . . . 40
4. Report of Investments for November 2014. . . . . 41
5. Approval of Accounts Payable and Payroll Warrants for Month of  
November 2014. . . . . 48
6. Ordinance No. 1482 – Second Reading: An Ordinance of the City  
Council of the City of Banning, California, Adopting Zone Text  
Amendment No. 14-97501 and Zone Change No. 14-3502 to Establish  
An Affordable Housing Opportunity (AHO) Overlay Zone in  
Conformance with the General Plan Housing Element . . . . . 51
7. Resolution No. 2015-04, Approving the Purchase of PowerEdge VRTX  
Blade Servicer, Controllers and Necessary Hardware, Software, Licenses  
and Implementation Services for the City of Banning Computer  
Virtualization Project . . . . . 57
8. Resolution No. 2015-05, Approval of City’s Disadvantaged Business  
(DBE) Program Implementation Agreement with California Department  
of Transportation (Caltrans). . . . . 84
9. Notice of Completion for Project No. 2013-03, Construction of Parking  
Lot Improvements at Repplier Park. . . . . 96
10. Resolution No. 2015-07, Adopting a Statement of Investment Policy . . . . 100

- Open for Public Comments
- Make Motion

**RECESS REGULAR CITY COUNCIL MEETING AND CALL TO ORDER A JOINT MEETING  
OF THE BANNING CITY COUNCIL AND THE BANNING UTILITY AUTHORITY.**

V. CONSENT ITEM

1. Resolution No. 2015-02 UA, Approval the Dynamic Survey of Well  
Nos. 25 and 26 to Address High Contaminate Levels ..... 115

Recess joint meeting and reconvene the regular City Council Meeting.

VI. REPORTS OF OFFICERS

1. Resolution No. 2015-06: (i) Approving the Subcommittee Report Regarding Commercial Infeasibility of a Hotel on the Hotel Parcel, (as defined in certain Purchase and Sale Agreement between the City of Banning and JMA Village, LLC dated June 10, 2012); (ii) Finding that JMA Village, LLC used diligent good faith efforts to find a hotel user for the Hotel Parcel but was unsuccessful; and (iii) Approving Developer's proposed alternate tenant for the Hotel Parcel being the Riverside County Probation Department.  
Staff Report. .... 135

Recommendations: **That the City Council: 1) adopt Resolution No. 2015-06: Approving the report by the City Council's Subcommittee ("Subcommittee") that a hotel on the Hotel Parcel (as defined in that certain Purchase and Sale Agreement ("Purchase Agreement") between the City of Banning and JMA Village, LLC ("Developer") which report determined that a hotel on the Hotel Parcel is not economically feasible based on the Marketing Report prepared by NAI Capital ("NAI Capital Report") and other information provided by Developer to the Subcommittee; 2) Finding that, based on the (NAI Capital Report, other information provided by the Developer to the Subcommittee and the investigation by the Subcommittee, Developer used diligent good faith efforts to find a hotel user but was unable to do so; and 3) Approving a proposed alternate tenant for the Hotel Parcel being the Riverside County Probation Department ("Department"). Passage of the Resolution is required in order to allow the Department's tenancy on the Hotel Parcel.**

2. Resolution No. 2015-01, Authorizing the Lease of One (1) New Elgin CNG Crosswind J Sweeper with an Option to Purchase.  
Staff Report. .... 152

Recommendations **That the City Council: 1) adopt Resolution No. 2015-01, Authorizing the lease, with an option to purchase, of one (1) 2014 New Elgin CNG Crosswind J Street Sweeper (Model No. J30243) from Haaker Equipment Company utilizing the National Joint Powers Alliance (NJPA) Cooperative Agreement for an amount "Not to Exceed" \$325,000.00; 2) Authorizing the Administrative Services Director to make necessary related budget adjustments and appropriations for the lease and purchase of one (1) 2014 New Elgin CNG Crosswind J Street Sweeper (Model No. J30243); and 3) Authorizing the City Manager to execute the Lease and Purchase Agreement with Haaker Equipment Company.**

3. Resolution No. 2015-02, Approving a Professional Services Agreement with Western Riverside Council of Governments for Residential and Commercial Diversion Services.  
Staff Report. . . . . 287  
Recommendation: **The City Council adopt Resolution No. 2015-02, Awarding a Professional Services Agreement to Western Riverside Council of Governments for Residential and Commercial Diversion Services in the amount of \$100,000.00 for a two year term (\$50,000.00 per year for FY 2014/2015 and FY 2015/2016).**
  
4. Resolution No. 2015-03, Approving the Banning Municipal Airport's ACIP, Authorizing the Submittal of a 2015 AIP Grant Application and Approving a Master Agreement for Professional Services and Contract Amendment No. 1 with C&S Engineers, Inc.  
Staff Report. . . . . 354  
Recommendations: **That the City Council: 1) adopt Resolution No. 2015-03, Approving the submittal of the 2016–2020 Airport Capital Improvement Plan ("ACIP") to the Federal Aviation Administration ("FAA"); 2) Authorizing the Public Works Department staff to submit a grant application and related documentation to the FAA for 2015 Airport Improvement Program ("AIP") grant funding; 3) Authorizing the Interim City Manager to execute documentation related to the 2015 AIP grant funding; and 4) Awarding a Master Agreement for Professional Services to C&S Engineers, Inc. of San Diego, California, authorizing the Interim City Manager to execute the Master Agreement and the related Contract Amendment #1.**

**VII. ANNOUNCEMENTS/REPORTS** *(Upcoming Events/Other Items if any)*

- City Council
- City Committee Reports
- Report by City Attorney
- Report by City Manager

**VIII. ITEMS FOR FUTURE AGENDAS**

New Items – None

**Pending Items – City Council**

1. Discussion on how to handle loans or distributions to charities. *(Midyear budget)*
2. Discussion on how the City Council handles donations to the City. *(Feb. 2015)*
3. Grocery Cart Policy *(In planning process.)*
4. Discussion regarding City's ordinance dealing with sex offenders and child offenders. *(2/2015)*



5. Discussion to move "Announcements" (events) up on the agenda after Public Comments. (1/15)
6. Discussion regarding flex scheduling to keep city hall open five days a week.
7. Discussion regarding Animal Control Services (Midyear Budget)
8. Discussion regarding Police Staffing (Midyear Budget)
9. Golf Cart Lanes
10. Bond Workshop (Midyear Budget)
11. Report on 33-day Billing Cycle
12. Report on process used to collect unpaid utility bills.
13. Report on Electric Rates
14. Report on Code Enforcement and taking care of vacant properties.
15. Discussion of a change in the General Plan.

## **IX. ADJOURNMENT**

*Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Thursday, 7 a.m. to 5 p.m.*

**NOTICE:** Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

**In compliance with the Americans with Disabilities Act**, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (951) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II]

# COMMITTEE ASSIGNMENTS AND MEETINGS FOR - 2014

## CITY COUNCIL CITY OF BANNING

NAME OF COMMITTEE	DAY & TIME OF MEETING	ASSIGNMENT	ALTERNATE	STAFF MEMBER
Western Riverside Council of Governments (WRCOG) <i>(receive stipend)</i>	1 <sup>st</sup> Monday of each month.	Franklin	Peterson	City Manager
Riverside Transit Agency (RTA) <i>(receive stipend)</i>	4 <sup>th</sup> Thurs. of each month – 2:00 p.m. (Dark-August) (Nov. & Dec. 3 <sup>rd</sup> . Thursday)	Welch	Westholder	Heidi Meraz, Community Services Dir.
Riverside County Transportation Commission (RCTC) <i>(receive stipend)</i>	2 <sup>nd</sup> Wednesday of each month - 10:00 a.m.	Franklin	Welch	Duane Burk, Public Works Director and Heidi Meraz, Community Services Dir.
Pass Area Transportation NOW Committee	1 <sup>st</sup> Friday of each month at Noon	Welch	Miller	Heidi Meraz, Community Services Dir.
Regional Conservation Authority (RCA) <i>(receive stipend)</i>	1 <sup>st</sup> Monday of each month.	Westholder	Franklin	

### Assignments - 2014 (Continued)

<b>GOVERNMENT ACCESS CHANNEL COMMITTEE</b> <i>(as needed)</i>	<b>PUBLIC UTILITY ADVISORY COMMITTEE FOR CITY OF BANNING</b> <i>(as needed)</i>	<b>OVERSIGHT BOARD to Successor Agency of Dissolved CRA</b>		
Peterson Welch	Miller Welch	Welch, Appt. Franklin, Alt. Brian Guillot, Staff Member		

<b>TUMF ZONE COMMITTEE</b>	<b>LEAGUE OF CALIF. CITIES – Contact and Executive Board Representative</b>	<b>LEAGUE OF CALIFORNIA CITIES</b> (External Group)	<b>SAN GORGONIO PASS WATER AGENCY</b> (External Group)	<b>COMMUNITY ACTION AGENCY</b> (External Group)
Franklin Peterson, Alt.	Franklin (Mayor)	City Council	Franklin Miller, Alt.	Miller Staff Person, Alt.

### **2 x 2 COUNCIL WORKING GROUPS**

*These groups meet quarterly  
with set date UNLESS specified.*

<b>BANNING UNIFIED SCHOOL DIST.</b>	<b>MORONGO BAND OF MISSION INDIANS</b>	<b>MT. SAN JACINTO COLLEGE</b>	<b>AIRPORT</b>	<b>INTER-GOVERNMENTAL – LOBBYING</b> <i>(Reso. 2012-89)</i>
Miller Westholder	Franklin Welch	Peterson Miller	Westholder Peterson	Franklin Welch

<b>SAN GORGONIO MEMORIAL HOSPITAL</b>	<b>BUDGET &amp; FINANCE</b> (Meet Monthly)	<b>BRANDING COMMITTEE</b>		
Franklin Welch	Westholder Miller McQuown J. Overholt, Staff	Franklin Westholder  B Manis, Staff		

## **OTHER MEETINGS**

**Goal Setting Workshop:** February

### **Quarterly Town Hall Meetings to be held in various areas of the city:**

<u>1<sup>st</sup> Meeting</u>	<u>2<sup>nd</sup> Meeting</u>	<u>3<sup>rd</sup> Meeting</u>	<u>4<sup>th</sup> Meeting</u>
North West	South West	South East	North East

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

12/09/14  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on December 9, 2014 at 3:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT:      Councilmember Miller  
   Councilmember Peterson  
   Councilmember Welch  
   Councilmember Westholder  
   Mayor Franklin

COUNCIL MEMBERS ABSENT:    None

OTHERS PRESENT:      David J. Aleshire, City Attorney  
                                 Fred Mason, Acting City Manager  
                                 Marie A. Calderon, City Clerk

CLOSED SESSION

City Attorney said the items on the closed session agenda are three cases of potential initiation of litigation pursuant to Government Code Section 54956.9 (d)(4); existing litigation pursuant Government Code Section 54956.9 (d)(1) from Robertson's Ready Mix, Lt., v. City of Banning and the Banning City Council; City of Banning Mayor Debbie Franklin, City of Banning Council Members Edward Miller, Art Welch, Don M. Peterson and Jerry Westholder – Case No. RIC 1409828; existing litigation pursuant to Government Code Section 54956.9 (d)(1): Highland Springs Resort v. City of Banning, Riverside County Superior Court Case No. RIC 1206246 (Consolidated with Cherry Valley Pass Acres and Neighbors v. City of Banning – Case No. ROC 1206271); and personnel matters regarding recruitment of City Manager and Interim City Manager pursuant to Government code Section 54957.

Mayor Franklin opened the closed session item for public comments; there were none.

Meeting went into closed session at 3:02 p.m. and reconvened at 4:41 p.m.

Councilmembers Westholder did not participate in the discussion regarding existing litigation pursuant to Government Code Section 54956.9 (d)(1) Highland Springs Resort v. City of Banning, Riverside County Superior Court Case No. 1206246 (Consolidated with Cherry Valley Pass Acres and Neighbors v. City of Banning – Riverside Superior Court Case No. 1206271) because of a conflict of interest.

ADJOURNMENT

By common consent the meeting adjourned at 4:41 p.m.

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Marie A. Calderon, City Clerk

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MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

12/09/14  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on December 9, 2014, at 5:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller  
Councilmember Peterson  
Councilmember Welch  
Councilmember Westholder  
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

COUNCIL MEMBERS ELECT: George Moyer

OTHERS PRESENT: Fred Mason, Electric Utility Dir./Acting City Manager  
David J. Aleshire, City Attorney  
Duane Burk, Public Works Director  
Alex Diaz, Interim Chief of Police  
Heidi Meraz, Community Services Director  
Brian Guillot, Acting Community Development Director  
John McQuown, City Treasurer  
Marie A. Calderon, City Clerk

The invocation was given by Juan De La Fuente, Pastor/Chaplain, New Creation Church. Councilmember Peterson led the audience in the Pledge of Allegiance to the Flag.

Mayor Franklin recessed the regular City Council Meeting and called to order a joint meeting of the Banning City Council and the Banning Housing Authority.

CERTIFICATION OF ELECTION RESULTS

1. Resolution No. 2014-84, Reciting the Facts of the Consolidated General Election Held in Said City on November 4, 2014 Declaring the Result Thereof and Such Other Matters as Provided by Law.

Mayor Franklin asked if there were any public comments in regards to the resolution; there were none.

**Motion Westholder/Peterson that the City Council adopt Resolution No. 2014-84, Reciting the Facts of the General Municipal Election Held in Said City on November 4, 2014 and Declaring the Result Thereof and Such Other Matters as Provided by Law. Motion carried, all in favor.**

### PRESENTATION TO OUTGOING CITY COUNCIL MEMBER

Mayor Franklin stated that Council Member Jerry Westholder joined the Council a little over a year ago and anybody who undertakes being a member of a City Council may not always know how much work is involved in being able to just glance through all the paper work that you get to read but we did appreciate the fact that he was willing and able to come and step up to the table. We appreciate his work and dedication to our city and wish him well on his future endeavors. Mayor Franklin and the City Council Members presented a plaque to him from the Regional Conservation Authority (RCA) for the Western Riverside County in sincere appreciation of his leadership, guidance and support in securing the conservation of species and their associated habitats as a member RCA Board of Directors and also presented to him a plaque from the City of Banning in appreciation of his services to the City of Banning from December 2013 to December 2014.

Council Member Westholder said it was a privilege serving this community.

Councilmember Miller said it was a true honor to have been on the Council with Council Member Westholder. He is a true man of God and his beliefs and his actions were always in the best interest of our city and in the best interest of everything that a man of God stands for and thanked him personally for what he has done.

### SWEARING IN OF NEW COUNCIL MEMBER

City Clerk Calderon gave the Oath of Office to the newly elected City Council Members Deborah Franklin and George Moyer and had them take their seats at the dais.

Mayor Franklin thanked everyone who took the time to vote during this election because it is a very important part of the American process. She also sent out a special thank you to her husband who has been with her through almost 30 years now and the last 8 as being on the City Council. She also thanked staff and reminded everyone to just believe in Banning because we live here and we should make it a great place.

Council Member Moyer thanked everyone who supported him through this last election. He found the outpouring to be very, very gratifying. He thanked Jerry Westholder for his service to the City. He also thanked the current City Council Members and most of them have met with him since the election and have done a really good job in helping him catch up and try to be at least 80% ready to do this job and it appreciated that also.

### REORGANIZATION OF CITY COUNCIL AND THE BANNING HOUSING AUTHORITY

City Clerk Calderon conducted the reorganization of the City Council and the Housing Authority. Deborah Franklin was elected as Mayor and Art Welch as Mayor Pro Tem and Deborah Franklin will serve as the Chairman of the Housing Authority and Art Welch as the Vice Chairman.

Meeting recessed at this time for a small reception in the Large Conference Room.

Mayor Franklin adjourned the joint meeting of the Banning City Council and the Banning Housing Authority and reconvened the regular City Council Meeting.

#### REPORT ON CLOSED SESSION

City Attorney said in regards to closed session agenda there were three matters of potential initiation of litigation and they only discussion one matter and there was no action taken. With respect to the Robertson's litigation matter a status report was given and there was no reportable action taken. With regards to the Pardee matter (Highland Springs Resort v. City of Banning) a report was given and that item is on tonight for a public action and there was no action taken in closed session. In regards to the personnel matters regarding recruitment of City Manager and Interim City Manager the Council discussed the recruitment process and there was no reportable action taken.

#### PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS

##### PUBLIC COMMENTS – *On Items Not on the Agenda*

Diane Box, resident of Banning thanked Jerry Westholder for trying to bring transparency, honesty, and integrity to the City of Banning and she appreciated his service. She also wanted to make sure that the ball doesn't get dropped on the things he tried to get the ball rolling on like the utility rates and the prices we are paying for it compared to other cities of our size. Also Mr. Moyer said that the Robertson's/Match companies were competitors and she doesn't understand why they would let Match diesels park on their property and also on residential property idling at 3:30 in the morning in their neighborhood. Code enforcement had had them moved but as soon as Measure J hit they were all right back over there with a vengeance. Ever since Measure J passed they have become bigger victims of Robertson's retaliation with lights on, dust, diesels running 24/7, and machinery on. She thinks the City should be responsible for their citizens and Robertson's is a nuisance and affecting their quality of life. They have come to the City for help on numerous occasions yet they are still mining illegally. She will be contacting the CDC, Attorney General or anyone else regarding the dust, the silica sand and the respiratory illnesses that it is causing them since her City won't stand up for them. All of the other cities have clear guidelines and legalities that Robertson's has to follow and adhere to, as well as, Match to protect the citizen's quality of life and if they don't, the City shuts them down until they are compliant. She would hate to see the City in yet another lawsuit because they failed to maintain and monitor rouge businesses within the city limits that are negatively affecting our health and wellness. We beg you to please ask them to come into compliance and follow all the mining laws that they are supposed to follow. They are also waiting for the 2013 Environmental Impact Mining Report that they have failed to still come up to compliance with, as well as, the 2014 Environmental Impact Report.

Anna representing the Banning Family Community Health Center addressed the Council stating that they are now open Monday through Friday from 8 a.m. to 5 p.m. offering health services to the community. They have general doctors, pediatricians, and dental. They take private and regular insurances like Medical and Medicare, Health Net, Molina and IEHP. They offer several services and are also providing help to apply for Medical, Medicare, SSI and Covered California and she went over the dates in regards to the application process for Covered California. They also speak Spanish and Hmong. They are located at 1070 E. Ramsey Street and their phone number is 951-849-2560.



Fred Sakauri addressed the Council in regards to a couple of items. The last word he heard was that there was a huge pile of papers that said that all the charges against Duane Burk were unfounded and he is hoping that at the end of that huge pile of paper there was some recommendations up to \$25,000 that would say how to treat future stupid anonymous letters from stupid bobble heads. We wasted a lot of time and money for stupid things. He would hope that that paper would come out and say what you should do when we get future anonymous letters. Also we have been searching for a City Manager for a long, long time and we continue to get these things that say no reportable action. We discussed it; no reportable action. It was on the agenda; no reportable action. The City has been without a permanent City Manager for a long, long time and the least you could do is tell us we interviewed three potential candidates; we rejected three potential candidates or we have no potential candidates. It is not a good atmosphere to come into with all the turmoil the City of Banning has had. Can we at least find out if we have some people that are willing to jump into a boiling pot of water and try to make things straight again.

Anna with the Banning Family Community Health Center addressed the Council again stating that they are actually hosting an event which will be held on Sunday, December 14<sup>th</sup> from 12 to 4 p.m. at the Banning Community Center with Mr. and Mrs. Santa Clause and they will be giving away free toys. There is no fee to attend this event.

#### CORRESPONDENCE – None

#### PRESENTATIONS

##### 1. Update on Sunset Grade Separation – Dennis Green

Dennis Green addressed the Council giving a quick update on the Sunset Avenue Grade Separation. At this time he started his power-point presentation (Exhibit “A”) giving a project status as of November 30, 2014. He said that they are about 50% done and are expected to be completed in Fall of 2015. He went over the work performed in November 2014 and the work schedule for December 2014 and also displayed some pictures of the work going on and the problems with the recent flooding that occurred in December. In regards to public impacts the monthly schedule update shows on time completion and there were a few days added because of the weather which is normal. There have been no traffic delays or impacts noticed during this month or the previous months and they have received very few calls regarding delays of people not being able to get in off of 22<sup>nd</sup> Street or get around Ramsey Street. In regards to public information the project team will keep the city, business owners and adjacent residents informed about project activities and that is why he is here tonight. If anything changes or needs to be updated, they will be here talking to the community. He showed a short video of what they are building.

#### CONSENT ITEMS

Mayor Franklin pulled consent Item No. 7 as requested by Councilmember Miller.

##### 1. Approval of Minutes – Special Meeting – 11/12/14 (*Closed Session*)

Recommendation: That the minutes of the Special Meeting of November 12, 2014 be approved.

2. Approval of Minutes – Regular Meeting – 11/12/14

Recommendation: that the minutes of the Regular Meeting of November 12, 2014 be approved.

3. Approval of Minutes – Special Meeting – 11/13/14 (*Closed Session*)

Recommendation: That the minutes of the Special meeting of November 13, 2014 be approved.

4. Report of Investments for October 2014

Recommendation: The City Council receive and file the monthly Report of Investments.

5. Approval of Accounts Payable and Payroll Warrants for Month of October 2014.

Recommendation: The City Council review and ratify the following reports per the California Government Code.

6. Resolution No. 2014-75, Accepting the General Order 165 and 174 Annual Reports.

Recommendation: That the City Council adopt Resolution No. 2014-75.

8. Resolution No. 2014-86, Approving Extensions to the Memoranda of Understanding Between the City and the International Brotherhood of Electrical Workers – Local 47, Representing the General Employees Unit and the Utility Employees Unit.

Recommendation: That the City Council adopt Resolution No. 2014-86, approving the second amendment to the Memoranda of Understanding between the City of Banning and the International Brotherhood of Electrical Workers – Local 47 (“IBEW”) representing the Utility Unit and the General Employees Unit which currently expire on December 31, 2014 providing an extension, on a month-to-month basis, starting January 1, 2015 and expiring on the earlier of June 30, 2015, or the date the City and the IBEW negotiate and the City Council adopts successor Memoranda of Understanding.

9. Resolution No. 2014-87, Approving Amendments to the Memoranda of Understanding between the City and the International Brotherhood of Electrical Workers – Local 47, Representing the General Employees Unit and the Utility Unit to Add a Y-Rating Provision.

Recommendation: That the City Council adopt Resolution No. 2014-87, approving the amendments to the Memoranda of Understanding between the City of Banning and the International Brotherhood of Electrical Works - Local 47 (“IBEW”) representing the General Employees Unit and the Utility Unit to add a Y-Rating Provision to the Memoranda of Understanding.

10. Notice of Completion for Project No. 2014-01, Street Rehabilitation and Sidewalk Improvements at Various Locations.

Recommendation: That the City Council accepts Project No. 2014-01, Street Rehabilitation and Sidewalk Improvements at Various Locations as complete and directs the City Clerk to record the Notice of Completion and gives the Administrative Services Director the authorization to make all necessary budget adjustments and appropriations related to the project.

11. Notice of Completion for Project No. 2014-01WW, Hargrave Street Sewer main Repair.

Recommendation: That the City Council accepts Project No. 2014-01WW Hargrave Street Sewer Main Repair as complete and direct the City Clerk to record the Notice of Completion.

12. Resolution No. 2014-88, Declaring the Mathewson Building Fire a Local Emergency Requiring Immediate Fire Remediation Services.

Recommendation: That the City Council adopt Resolution No. 2014-88.

**Motion Welch/Moyer to approve Consent Items 1 through 6 and 8 through 12.** Mayor Franklin opened the item for public comment; there were none. **Roll call vote was taken and motion carried, all in favor.**

7. Resolution No. 2014-83, Accepting the 2015 Supplemental Law Enforcement Services Allocation in the Amount of \$100,000 and Authorizing the Banning Police Department to Use the Funds Towards the Purchase of Law Enforcement Related Equipment, Services and Supplies.

Lt. Holder of the Banning Police Department addressed the Council regarding this item per his staff report as contained in the agenda packet. He said the funds obtained through this allocation must be used to supplement front-line municipal law enforcement services and cannot be used for anything that has already been planned. Additionally any purchases they make with these grants must follow the purchasing practices of the City. In his staff report he said that he gave some ideas of the projects that they are working on currently. They have approximately \$90,000 from last year's allocation and this year's allocation is for another \$100,000 so when you look at their projects that they will be working on they expect to use all most of that if not all by the end of this fiscal year coming up into next year.

Councilmember Miller asked Lt. Holder if he would tell everyone what projects and what pieces of equipment you are going to use and he understands that one of them is to be cameras to be placed on the police so they can have pictures of everything that occurs during any incident.

Lt. Holder gave a brief synopsis of the items that they will be purchasing such as upgrades to all of their in-car computers as well as dispatch center, upgrade to their server for needed storage needed, upgrade to the video storage capacity for the cameras monitoring the police facilities, and looking at body cameras for their officers. Presently they do have cameras in all

of their patrol cars but the body camera allows the officer the ability to go out on foot and record his activities as he interacts with the public and deals with situations. Presently they are testing and evaluating body cameras but it is something they want to approach being fiscally responsible and to make sure they have the right policy in place so when they do implement them it is done with care and forethought.

There was further Council and staff discussion regarding the concern over narcotics and the possibility utilizing this money for a canine, costs for a canine along with upkeep and training, there were questions in regards to what computer upgrades and virus protection, and discussion in regards to body cameras and contracting local agencies that are already using them. There were some further questions in regards to what happens to the old equipment and how long do we have to use these grant dollars.

**Motion Moyer/Miller to approve Consent Item 7, approving the adoption of Resolution No. 2014-83.** Mayor Franklin opened the item for public comment; there were none. **Roll call vote was taken and motion carried, all in favor.**

#### PUBLIC HEARINGS

1. Amendments to the General Plan and Zoning Code in Response to the State Housing and Community Development (HCD) Comments on the 2013-2021 Housing Element. (Staff Report – Brian Guillot, Acting Community Development Director)

Acting Director Guillot addressed the Council and introduced John Douglas the City's Housing Consultant which will be presenting the staff report.

Mr. Douglas gave a power-point presentation in regards to this item (Exhibit "B") and stated that they are asking for Council's approval of amendments to the General Plan Land Use Element and the Housing Element and the introduction of an ordinance to establish and affordable housing opportunity overlay zone. This stems from the State requirement for every City to adopt a Housing element that demonstrates capacity to accommodate development to address every city's housing needs for the full spectrum of income levels. This issue has been discussing and the Housing Element has been going on here with the City for about two years and this they hope is one of the final steps in the process to lead to certification of the Housing Element. Certification of the Housing Element is important for a couple of reasons: 1) to maximize the City's eligibility for grant funds; and 2) to preserve the City's local control of land use decisions. In order to facilitate getting that certification of the Housing Element the City rezoned 8 parcels last year from high density residential (HDR) to high density residential 20 (HDR-20) which means a minimum density of 20 units per acre and a maximum density of 20 units per acre. When they submitted that adopted Housing Element reflecting that zone change to HCD (Housing and Community Development) late last year HCD indicated that the density was not sufficient in order to accommodate the City's affordable housing needs. In the Spring of this year there was some negotiation back and forth between the City and HCD which led to a letter from HCD in May 2014 indicating that if the City adopted an Overlay Zone for Affordable Housing which is reflected in your agenda packet tonight that would address HCD's concerns and lead to the certification of our Housing Element. He recapped the essence of what this amendment tonight would do. It would apply to only 8 parcels in the city and those 8 parcels that rezoned to HDR-20 last year. It would allow the density to increase from 20 units

per acre to 24 units per acre on only those four parcels and only if the developer includes affordable units in the project. It does not mandate affordable units on any of these sites. It is an option for the developer, in the State's view, in order to facilitate affordable housing development. There is a letter in the agenda packet from HCD indicating that this amendment if adopted would address their concerns and lead to certification of the Housing Element. He recapped the public review process that they had over the past year. Mr. Douglas concluded his recap and summary of where they are to date and staff is asking for approval of the resolution to amend the land use and housing elements of the General Plan consistent with HCD's letter and to introduce for first reading the ordinance that would establish the Affordable Housing Opportunity Overlay Zone.

Mayor Franklin asked Mr. Douglas if he could he go over the different locations or street approximations so people know where they are.

Mr. Douglas at this time displayed an overview map showing the general location of the 8 parcels that would be affected by this overlay with five of those parcels being on the northern side of the city north of the freeway and 3 of them on the south western portion of the city

Acting Director Guillot also went over the individual maps of each site. He said that you will notice on the overview map with the stars they are all located on the brown zones (HDR - the existing high density residential zones). So these are not new creations just a small change to existing zones.

There was much dialogue between the Council and staff in regards to when will this element be certified, is this the last step, State mandates of low cost housing and why is Banning being picked on for 20% of its development being low cost housing.

Mr. Douglas said the process would be if approved it would be submitted up to HCD and then we would wait for a response with a letter. He said that this should be the last step. In regards to low cost housing the State does not mandate development for issuance of building permits or that projects include affordable units. What the State mandates is that the City adopt plans and zoning regulations that would enable housing and affordable housing to be built. Those percentages when you look at them they are a mandate for planning and for zoning; not for development. Specifically with regard to other cities in Riverside County or throughout the state the same rules apply to every city everywhere so other cities have to play by the same rules and have to adopt zoning regulations that are very similar to what we are talking about here. He emphasized that nothing that is before you tonight or any actions that you would take on this ordinance would require affordable housing to be built. The purpose in the legislature's infinite wisdom is to create the conditions and the regulations that would allow affordable housing to be built.

City Attorney said he wanted to add to that answer. He said he didn't disagree with any of that but he thinks the question is why are we getting the number of units that are identified and how does that compare with other communities and actually that is not HCD that is doing that. The Southern California Association of Governments (SCAG) which our county is one of the member entities they does a computer model and that computer model determines the regional housing needs and then distributes housing units to various communities and over the last 20 years there has been a lot of upset and grief. It is a computer model that is utilized and there

are many communities that don't feel they get the same treatment. For example, the City of Signal Hill which only has 10,000 in population their allocation was less than 600 units. However, the time to challenge that is when the model comes out and the data is established and there is an appeal process and some of our communities have sometimes challenged it and sometimes gotten their number reduced but once that period is over those are the numbers you have to use and then these policies that HCD applies in terms of what they are trying to get to in making sure there is appropriate zoning to cover that and yes, they are consistent. What is not consistent is what your allocation of units is but that goes back to SCAG and there is an appeal process to go through and that time has passed.

There was more dialogue between the Council and staff in regards to not being happy with the computer model and this is something that needs to be addressed by our State legislators.

Mayor Franklin said for clarification just because we have done the overlay no developer is required to do it if they are not doing affordable housing. Mr. Douglas said that was correct. Mayor Franklin said and we do not have any funds available to help a developer do affordable housing. Mr. Douglas said that is correct also as far as he knows.

Mayor Franklin asked Mr. Douglas if he thought there was any benefit, once we get this approved, to write a letter of protest as to the way our numbers are being configured. Mr. Douglas said it is the prerogative of the City Council to write letters as you see fit. He doesn't think there is a benefit. He is looking narrowly at the objective of getting this document certified by the State and doesn't believe that kind of letter would have any effect on our chances of getting the document certified. A letter like that might have some influence on the State Legislature in changing the rules in the future. Mayor Franklin said her question had to do with writing a letter after the certification so there may be a benefit of doing that at that point. Mr. Douglas said it is subject to the political process as you know.

City Attorney said he doesn't think it helps with HCD. HCD is not going to suddenly decide that these policies are wrong and they would support legislation. But he does think as Councilmember Welch indicated that bringing these situations forward in the legislative process does have an impact.

Mayor Franklin opened the public hearing on this item for comments from the public.

The following people spoke in favor or against or had some questions or concerns or general comments in regards to this item (*any written comments handed to the City Clerk will be attached as an exhibit to the minutes*):

- Don Smith addressed the Council stating that he agrees that we need to have an approved Housing Element and agrees that these changes are minor changes to our current plan and should probably be approved so we can move forward. As you know he has a problem with the underlying plan on which this modification is based and he explained. He segued into a completely different topic that he thinks is related and said at some point in time he believes that our City Attorney will successfully defend Measure J and the City will have more money in the General Fund that you are then going to have to prioritize how to spend. In regards to our overall General Plan it is

almost time to renew it and the Housing Element as soon as it is approved it is time to renew it. The next allocation through SCAG is happening now and money needs to be spent in lobbying to change how it is done next time and to lobby with the legislators to get it changed before we are right back here the next time saying it's too late and we should have filed an appeal and didn't but when it comes time to prioritize how to spend the Measure J funds some of that money needs to be set aside to update the General Plan and Housing Element and he would encourage the Council to do so even though that is not very politically attractive but it is actually something that would help the City and that some of that money should be spent to that regard. Also he pointed out that Inge Schuler wanted to talk on this and she submitted a letter. For the record, she is just opposed to it all together and she couldn't stay. He pointed out that maybe at the opening comments you should allow people that even if they want to comment on something that is on the agenda be allowed to do it, if they can't stay for the end of the meeting when their item would be on the agenda. His request is that once this is approved it is time to actually develop a plan based on what Banning wants rather than what the State wants.

Councilmember Peterson addressed Mr. Douglas stating that he recalls in the workshop that he had was it not determined that we were utilizing these sites to get the approval but these could be changed at a later date and was that not talked about and we are not stuck on these locations and these locations were only selected to seek approval. Mr. Douglas said yes.

Mayor Franklin asked if there were any other public comments.

City Clerk said that she had two letters that came in one from Linda Pippenger and one from Inge Schuler and asked if she would like them read into the record and also the Council did have copies. Mayor Franklin asked that she read both letters.

- Letter from Linda Pippenger, 2553 W. Westward Ave., Banning (Exhibit "C")
- Letter from Inge Schuler, 1030 W. Westward Ave., Banning (Exhibit "D")

Mayor Franklin closed the item for public comments seeing no one else coming forward.

Councilmember Miller commented that this is a very important topic and before we proceed to the motion we should possibly have a little discussion. The letters and Don Smith's comments are very pertinent. The only problem is if we stop and say we do not approve this plan that means we go back to the drawing board and it will be at least a year before we propose a new plan. That will then be sent to the State and the State will not approve that plan probably on general principles because we have discussed this plan with them extensively and they have indicated that if we proceed with this plan they will approve it. If we say we are going to change the plan, we are back to square one and we cannot get grants. All the negative aspects of not having a housing plan will be in effect. So he agrees with the comments that were made and he agrees with the letters but again his conclusion is that at this stage it would be more disastrous to our City to say we do not have a Housing Element, we defied the State and we go back to the drawing board and our City will be in limbo for several years at the very least. Reluctantly the gun is to our head and he is not ready to kill the City with respect to the State.

**Motion Miller/Peterson to adopt Resolution No. 2014-85 approving: a) Addendum to the Initial Study/Mitigated Negative Declaration that was adopted by the City Council on July 23, 2013; and b) General Plan Amendment No. 14-2502, An Amendment to the Land Use and Housing Element text and maps to create an Affordable Housing Opportunity (AHO) Overlay Zone.**

Mayor Franklin asked if there were any comments from the Council.

Councilmember Peterson said he disagrees with the approval but we have to approve. The other thing that we need to keep in mind is that just because we are approving this for the purpose of approving the Housing Element it doesn't necessarily mean that this Council or a future Council is going to approve development under that particular zone. So this can be changed and it can be moved. Mr. Douglas has assured us that this is not something that is locked in concrete that cannot be changed. But for right now in order to get this thing off our back and to be eligible for some new money from the State to be able to move forward with an approved Housing Element this is what needs to be done.

Councilmember Moyer said he tends to agree and doesn't want to be held hostage by the State either but he doesn't think we have an option.

Councilmember Welch said he agrees. Just like Councilmember Peterson said he doesn't think any of us up here want to put a glut of homes or apartment buildings in any one part of our city. Again, we need to move forward though with the idea that we don't really have to do that. It is sort of like a paper game like checkers with the State you approve something and then you start moving and that is exactly what he thinks this Council will do. We don't really want to burden any part of this city with an overbuilding of buildings. Do we need housing in Banning? Yes. Do we need low cost affordable housing in Banning? No; maybe some. We need housing in Banning to attract a workforce and increase our economic well-being here in the city. Let's do this and move on so we get what Banning really needs in the future.

Mayor Franklin said she would have to agree with her fellow Councilmembers. This is something we have not addressed in the sense of taking action and we just have to do so we can move forward.

**City Clerk conducted a roll call vote of the Council and the motion carried, all in favor.**

Mayor Franklin asked the City Clerk to read the title of Ordinance No. 1482. City Clerk read: "An Ordinance of the City Council of the City of Banning, California, Adopting zone Text Amendment No. 14-97501 and Zone Change No. 14-3502 to Establish and Affordable Housing Opportunity (AHO) Overlay Zone in Conformance with the General Plan Housing Element."

Mayor Franklin asked if there were any comments from the Council; there were none.

She opened up the item for public comment.

Don Smith addressed the Council stating that he agrees that this is not set in stone. It is set in stone unless this Council budgets both staff time and money to changing it in the future.



**Motion Welch/Moyer to waive further reading of Ordinance No. 1482 and that it pass its first reading. Roll call vote was taken and motion carried, all in favor.**

Mayor Franklin said she does think that we do have a commitment from the Council that as soon as we hear on this we want to move forward with trying to schedule the meetings to look where else we can put this. **There was Council concurrence.**

#### REPORTS OF OFFICERS

1. Butterfield Specific Plan Litigation Settlement Agreement: Highland Springs Resort v. City of Banning, et al. (Riverside County Superior Court Case No. RIC 1206246, Consolidated with Case No. RIC 1206271).  
(Staff Report - David J. Aleshire, City Attorney)

City Attorney stated that this item has been on your agenda for over two years in various forms and he thinks tonight we have a chance of putting an end to it. He said that all parties have signed the settlement agreement except for the City of Banning so we are the final party to approve it. The staff report goes into the primary terms of the agreement but the most important terms are that there is a 44 acre parcel that will now not be developed and in fact it will be conveyed back to Highland Springs Resort. There will be trails and so forth and they have used it in connection with their property for hiking and so forth and they will continue to have that opportunity. There will be a deed restriction that the property has to be held for open space, recreational uses and cannot be developed. The golf course has been eliminated from the project. The project has also been scaled back by about 10% in terms of the number of units – 525 units have been eliminated. There are also a number of other provisions dealing with water, electrical efficiency, ride sharing, transportation, and green measures to make the project more green. To some extent there hasn't been that strong of a market for Pardee to proceed with their project but the market is changing and he thinks that they are very anxious to get this settled. This settlement removes the barriers to going forward with the project and he thinks that Pardee is looking forward to being able to proceed with the first phase of the project. Staff is recommending that with all the efforts going into this that the Council go ahead and be the final body to approve the settlement agreement.

Mayor Franklin asked the Council if there were any questions.

Councilmember Welch said he didn't have any questions but wanted to commend past City Councils on this project and commend Pardee with having the foresight to continue and bring this to a state where it is going to be built and built in accordance with what the community in the area wants. He is excited to see this move forward.

Mayor Franklin opened the item for public comments.

Don Smith congratulated the Council on getting a settlement. He said he started working on this project in 1992 when we annexed part of it into the city of Banning and entered into the original pre-development agreement so this project has certainly been around for a long, long time. Certainly a settlement that calls for some open space, 500 less units, some energy savings, and a lot of water savings are all probably good things and actually makes the development agreement more economically and ecologically friendly than the previous one and

maybe we should even thank the petitioners for giving us a better agreement. He said he still doesn't understand that when we have the traffic study approved as to where the roads are actually going to go and he doesn't necessarily expect an answer tonight but at some point in time we actually have to figure out where it is actually going and he is just curious as to when that will happen.

Mayor Franklin closed the item for further public comments.

City Attorney said that he will get back to Don Smith in regards to the where the road may go.

**Motion Moyer/Welch that the City Council approve the proposed Settlement Agreement in the pending litigation entitled *Highland Springs Resort v. City of Banning, et al.* (Riverside County Superior Court Case No RIC1206246, Consolidated with Case No. RIC 1206271), and authorize the Acting City Manager to sign the Settlement Agreement on behalf of the City of Banning ("City" or "City of Banning") as resolution of the dispute among the City of Banning, Pardee Homes ("Pardee"), Highland Springs Resort ("Resort"), and Cherry Valley Pass Acres and Neighbors and Cherry Valley Environmental Planning Group ("CVEPG") (collectively, "CVAN") with regard to the City's approval of the Butterfield Specific Plan, certification of the environmental impact report ("EIR") and related approvals. Roll call vote was taken and motion carried, all in favor.**

ANNOUNCEMENTS/REPORTS (Upcoming Events/Other Items if any)

City Council

Councilmember Moyer –

- He said he already thanked the Council for their warm welcome and their confidence and he thanked Dave Aleshire for spending the whole afternoon with him. It is his goal that we have a great working relationship between the Council, the staff and the residents of this community and he is going to work hard to do that. He asked if anyone could tell him what is going on with the closure of Big Lots because he understands that they are leaving their location. His concern is that they are one of our top 25 sales tax producers and he would hate to lose them.

Mayor Franklin said that she personally called their home office and got the name of the gentleman that is in their real estate department and asked what was the procedure to be able to talk with him and get some information and they asked some specifics about any other location here in town so she did give that information over to Brian Guillot in our Planning Department asking him to give them some information regarding the Kmart location. Mr. Guillot has put in several calls also and so far they haven't responded and she and Brian had a conversation and he is going to be following up with them weekly to see if we can get somebody to talk to us one on one. Her understanding is that it does not have anything to do with the customer base; it is issues with the landlord.

Mayor Franklin –

- There is going to be a count of the homeless in our city and it is done every two years through the Economic Development Department for the County. They have asked for volunteers from our city to help do the count in our city on January 28<sup>th</sup> from 5 to 9 a.m. so if anybody is interested in being a part of the process, there will be training available and you can call city

hall at 922-3105 and talk to Sonja De La Fuente and she will take your name, phone number and email address so that we can let you know when the upcoming training sessions are or if there is not enough people to go in advance, they will do the training that day. We will be working with the police department to get the locations and do the survey. The purpose of doing the homeless count is to find out what the needs are from the people who are homeless to see how we can better address the concerns.

- She attended the Riverside Conservation Authority (RCA) meeting, as well as, the Western Riverside Council of Governments (WRCOG) and there was nothing really that was reported that applied to us other than the HERO Program and it was interesting that in the WRCOG meeting they talked about LED lights and cities that have lights taking it over from Edison and we are already there so we didn't have to worry about doing anything in that area.

#### City Committee Reports - None

Report by City Attorney – Nothing at this time.

Report by City Manager – Acting City Manager Mason:

- He reminded the public that we are looking for applicants for the Park and Recreation Commission, as well as, the Planning Commission so there are two open commission positions for each of those and applications are available in the back of the room, on line, or you can pick one up at city hall. The deadline is January 29, 2015 to submit your application.

#### ITEMS FOR FUTURE AGENDAS

##### New Items -

Councilmember Miller said that he thinks that Mr. Don Smith had a very good point. The whole Council said that this is a plan that may be changed so he thinks it is worthwhile putting on a future agenda a discussion of a change in the General Plan. He knows that the General Plan costs a million dollars to produce so it is obviously something to be discussed carefully.

##### Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials *(Jan. 2015)*
2. Discussion on how to handle loans or distributions to charities. *(Midyear budget)*
3. Discussion on how the City Council handles donations to the City. *(Feb. 2015)*
4. Grocery Cart Policy *(In planning process.)*
5. Workshop to discuss the future of the airport. *(Jan. 2015)*
6. Discussion regarding Public Works Committee and Ad Hoc Committees *(Jan. 2015)*
7. Discussion regarding City's ordinance dealing with sex offenders and child offenders. *(Feb. 2015)*
8. Discussion to move "Announcements" (events) up on the agenda after Public Comments. *(Jan. 2015)*
9. Discussion regarding flex scheduling to keep city hall open five days a week.
10. Discussion regarding Animal Control Services *(Midyear Budget)*
11. Discussion regarding Police Staffing *(Midyear Budget)*
12. Golf Cart Lanes
13. Bond Workshop *(Midyear Budget)*
14. Report on 33-day Billing Cycle

15. Report on process used to collect unpaid utility bills.
16. Verify what our City laws are in regards to public comment.
17. Report on Electric Rates
18. Report on Code Enforcement and taking care of vacant properties.

ADJOURNMENT

By common consent the meeting adjourned at 7:16 p.m.

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Marie A. Calderon, City Clerk

**THE ACTION MINUTES REFLECT ACTIONS TAKEN BY THE CITY COUNCIL. A COPY OF THE MEETING IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY CLERK'S OFFICE.**

# Sunset Avenue Grade Separation Project

Project Update  
December 10, 2014

## Project Status (As of Nov 30, 2014)

Working Days	360 working days is allotted for project 46.6% of working days expired to date
Anticipated Completion	Fall 2015
Contract Amount	\$18,237,589

## Work Performed In November 2014

- Completed shoofly tracks punch list items
- UPRR crew Began work on shoofly tracks
- Continued roadway excavation EB ramps and Sunset Avenue
- Completed sewer line installation at Sunset Avenue between I-10 FWY and UPRR / Stage II
- Completed waterline and reclaim waterline installation under I-10 existing bridge / Stage II
- Completed storm drain system installation / Stage II

## Work Performed In November 2014

- Completed Gas Line installation under I-10 existing bridge / Stage II
- Removed AC Dike along EB I-10 shoulder
- Began side walk grading / Stage II
- Began Sound wall pile cage fabrication
- Continued maintaining storm water (SWPPP) and traffic control

## Punch List on Shoofly Tracks



## Work Scheduled for December 2014

- Side walk grading / Stage II
- Fine grade along EB ramps
- Ramp Termini LCB / JPCP (30 calendar days)
- Storm Drain System
- Barrier Rail

## Work Scheduled for December 2014

- Curb and Gutter along Sunset /Stage II
- EB ramp traffic signal
- Shoofly shoring
- Sound wall at WB entrance ramp footing
- Shoofly switch over for Track #1 & #2 postponed until January 2015

## Public Impacts

- Schedule Update
  - Monthly schedule update shows on time completion.
- Traffic Impacts
  - No traffic delays or impact noticed during this month.
- Public Information
  - Project team will keep city, business owners and adjacent residents informed about project activities.



## EB Ramps

- Ramps were originally scheduled to open December 26, 2014
- Delayed until January 2015 due to retaining wall redesign and weather (flooding).

## Flooding at EB Ramps – December Storms



## Flooding at EB Ramps – December Storms



## Flooding at EB Ramps – December Storms





## Flooding at EB Ramps – December Storms



## Water Lines Back Fill



## Gas Line Installation



## Drainage System Installation at Sunset





## Roadway Excavation along EB On-Ramp




## Transition Track





Thank You






# City of Banning


## Housing Element Implementation

City Council  
December 9, 2014




### Affordable Housing Opportunity (AHO) Overlay

- Housing Element required by state law
- Regional Housing Needs Assessment (RHNA)
- 8 parcels were rezoned HDR-20 in 2013
- AHO would allow up to 24 units/acre only if affordable units are provided
- Affordable housing is optional (not required)
- HCD letter of support
- Housing Element certification through 2021



### Public Review


- January 2014 - Housing Element adopted
- May 2014 - HCD review letter
- June 2014 - Council initiated GP & zoning amendments
- July 2014 - Public workshop
- September 2014 - PC recommended approval
- November 2014 - Airport Land Use Commission review



### Recommended Action

- Adopt Resolution approving General Plan amendment
- Introduce Ordinance to establish AHO overlay zone





Proud History  
Prosperous Tomorrow

# City of Banning

## Housing Element Implementation


City Council  
December 9, 2014



Proud History  
Prosperous Tomorrow

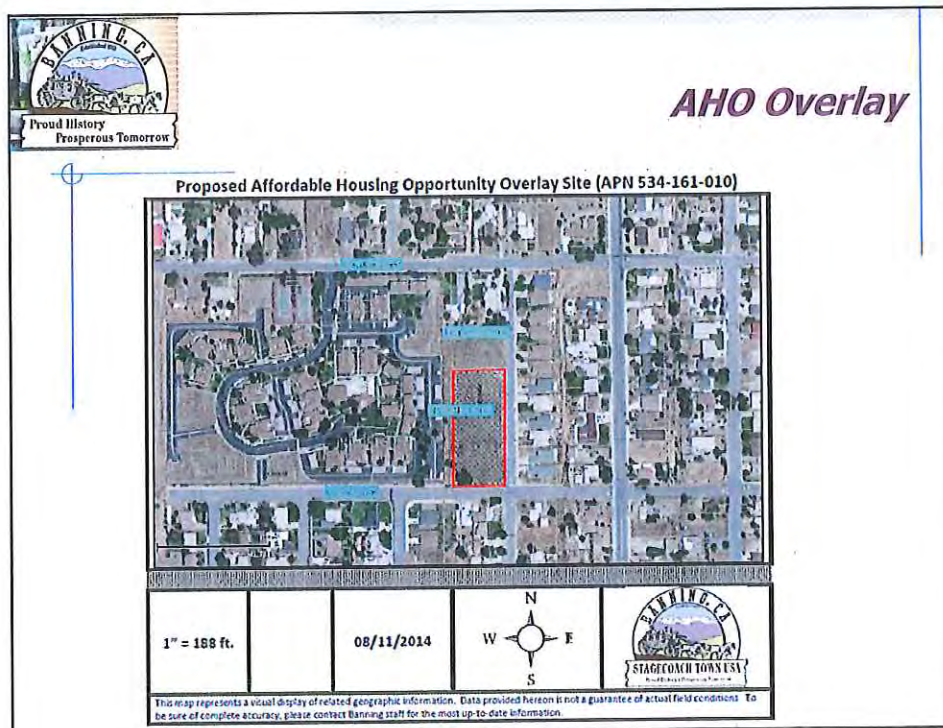
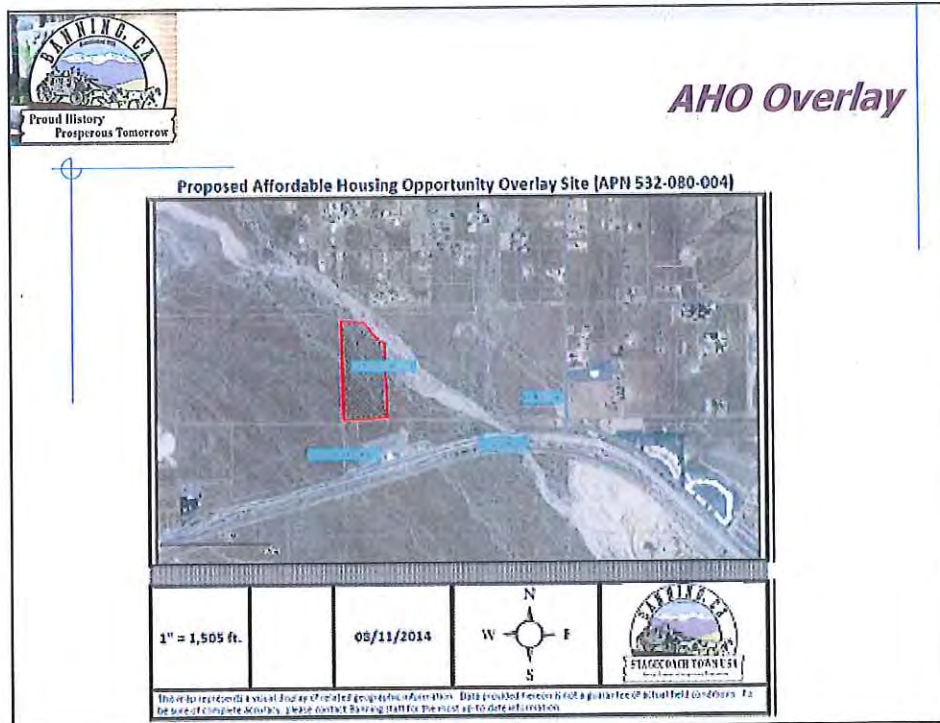
### AHO Overlay

Proposed Affordable Housing Opportunity Overlay Site (APN 419-140-059)

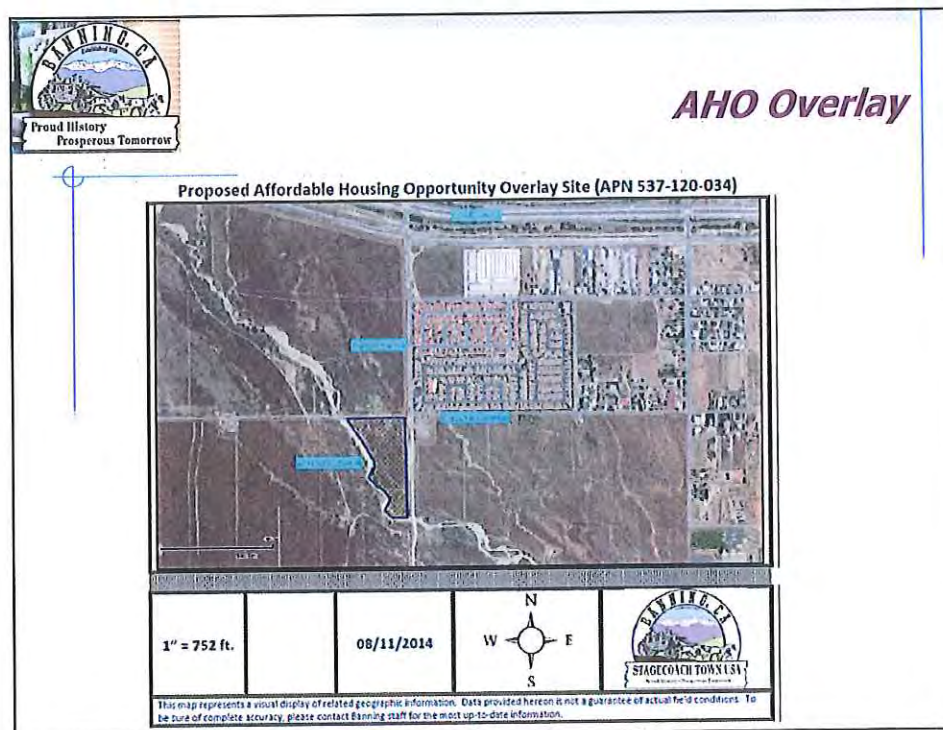


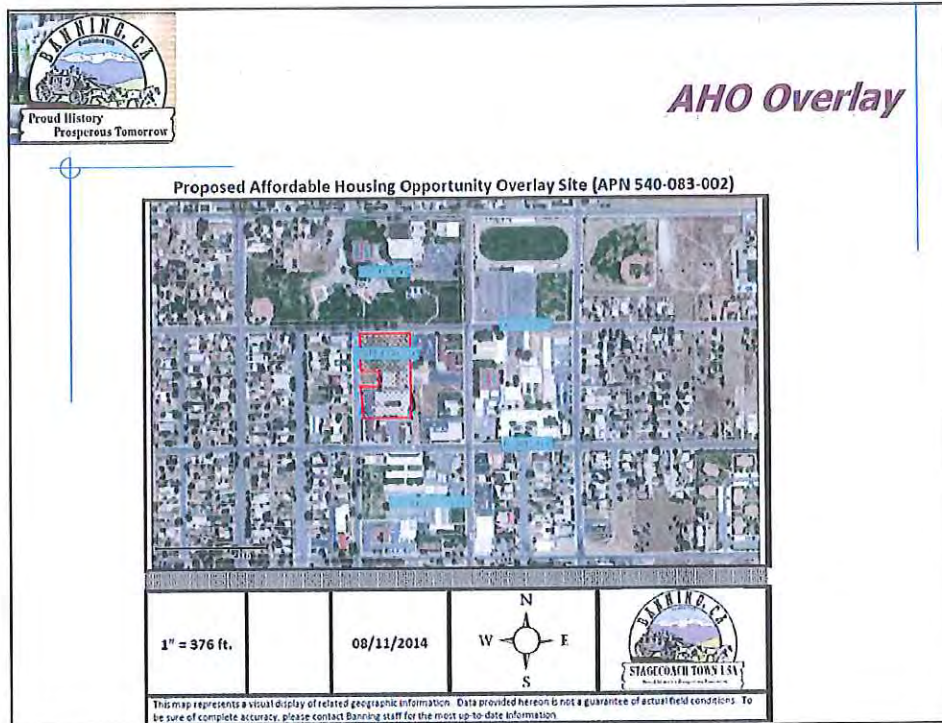
1" = 376 ft.	08/11/2014		 <p>STAGECOACH TOWN USA</p>
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This map represents a compilation of related geographic information. Data provided herein is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.

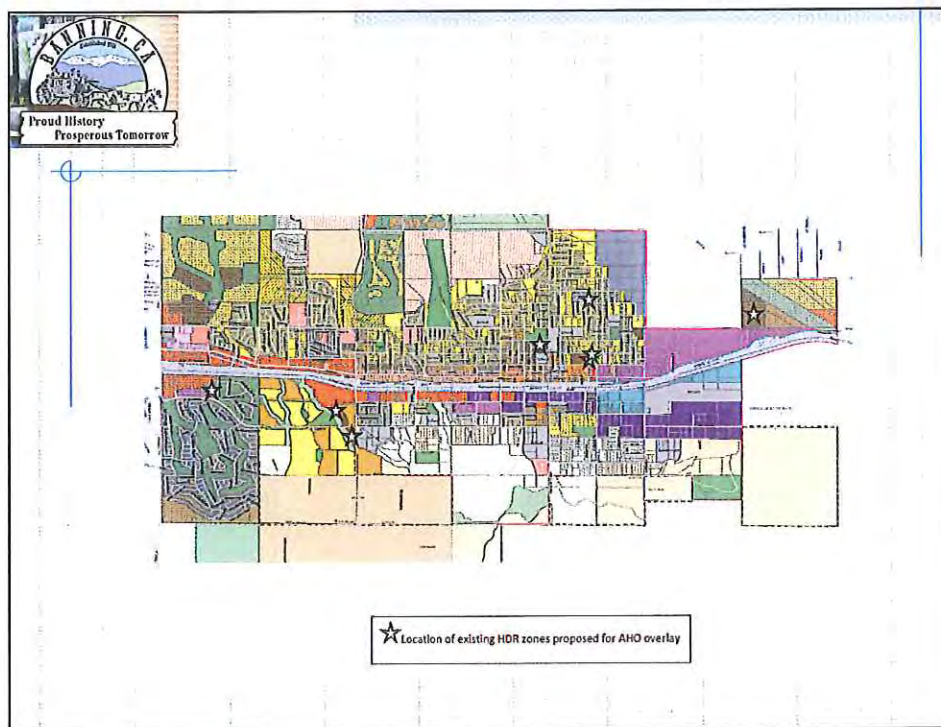
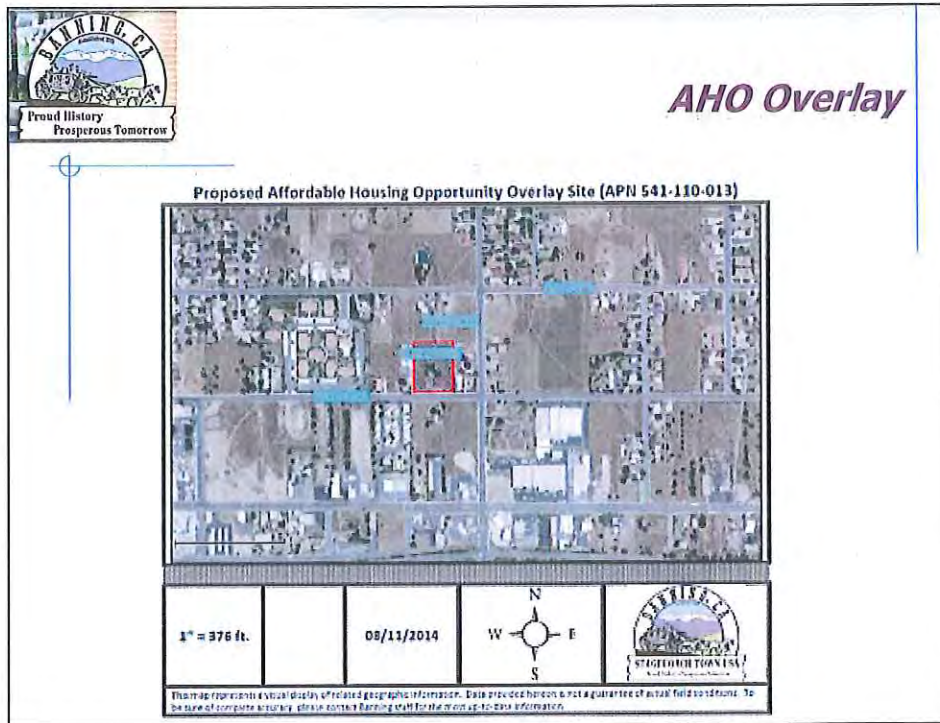












①

Banning City Council  
Banning City Council meeting December 9, 2014

RE: Proposed amendments to the Banning General Plan and Zoning Code to establish an Affordable Housing Opportunity (AHO) Overlay Zone. (Dated November 24, 2014)

On June 24, 2014 Inge Schuler addressed the City Council regarding the Housing Element. She emphatically opposed South Banning taking the brunt of the VHDR zone changes to the General Plan Amendment forever changing the character and quality of life in Banning.

I have also addressed the council numerous times regarding the devastating effect of the General Plan Amendment and zone Change.

We have succeeded in mucking up our General Plan with the setting aside of 26 acres in far southwest Banning for VHDR which is isolated from all infrastructure as the State of California requires for VHDR to be connected to shopping, transportation, water and waste water service , emergency services, etc.

Some of the dedicated parcels were repeatedly not approved by the State Department of Housing and Community Development because of their isolation for the housing element.

Some of the parcel maps do not match the proposed overlay (APN 532-080-004 in particular). The overlay only uses a partial segment of the entire parcel with no identifying boundaries. Has a lot split been initiated/approved? If so, who pays for that expense?

I feel that the community has been railroaded. Our City Council has been forced to accept these zone changes by the former Community Development Director who claimed that if not approved dire consequences would befall the city.

Please do not approve this affordable housing overlay. This is a scheme to accommodate future development. We have heard repeatedly that jst because the zoning is changed does not mean that a developer will actually develop the parcel and construct VHDR/affordable housing. Several of the parcels that are involved are owned by Diversified Pacific Development, LLC that is actively working on a huge development.

All that this overlay is accomplishing is saving money for the developers because they will not need to pay for a general plan amendment and zone change which is very costly. Only four zone change amendments are allowed per year.....another reason this is a scheme to help the developer.

As an afterthought, one of the parcels (adjacent to Peacock Valley I, APN 419-081-003) that I suggested for a zone change is now on the market. The former Community Development Director rejected any suggestions that I made and returned to the Diversified Pacific Development, LLC parcels in South Banning who is the main recipient of the windfall zone changes.

(2)

Future City Councils, Planning Commissioners and City of Banning employees are going to look at this mess and wonder what happened to the General Plan of this city.....there is absolutely no conformity whatsoever throughout the city.

Thank you for your attention.

Sincerely, *Linda Pippenger*

Linda Pippenger  
City of Banning resident since 1979  
2553 W. Westward Avenue  
Banning, CA. 92220  
909.556.1345 cell  
lindaloupip@yahoo.com

12/8/2014

Rec'd 12/9/14  
cmae

Re: Item IX on the agenda for the regular Banning City Council Meeting December 09, 2014

Mayor Franklin, and City Council members:

Now that ALUC ( Airport Land Use Commission) of Riverside County has determined that the proposed General Plan Amendment and Zone Change for a large number of parcels on the South Western part of Banning is consistent with the 2004 Banning Municipal Airport Land Use Compatibility Plan, the last remaining obstacle to approval of the Affordable Housing Overlay (AHO) has been removed and the road is open to the rezoning of a large amount of hitherto open space. The affected residents have repeatedly protested this blatant attempt to encourage the designs of an influential developer, Diversified Pacific, to bless the citizens of Banning with the Rancho San Geronimo Specific Plan. This plan has some components that are odious and detrimental to our environment. The AHO eases the path to success for this major change to our General Plan whose committee members unanimously determined that the SW segment of Banning should remain rural-residential and preserve the character of the neighborhood that drew most of the current residents of the area to invest in this community. The tremendous reduction of their property values as a result of this General Plan Amendment and Zone Change alone should give you pause to re-examine your bull headed pursuit of this development that will most certainly degrade our quality of life.

Please do not pass this Resolution tonight or ever.

Respectfully submitted,

Inge Schuler  
1030 W Westward Avenue  
Banning, CA 92220  
951 849 1483



MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

12/16/14  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on December 16, 2014 at 11:02 a.m. at the Banning Civic Center Large Conference Room, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller  
Councilmember Moyer  
Councilmember Peterson  
Councilmember Welch  
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Marie A. Calderon, City Clerk

CLOSED SESSION

Meeting was called to order in regards to personnel matters regarding recruitment of Interim City Manager pursuant to Government Code Section 54957.

Mayor Franklin opened the item for public comments and seeing no one from the public in attendance she closed public comments.

The City Council went into closed session at 11:03 a.m. in regards to recruitment of interim city manager. Meeting recessed at 12:25 p.m. and reconvened at 1:18 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 3:22 p.m.

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Marie A. Calderon, City Clerk

## CITY COUNCIL AGENDA

**Date:** January 13, 2015  
**TO:** City Council  
**FROM:** June Overholt, Administrative Services Director/Deputy City Manager  
**SUBJECT:** Report of Investments for November 2014

**RECOMMENDATION:** The City Council receive and file the monthly *Report of Investments*.

**JUSTIFICATION:** State law requires that a monthly report of investments be submitted to the Governing Legislative Body.

**BACKGROUND/ANALYSIS:** This report includes investments on hand at the end of November 2014. As of November 30, 2014, the City's operating funds totaled \$72,881,343. Included in Successor Agency operating funds is \$767,514 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Summary Schedule.

As of November 30, 2014 approximately 40% of the City's unrestricted cash balances were invested in investments other than LAIF.

The November Investment Report includes the following documents:

- Summary Schedule of Cash and Investments
- Operational Portfolio Individual Investments
- Individual Investments with Fiscal Agent
- Investment Report Supplemental Information

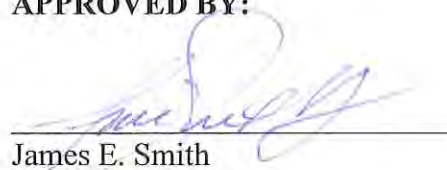
The attached Summary Schedule of Cash and Investments has been updated to show the rate of earnings allowance received from Wells Fargo Bank. The amount earned reduces the total amount of bank fees charged.

**FISCAL DATA:** The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) was 0.261% in November, which showed no change from October. The average rate for all investments in November was 0.399%.

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
James E. Smith  
Interim City Manager

## Summary Schedule of Cash and Investments

**Operating Funds**Petty Cash

Amount

3,705

Bank Accounts

Wells Fargo Bank

Interest

Rate

Amount

0.200% \* 1,941,403

Bank of America-Airport

0.020% 3,609

Bank of America-Parking Citations

0.020% 3,007

Bank of America-CNG Station

0.020% 3,316

Money Market and Bank Account Sub-Total

1,951,336

Government Pools

Account #1 Operating Amount

41,289,324

Account #1 CRA Bond Cash Bal.

767,514

Local Agency Investment Fund: Account #1

0.261% 42,056,838

Account #2 Successor Agency Cash Bal

0

Local Agency Investment Fund: Account #2

0.261% 0

Government Pool Sub-Total

42,056,838

Operating Cash Balance

44,011,879

Restricted Operating Funds

Riverside Public Utilities- Highmark U.S. Government Money Market Fund

0.010%

1,005,516

California ISO Corp- Union Bank

100,184

Worker's Compensation Program- (PERMA)

1,894,156

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2

0.639%

25,869,608

Operating Funds Total

72,881,343

**Fiscal Agent**

US Bank

Amount

34,851,747

Fiscal Agent Total

34,851,747

\* Rate of earnings allowance received, offsets analyzed bank charges.

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# City of Banning Investment Report

November 30, 2014

## Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Date	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
1,941,403	Wells Fargo Bank-Operating	n/a	0.20%	daily	varies	1,941,403	n/a	1,941,403
3,609	Bank of America-Airport	n/a	0.02%	daily	varies	3,609	n/a	3,609
3,007	Bank of America-Parking Citations	n/a	0.02%	daily	varies	3,007	n/a	3,007
3,316	Bank of America-Parking Citations	n/a	0.02%	daily	varies	3,316	n/a	3,316
Sub-total								
								1,951,336
<u>Government Pools</u>								
42,056,838	L.A.I.F. account #1	n/a	0.261%	daily	varies	42,056,838	n/a	42,056,838
0	L.A.I.F. account #2	n/a	0.261%	daily	varies	0	n/a	0
								42,056,838
<u>Investments-US Bank/Piper Jaffray</u>								
1,000,000	FHLMC Mtn	n/a	0.570%	6/20/2016	6/6/2013	1,000,000		1,000,210
1,000,000	FNMA	n/a	0.750%	12/19/2016	6/19/2013	1,000,000		1,000,280
2,000,000	FHLMC Mtn	n/a	0.375%	6/24/2016	12/24/2013	2,000,000		2,000,140
2,000,000	FHLMC Mtn	n/a	0.500%	6/27/2016	12/27/2013	2,000,000		1,997,540
2,000,000	FHLMC Mtn	n/a	0.750%	12/27/2016	12/27/2013	2,000,000		2,000,900
2,000,000	Federal Home Loan Bks	n/a	0.700%	12/27/2016	3/27/2014	2,000,000		2,000,840
2,000,000	Federal Home Loan Bks	n/a	0.900%	3/27/2017	3/27/2014	2,000,000		1,996,660
2,000,000	Federal Home Loan Bks	n/a	0.500%	7/15/2016	4/15/2014	2,000,000		2,000,300
1,000,000	Federal Home Loan Bks	n/a	1.050%	4/17/2017	4/17/2014	1,000,000		1,001,000
1,700,000	FHLMC Mtn	n/a	0.700%	12/30/2016	6/30/2014	1,700,000		1,700,782
2,000,000	FHLMC Mtn	n/a	0.750%	2/28/2017	11/28/2014	2,000,000		1,998,560
2,000,000	FHLMC Mtn	n/a	0.800%	5/26/2017	11/26/2014	2,000,000		1,996,340
2,000,000	Federal Home Loan Bks	n/a	1.200%	5/24/2018	11/6/2014	2,000,000		2,001,460
3,174,596	Money Market	n/a	0.010%	daily	varies	3,174,596	0	3,174,596
US Bank/Piper Jaffray Average Rate=								
			0.639%					25,869,608

Average Rate All= 0.399%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on September 24, 2013. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 253 days and does not include Bond Reserve Fund Investments.

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November 30, 2014

City of Banning Investment Report  
Individual Investments with Fiscal Agent

Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve	Bond Maturity Date	Minimum Reserve Requirement	Nov-14	11/30/2014 Market Value
COB IMPROVEMENT DISTRICT LIMITED OBLIGATION BONDS SERIES 2005A								
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 5-Ct	0.030%	daily	188,024		4.79	188,045
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION, SERIES 2003								
2003 CRA Tax Allocation Bonds	2028	U S Treasury Bill	4.61%	1/29/2015	971,250			991,980
		US Bank Mmkt 5-Ct	0.030%	daily			0.54	21,025
		US Bank Mmkt 5-Ct	0.060%	daily				18
Surplus Fund		US Bank Mmkt 5-Ct	0.000%	daily				12
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007								
Redevelop Fund	2037	US Bank Mmkt 5-Ct	0.030%	daily			212.31	8,332,875
Reserve Fund		US Bank Mmkt 5-Ct	0.030%	daily	1,875,100		47.78	1,875,336
Special Fund		US Bank Mmkt 5-Ct	0.030%	daily				32
Surplus Fund		US Bank Mmkt 5-Ct	0.000%	daily				11
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Interest Account		US Bank Mmkt 5-Ct	0.000%	daily			1.80	2
Principal Account		US Bank Mmkt 5-Ct	0.000%	daily			1.97	4
		US Bank Mmkt 5-Ct	0.030%	daily			83.21	3,266,014
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Interest Account		US Bank Mmkt 5-Ct	0.000%	daily				10
Principal Account		US Bank Mmkt 5-Ct	0.050%	daily			10.26	20
Reserve Fund		US Bank Mmkt 5-Ct	0.030%	daily	2,310,738		58.90	2,310,853
Project Fund		US Bank Mmkt 5-Ct	0.030%	daily			40.82	1,602,244
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES								
		US Bank Mmkt 5-Ct	0.030%	daily				867,987
		US Bank Mmkt 5-Ct	0.030%	daily	2,672,050		68.10	2,672,650
Acquisition & Construction		US Bank Mmkt 5-Ct	0.030%	daily			324.16	12,722,630
*Paid Semi-Annually-Deposited into Money Mkt Account							854.64	34,851,747
Total								

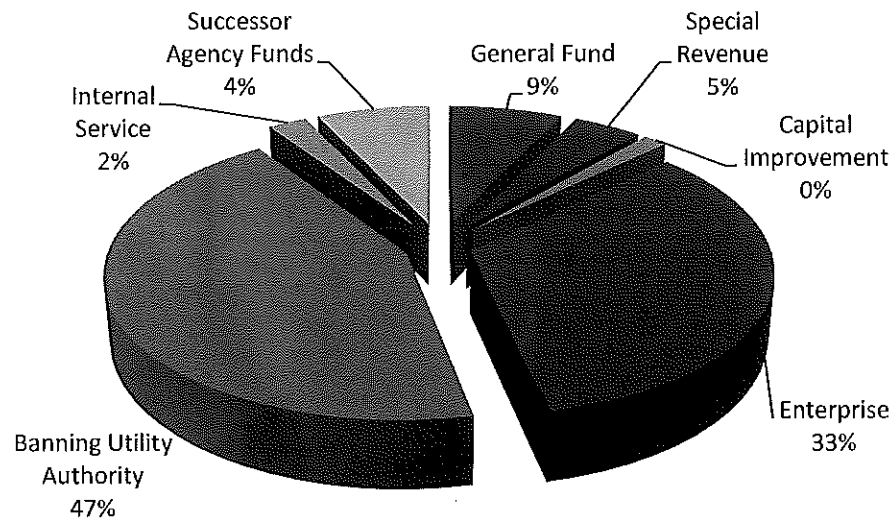
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# City of Banning

## Investment Report Supplemental Information

### Pooled Cash Distribution

Investment reports for cities typically do not include the cash balance of the individual funds that make up the total pooled cash. This is primarily due to timing differences between when investment reports are prepared and when month end accounting entries are posted. Investment reports are usually prepared first. However, the pie chart below provides an understanding of the percentage distribution of the investments by fund type. The percentages were calculated using the average cash balances from the twelve month period of Oct. 2013 to Sept. 2014. *(The percentages will be updated quarterly.)*



The Table below describes the funds that are included within the Fund Types used for the pie chart.

Fund Type	Description of Funds
Governmental	General Fund
Special Revenue	Restricted Funds (i.e. CFDs, grants)
Capital Improvement	Development Impact Fee funds
Enterprise	Airport, Transit, Refuse, Electric
Banning Utility Authority	Water, Wastewater, Reclaimed water
Internal Service	Risk Management, Fleet, IT, Utility Services
Successor Agency Funds	Previously called Redevelopment Agency

## Summary Schedule – Line item descriptions

### ***Petty Cash –***

The City maintains petty cash in various departments for incidental purchases. This line item includes the cash drawers for cashiering in utility billing.

### ***Bank Accounts –***

When reviewing the *Report of Investments*, please keep in mind that the balances shown on the *Summary Schedule of Cash and Investments* for bank accounts are “statement” balances. They reflect what the financial institution has on hand as of particular date and lists on their statement. They are not “general ledger” balances. General ledger balances reflect all activity through a particular date (i.e. all checks that have been written and all deposits that have been made) and is what we show on our books (the general ledger). The general ledger balance more accurately reflects the amount of cash we have available.

It should be noted that statement balances and general ledger balances can differ significantly. For example – on June 30<sup>th</sup> the statement balance for Wells Fargo Bank could show \$1,000,000, however, staff may have prepared a check run in the amount of \$750,000 on the same day. Our general ledger balance would show \$250,000, as the Wells Fargo statement does not recognize the checks that have been issued until they clear the bank.

For investment decisions and cash handling purposes staff relies on the balance in the general ledger. Staff does not invest funds that are not available. Sufficient funds must be kept in the bank accounts to cover all checks issued.

- Wells Fargo Bank – This is the City checking account. All cash receipts, payroll and accounts payables checks are processed through this account. Balances fluctuate based on activity and cash flow needs. As excess funds accumulate, they are transferred to LAIF to increase earnings. The Summary Schedule of Cash and Investments shows the rate of earnings allowance received from the bank. The amount earned reduces the total amount of bank fees charged.
- Bank of America – Airport – The City maintains a Trust account for credit card purchases made at the airport. When the account balance exceeds \$3000, excess funds are transferred to the Wells Fargo Bank account.
- Bank of America – Parking Citations – The City maintains a Trust account for the processing of parking citations through Turbo Data. When the account balance exceeds \$3000, excess funds are transferred to the Wells Fargo Bank account.
- Bank of America – CNG – The City maintains a Trust account for credit card purchases of CNG fuel made at the City yards. When the account balance exceeds \$3000, excess funds are transferred to the Wells Fargo Bank account.

## Summary Schedule – Line item descriptions – Cont.

### ***Government Pools –***

- Local Agency investment Fund – Account #1
  - This account includes both City pooled funds and a restricted cash balance related to the CRA bonds. Investments in LAIF are limited to \$50M.
- Local Agency investment Fund – Account #2
  - There is currently no balance in this account.
  - Note: When the State established the cutoff date of January 31, 2012 for the elimination of the Redevelopment Agency, LAIF staff recommended a transfer of the available balance from the CRA account to the City account to protect the funds from a rumored State raid or freezing of the funds.

### ***Restricted Operating Funds at Riverside Public Utilities –***

The City Electric operation has an agreement with Riverside Public Utilities (RPU) to purchase power for the City. Part of the agreement requires that the City maintain a balance in the trust account used by RPU. The City does not control the investments or earnings of the trust account.

### ***Restricted Operating Funds at California ISO-***

The California ISO facilitates the purchase and sale of the City's electricity. The City participates in periodic Congestion Revenue Rights (CRR) auctions to acquire financial hedges for transmission congestion. In order to participate in the CRR auctions the City was required to have a secured form of financial security in the amount of \$100,000. A cash deposit was placed with Union Bank in March, 2012 to meet the requirements. The account is an interest bearing collateral account.

### ***Restricted Operating Funds at PERMA-***

The City participates in a JPA with the Public Entity Risk Management Authority (PERMA), who provides administration for the City's worker's compensation insurance program. PERMA requires the City to deposit funds into an account used by PERMA for the payment of worker's compensation claims. The City does not control the investments or earnings of this account.

### ***Other Investments –***

Currently the City works with a Piper Jaffray broker to make various investments per the City policy and in accordance with State guidelines. The Broker is not on retainer, nor do they receive a City paid fee with each investment. Funds in the Money Market fluctuate as securities mature or get called. Staff is in the process of investing the Money Market funds over several months. We will be adding an additional broker to provide more investment options.

### ***Fiscal Agent / US Bank –***

Unspent bond proceeds and required bond reserves are invested by the Fiscal Agent in accordance with the bond documents.

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## CITY COUNCIL AGENDA

**Date:** January 13, 2015

**TO:** City Council

**FROM:** June Overholt, Administrative Services Director

**SUBJECT:** Approval of Accounts Payable and Payroll Warrants for Month of November 2014

**RECOMMENDATION:** The City Council review and ratify the following reports per the California Government Code.

**FISCAL DATA:** The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of November 2014.

The reports are:

Expenditure approval lists

November 6, 2014	707,703.67
November 13, 2014	236,200.39
November 24, 2014	1,603,479.67
January 6, 2015	3,168,459.99 (November Month End)

Payroll check registers

November 14, 2014	3,072.09
November 19, 2014	2,333.73
November 28, 2014	2,969.89

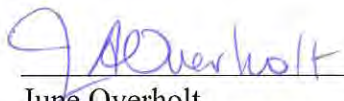
Payroll direct deposits\*

November 14, 2014	254,903.06
November 28, 2014	315,133.02

As you review the reports, if you have any questions please contact the Finance Department so that we can gather the information from the source documents and provide a response.

Report Prepared by: Melissa Rodriguez-Elizondo, Accountant

RECOMMENDED BY:

  
\_\_\_\_\_  
June Overholt  
Administrative Services Director

APPROVED BY:

  
\_\_\_\_\_  
James E. Smith  
Interim City Manager

# CITY of BANNING

## Fund/Department Legend

*Fund/Department Legend*

### 001 General Fund Departments

0001 – General  
 1000 – City Council  
 1200 – City Manager  
 1300 – Human Resources  
 1400 – City Clerk  
 1500 – Elections  
 1800 – City Attorney  
 1900 – Fiscal Services  
 1910 – Purchasing & A/P  
 2060 – TV Government Access  
 2200 – Police  
 2210 – Dispatch  
 2279 – TASIN – SB621 (Police)  
 2300 – Animal Control  
 2400 – Fire  
 2479 – TASIN – SB621 (Fire)  
 2700 – Building Safety  
 2740 – Code Enforcement  
 2800 – Planning  
 3000 – Engineering  
 3200 – Building Maintenance  
 3600 – Parks  
 4000 – Recreation  
 4010 – Aquatics  
 4050 – Senior Center  
 4060 – Sr. Center Advisory Board  
 4500 – Central Services  
 4800 – Debt Service  
 5400 – Community Enhancement

### All Other Funds

002 – Developer Deposit Fund  
 003 – Riverside County MOU  
 100 – Gas Tax Street Fund  
 101 – Measure A Street Fund  
 103 – SB 300 Street Fund  
 104 – Article 3 Sidewalk Fund  
 110 – CDBG Fund  
 111 – Landscape Maintenance  
 132 – Air Quality Improvement Fund  
 140 – Asset Forfeiture/Police Fund  
 148 – Supplemental Law Enforcement  
 149 – Public Safety Sales Tax Fund  
 150 – State Park Bond Fund  
 190 – Housing Authority Fund  
 200 – Special Donation Fund  
 201 – Sr. Center Activities Fund  
 202 – Animal Control Reserve Fund  
 203 – Police Volunteer Fund

204 – D.A.R.E. Donation Fund  
 300 – City Administration COP Debt Service  
 360 – Sun Lakes CFD #86-1  
 365 – Wilson Street #91-1 Assessment Debt  
 370 – Area Police Computer Fund  
 375 – Fair Oaks #2004-01 Assessment Debt  
 376 – Cameo Homes  
 400 – Police Facilities Development  
 410 – Fire Facilities Development  
 420 – Traffic Control Facility Fund  
 421 – Ramsey/Highland Home Road Signal  
 430 – General Facilities Fund  
 441 – Sunset Grade Separation Fund  
 444 – Wilson Median Fund  
 451 – Park Development Fund  
 470 – Capital Improvement Fund  
 475 – Fair Oaks #2004-01 Assessment District  
 600 – Airport Fund  
 610 – Transit Fund  
 660 – Water Fund  
 661 – Water Capital Facilities  
 662 – Irrigation Water Fund  
 663 – BUA Water Capital Project Fund  
 669 – BUA Water Debt Service Fund  
 670 – Electric Fund  
 672 – Rate Stability Fund  
 673 – Electric Improvement Fund  
 674 – '07 Electric Revenue Bond Project Fund  
 675 – Public Benefit Fund  
 678 – '07 Electric Revenue Bond Debt Service Fund  
 680 – Wastewater Fund  
 681 – Wastewater Capital Facility Fund  
 682 – Wastewater Tertiary  
 683 – BUA Wastewater Capital Project Fund  
 685 – State Revolving Loan Fund  
 689 – BUA Wastewater Debt Service Fund  
 690 – Refuse Fund  
 700 – Risk Management Fund  
 702 – Fleet Maintenance  
 703 – Information Systems Services  
 761 – Utility Billing Administration  
 805 – Redevelopment Obligation Retirement Fund  
 810 – Successor Housing Agency  
 830 – Debt Service Fund  
 850 – Successor Agency  
 855 – 2007 TABS Bond Proceeds  
 856 – 2003 TABS Bond Proceeds  
 857 – 2003 TABS Bond Proceeds Low/Mod  
 860 – Project Fund

ORDINANCE NO. 1482

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA ADOPTING ZONE TEXT AMENDMENT NO. 14-97501 AND ZONE CHANGE NO. 14-3502 TO ESTABLISH AN AFFORDABLE HOUSING OPPORTUNITY (AHO) OVERLAY ZONE IN CONFORMANCE WITH THE GENERAL PLAN HOUSING ELEMENT**

**WHEREAS**, California Government Code §65302(c) mandates that each city shall include a Housing Element in its General Plan. The Housing Element is required to identify and analyze existing and projected housing needs and include statements of the City's goals, policies, quantified objectives, and scheduled programs for the preservation, improvement, and development of housing. The City in adopting its Housing Element, must consider economic, environmental, and fiscal factors, as well as community goals as set forth in the General Plan.

**WHEREAS**, on January 28, 2014 the City Council adopted the 2013-2021 Housing Element; and

**WHEREAS**, on May 1, 2014 the California Department of Housing and Community Development ("HCD") issued a letter finding that changes to the Housing Element and zoning regulations would be necessary to fully satisfy the requirements of state law. HCD also stated that the adoption of an Affordable Housing Opportunity (AHO) overlay in the HDR-20 zone would address this finding; and

**WHEREAS**, a finding of substantial compliance from HCD is important to maximize the City's eligibility for grant funds and preserve local land use authority; and

**WHEREAS**, in accordance with Government Code §65854, the City gave public notice as required under Chapter 17.68 of the Zoning Ordinance by advertising in the Record Gazette newspaper of a public hearing to be held by the Planning Commission regarding the proposed zoning amendments; and

**WHEREAS**, on the 3rd day of September 2014, the Planning Commission held a noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the proposed zoning amendments, and at which time the Planning Commission considered Zone Text Amendment No. 14-97501 and Zone Change No. 14-3502; and

**WHEREAS**, at this public hearing, the Planning Commission analyzed this proposed project together with an Addendum to a previous Initial Study/Mitigated Negative Declaration in compliance with California Environmental Quality Act §15162 and §15164 and recommended adoption of the Addendum by the City Council; and

**WHEREAS**, On November 28, 2014 notice of the City Council public hearing regarding Zone Text Amendment No. 14-97501 and Zone Change No. 14-3502 was published in the Record Gazette newspaper; and

**WHEREAS**, on December 9, 2014 the City Council conducted a duly noticed public hearing to consider Zone Text Amendment No. 14-97501 and Zone Change No. 14-3502, at which time all interested persons were invited to provide comments in opposition to or support for the proposed amendment.

**NOW THEREFORE**, the City Council of the City of Banning does make the following findings and based thereon and the administrative record does ordain as follows:

SECTION 1. ENVIRONMENTAL FINDINGS.

An Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program were adopted for the 2008-2013 Banning Housing Element and Zone Change No. 13-3502 in accordance with the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines §15000 through 15387, and the City of Banning Environmental Review Guidelines. City Council Resolution No. 2013-75, incorporated herein by this reference, provides environmental findings in support of that IS/MND.

When an EIR or negative declaration has been prepared for a project and changes are subsequently proposed to that project, the City is required to determine whether the environmental effects of such actions are within the scope of previous environmental documentation, and whether additional environmental analysis is required. If the agency finds that pursuant to §15162, §15164, and §15183 of the CEQA Guidelines no new effects would occur, nor would a substantial increase in the severity of previously identified significant effects occur, then no supplemental or subsequent EIR or MND is required.

Pursuant to CEQA Guidelines §15164, an Addendum to the 2008-2013 Housing Element IS/MND has been prepared to evaluate the potential environmental effects of Zone Text Amendment No. 14-97501 and Zone Change No. 14-3502. Through the analysis described in that Addendum, the City of Banning has determined that changes associated with the proposed zoning amendments are not substantial. No new significant impacts would result from these changes, nor would there be a substantial increase in the severity of previously identified environmental impacts. In addition, the changes with respect to the circumstances under which the project will be undertaken would not result in new or more severe significant environmental impacts.

The City Council finds that the Addendum together with the previous IS/MND reflect its independent judgment further finds that these documents satisfy the requirements of CEQA for Zone Text Amendment No. 14-97501 and Zone Change No. 14-3502.

**SECTION 2. REQUIRED FINDINGS FOR ZONE TEXT AMENDMENT NO 14-97501 AND ZONE CHANGE NO. 14-3502:**

**Finding No. 1:** The proposed zoning amendments are consistent with the General Plan.

**Facts in Support of Finding:** The proposed zoning amendments would demonstrate the availability of adequate sites for residential development commensurate with the Regional Housing Needs Assessment (RHNA) for the 2013-2021 planning period. The proposed amendments to the Zoning Ordinance and Map are not only consistent with the General Plan, they are required to ensure consistency with the Housing and Land Use Elements of the General Plan and the RHNA by establishing zoning regulations on sufficient sites to accommodate housing development at densities necessary to meet the projected needs of lower-income households in Banning.

**Finding No. 2:** The proposed zoning amendments would not be detrimental to the environment, or to the public interest, health, safety, convenience, or welfare of the City.

**Facts in Support of Finding:** Pursuant to CEQA, an Addendum to the 2008-2013 Housing Element Initial Study/Mitigated Negative Declaration (IS/MND) has been prepared for the proposed zoning amendments. The Addendum concluded that adoption of the Affordable Housing Opportunity (AHO) Overlay would not result in new significant environmental effects that were not previously analyzed. Further, any future development on AHO sites must comply with applicable development standards and environmental requirements designed to protect the health, safety and welfare of the community and its residents. Further facts and evidence in support of this finding are contained in the Addendum and the accompanying staff report, all of which are incorporated herein by this reference.

**Finding No. 3:** The subject property is physically suitable for the requested land use designation(s) and the anticipated development(s).

**Facts in Support of Finding:** Pursuant to CEQA, an Addendum to the 2008-2013 Housing Element Initial Study/Mitigated Negative Declaration (IS/MND) has been prepared for the proposed zoning amendments. The Addendum concluded that with the mitigation measures identified in the General Plan EIR and the IS/MND, adoption of the AHO Overlay would not result in new significant impacts regarding access, utilities, land use compatibility or other potential environmental effects that were not previously analyzed and disclosed in the IS/MND and General Plan EIR. Further facts and evidence in support of this finding are contained in the Addendum and the accompanying staff report, all of which are incorporated herein by this reference.

**Finding No. 4:** The proposed zoning amendments shall ensure development of desirable character which will be compatible with existing and proposed development in the surrounding neighborhood.

**Facts in Support of Finding:** Pursuant to CEQA, an Addendum to the 2008-2013 Housing Element Initial Study/Mitigated Negative Declaration (IS/MND) has been prepared for the proposed zoning amendments. The Addendum concluded that with the mitigation measures identified in the General Plan EIR and the IS/MND, adoption of the AHO Overlay would not result in new significant impacts to the surrounding properties or the community in general that were not previously analyzed and disclosed in the IS/MND and General Plan EIR. Further facts and evidence in support of this finding are contained in the Addendum and the accompanying staff report, all of which are incorporated herein by this reference. Moreover, adoption of the AHO Overlay is required by state law to ensure consistency with the Regional Housing Needs Assessment.

### SECTION 3. CITY COUNCIL ACTIONS.

The City Council hereby takes the following actions:

1. Zoning Code §17.08.010.B.10 is hereby amended as follows:

“10. High Density Residential-20/Affordable Housing Opportunity (HDR-20/AHO) (20-24 du/acre). Allows condominiums and townhomes, as well as apartments with the provision of common area amenities and open space by-right at a minimum density of 20 dwelling units per acre and a maximum density of 24 dwelling units per acre when at least 20% of the units are reserved for lower-income households in conformance with Program 5 of the Housing Element. Projects requesting a density increase above 20 units/acre shall execute a Density Bonus Housing Agreement in conformance with Section 15.60.130 of this code. Affordable units shall be distributed throughout the development and shall be comparable to market rate units in design and quality. The clustering of condominiums and townhomes is appropriate with the provision of common area amenities and open space. Home Occupations may be appropriate with approval of a Home Occupation permit.”

2. Zoning Code Table 17.08.020 is amended to revise the HDR footnote as follows:

“\*Housing developments in the HDR-20/AHO district are permitted at a density of 20-24 dwelling units per acre when at least 20% of the units are reserved for lower-income households in conformance with Program 5 of the Housing Element. Development standards for qualifying developments shall be as provided for the HDR district in Chapter 17.24.”

3. The Zoning Map is hereby amended to change the designations for the following parcels from HDR-20 to HDR-20/AHO:

“537-120-034	419-140-059
540-083-002	534-161-010
541-110-013	537-110-008
532-080-004	541-110-009”

#### SECTION 4. PUBLICATION

The Mayor shall sign this Ordinance and the City Clerk shall attest thereto and shall within fifteen (15) days of its adoption cause it, or a summary of it, to be published in the Record Gazette, a newspaper published and circulated in the City. Thereupon, this Ordinance shall take effect thirty (30) days after the adoption and be in effect according to the law.

**PASSED, APPROVED AND ADOPTED** this 13<sup>th</sup> day of January, 2015.

\_\_\_\_\_  
Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

\_\_\_\_\_  
David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP



**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1482 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 9<sup>th</sup> day of December, 2014 and was duly adopted at a regular meeting of said City Council held on the 13<sup>th</sup> day of January, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon, City Clerk  
City of Banning, California

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** January 13, 2015

**TO:** City Council

**FROM:** June Overholt, Administrative Services Director/Deputy City Manager  
Michelle Green, Deputy Finance Director

**SUBJECT:** Resolution No. 2015-04, "Approving the Purchase of a PowerEdge VRTX Blade Server, Controllers and Necessary Hardware, Software, Licenses and Implementation Services for the City of Banning Computer Virtualization Project".

**RECOMMENDATION:** That the Council adopt Resolution No. 2015-04 "Approving the Purchase of a PowerEdge VRTX Blade Server, Controllers and Necessary Hardware, Software, Licenses and Implementation Services for the City of Banning Computer Virtualization Project" in the amount of \$44,030.00 from Logical Front and authorizes the Administrative Services Director to make the necessary budget adjustments needed for the project.

**BACKGROUND:** The City of Banning currently has a mixed computer environment consisting of desktop and laptop computers that have exceeded their expected lives and have operating systems that are no longer supported. There are still users with computers that have hardware equipped with the now unsupported Windows XP Operating System. Current software applications are requiring a Windows 7 operating system as the minimum recommended specification.

The project to upgrade the workstations has been contemplated for several years with budget initially set aside in the Information Systems Services fund in fiscal year 2013-14. Research has been done on whether to replace the workstations following the current model for providing technology to staff, or whether to implement a virtual computing system. In addition to observing demonstrations by potential vendors, the information technology (IT) staff visited sites using virtual systems and talked with the IT staff at those sites to verify the benefits.

**DISCUSSION:** The recommendation is to implement a virtual computing system. Initially, the project will address 40 workstations. As the remaining computer workstations exceed their expected and supported life, they will be replaced using the virtual system. The major benefits of moving to the virtual computing system include the following:

- The technology industry is moving towards virtualizing workstations and servers as the most efficient method for providing technology to employees.
- Staff will have what is called a "thin client terminal technology" that looks to the server for software operating systems and data. This will replace each desk maintaining a computer workstation hard drive.

- Utilizing thin client terminal technology, instead of the typical desktop computer, enables the IT department to reliably and promptly “push” out updates to the operating system, hardware and/or software requirements to the user without the need to go to each computer workstation.
- In 2011, the City upgraded outdated and antiquated servers to a server virtualization infrastructure in which there are 2 servers (for redundancy) that control 31 virtual servers all requiring different memory allocations and software. However, those servers do not have the capacity to handle this new project of replacing the desktop workstations with a thin client terminal. In addition, technology is continually improving its capacity. The servers purchased in 2011 will need to be replaced in the next 2 years.
- When more hard drive space or memory is needed, it is managed and allocated by the controlling virtual server and utilized by the clients without drastic down time or expensive component purchases. As software demands increase or the number of users increase, a new “blade” can be added into the chassis to accommodate the new demands. The users (staff) will have a thin client at their desk and have an entire new operating system controlled and pushed out by the VRTX Server.
- Work areas in the city that are prone to dirt contamination of equipment will be able to utilize the thin clients, which have no moving parts, for more reliable computing.

No formal request for proposals was created. Instead, staff received proposals from companies that are authorized through WSCA (Western States Contracting Alliance). The purchasing ordinance allows for exceptions to bidding requirements (See below, item D).

**3.24.130 - Exceptions to bidding requirements.**

*Notwithstanding any provision of this chapter to the contrary, the competitive bidding procedures and requirements may be dispensed within any of the following instances:*

- When an "Emergency" has been determined to exist pursuant to the official policies and procedures implementing this chapter;*
- When the commodity is a sole source;*
- When the price is less than one thousand dollars;*
- When the purchasing officer determines the commodity can be procured using a cooperative purchase agreement (e.g., through CMAS or GSA) and, the price to the city is equal to or better than the price to that public agency;*
- When the commodity being purchased is gasoline, diesel or aviation fuel;*
- When the city council determines, in accordance with applicable law, that a competitive market does not exist, and no competitive advantage will be gained by the bidding process;*
- When no bids are received on formal or informal bidding procedures.*

The City did receive at least three quotes for this project. The quotes were as follows:

Dell – Logical Front	41,709.03 + sales tax
HP - Vology	63,206.84 + sales tax
Cisco - Cybertek	82,046.80 + sales tax

The recommendation before Council is to authorize the purchase with Logical Front, which is an authorized provider through a cooperative agreement established by the State of California called WSCA (Western States Contracting Alliance).

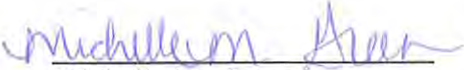
With the approval of Council, the contract with Logical Front will be finalized and the purchase order issued. Once the project begins, it will take approximately 3 weeks to complete.

**FISCAL DATA:** The total project costs, including implementation services and sales tax is \$44,031.00. There is currently \$25,000.00 available in the budget for this project. An appropriation of \$ 19,031.00 is needed to account 703-3700-480.90-48 (Computer Hardware) and is being requested. This amount is available in the fund balance of the Information Systems Services Fund (Fund 703).


**REVIEWED BY:**

**RECOMMENDED BY:**

**APPROVED BY:**

  
Michelle M. Green  
Deputy Finance Director

  
June Overholt  
Administrative Services Director

  
James E. Smith  
Interim City Manager

**Attachments:**

1. Quotes From Three Vendors
2. Logical Front Implementation Services Contract

## **RESOLUTION NO. 2015-04**

### **A RESOLUTION APPROVING THE PURCHASE OF A POWEREDGE VRTX BLADE SERVER, CONTROLLERS AND NECESSARY HARDWARE, SOFTWARE, LICENSES AND IMPLEMENTATION SERVICES FOR THE CITY OF BANNING COMPUTER VIRTUALIZATION PROJECT**

**WHEREAS**, the City has many computers that have exceeded their expected lives and have operating systems that are no longer supported; and

**WHEREAS**, these computers need to be replaced to allow users to meet the minimum recommended software specifications for many types of software; and

**WHEREAS**, the current model for providing technology to staff has been analyzed and compared to a virtual computing system model; and

**WHEREAS**, staff has found that virtualization of the City's technology would provide many benefits to both the IT department and users; and

**WHEREAS**, staff is recommending a change in the current model to a virtualized technology environment; and

**WHEREAS**, Logical Front provided the lowest project quote through the WSCA (Western States Contracting Alliance) contract; and

**WHEREAS**, the total project cost is \$44,030.00 and additional funds in the amount of \$19,013.00 are needed;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Banning, as follows:

SECTION 1. City Council adopts Resolution No. 2015-04, "Approving the Purchase of a PowerEdge VRTX Blade Server, Controllers and Necessary Hardware, Software, Licenses and Implementation Services for the City of Banning Computer Virtualization Project" in the amount of \$ 44,030.00 from Logical Front.

SECTION 2. City Council approves an appropriation in the amount of \$19,031.00 to account number 703-3700-480.90-48.

SECTION 3. The Administrative Services Director is authorized to make the necessary budget adjustments needed for the project.

**PASSED, APPROVED AND ADOPTED** this 13<sup>th</sup> day of January, 2015.

---

Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

---

Marie A. Calderon  
City Clerk of the City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

---

David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-04 was adopted by the City Council of the City of Banning at a joint meeting thereof held on the 13<sup>th</sup> day of January, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon, City Clerk  
City of Banning, California

## Attachment #1

### Quotes From Three Vendors



Quote Number 10142014-545  
 Created Date 12/2/2014  
 Expiration Date 11/21/2014

Prepared By Adam Hinckley  
 E-mail adam.hinckley@logicalfront.com  
 Fax (801) 327-0674

Contact Name Patrick Stephens  
 Phone (951) 922-3133  
 Email pstephens@ci.banning.ca.us

Quantity	Product	Line Item Description	Unit Subtotal	Line Item Total
1.00	Dell Server	PowerEdge VRTX, 1GB switch module 16 internal ports 8 external ports, 5 - 900GB 10k RPM SAS 6gbs 2.5in hot-swap hard drives; Chassis Management Controller Card; 4 - 1100W Redundant power supplies; ProSupport and NBD On-site Service - 3 year.	\$8,049.46	\$8,049.46
2.00	Dell Server	PowerEdge M620 VRTX - Dual Intel Xeon E5-2620 v2 2.10GHz, 15M cache, 1 7.2GT/s QPI, Turbo, HT, 6 core; 96GB RDIMM, 1600MT/s Low volt, Dual Rank, x4 data width; 2 - 960GB SSD SATA read intensive MLC 3Gbps 2.5in Hot Swap Hard Drive; Raid 1, H310 Controller; IDRAC7 Enterprise for blades with Vflash, 8GB 1 SD Card; Broadcom 5780-k Dual port 10Gb KR Blade Network Daughter Card; ProSupport and NBD on-site service - 3 year.	\$6,838.99	\$13,677.98
1.00	Dell UPS	DELL Smart UPS 2200	\$755.99	\$755.99
1.00	Dell Rack	Dell Netshelter SX 24U Rack - 600mm Wide x 1070mm Deep	\$956.14	\$956.14
40.00	Quest vWorkspace	VWORKSPACE Premier Per Concurrent User License - 24/7 Maintenance	\$139.36	\$5,574.46
1.00	Logical Front-Services	Installation, Configuration, Training, and Knowledge Transfer	\$9,995.00	\$9,995.00
1.00	Logical Front - Support	One (1) year Logical Front Virtual Desktop Support (Up to 3 Instances)	\$2,700.00	\$2,700.00

Quote Subtotal \$41,709.03  
 Quote Total \$41,709.03

#### Notes

Per State of California (WCSA) DELL contract pricing or below.  
 Standard shipping fees are waived for Logical Front customers.  
 City of Banning to use their EA agreement for MS licensing needs.

#### Notice

Quote information is valid for U.S. customers and U.S. addresses only, and is subject to change. Sales tax on products shipped is based on "Ship To" address, and for downloads is based on "Bill To" address. Please indicate any tax-exempt status on your PO.

For certain products shipped to end-users in California, a State Environmental Fee will be applied.





Vology  
4027 Tampa Road, Suite 3900  
Oldsmar, FL 34677  
(813)-852-6400 office (813)-490-7090 fax

## SALES QUOTE

SQ-484596

11/19/2014

Customer			Contact		Ship To		
City of Banning 99 E. Ramsey St. Banning, CA 92220 US			Stephens, Patrick		City of Banning 99 E. Ramsey St. Banning, CA 92220 US		
Account	Terms	Due Date	Account Manager		Schedule Date	Ship VIA	P.O. #
124373	Net 30	11/19/2014	Angela Bruno Ph# (949) 521-6016		1/1/0001	UPS Ground	
			abruno@vology.com Fax# (813) 490-7090				

Line #	Manufacturer/ Model / Description		Product Condition	Qty	Unit Price	Extended Amount
1	HP DL380p G8 Servers					
2	HP / 653200-B21 / HP ProLiant DL380p Gen8 - Server - rack-mountable - 2U - 2-way - RAM 0 MB - SAS - hot-swap 2.5" - no HDD - Matrox G200 - Monitor : none. - CTO		New	2	1,497.23	2,994.46
3	HP / 662250-L21 / Intel Xeon E5-2620 - 2 GHz - 6-core - 12 threads - 15 MB cache - factory integrated		New	2	459.17	918.34
4	HP / 662250-B21 / HP DL380p Gen8 E5-2620 (2.0GHz/6-core/15MB/95W) Processor Kit		New	2	459.17	918.34
5	HP / 647901-B21 / HP 16GB 2RX4 PC3L-10600R-9 KIT		New	12	251.85	3,022.20
6	HP / 652564-B21 / HP 300GB 6G SAS 10K 2.5in SC ENT HDD		New	12	229.95	2,759.40
7	HP / 684208-B21 / HP Ethernet 1GbE 4P 331FLR FIO Adptr		New	2	18.25	36.50
8	HP / 661069-B21 / HP 512MB FBWC for P-Series Smart Array		New	2	254.77	509.54
9	HP / 733668-B21 / HP 2U SFF Easy Install Rail Kit with CMA		New	2	102.20	204.40
10	HP / 726113-B21 / HP 8GB SD EM FLASH MEDIA KIT		New	2	51.10	102.20
11	HP / 739252-B21 / HP 460W CS PLAT HT PLG PWR SUPPLY KIT		New	2	218.27	436.54
12	HP / H7J32A3#7G3 / HP Foundation Care Next Business Day Service - extended service agreement - 3 years - on-site		New	2	161.60	323.20
	Sub-Total					12225.12
13	HP BL460c G8 & Enclosure					
14	HP / 696910-B21 / HP BLc3000 Enclosure w/4 Power Supplies and 6 Fans with Insight Control Environment License - Rack-mountable - 6U - power supply - hot-plug		New	1	2,922.19	2,922.19
15	HP / 735151-B21 / HP ProLiant BL460c Gen8 E5-v2 10Gb FlexibleLOM CTO Blade Server		New	2	1,431.53	2,863.06

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Line #	Manufacturer/ Model / Description		Product Condition	Qty	Unit Price	Extended Amount
16	HP / 718361-L21 / HP Intel Core i5 4200M mobile - 2.5 GHz - 2 cores - 4 threads - 3 MB cache - CTO		New	2	481.07	962.14
17	HP / 718361-B21 / HP Intel Xeon E5-2650L - 1.8 GHz - 8-core - 16 threads - 20 MB cache - factory integrated		New	2	481.07	962.14
18	HP / 672631-B21 / HP 16GB 2RX4 PC3-12800R-11 KIT		New	12	259.15	3,109.80
19	HP / 756601-B21 / HP 960GB 6G SATA LE 2.5in SC EL G1 SSD		New	4	2,627.27	10,509.08
20	HP / 700742-B21 / HP FlexFabric 534FLB FlexLOM		New	2	7.30	14.60
21	HP / 690164-B21 / HP Smart Array P220i Controller - Storage controller (RAID) - SAS 2 - 600 MBps - RAID 0, 1 - PCIe x4		New	2	437.27	874.54
22	HP / 726116-B21 / HP 8GB MICRO SD EM FLASH MEDIA KIT		New	2	57.67	115.34
23	HP / 638526-B21 / HP BLc VC Flex-10/10D Module Opt		New	1	9,179.75	9,179.75
24	HP / 656364-B21 / HP POWER SUPPLY KIT 1200W CS PLAT PL HOT PLUG		New	4	313.17	1,252.68
25	HP / H7J32A3#7GK / HP c3000 Enclosure Support		New	1	260.00	260.00
26	HP / H7J32A3#7XE / FIO CAREPACK BL4XXC SVR BLD H/W SUP 3Yr Foundation Care NBD Service		New	2	107.20	214.40
	Sub-Total					33239.72
27	HP T620 Clients					
28	HP / F5A54AT#ABA / HP T620 MS TC GX/1.65 2C 4GB 16GB WES7E SBY Dual-Core USB Kyp/Mouse		New	40	443.55	17,742.00
	Sub-Total					17742.00
					SubTotal:	\$63,206.84
					Est. Freight	\$0.00
Memo :					Total Amount	\$63,206.84

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All certified pre-owned products have passed our 5 Star Certification Process and is backed by our 5 year Warranty. (End-User Customers only) For detailed information regarding our 5 year warranty, 5 Star Certified Process and returns please visit our website at <http://www.vology.com/services/solutions/warranty-solutions>. For all other products, Vology makes no claim as to the warranty of any products or services in this quotation. Only the written warranty offered by the equipment manufacturer or service provider will apply. This agreement will expire 7 days from the quote date above. Prices are subject to change without notice. Unless noted, this quote does not include shipping charges or taxes.

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Accept this quote - Signature: \_\_\_\_\_

Purchase Order #: \_\_\_\_\_

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**City of Banning**

UCS System

19 December 2014

Project Name: UCS System

Document Number / Version Number: 01V1

Customer Name: City of Banning

## Project Description

Cybertek is proposing a new Cisco UCS System to upgrade the server environment at City of Banning. The upgrade will include a Cisco UCS Mini Blade server with 4 blades & a Nimble Storage unit for storage. Cybertek can use existing Citrix licenses for 2 blades, but will need to add additional licenses to make the other 2 blades operational. This would be the most cost effective solution for virtualization.

There are additional line items that Cybertek has listed at the end of this quote. These options include: VMware licenses, Citrix Licenses, Two VDI options (VMware Horizon & Citrix XenDesktop), & Rack Equipment (Rack and UPS).

Cybertek  
2187 Larimore Lane  
Mentone, Ca. 92359  
(909)792-3381  
Prepared By: Jason



Project Name: UCS System

Document Number / Version Number: 01V1

Customer Name: City of Banning

## Pricing

### City of Banning - UCS Mini 4 Blades

Model	Description	Qty	Mfr. List	Price	Ext Price
<b>Blade Center</b>					
UCS-SP8-M-B200-EP	UCS SP8 B200 ENTRY PLUS 2x6324 1xCH 4xB200M3 w/2xE52620 v2	1	\$0.00	\$0.00	\$0.00
UCS-SP-MINI-AC2	(Not sold Standalone)UCS MINI SP 5108 Blade Svr AC2 Chassis	1	\$21,025.00	\$9,913.29	\$9,913.29
CAB-US520-C19-US	NEMA 5-20 to IEC-C19 14ft US	4	\$0.00	\$0.00	\$0.00
N20-CAK	Accessory kit for UCS 5108 Blade Server Chassis	1	\$0.00	\$0.00	\$0.00
N20-CBLKB1	Blade slot blanking panel for UCS 5108/single slot	8	\$0.00	\$0.00	\$0.00
N20-FAN5	Fan module for UCS 5108	8	\$0.00	\$0.00	\$0.00
N20-FW013	UCS Blade Server Chassis FW Package 3.0	1	\$0.00	\$0.00	\$0.00
UCSB-5108-PKG-HW	UCS 5108 Packaging for chassis with half width blades.	1	\$0.00	\$0.00	\$0.00
UCSB-PSU-2500ACDV	2500W Platinum AC Hot Plug Power Supply - DV	4	\$0.00	\$0.00	\$0.00
N01-UAC1	Single phase AC power module for UCS 5108	1	\$0.00	\$0.00	\$0.00
UCS-SP-FI-M-6324	(Not sold Standalone)UCS SP 6324 In-Chassis FI	1	\$0.00	\$0.00	\$0.00
GLC-T	1000BASE-T SFP	2	\$0.00	\$0.00	\$0.00
SFP-10G-SR	10GBASE-SR SFP Module	2	\$0.00	\$0.00	\$0.00
UCS-CTR-LIC	UCS Central Per UCS Domain License (Physical)	1	\$0.00	\$0.00	\$0.00
UCS-SP-FI-M-6324	(Not sold Standalone)UCS SP 6324 In-Chassis FI	1	\$0.00	\$0.00	\$0.00
GLC-T	1000BASE-T SFP	2	\$0.00	\$0.00	\$0.00
SFP-10G-SR	10GBASE-SR SFP Module	2	\$0.00	\$0.00	\$0.00
<b>UCS-SP7-SR-B200-EP</b>	(Not a standalone SKU) B200M3 w/ 2xE52620B8x8GBVIC1240	4	\$9,487.00	\$4,473.12	\$17,892.48
UCS-M3-V2-LBL	Cisco M3 - v2 CPU asset tab ID label (Auto-Expand)	4	\$0.00	\$0.00	\$0.00
UCS-CPU-E52620B	2.10 GHz E5-2620 v2/80W 6C/15MB Cache/DDR3 1600MHz	8	\$0.00	\$0.00	\$0.00
UCS-MR-1X082RZ-A	8GB DDR3-1866-MHz RDIMM/PC3-14900/dual rank/x4/1.5v	32	\$0.00	\$0.00	\$0.00

Cybertek  
2187 Larimore Lane  
Mentone, Ca. 92359  
(909)792-3381  
Prepared By: Jason



Project Name: UCS System  
Document Number / Version Number: 01V1

Customer Name: City of Banning

<b>UCS-MR-1X082RZ-A=</b>	8GB DDR3-1866-MHz RDIMM/PC3-14900/dual rankx4/1.5v	32	\$486.00	\$229.15	\$7,332.80
N20-BBLKD	UCS 2.5 inch HDD blanking panel	8	\$0.00	\$0.00	\$0.00
UCSB-HS-01-EP	CPU Heat Sink for UCS B200 M3 and B420 M3	8	\$0.00	\$0.00	\$0.00
UCSB-MLOM-40G-01	Cisco UCS VIC 1240 modular LOM for blade servers	4	\$0.00	\$0.00	\$0.00
	<b>Blade Center Sub Total</b>				<b>\$35,138.57</b>
<b>Nimble SAN</b>					
CS215-2T-12T-320F	CS215, 2x1 GigE, Dual 10Gbaset (Qty. 1 pair), 12 x 1TB HDD, 4 x 80GB SSDs	1	\$56,500.00	\$25,990.00	\$25,990.00
	<b>Nimble Sub Total</b>				<b>\$25,990.00</b>
	<b>Parts Sub Total</b>			9.00%	<b>\$61,128.57</b>
	<b>Tax</b>				<b>\$5,501.57</b>
<b>Smartnet/Warranty</b>					
CON-SNT-6508AC2S	SMARTNET 8X5XNBD UCS MINI SP 5108 Blade Svr AC2 Chassis	1	\$82.00	\$78.06	\$78.06
CON-SNT-FIM6324S	SMARTNET 8X5XNBD UCS SP 6324 In-Chassis FI	1	\$256.00	\$243.71	\$243.71
CON-SAU-UCSMGRAS	SW APP SUPP + UPRGR UCS Central Per UCS Domain Lic-Physical	1	\$2,400.00	\$2,284.80	\$2,284.80
CON-SNT-FIM6324S	SMARTNET 8X5XNBD UCS SP 6324 In-Chassis FI	1	\$256.00	\$243.71	\$243.71
CON-SNT-SP7B20EP	SMARTNET 8X5XNBD TBD	4	\$220.00	\$209.44	\$837.76
SLA-NBD	NBD Parts Del, SW Sup & InfoSight - NextGen Arrays - 12 months	1	\$3,491.76	\$3,128.62	\$3,128.62
	<b>Smartnet/Warranty Sub Total</b>				<b>\$6,816.66</b>
<b>Installation</b>					
PRO-INSTALL-ARRAY	Installation for Nimble Array / Expansion Shelf	1	\$2,500.00	\$2,300.00	\$2,300.00
	Installation, Configuration and Integration of Blade Server	1	\$6,300.00	\$6,300.00	\$6,300.00
	<b>Labor Sub Total</b>				<b>\$8,600.00</b>
	<b>City of Banning - UCS Mini 4 Blades - Total</b>				<b>\$82,046.80</b>

Cybertek  
2187 Larimore Lane  
Mentone, Ca. 92359  
(909)792-3381  
Prepared By: Jason



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Project Name: UCS System  
Document Number / Version Number: 01V1

Customer Name: City of Banning

# City of Banning - UCS Mini 4 Blades - Optional Line Items

## VMware for all 4 blades

VMW-VC5-STD-1A=	VMware vCenter 5 Server Standard	1	\$9,366.00	\$4,416.07	\$4,416.07
CON-ISV1-VC5STD1A	ISV 24X7 VMware vCenter-Server Standard, List Price is ANNUAL	1	\$1,624.00	\$1,546.05	\$1,546.05
VMW-VS5-ST-1A=	VMware vSphere 5 Standard (1 CPU) 1yr Support Required	8	\$1,866.00	\$879.82	\$7,038.56
CON-ISV1-VS5STD1A	ISV 24X7 VMware vSphere Standard List Price is ANNUAL	8	\$420.00	\$399.84	\$3,198.72
	<b>VMware Sub Total</b>				<b>\$16,199.40</b>

## Citrix Licensing

3009822-EZ	EASY XENSERPER PER SOCKET	4	\$1,025.00	\$942.60	\$3,770.40
4025026-EZ	EASY 1YR SW MNT XENSERPER PER SOCKET	4	\$225.00	\$220.71	\$882.84
	<b>Citrix Sub Total</b>				<b>\$4,653.24</b>

## VMware Horizon View - VDI Option from VMware

HZ-STD-10-C	HORIZON VIEW STD 10PK CCU	4	\$2,500.00	\$2,375.79	\$9,503.16
HZ-STD-10-P-SSS-C	PROD SNS HORIZON VIEW STD 10PK CCU 1YR	4	\$625.00	\$616.22	\$2,464.88
	<b>VMware Horizon Sub Total</b>				<b>\$11,968.04</b>

## Citrix XenDesktop - VDI Option from Citrix

MWZ20000102	XENDESKTOP VDI CONCURRENT LICENSE W/ 1 YR SA	40	\$195.00	\$182.44	\$7,297.60
	<b>Citrix XenDesktop Sub Total</b>				<b>\$7,297.60</b>
MWZ20000105	XENDESKTOP ENTERPRISE CONCURRENT LICENSE W/ 1 YR SA	40	\$500.00	\$450.48	\$18,019.20
	<b>Citrix XenDesktop Enterprise Sub Total</b>				<b>\$18,019.20</b>

## Rack Equipment

SR24UB	Tripp Lite 24U Rack Enclosure Server Cabinet	1	\$1,301.40	\$805.85	\$805.85
SMART2200RM2U	Tripp Lite SmartPro SMART2200RM2U 2200VA Rack-mountable UPS	1	\$1,409.40	\$850.37	\$850.37
	<b>Rack Equipment Sub Total</b>				<b>\$850.37</b>

Cybertek  
2187 Larimore Lane  
Mentone, Ca. 92359  
(909)792-3381  
Prepared By: Jason



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## Attachment #2

# Logical Front Implementation Services Contract



Logical Front

Worldwide Services

Statement of Work

for

City of Banning

Virtual Desktop Infrastructure (VDI) Implementation

## Statement of Work

---

### Effective

This Statement of Work (the "SOW") is dated and effective as of 30 October 2014 (the "Effective Date"), by and between the following Parties:

Logical Front, LLC  
3080 Skyvue Circle  
West Jordan, Utah 84088  
Tel: 801.203.3141  
Fax: 801.327.0674

Recipient/  
Customer:

### Term

This SOW shall commence on the Effective Date and will continue in effect through the completion of the SOW or until otherwise terminated (the "Term").

### Services and Schedule

The Services to be performed and any associated schedule are detailed in Exhibit A and governed by the additional terms of Exhibit B. All work will be documented in a Statement of Work signed by authorized representatives of both Parties and, except as otherwise indicated in a Statement of Work, shall be performed by Logical Front, or Logical Front's contractors or consultants. Recipient will provide the necessary resources to facilitate the execution of services outlined in Exhibit A in supporting Logical Front's performance of the Services. The SOW Managers for each Party are:

Logical Front:

Recipient:

### Final Agreement

This SOW, including the Exhibits attached here, constitutes the entire agreement and understanding between the Parties and supersedes all prior contemporaneous communications, discussions, understandings, negotiations, arrangements, and agreements between the Parties, whether written or oral, relating to the subject matter of this SOW. This SOW may not be modified or amended except in writing duly executed by both Parties.

### *Agreed to and accepted by:*

Logical Front:

Recipient:

By:  
Name:  
Title:  
Date: 30 October 2014

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## Exhibit A - Services To Be Performed

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## Project Definition

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This STATEMENT OF WORK ("SOW") dated 30 October 2014, (the "Effective Date") is executed between Logical Front, LLC ("Logical Front") and Client ("Client"). The content of this Worldwide Services SOW is based on Logical Front's current understanding of Client's requirements. This engagement provides for professional services to deploy Virtual Desktop Infrastructure (VDI) to support 40 virtual desktops with an emphasis on establishing best practices and knowledge transfer. Project not to exceed 5 Days of onsite and/or remote work.

## Project Tasks

1. Build Quest vWorkspace Virtual Desktop environment
2. Rollout client desktop image
3. Provide training

## Deployment

A proposed high-level project plan is described in the list below. The Logical Front and Client Project Managers will review the SOW, and may create a revised project plan at the start ("kick-off") of the project. Tasks may be completed in a different order than listed at the discretion of the Logical Front Engineer, Logical Front Project Manager, and/or Client's Project Manager.

### Phase I

1. **Project Discussion and Planning**  
Discuss design, processes, IP addressing needs, and overall scope.
2. **Server Installation**  
Deploy Quest Desktop Virtualization environment including:
  - a. Hyper-V server, including addition to the vWorkspace farm.
  - b. Microsoft SQL server for environment
  - c. Virtual Connection Brokers
  - d. Virtual Web Interface Server and Secure Gateway
3. **Image development and deployment**  
Create and optimize a Windows 7 golden image, and provide training on the process to update the golden image. Install thin shell and demonstrate its use and configuration to the client.
4. **Quest vWorkspace Server Training**  
Provide basic training on Desktop Virtualization with Specific focus on how it is implemented in the Client's environment. Training to include the basic administration of the following items.
  - a. Hyper-V
  - b. Connection Broker
  - c. Web Server and Gateway
5. **Project Closure Meeting**  
Deployment Engineers will meet with the respective Project Manager and/or management to discuss the deliverables mentioned in the Scope of Work for this project. Any open issues and items of concern should be addressed during this meeting. Intention is to finalize the project with regard to implementation and delivery of key objectives stated above.



## Change Control Process

Client understands that changes may result in additional time by the Logical Front consultant at an additional cost to Client. The Change Request Form will describe the change(s), the reason for the change, the charges for the change, and the effect the change will have on the project timelines.

The change control process consists of:

- a. Logical Front consultant or Project Manager will complete the Change Request form in appendix B of this statement of work.
- b. Logical Front consultant or Project Manager will forward the Change Request Form to Client for review and agreement.
- c. Client agrees to changes and costs (if any) in the change.
- d. Logical Front consultant or Project Manager will forward the Change Request Form to Logical Front Management for approval.
- e. Change Request form must be signed by both parties.
- f. Changes are implemented.

## Responsibilities

### Logical Front Project Resources and Responsibilities

Logical Front will assign adequate resources to initiate the project in a timely manner with high quality standards. Logical Front will make every effort to maintain a consistent staff for the period of 'man days' from project commencement. However, Logical Front reserves the right to assign and remove resources as required. Logical Front may choose to utilize the services of our consulting partners to complete the services. Logical Front's business partners have previous experience, while on contract to Logical Front, our partners are fully recognized and supported as an extension of Logical Front's Professional Services Group.

### Client Responsibilities

1. Provide racked and configured physical servers with Windows Server 2008 R2 or 2012 with the Hyper-V role enabled for the deployment. Client will have downloaded all necessary software packages prior to Logical Front's first day of services provided.
2. Client will provide remote access (via VPN, WebEx, or GoToMeeting, for example) to Logical Front consultant during the duration of the deployment.
3. Project personnel will be available on a timely basis and will be able to allocate necessary time to the consultant during the deployment. Anticipated Client resources required will be the following Administrators:
  - a. Windows 7, Windows Server 2008 R2, 2012
  - b. Relational database management system (eg: SQL Server)
  - c. Infrastructure
4. All Operating Systems must be installed and patched to environmental standards prior to the arrival of the Logical Front Consultant for deployment and implementation services.
5. Client will be responsible for conducting any necessary backups of the system, as well as any subsequent restorations that may be required.
6. Client acknowledges that Logical Front work will be performed by remote resources.

7. Client will provide relevant application and process documentation, and assist with information, as deemed necessary, as it relates to this engagement. Logical Front will define required documentation as appropriate.
8. Meetings and interviews will be conducted remotely, and as required, Client personnel will be available to the Logical Front consultant during the deployment (e.g. teleconference or videoconference).
9. Adequate accounts for administration and testing will be provided to the Logical Front consultant for the duration of deployment.
10. Client will assign a Project Manager who will serve as Logical Front's executive-level and primary contact.

### Cancelation Policy

If customer cancels this engagement less than 10 business days prior to the start date of this engagement, customer shall pay Logical Front the fees equivalent to one day of services under this engagement or \$2,500, whichever is less.

Services Quotation		
Service Type	QTY	Total
Quest Onsite/Remote Install (install details above)	1	\$9,995.00
Travel Expenses not included		
Total		\$9,995.00

## Appendix A - Change Request Form

This document serves as an addendum to the SOW ("Statement of Work") executed between Logical Front, LLC ("Logical Front") and Client ("Client") dated 30 October 2014. Client has requested additional services from Logical Front that were not included in the SOW but are closely associated with the project. Therefore, the parties have agreed to amend the SOW to expand the scope of the project. The following is a description of the requested services:

Change Request Initiation	
Change Title	Change Request #
Date Submitted	Date Require by
Related Requirement(s)	Related Issue(s)
Submitted by	Contact Phone
Description	
Reason	

Technical Evaluation	
Technical Consultant	Date
Conclusions	
Project Manager	Date
Conclusions	



Budget/Project Impact Evaluation	
Project Manager	Date
Change of Scope?	Description
Technical Consultant	Date
Summary of Work Effort Change	
Description	
Reason	

List of New or Changed Tasks – Projected						
Task ID	New ?	Description	Budget Hours	Est. Hours	Total Chg	Cost Change
						\$
						\$
						\$
Totals						\$ 0

Risk Evaluation		
#	Description	Risk Resolution Strategy

Determination		
Approved?	Rejected?	Deferred?
Reason		
Logical Front Project Manager		
Signature	Date	
Customer Authorized Project Manager		
Signature	Date	
New Service PO #(s)		

Acceptance
As of the date below, Client acknowledges the work on this change to be complete, having required the work effort defined below. Any further effort requested will be evaluated and managed as a separate change request.

List of New or Changed Tasks – Actual						
Task ID	New ?	Description	Budget Hours	Est. Hours	Total Chg	Cost Change
						\$
						\$
						\$
Totals						\$ 0
Customer Authorized Representative						
Signature			Date			

## Exhibit B - Legal Terms

### Document Amendment Log

Date	Status	Author(s)	Changes
22 March 2012	V 1.3	George Thornton	SOW

### Copyright

© Copyright 2006-2012 Logical Front, LLC All Rights Reserved. The information and/or drawings set forth in this document and all rights in and to inventions disclosed herein and patents which might be granted thereon disclosing or employing the materials, methods, techniques, or apparatus described herein are the exclusive property of Logical Front. No disclosure of information or drawing shall be made to any other person or organization without prior consent Logical Front.

#### 1. DEFINITIONS

- 1.1. "Logical Front Work Product" means Customizations, Inventions, Intellectual Property and work product, developed pursuant to this SOW.
- 1.2. "Customizations" means computer software code and/or programs developed or delivered by Logical Front under this SOW.
- 1.3. "Inventions" means any ideas, designs, concepts, techniques, technology, know-how, processes, methods, configurations, inventions, discoveries, and improvements.
- 1.4. "Intellectual Property" means any intellectual property rights, including copyrights, trademarks, service marks, trade names, mask works, trade secrets, know-how, moral rights, and rights of publicity.
- 1.5. "Services" means work for Recipient pursuant to this SOW.

#### 2. PROPRIETARY RIGHTS

- 2.1. Logical Front shall have full and exclusive right, title and ownership interest in and to all Logical Front Work Product.
- 2.2. Subject to payment in full by Recipient of all amounts owed to Logical Front under this SOW, Logical Front grants Recipient a limited, nonexclusive, and nonsublicenseable license to use, execute, and reproduce the Logical Front Work Product for Recipient's own internal use.
- 2.3. Any Customizations provided to Recipient shall be governed by the license agreement governing Recipient's use of the program for which the Customization is designed. Logical Front may migrate any Customizations into its software. If a Customization is not migrated into the software, the Parties may negotiate a maintenance fee for such Customization. If the Parties cannot agree such a maintenance fee, the Customization is provided on an "AS IS" basis and without warranty.

#### 3. LIMITED WARRANTIES AND REMEDIES FOR BREACH

- 3.1. Logical Front warrants that the Services will be performed in a workmanlike manner consistent with industry standards reasonably applicable to the performance of such Services.
  - 3.1.1. If Recipient believes there has been a breach of this warranty and so notifies Logical Front in writing stating in reasonable detail the nature of the alleged breach within fifteen (15) days after the Services are delivered, then Logical Front will investigate the alleged breach.
  - 3.1.2. If there is a breach of this warranty, Logical Front's sole obligation, and Recipient's exclusive remedy, will be to correct or re-perform any affected Services to cause them to comply with this warranty. If Logical Front is unable to correct a breach of this warranty after repeated efforts, Recipient will receive an equitable adjustment in the Logical Front charges for the Services in question (up to the total amount of the SOW) to reflect any reduction in the value of the Services.
- 3.2. Logical Front warrants that any original works of authorship provided under this SOW, will not, to Logical Front's knowledge, infringe any third party Intellectual Property arising under the laws of the U.S.A.
  - 3.2.1. If a third party brings an action against Recipient making allegations that, if true, would constitute a breach of this warranty, then Logical Front will, at its own expense, settle the claim or defend Recipient in such proceeding and Logical Front will pay all settlements, costs, damages and legal fees and expenses finally awarded, provided that Recipient (i) promptly notifies Logical Front in writing of the proceeding, (ii) provides Logical Front a copy of all information received by Recipient with respect to the proceeding, (iii) cooperates in defending or settling the proceeding, and (iv) allows Logical Front to control the defense and settlement of the proceeding, including the selection of attorneys. Recipient may observe any such proceeding at its own expense.
  - 3.2.2. If such a proceeding is brought or appears to Logical Front to be likely to be brought, Logical Front may, at its sole option and expense, either obtain the right for Recipient to continue using the allegedly infringing item(s) or replace or modify the item(s) to resolve such proceeding. If Logical Front finds that neither of these alternatives is available



to it on commercially reasonable terms, Logical Front may require Recipient to return the allegedly infringing item(s), in which case Recipient will receive a refund of the amounts paid by it for the returned item(s), depreciated on a straight-line basis over a 5 years.

- 3.3. Section 3 states Logical Front's entire obligation to Recipient and Recipient's sole remedy with respect to any claim of infringement.
- 3.4. To the extent possible, Logical Front shall perform investigation and correction services at Logical Front's offices and Recipient agrees to provide dial-up or other remote IP access to Recipient's production and test computers. If Recipient refuses such access or requires Logical Front to travel to Recipient's business to correct an error that could have been corrected remotely, Recipient will reimburse Logical Front for the reasonable travel time and Reimbursable Expenses. If an alleged breach of warranty is not attributable to Logical Front, then Logical Front will be entitled to payment for efforts on a time and materials basis.
- 3.5. Logical Front is not responsible for any claimed breaches of any warranty caused by: (i) modifications not made by Logical Front or Logical Front subcontractors; or (ii) the combination or use of the item with items not supplied by Logical Front; or (iii) Recipient's failure to use any new or corrected versions made available by Logical Front; or (iv) Recipient's failure to follow directions or perform procedures prescribed by Logical Front; or (v) adherence to Recipient's specifications or instructions.
- 3.6. EXCEPT AS EXPRESSLY STATED IN THIS SOW, ALL WARRANTIES ARE IN LIEU OF, AND THIS SOW EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ALL IMPLIED WARRANTIES OF MERCHANTABILITY; (ii) ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE; AND (iii) ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.
4. **LIMITATION OF LIABILITY**
  - 4.1. IN NO EVENT WILL LOGICAL FRONT OR ANY PERSON OR ENTITY INVOLVED IN THE PERFORMANCE OF ANY SERVICES UNDER THIS SOW BE LIABLE FOR DAMAGES CAUSED BY THE FAILURE OF RECIPIENT TO PERFORM ITS RESPONSIBILITIES; ANY CLAIMS OR DEMANDS OF THIRD PARTIES; OR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, BUSINESS, DATA, SAVINGS OR COST OF SUBSTITUTE GOODS INCURRED BY RECIPIENT OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, TORT OR OTHER LEGAL THEORY OR WARRANTY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
  - 4.2. If Recipient should become entitled to claim direct damages from Logical Front, Logical Front will be liable only up to the amount that Recipient paid Logical Front for the Services that are the subject of the claim. In no event will Logical Front's aggregate liability relating to this SOW exceed the total amount paid to Logical Front by Recipient under this SOW.
  - 4.3. Logical Front shall not be held responsible for damages due to any delay, interruption in services, or failure to perform arising out of causes beyond Logical Front's reasonable control which prevents or makes reasonably difficult its performance. Such events may include acts of God or a public enemy, acts of government, earthquake, fire, floods, strikes, work stoppages, accidents or degradation of communication services.
5. **INDEMNIFICATION**
  - 5.1. If, as a result of Logical Front's negligence, Recipient or Recipient's employees suffer personal injury or damage to tangible property, Logical Front will reimburse Recipient for claims Recipient actually pays for which Logical Front is legally liable, not to exceed (in the aggregate) the amount paid by Recipient to Logical Front under the applicable SOW.
  - 5.2. If, as a result of Recipient's negligence, Logical Front or Logical Front's employees suffer personal injury or damage to tangible property, Recipient will reimburse Logical Front for claims Logical Front actually pays for which Recipient is legally liable, not to exceed (in the aggregate) the amount paid by Recipient to Logical Front under the applicable SOW.
6. **TERMINATION**
  - 6.1. Either Party may terminate this SOW at any time and for any reason upon thirty (30) days prior written notice to the other Party. In such an event, Logical Front will inform Recipient of the status of the SOW work and Logical Front will take steps to wind down work in progress in an orderly fashion during the notice period. Recipient will pay Logical Front for Services performed through the date of termination, plus all Reimbursable Expenses. Logical Front shall refund to Recipient any pre-paid fees for incomplete Services rendered under this SOW as of the date of termination. Upon the termination of this SOW for any reason, all obligations of Logical Front to provide Services shall immediately cease.
7. **GENERAL**
  - 7.1. This SOW shall be governed by the laws of the State of Utah, without giving effect to Utah's choice of law rules or principles. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from this SOW.
  - 7.2. The prevailing Party shall be entitled to recover the reasonable out-of-pocket costs and fees including without limitation reasonable attorneys' fees incurred by such Party in the event of any suit or action.
  - 7.3. Any provision of this SOW that includes continuing obligations on a Party will survive the expiration or termination of the SOW.
  - 7.4. If any provision of this SOW is declared unenforceable, the Parties will substitute an enforceable provision that preserves the original intentions and economic positions of the Parties.
  - 7.5. Logical Front and Recipient are entering this SOW as independent contractors and no relationship of exclusivity is created hereby.

## Contact Summary

Customer Primary Contact	Name: Phone: Email:
Customer Billing Contact	Client
Customer Location(s) Where Work Will Be Performed	Client(customer location)
Logical Front Account Representative	Name: Phone: Email:
Logical Front Solutions Architect	Name: Phone: Email:

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** January 13, 2015

**TO:** City Council

**FROM:** Duane Burk, Director of Public Works

**SUBJECT:** Resolution No. 2015-05, "Approving the Disadvantaged Business Enterprise Implementation Agreement with the California Department of Transportation"

**RECOMMENDATION:** Adopt Resolution No. 2015-05, "Approving the City of Banning's Disadvantaged Business Enterprise Implementation Agreement with the California Department of Transportation"

**JUSTIFICATION:** The adoption of Resolution No. 2015-05 is essential in order to obtain and utilize federal grants administered by the California Department of Transportation ("CALTRANS").

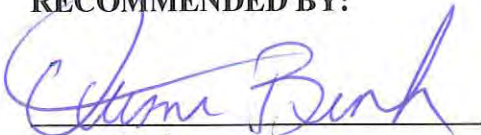
**BACKGROUND:** In order to obtain federal grant funding for transportation projects, local agencies within California must comply with the requirements of U.S. Department of Transportation ("DOT"). As a condition of receiving federal grant funding, recipients are to sign the CATLRANS Disadvantage Business Enterprise ("DBE") Implementation Agreement, attached as Exhibit "A". Signing the DBE Implementation Agreement is the initial step to formally acknowledge the City's commitment to implement the DOT's DBE Program Plan.

The DBE program is intended to ensure a level playing field and foster equal opportunity in federal-aid contracts. CALTRANS periodically conducts studies that examine the availability, disparity and discrimination of disadvantaged businesses in the transportation construction and engineering industry in California. Past studies have determined that discrimination continues to exist in the transportation contracting industry.

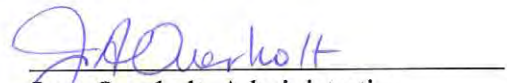
**FISCAL DATA:** The City of Banning has been awarded and has formally accepted by resolution a Highway Safety Improvement Program ("HSIP") grant in the amount of \$375,700.00. The HSIP grant is administered by the DOT, therefore the City is required to execute the DBE Implementation Agreement in order to receive the grant funding.

**SIGNATURES ON NEXT PAGE**

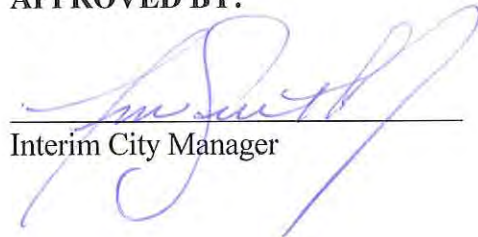
**RECOMMENDED BY:**

  
Duane Burk,  
Director of Public Works

**REVIEWED BY:**

  
June Overholt, Administrative  
Services Director/Deputy City Manager

**APPROVED BY:**

  
Interim City Manager



**RESOLUTION NO. 2015-05**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM IMPLEMENTATION AGREEMENT WITH CALTRANS**

**WHEREAS**, the City of Banning is a recipient of federal grant funds from U.S. Department of Transportation ("DOT") programs administered by the California Department of Transportation ("CALTRANS"); and

**WHEREAS**, the DOT has required that all recipients of federal grant funds submit a Disadvantaged Business Enterprise ("DBE") Program Implementation Agreement, as attached as Exhibit "A", for Local Agencies, incorporating Federal DBE regulations, to CALTRANS for approval; and

**WHEREAS**, it is essential that the Implementation Agreement with CALTRANS be approved by the City Council in order to utilize federal grant funds for transportation projects.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning, as follows:

SECTION I. City Council adopts Resolution No. 2015-05, "Approving the Disadvantaged Business Enterprise Implementation Agreement with CALTRANS"

SECTION II. The City Manager is authorized to execute the DBE Implementation Agreement.

**PASSED, APPROVED AND ADOPTED** this 13<sup>th</sup> day of January, 2015.

\_\_\_\_\_  
Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk  
City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

\_\_\_\_\_  
David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-05 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of January, 2015 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Marie A. Calderon, City Clerk  
City of Banning, California

**EXHIBIT "A"**  
**DBE IMPLEMENTATION AGREEMENT**

**EXHIBIT 9-A DBE IMPLEMENTATION AGREEMENT FOR LOCAL AGENCIES**  
**CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) DISADVANTAGED  
BUSINESS ENTERPRISE (DBE) IMPLEMENTATION AGREEMENT**

For the City of Banning, hereinafter referred to as "SUB-RECIPIENT."

**I. Definition of Terms**

The terms used in this agreement have the meanings defined in 49 CFR 26.5.

**II. Objective/Policy Statement (49 CFR 26.1 and 26.23)**

SUB-RECIPIENT intends to receive federal financial assistance from the U. S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans), and as a condition of receiving this assistance, SUB-RECIPIENT will sign the California Department of Transportation Disadvantaged Business Enterprise Implementation Agreement (hereinafter referred to as Agreement). SUB-RECIPIENT agrees to implement the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan (hereinafter referred to as the DBE Program Plan) as it pertains to local agencies. The DBE Program Plan is based on U.S. Department of Transportation (DOT), 49 CFR 26 requirements.

It is the policy of SUB-RECIPIENT to ensure that DBEs, as defined in 49 CFR 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also SUB-RECIPIENT's policy:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- To create a level playing field on which DBE's can compete fairly for DOT-assisted contracts.
- To ensure that the DBE participation percentage is narrowly tailored, in accordance with applicable law.
- To ensure that only firms that fully meet 49 CFR 26 eligibility standards are permitted to participate as DBEs.
- To help remove barriers to the participation of DBEs in Federal-aid contracts.
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

**III. Nondiscrimination (49 CFR 26.7)**

SUB-RECIPIENT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the local agency components of the DBE Program Plan, SUB-RECIPIENT will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

**IV. Annual DBE Submittal Form (49 CFR 26.21)**

SUB-RECIPIENT will provide to the Caltrans District Local Assistance Engineer (DLAE) a completed "Local Agency DBE Annual Submittal Form" (Exhibit 9-B), by June 30 of each year for the following Federal Fiscal Year (FFY). This form must include the name, phone number, email address of the designated Disadvantaged Business Enterprise Liaison Officer (DBELO), and the choice of Prompt Pay Provision to be used by SUB-RECIPIENT for the following FFY.

**V. Race-Neutral Means of Meeting Caltrans Overall Statewide Annual DBE Goal (49 CFR 26.51(a))**

Caltrans expects SUB-RECIPIENT to meet the maximum feasible portion of Caltrans Overall Statewide Annual DBE Goal through race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes when a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts). Race-neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate the participation of DBE and other small businesses (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs and other small businesses obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on SUB-RECIPIENT mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of types of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of your DBE directory through print and electronic means to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.

**VI. Race-conscious Means of Meeting Caltrans Overall Statewide Annual DBE Goal (49 CFR 26.51(d))**

SUB-RECIPIENT must establish DBE contract goals to meet any portion of Caltrans Overall Statewide Annual DBE Goal that cannot be achieved through race-neutral means.

**VII. Quotas (49 CFR 26.43)**

SUB-RECIPIENT will not use quotas or set-asides in any way in the administration of the local agency component of the DBE Program Plan.

**VIII. DBE Liaison Officer (DBELO) (49 CFR 26.25)**

SUB-RECIPIENT has designated a DBE Liaison Officer. The DBELO is responsible for implementing the DBE Program Plan as it pertains to the SUB-RECIPIENT, and ensures that the SUB-RECIPIENT is fully and properly advised concerning DBE Program Plan matters. [Specify resources available to the DBELO; e.g., the DBELO has a staff of two professional employees assigned to the DBE program on a

full-time basis and two support personnel who devote a portion of their time to the program.] The name, address, telephone number, email address, and an organization chart displaying the DBELO's position in the organization are found in Attachment "A" to this Agreement. This information will be updated annually and included on the DBE Annual Submittal Form.

The DBELO is responsible for developing, implementing, and monitoring the SUB-RECIPIENT's requirements of the DBE Program Plan in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to determine DBE contract goals.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and DBE race-neutral issues.
8. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

**IX. Federal Financial Assistance Agreement Assurance (49 CFR 26.13)**

Each agreement SUB-RECIPIENT signs with Caltrans must include the following assurance:

The SUB-RECIPIENT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR 26. The SUB-RECIPIENT shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The SUB-RECIPIENT's DBE Program, as required by 49 CFR 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the SUB-RECIPIENT of its failure to carry out its approved program, Caltrans may impose sanctions as provided for under 49 CFR 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Each contract SUB-RECIPIENT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the SUB-RECIPIENT deems appropriate.

**X. DBE Financial Institutions (49 CFR 26.27)**

SUB-RECIPIENT must investigate the full extent of services offered by financial institutions owned and

controlled by socially and economically disadvantaged individuals in the community to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Information on the availability of such institutions can be obtained from the DBELO. The Caltrans Disadvantaged Business Enterprise Program may offer assistance to the DBELO.

**XI. Directory (49 CFR 26.31)**

SUB-RECIPIENT will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's website at:  
[www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep).

**XII. Required Contract Clauses (49 CFR 26.13 and 26.29)**

SUB-RECIPIENT ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

**A. Contract Assurance**

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as SUB-RECIPIENT deems appropriate.

**NOTE:** This language is to be used verbatim, as is stated in "Required Federal-aid Contract Language" (Exhibit 12-G). See also 49 CFR 26.13(b).

**B. Prompt Payment**

**Prompt Progress Payment to Subcontractors**

The local agency shall require contractors and subcontractors to be timely paid as set forth in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 7-day is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

**Prompt Payment of Withheld Funds to Subcontractors**

The local agency shall ensure prompt and full payment of retainage from the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed and accepted. This shall be accompanied by including; either (1), (2), or (3) of the following provisions [local agency equivalent will need Caltrans approval] in their federal-aid contracts to ensure prompt and full payment of retainage [withheld funds] to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to



the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

2. No retainage will be held by the agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

### **XIII. Local Assistance Procedures Manual**

The SUB-RECIPIENT will advertise, award and administer Federal-aid contracts in accordance with the current [Local Assistance Procedures Manual \(LAPM\)](#) including [forms and Exhibits](#).

### **XIV. Vehicle Manufacturers/Specialized Equipment (§26.49)**

If Federal-aid contracts will include vehicle/specialized equipment procurements, SUB-RECIPIENT will require each vendor, as a condition of being authorized to bid or propose on vehicle/specialized equipment procurements, to certify that it has complied with the requirements of 49 CFR 26.69.

### **XV. Reporting to the DLAE**

SUB-RECIPIENT will promptly submit a copy of the Consultant Proposal DBE Commitment (Exhibit 10-O1) at the time of award of the consultant contract.

SUB-RECIPIENT will promptly submit a copy of Consultant Contract DBE Information (Exhibit 10-O2) or the Local Agency Bidder DBE Commitment (Construction Contracts) (Exhibit 15-G) to the DLAE within 30 days after execution of consultant or construction contract.

SUB-RECIPIENT will promptly submit a copy of the Final Report-Utilization of DBE, First-Tier Subcontractors (Exhibit 17-F) of the LAPM, immediately upon completion of each consultant or

construction contract.

**XVI. Certification (§26.83(a))**

SUB-RECIPIENT ensures that only DBE firms currently certified by the California Unified Certification Program (CUCP) will participate as DBEs on Federal-aid contracts.

**XVII. Confidentiality**

SUB-RECIPIENT will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information consistent with federal, state, and local laws.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title)  
ADMINISTERING AGENCY  
(Authorized Governing Body Representative)

Phone #: \_\_\_\_\_

This California Department of Transportation's Disadvantaged Business Enterprise Program Implementation Agreement is accepted by:

\_\_\_\_\_  
(Signature of DLAE)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Print Name of DLAE)

**Distribution:** (1) Original – DLAE  
(2) Signed copy by the DLAE – Local Agency

## ATTACHMENT "A" TO THE DBE IMPLEMENTATION AGREEMENT

DBELO

Duane Burk

Director of Public Works

dburk@ci.banning.ca.us

951-922-3130

Resources: Has one Senior Engineer and one Public Works Analyst who devote a portion of their time to the program.

**CITY COUNCIL**

**DATE:** January 13, 2015

**TO:** City Council

**FROM:** Duane Burk, Director of Public Works

**SUBJECT:** Notice of Completion for Project No. 2013-03, "Construction of Parking Lot Improvements at Replier Park"

**RECOMMENDATION:** That the City Council accepts Project No. 2013-03, "Construction of Parking Lot Improvements at Replier Park" as complete and directs the City Clerk to record the Notice of Completion as attached herein as Exhibit "A," and gives the Administrative Services Director the authorization to make all necessary budget adjustments and appropriations related to the project.

**JUSTIFICATION:** Staff has determined that the project has been completed per the City of Banning Plans and Specifications.

**BACKGROUND:** On October 8, 2013, the City Council adopted Resolution No. 2013-97 "Awarding the Construction Contract for Project No. 2013-03, 'Construction of Parking Lot Improvements at Replier Park' and Rejecting All Other Bids." The project was awarded to Avi-Con, Inc. dba CA Construction of Riverside, California.

The scope of work under the project included the construction of the parking lot originally designed as part of the Replier Park Bowl project and provided additional parking stalls, improved parking circulation and ADA compliant handicap parking stalls

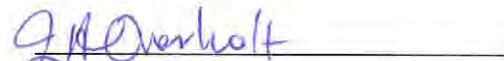
**FISCAL DATA:** The original contract amount for this project was \$406,989.00. The final contract amount is equal to \$401,995.48.

**RECOMMENDED BY:**



Duane Burk,  
Director of Public Works

**REVIEWED AND APPROVED BY:**



June Overholt,  
Administrative Services Director/  
Acting City Manager



1 WHEN RECORDED MAIL TO:

2  
3 Office of the City Clerk  
4 City of Banning  
5 P.O. Box 998  
6 Banning, California 92220  
7

8 FREE RECORDING:  
9 Exempt Pursuant to  
10 Government Code §6103  
11

---

12  
13 NOTICE OF COMPLETION

14 PROJECT NO. 2013-03

15 CONSTRUCTION OF PARKING LOT IMPROVEMENTS AT REPPLIER PARK  
16

17 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the  
18 City of Banning, a municipal corporation, pursuant to the provisions of Section 3093 of  
19 the Civil Code of the State of California, and is hereby accepted by the City of Banning,  
20 pursuant to authority conferred by the City Council this January 13, 2015, and the  
21 grantees consent to recordation thereof by its duly authorized agent.  
22

23 That the OWNER, the City of Banning, and Avi-Con Inc., dba CA Construction of  
24 Riverside, California, the vendee, entered into an agreement dated November 4, 2013 for  
25 Project No. 2013-03, "Construction of Parking Lot Improvements at Repplier Park."  
26

27 The scope of work under the project included the construction of the parking lot  
28 originally designed as part of the Repplier Park Bowl project and provided additional  
29 parking stalls, improved parking circulation and ADA compliant handicap parking stalls  
30 all in accordance with the City of Banning Standard Specifications.  
31

32 (1) That the work of improvement was completed on November 17, 2014, for  
33 Project No. 2013-03, "Construction of Parking Lot Improvements at Repplier Park."

1 (2) That the City of Banning, a municipal corporation, whose address is  
2 Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is completing work  
3 of improvement.

4 (3) That said work of improvement was performed at the Northwest corner of  
5 San Gorgonio Avenue and George Street in Banning, California 92220.

6 (4) That the original contractor for said improvement was Avi-Con Inc., dba  
7 CA Construction, State Contractor's License No. 588602.

8 (5) That Performance and Payment bonds were required for this project.

9 (6) The nature of interest is in fee.

10  
11 Dated: January 13, 2015

12 CITY OF BANNING  
13 A Municipal Corporation  
14

15  
16  
17 By \_\_\_\_\_  
18  
19 Administrative Services  
20 Director  
21

22 APPROVED AS TO FORM:  
23  
24  
25

26  
27 \_\_\_\_\_  
28 David J. Aleshire, City Attorney  
29 Aleshire & Wynder, LLP  
30  
31  
32  
33  
34  
35  
36



1  
2  
3 **JURAT**  
4

5 State of California  
6 County of Riverside  
7

8 Subscribed and sworn to (or affirmed) before me on this 13th day of January, 2015 by  
9 \_\_\_\_\_ proved to me on this basis of satisfactory evidence to be the  
10 person(s) who appeared before me.  
11  
12

13  
14 (S e a l)  
15

16 \_\_\_\_\_  
17 Notary Public in and for said County  
18 and State  
19

20 STATE OF CALIFORNIA)

21 ) ss

22 COUNTY OF RIVERSIDE)  
23

24 MARIE A. CALDERON, being duly sworn, deposes and says:  
25

26 That I am the City Clerk of the City of Banning, which City caused the work to be  
27 performed on the real property hereinabove described, and is authorized to execute this  
28 Notice of Completion on behalf of said City; that I have read the foregoing Notice and  
29 know the contents thereof, and that the facts stated therein are true based upon  
30 information available to the City of Banning, and that I make this verification on behalf  
31 of said City of Banning. I declare under perjury that the forgoing is true and correct.

32 Executed on \_\_\_\_\_, 2015 at Banning, California.  
33  
34  
35  
36

37 \_\_\_\_\_  
38 City Clerk of the City of Banning

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** January 13, 2015

**TO:** City Council

**FROM:** June Overholt, Administrative Services Director

**SUBJECT:** Recommendation to Adopt Resolution 2015-07, "Adopting a Statement of Investment Policy"

**RECOMMENDATION:** "The City Council adopt Resolution No. 2015-07, a Resolution of the City Council of the City of Banning Adopting a Statement of Investment Policy."

**JUSTIFICATION:** City policy requires an annual review of the investment policy.

**BACKGROUND/ANALYSIS:** The current policy focuses on safety, liquidity and availability, rather than on yield. Under the current policy, a minimum of 40% of the City's investments may be placed in an investment with the State of California's Local Agency Investment Fund (LAIF). The other investments cannot exceed a 36 month maturity. Per the State Treasurer's Office, pursuant to the California Government Code monies invested with LAIF cannot be borrowed or withheld by the State of California. These monies are protected by statute. The remaining 60% of the City's available operating money is invested in authorized securities (other than LAIF). The LAIF rate has dropped from .528% to .261% from July 1, 2010 to the present. Our current average rate on investments other than LAIF is .242%. Our current average rate on investments overall (excluding bond funds) is .399%. In 2012-13 the LAIF rate dropped to .244% and the total interest earned on all investments was approximately \$178,000. In 2013-14, the LAIF rate ranged from .228% to .271% and the City earned approximately \$184,000 in interest on all of its investments.


Staff is not recommending any changes to the policy at this time.

**FISCAL DATA:** No immediate fiscal impact is anticipated. The monthly Report of Investments tracks any changes in investment income.

**RECOMMENDED BY:**

**APPROVED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

  
James Smith  
Interim City Manager

**RESOLUTION NO. 2015-07**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING ADOPTING  
A STATEMENT OF INVESTMENT POLICY**

**WHEREAS**, Under the laws of the State of California, it is the responsibility of the City Council to secure and protect the public funds of the City of Banning (hereinafter "City"), and to establish proper safeguards, controls, and procedures to maintain these funds in a lawful, rational and auspicious manner; and

**WHEREAS**, said maintenance shall include the prudent and secure investment of those funds that are not immediately needed to meet cash disbursements, in a manner anticipated to provide additional benefit to the electorate of the City of Banning;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BANNING** as follows:

SECTION 1. The following shall constitute the Statement of the Investment Policy of the City of Banning:

**1. SCOPE**

This Statement of Investment Policy pertains to those funds under the control of the City Council, designated for the ongoing operations of the City and the City's Successor Agency; and concerns the deposit, maintenance, and safekeeping of all such funds, and the investments made with these funds. This Policy does not apply to pension moneys, deferred compensation funds, trustee, and certain other non-operating funds.

**2. PURPOSE OF POLICY STATEMENT**

The purpose of this Statement of Investment Policy is to provide the public and those involved in servicing the investment requirements of the City, and any other interested party, a clearer understanding of the Government Codes, regulations and internal guidelines that will be observed in maintaining and investing those funds not immediately needed to meet liabilities.

**3. INVESTMENT OBJECTIVES**

The underlying objective of the City Council is to protect the safety of the principal of the portfolio through the judicious purchase of those legal investments permitted to local agencies, as defined in the State of California Government Codes, consistent with current conditions and the other dominant objectives pursuant to managing a local agency portfolio, namely:

- A. **Safety:** The City Council takes as its primary responsibility to maintain the safe return of all principal placed in investments by avoiding decisions that might result in

losses through fraud, default, or adverse market conditions. Importance is also accorded to the protection of accrued interest earned on any investment instrument.

- B. **Liquidity:** The City Council accepts as an imperative that a majority (a minimum of 60%) of all investments are in items that are immediately negotiable, as the portfolio is a cash management fund. It shall be assumed that all investments shall remain sufficiently liquid in order to meet unexpected cash calls.
- C. **Availability:** Due to the nature of a public funds portfolio, the City Council finds that it is mandatory that moneys be available to meet the monetary requirements inherent to operating a public entity. Thus funds should be invested in such a manner that money will always be available without risk of trading loss to meet normal cash requirements. A vast majority of the moneys invested by the City Council should never require the realization of immoderate losses should an unforeseen cash demand require the sale of investments prior to maturity. A sufficient portion of all funds shall be invested in securities providing a high degree of availability, that is, in securities easily sold or converted to cash in a timely manner, with little or no loss of interest earnings.
- D. **Yield:** While it is considered desirable to obtain a respectable yield, yield shall not be the driving force in determining which investments are to be selected for purchase. Yield is to be given lesser weight in the investment decision than safety, liquidity, or availability.

The City Council shall undertake to place investments with the objective of obtaining a reasonable rate of return under prevailing market conditions. In pursuit of this goal, maximization of yield shall be of lesser concern than either safety of principal, liquidity of the investment, or availability of the invested funds. The City Council undertakes to be prudently cognizant of those factors within the marketplace that may be indicative of either favorable or hazardous conditions relative to the City's investments. The portfolio is to be managed under the strategy of minimal turnover in investments however, with sufficient activity to minimize losses due to adverse changes in market conditions.

#### 4. PRUDENCE

The City Council recognizes that it is subject to the "Prudent Investor Standard" whenever making a decision regarding the investment of the City's funds. This rule states:

*When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, general economic conditions and the anticipated needs of the agency, that a prudent person acting in like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency (Cal. Gov. Code §53600.3).*

The City Council, and those acting under the auspices of the City Council, is deemed to have a fiduciary trustee relationship with the public for the public funds, and all investment decisions will be made in a manner sustaining this responsibility.

## 5. DELEGATION OF AUTHORITY

While the City Council has final responsibility for all investment decisions, other City personnel are required to aid in the day to day administration of those decisions. Those staff members currently authorized to act on behalf of the City Council are listed below. This list is subject to change. Parties involved in investment transactions with the City Council are deemed to be on notice of the contents of the most current copy of this Policy, and all pertinent authorizing documents, at the time of accepting written or verbal instructions from any staff member. The Councilpersons and deputized personnel listed below are designated to perform such approved investment related tasks as the City Council shall from time to time assign, to arrange any required notifications, and to execute the documents necessary to put into effect the decisions of and for the City Council:

### Title

### Mayor

### Administrative Services Director

### City Manager

Other persons, both inside and outside City employment, may act in the role of assistant or advisor to those listed above, to aid in the timely and proper settlement of investment transactions. Such persons may not authorize, approve, or initiate any trading activities. **Only the persons listed above may initiate trading activity and only in a manner consistent with the instructions of the City Council.**

City Council directives to the City Manager and Administrative Services Director are as follows:

- Make investments in accordance with this policy.
- Make phone calls to, or otherwise communicate with, LAIF or brokerage firm for investment purposes and to withdrawal and deposit funds as required to meet the City's cash flow requirements between meetings of the City Council.
- Make transaction withdrawals for cash flow requirements up to a maximum of limit of \$3,000,000 per single transaction without prior approval of the City Council.

## 6. SECURITIES CUSTODY

As required by the Government Code, the City Council shall establish a third party custody and safekeeping account to which all negotiable instruments shall be delivered upon purchase on a payment versus delivery basis. No negotiable, deliverable, securities or investments will be left in the custody of any brokerage firm or issuing party, including any collateral from Repurchase Agreements.

## **7. AUTHORIZED INVESTMENTS AND LIMITATIONS**

The Government Code of the State of California, primarily within sections 53600 et. seq., sets out the legal authority for inclusion of certain types of investment vehicles in a California local agency's investment portfolio. Consistent with those sections, under no circumstances will the City Council purchase an investment that is not specifically authorized for a local agency under these, or other code sections that may apply, or might later be enacted, pertaining to local agency investments. It shall be a requirement of all investment professionals performing any transaction on behalf of the City that they possess a complete understanding of the acceptability of the subject investment under those code sections.

A "Table of Investments Permitted Local Agencies by the California Government Codes" is attached hereto, marked Attachment "A" and by this reference made a part hereof. Attachment "A" briefly describes the principal types of securities legal within the Government Code sections noted above, and outlines the various limitations included in these sections. From these permitted investments, the Council shall determine those investment types that best meet the needs and abilities of the City. The Council has elected to be more restrictive than the attached State guidelines, as described in Section 8.

## **8. AUTHORIZED AND SUITABLE INVESTMENTS**

It is hereby determined by the City Council that, due to the exceptional safety, liquidity and availability provided by the State of California's Local Agency Investment Fund (LAIF), a minimum of 40% of the City's operating moneys shall be placed in the LAIF, with the exception of certain bond proceeds and required deposits that pre-existing contractual obligations restrict to other investment types. Such exceptions shall comply with all appropriate Government Codes, ordinances and other restrictions inherent to the conditions requiring such exceptions.

It is hereby further determined by the City Council that not more than 60% of the City's operating moneys may be placed in the following types of securities:

- Securities issued or guaranteed by the U.S. Treasury or agencies of the United States Government
- Bank Certificates of Deposit
- Shares of savings certificates of savings and loan associations

## **9. AUTHORIZED TERM OF INVESTMENTS**

It is hereby determined that the maximum maturity period for any portion of invested operating moneys shall not exceed thirty-six (36) months. This shall not apply to certain bond proceeds or other non-operating moneys of the City.

## **10. AUTHORIZED DEALER LIST – CONFLICT OF INTEREST PROHIBITION**

It is prohibited for a transaction to be entered into with any securities broker, dealer or bank investment department or subsidiary prior to that entity being designated an Authorized Dealer, and placed on the Authorized Dealer List. Authorized Dealers shall be selected on an as



needed basis to meet specific needs of the City Council. The Administrative Services Director is authorized to manage the Authorized Dealer List.

No member of the City Council, nor any other official or employee of the City, may accept any gift, honoraria, gratuity or service of value in violation of the regulations set forth by the Fair Political Practices Commission, the Government Code, additional limitations set forth by City ordinance, or internal requirements of the Treasurer and Administrative Services Director. The City Council is prohibited from conducting any business with any broker, dealer, or securities firm that has made a political contribution to the City Treasurer or any member of the City Council, or any candidate for these offices, within the 48 month period immediately following the date of the political contribution, in an amount exceeding the limitation contained in Rule G-37 of the Municipal Securities Rulemaking Board. A copy of Rule G-37 is attached hereto and incorporated herein as Attachment "B."

## **11. REPORTING**

The Administrative Services Director shall maintain investment records legally required or otherwise requested by the City Council and prepare a report for the Council on a monthly basis stating the holdings, status, and earnings of the portfolio. The Statement of Investment Policy will be provided at the start of each fiscal year annually for review and approval of the City Council. Should conditions arise, or legislation become effective that behooves consequential changes within the Policy during the year, the revised policy will again be addressed by the City Council.

SECTION 2. This Statement of Investment Policy shall be reviewed annually and approved by the City Council in an open public meeting. Upon request, it will be provided to banks and brokers and to other effected persons or entities; and to any member of the electorate wishing to review this document. The City reserves the right to provide these documents on a cost recovery basis.

SECTION 3. The Statement of Investment Policy was originally adopted under Resolution 2013-95, which expired by its terms on October 8, 2014.

SECTION 4. The Statement of Investment Policy is hereby adopted.

**PASSED, APPROVED AND ADOPTED** this 13th day of January, 2015.

---

Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

---

Marie A. Calderon, City Clerk  
City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

---

David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2015-07 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of January, 2015 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon, City Clerk  
City of Banning, California

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

---

David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2015-07 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of January, 2015 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon, City Clerk  
City of Banning, California

FIGURE 1

ALLOWABLE INVESTMENT INSTRUMENTS PER STATE GOVERNMENT  
CODE (AS OF JANUARY 1, 2014)<sup>A</sup> APPLICABLE TO ALL LOCAL AGENCIES<sup>B</sup>

See "Table of Notes for Figure 1" on the next page for footnotes related to this figure.

INVESTMENT TYPE	MAXIMUM MATURITY <sup>C</sup>	MAXIMUM SPECIFIED % OF PORTFOLIO <sup>D</sup>	MINIMUM QUALITY REQUIREMENTS
Local Agency Bonds	5 years	None	None
U.S. Treasury Obligations	5 years	None	None
State Obligations-- CA And Others	5 years	None	None
CA Local Agency Obligations	5 years	None	None
U.S Agency Obligations	5 years	None	None
Bankers' Acceptances	180 days	40% <sup>E</sup>	None
Commercial Paper-- Select Agencies <sup>F</sup>	270 days	25% of the agency's money <sup>G</sup>	"A-1" if the issuer has issued long-term debt it must be rated "A" without regard to modifiers <sup>H</sup>
Commercial Paper-- Other Agencies <sup>I</sup>	270 days	40% of the agency's money <sup>J</sup>	"A-1" if the issuer has issued long-term debt it must be rated "A" without regard to modifiers <sup>H</sup>
Negotiable Certificates of Deposit	5 years	30% <sup>K</sup> (combined with placement service CDs)	None
Placement Service Deposits	5 years	30% <sup>K</sup> (inclusive of placement service CDs)	None
Placement Service Certificates of Deposit	5 years	30% <sup>K</sup> (combined with negotiable CDs)	None
Repurchase Agreements	1 year	None	None
Reverse Repurchase Agreements and Securities Lending Agreements	92 days <sup>L</sup>	20% of the base value of the portfolio	None <sup>M</sup>
Medium-Term Notes <sup>N</sup>	5 years	30%	"A" Rating
Mutual Funds And Money Market Mutual Funds	N/A	20% <sup>O</sup>	Multiple <sup>P,Q</sup>
Collateralized Bank Deposits	5 years	None	None
Mortgage Pass-Through Securities	5 years	20%	"A" Rating <sup>R</sup>
Bank/Time Deposits	5 years	None	None
County Pooled Investment Funds	N/A	None	None
Joint Powers Authority Pool	N/A	None	Multiple <sup>S</sup>
Local Agency Investment Fund (LAIF)	N/A	None	None
Voluntary Investment Program Fund <sup>T</sup>	N/A	None	None

## TABLE OF NOTES FOR FIGURE 1

- <sup>A</sup> Sources: Sections 16340, 16429.1, 53601, 53601.8, 53635, 53635.2, 53635.8, and 53638.
- <sup>B</sup> Municipal Utilities Districts have the authority under the Public Utilities Code Section 12871 to invest in certain securities not addressed here.
- <sup>C</sup> Section 53601 provides that the maximum term of any investment authorized under this section, unless otherwise stated, is five years. However, the legislative body may grant express authority to make investments either specifically or as a part of an investment program approved by the legislative body that exceeds this five year maturity limit. Such approval must be issued no less than three months prior to the purchase of any security exceeding the five-year maturity limit.
- <sup>D</sup> Percentages apply to all portfolio investments regardless of source of funds. For instance, cash from a reverse repurchase agreement would be subject to the restrictions.
- <sup>E</sup> No more than 30 percent of the agency's money may be in bankers' acceptances of any one commercial bank.
- <sup>F</sup> "Select Agencies" are defined as a "city, a district, or other local agency that does] not pool money in deposits or investment with other local agencies, other than local agencies that have the same governing body."
- <sup>G</sup> No more than 10 percent of the agency's money may be invested in any one issuer's commercial paper.
- <sup>H</sup> Issuing corporation must be organized and operating within the U.S. and have assets in excess of \$500 million.
- <sup>I</sup> "Other Agencies" are counties, a city and county, or other local agency "that pools money in deposits or investments with other local agencies, including local agencies that have the same governing body." Local agencies that pool exclusively with other local agencies that have the same governing body must adhere to the limits set for "Select Agencies," above.
- <sup>J</sup> No more than 10 percent of the agency's money may be invested in the commercial paper of any one corporate issuer.
- <sup>K</sup> No more than 30 percent of the agency's money may be invested in deposits, including CDs, through a private sector placement service. No more than 30 percent of the agency's money may be invested in CDs through a placement service and negotiable CDs. Sections 53601.8, 53635.8, and 53601(i).
- <sup>L</sup> Reverse repurchase agreements or securities lending agreements may exceed the 92-day term if the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity dates of the same security.
- <sup>M</sup> Reverse repurchase agreements must be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state chartered bank that has a significant relationship with the local agency. The local agency must have held the securities used for the agreements for at least 30 days.
- <sup>N</sup> "Medium-term notes" are defined in Section 53601 as "all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States"
- <sup>O</sup> No more than 10 percent invested in any one mutual fund.
- <sup>P</sup> A mutual fund must receive the highest ranking by not less than two nationally recognized rating agencies or the fund must retain an investment advisor who is registered with the SEC (or exempt from registration), has assets under management in excess of \$500 million, and has at least five years experience investing in instruments authorized by Sections 53601 and 53635.
- <sup>Q</sup> A money market mutual fund must receive the highest ranking by not less than two nationally recognized statistical rating organizations or retain an investment advisor registered with the SEC or exempt from registration and who has not less than five years experience investing in money market instruments with assets under management in excess of \$500 million.
- <sup>R</sup> Issuer must be rated in category "AA", or its equivalent or better as provided by a nationally recognized rating agency.
- <sup>S</sup> A joint powers authority pool must retain an investment advisor who is registered with the SEC (or exempt from registration), has assets under management in excess of \$500 million, and has at least five years experience investing in instruments authorized by Section 53601, subdivisions (a) to (o).
- <sup>T</sup> Local entities can deposit between \$200 million and \$10 billion into the Voluntary Investment Program Fund, upon approval by their governing bodies. Deposits in the fund will be invested in the Pooled Money Investment Account.



## Rule G-37 Political Contributions and Prohibitions on Municipal Securities Business

### Related Rules and Interpretations:

- Fairness Opinions
- Financial Advisory Relationship: Private Placements
- Sales of Municipal Fund Securities in the Primary Market
- The Definition of Solicitation Under Rules G-37 and G-38

### Other Information:

- Instructions for Forms G-37, G-37x and G-38t
- View and Print Form G-37
- View and Print Form G-37x
- Rule G-37 Interpretive Questions and Answers

(a) *Purpose.* The purpose and intent of this rule are to ensure that the high standards and integrity of the municipal securities industry are maintained, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect a free and open market and to protect investors and the public interest by: (i) prohibiting brokers, dealers and municipal securities dealers from engaging in municipal securities business with issuers if certain political contributions have been made to officials of such issuers; and (ii) requiring brokers, dealers and municipal securities dealers to disclose certain political contributions, as well as other information, to allow public scrutiny of political contributions and the municipal securities business of a broker, dealer or municipal securities dealer.

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### (b) *Ban on Municipal Securities Business.*

(i) No broker, dealer or municipal securities dealer shall engage in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by:

(A) the broker, dealer or municipal securities dealer;

(B) any municipal finance professional associated with such broker, dealer or municipal securities dealer; or

(C) any political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional;

provided, however, that this section shall not prohibit the broker, dealer or municipal securities dealer from engaging in municipal securities business with an issuer if the only contributions made by the persons and entities noted above to officials of such issuer within the previous two years were made by municipal finance professionals to officials of such issuer for whom the municipal finance professionals were entitled to vote and which contributions, in total, were not in excess of \$250 by any municipal finance professional to each official of such issuer, per election.

(ii) For an individual designated as a municipal finance professional solely pursuant to subparagraph (B) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply to contributions made by such individual to officials of an issuer prior to becoming a municipal finance professional only if such individual solicits municipal securities business from such issuer.

(iii) For an individual designated as a municipal finance professional solely pursuant to subparagraph (C), (D) or (E) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply only to contributions made during the period beginning six months prior to the individual becoming a municipal finance professional.

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### (c) *Prohibition on Soliciting and Coordinating Contributions.*

(i) No broker, dealer or municipal securities dealer or any municipal finance professional of the broker, dealer or municipal securities dealer shall solicit any person, including but not limited to any affiliated entity of the broker, dealer or municipal securities dealer, or political action committee to make any contribution, or shall coordinate any contributions, to an official of an issuer with which the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business.



(ii) No broker, dealer or municipal securities dealer or any individual designated as a municipal finance professional of the broker, dealer or municipal securities dealer pursuant to subparagraphs (A), (B), or (C) of paragraph (g)(iv) of this rule shall solicit any person, including but not limited to any affiliated entity of the broker, dealer or municipal securities dealer, or political action committee to make any payment, or shall coordinate any payments, to a political party of a state or locality where the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business.

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(d) *Circumvention of Rule.* No broker, dealer or municipal securities dealer or any municipal finance professional shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of this rule.

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(e) *Required Disclosure to Board.*

(i) Except as otherwise provided in paragraph (e)(ii), each broker, dealer or municipal securities dealer shall, by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31) send to the Board Form G-37 setting forth, in the prescribed format, the following information:

(A) for contributions to officials of issuers (other than a contribution made by a municipal finance professional or a non-MFP executive officer to an official of an issuer for whom such person is entitled to vote if all contributions by such person to such official of an issuer, in total, do not exceed \$250 per election) and payments to political parties of states and political subdivisions (other than a payment made by a municipal finance professional or a non-MFP executive officer to a political party of a state or a political subdivision in which such person is entitled to vote if all payments by such person to such political party, in total, do not exceed \$250 per year) made by the persons and entities described in subclause (2) of this clause (A):

(1) the name and title (including any city/county/state or political subdivision) of each official of an issuer and political party receiving contributions or payments during such calendar quarter, listed by state;

(2) the contribution or payment amount made and the contributor category of each of the following persons and entities making such contributions or payments during such calendar quarter:

(a) the broker, dealer or municipal securities dealer;

(b) each municipal finance professional;

(c) each non-MFP executive officer; and

(d) each political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional;

(B) for contributions to bond ballot campaigns (other than a contribution made by a municipal finance professional or a non-MFP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if all contributions by such person to such bond ballot campaign, in total, do not exceed \$250 per ballot initiative) made by the persons and entities described in subclause (2) of this clause (B):

(1) the official name of each bond ballot campaign receiving contributions during such calendar quarter, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, listed by state;

(2) the contribution amount made (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign), the specific date on which the contribution was made, and the contributor category of each of the following persons and entities making such contributions during such calendar quarter:

(a) the broker, dealer or municipal securities dealer;

(b) each municipal finance professional;

(c) each non-MFP executive officer; and

(d) each political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional;

(3) the full issuer name and full issue description of any primary offering resulting from the bond ballot campaign to which a contribution required to be disclosed pursuant to this clause (B) has been made, or to which a contribution has been made by a municipal finance professional or a non-MFP executive officer during the period beginning two years prior to such individual becoming a municipal finance professional or a non-MFP executive officer that would have been required to be disclosed if such individual had been a municipal finance professional or a non-MFP executive officer at the time of such contribution and the reportable date of selection on which the broker, dealer or municipal securities dealer was selected to engage in such municipal securities business, reported in the calendar quarter in which the closing date for the issuance that was authorized by the bond ballot campaign occurred; and

(4) the payments or reimbursements, related to any bond ballot contribution, received by each broker, dealer or

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## Attachment B

municipal securities dealer or any of its municipal finance professionals from any third party that are required to be disclosed pursuant to this clause (B), including the amount paid and the name of the third party making such payment.

(C) a list of issuers with which the broker, dealer or municipal securities dealer has engaged in municipal securities business during such calendar quarter, listed by state, along with the type of municipal securities business;

(D) any information required to be included on Form G-37 for such calendar quarter pursuant to paragraph (e)(iii);

(E) such other identifying information required by Form G-37; and

(F) whether any contribution listed in this paragraph (e)(i) is the subject of an automatic exemption pursuant to section (j) of this rule, and the date of such automatic exemption.

The Board shall make public a copy of each Form G-37 received from any broker, dealer or municipal securities dealer.

(ii) No broker, dealer or municipal securities dealer shall be required to send Form G-37 to the Board for any calendar quarter in which either:

(A) such broker, dealer or municipal securities dealer has no information that is required to be reported pursuant to clauses (A) through (D) of paragraph (e)(i) for such calendar quarter; or

(B) such broker, dealer or municipal securities dealer has not engaged in municipal securities business, but only if such broker, dealer or municipal securities dealer:

(1) had not engaged in municipal securities business during the seven consecutive calendar quarters immediately preceding such calendar quarter; and

(2) has sent to the Board completed Form G-37x setting forth, in the prescribed format, (a) a certification to the effect that such broker, dealer or municipal securities dealer did not engage in municipal securities business during the eight consecutive calendar quarters immediately preceding the date of such certification, (b) certain acknowledgments as are set forth in said Form G-37x regarding the obligations of such broker, dealer or municipal securities dealer in connection with Forms G-37 and G-37x under this paragraph (e)(ii) and rule G-8(a)(xvi), and (c) such other identifying information required by Form G-37x; provided that, if a broker, dealer or municipal securities dealer has engaged in municipal securities business subsequent to the submission of Form G-37x to the Board, such broker, dealer or municipal securities dealer shall be required to submit a new Form G-37x to the Board in order to again qualify for an exemption under this clause (B). The Board shall make public a copy of each Form G-37x received from any broker, dealer or municipal securities dealer.

(iii) If a broker, dealer or municipal securities dealer engages in municipal securities business during any calendar quarter after not having reported on Form G-37 the information described in clause (A) of paragraph (e)(i) for one or more contributions or payments made during the two-year period preceding such calendar quarter solely as a result of clause (B) of paragraph (e)(ii), such broker, dealer or municipal securities dealer shall include on Form G-37 for such calendar quarter all such information (including year and calendar quarter of such contributions or payments) not so reported during such two-year period.

(iv) A broker, dealer or municipal securities dealer that submits Form G-37 or Form G-37x to the Board shall either:

(A) send two copies of such form to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending; or

(B) submit an electronic version of such form to the Board in such format and manner specified in the current *Instructions for Forms G-37 and G-37x*.

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(f) *Voluntary Disclosure to Board.* The Board will accept additional information related to contributions made to officials of issuers and payments to political parties of states and political subdivisions voluntarily submitted by brokers, dealers or municipal securities dealers or others provided that such information is submitted in accordance with section (e) of this rule.

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### (g) *Definitions.*

(i) The term "contribution" means any gift, subscription, loan, advance, or deposit of money or anything of value made:

(A) to an official of an issuer:

(1) for the purpose of influencing any election for federal, state or local office;

(2) for payment of debt incurred in connection with any such election; or

(3) for transition or inaugural expenses incurred by the successful candidate for state or local office; or

(B) to a bond ballot campaign:

(1) for the purpose of influencing (whether in support of or opposition to) any ballot initiative seeking

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authorization for the issuance of municipal securities through public approval obtained by popular vote;

(2) for payment of debt incurred in connection with any such ballot initiative; or

(3) for payment of the costs of conducting any such ballot initiative.

(ii) The term "issuer" means the governmental issuer specified in section 3(a)(29) of the Act.

(iii) The term "broker, dealer or municipal securities dealer" used in this rule does not include its associated persons.

(iv) The term "municipal finance professional" means:

(A) any associated person primarily engaged in municipal securities representative activities, as defined in rule G-3(a)(i), provided, however, that sales activities with natural persons shall not be considered to be municipal securities representative activities for purposes of this subparagraph (A);

(B) any associated person (including but not limited to any affiliated person of the broker, dealer or municipal securities dealer, as defined in rule G-38) who solicits municipal securities business;

(C) any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any persons described in subparagraphs (A) or (B);

(D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to rule G-1(a); or

(E) any associated person who is a member of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G-1) executive or management committee or similarly situated officials, if any; provided, however, that, if the only associated persons meeting the definition of municipal finance professional are those described in this subparagraph (E), the broker, dealer or municipal securities dealer shall be deemed to have no municipal finance professionals.

Each person designated by the broker, dealer or municipal securities dealer as a municipal finance professional pursuant to rule G-8(a)(xvi) is deemed to be a municipal finance professional. Each person designated a municipal finance professional shall retain this designation for one year after the last activity or position which gave rise to the designation.

(v) The term "non-MFP executive officer" means an associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G-1), but does not include any municipal finance professional, as defined in paragraph (iv) of this section (g); provided, however, that if no associated person of the broker, dealer or municipal securities dealer meets the definition of municipal finance professional, the broker, dealer or municipal securities dealer shall be deemed to have no non-MFP executive officers.

Each person listed by the broker, dealer or municipal securities dealer as a non-MFP executive officer pursuant to rule G-8(a)(xvi) is deemed to be a non-MFP executive officer.

(vi) The term "official of such issuer" or "official of an issuer" means any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer.

(vii) The term "municipal securities business" means:

(A) the purchase of a primary offering (as defined in rule A-13(f)) of municipal securities from the issuer on other than a competitive bid basis (e.g., negotiated underwriting); or

(B) the offer or sale of a primary offering of municipal securities on behalf of any issuer (e.g., private placement); or

(C) the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis; or

(D) the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

(viii) The term "payment" means any gift, subscription, loan, advance, or deposit of money or anything of value.

(ix) Except as used in section (c), the term "solicit" means the taking of any action that would constitute a solicitation as defined in rule G-38(b)(i).

(x) The term "bond ballot campaign" means any fund, organization or committee that solicits or receives contributions to be used to support ballot initiatives seeking authorization for the issuance of municipal securities through public approval obtained by popular vote.

(xi) The term "reportable date of selection" means the date of the earliest to occur of: (i) the execution of an engagement letter; (ii) the execution of a bond purchase agreement; or (iii) the receipt of formal notification (provided either in writing or orally) from or on behalf of the issuer that the dealer has been selected to engage in municipal securities business.

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(h) *Operative Date.* The prohibition on engaging in municipal securities business, as described in section (b) of this rule, arises only from contributions made on or after April 25, 1994.

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(i) *Application for Exemption.* A registered securities association with respect to a broker, dealer or municipal securities dealer who is a member of such association, or the appropriate regulatory agency as defined in Section 3(a)(34) of the Act with respect to any other broker, dealer or municipal securities dealer, upon application, may exempt, conditionally or unconditionally, a broker, dealer or municipal securities dealer who is prohibited from engaging in municipal securities business with an issuer pursuant to section (b) of this rule from such prohibition. In determining whether to grant such exemption, the registered securities association or appropriate regulatory agency shall consider, among other factors:

(i) whether such exemption is consistent with the public interest, the protection of investors and the purposes of this rule;

(ii) whether such broker, dealer or municipal securities dealer (A) prior to the time the contribution(s) which resulted in such prohibition was made, had developed and instituted procedures reasonably designed to ensure compliance with this rule; (B) prior to or at the time the contribution(s) which resulted in such prohibition was made, had no actual knowledge of the contribution(s); (C) has taken all available steps to cause the contributor involved in making the contribution(s) which resulted in such prohibition to obtain a return of the contribution(s); and (D) has taken such other remedial or preventive measures, as may be appropriate under the circumstances, and the nature of such other remedial or preventive measures directed specifically toward the contributor who made the relevant contribution and all employees of the broker, dealer or municipal securities dealer;

(iii) whether, at the time of the contribution, the contributor was a municipal finance professional or otherwise an employee of the broker, dealer or municipal securities dealer, or was seeking such employment;

(iv) the timing and amount of the contribution which resulted in the prohibition;

(v) the nature of the election (e.g, federal, state or local); and

(vi) the contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

---

(j) *Automatic Exemptions.*

(i) A broker, dealer or municipal securities dealer that is prohibited from engaging in municipal securities business with an issuer pursuant to section (b) of this rule as a result of a contribution made by a municipal finance professional may exempt itself from such prohibition, subject to subparagraphs (ii) and (iii) of this section, upon satisfaction of the following requirements: (1) the broker, dealer or municipal securities dealer must have discovered the contribution which resulted in the prohibition on business within four months of the date of such contribution; (2) such contribution must not have exceeded \$250; and (3) the contributor must obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the broker, dealer or municipal securities dealer.

(ii) A broker, dealer or municipal securities dealer is entitled to no more than two automatic exemptions per 12-month period.

(iii) A broker, dealer or municipal securities dealer may not execute more than one automatic exemption relating to contributions by the same municipal finance professional regardless of the time period.

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## CITY COUNCIL/BANNING UTILITY AUTHORITY AGENDA

**DATE:** January 13, 2015

**TO:** Banning Utility Authority

**FROM:** Duane Burk, Director of Public Works

**SUBJECT:** Resolution No. 2015-02 UA, "Approving the Dynamic Survey of Well Nos. 25 and 26 to Address High Contaminant Levels"

**RECOMMENDATION:** Adopt Resolution No. 2015-02 UA, approving the dynamic survey and associated costs in the amount of \$28,525.00 for the maintenance of Well Nos. 25 and 26 per the joint agreement with Beaumont-Cherry Valley Water District.

**JUSTIFICATION:** The joint agreement between Beaumont-Cherry Valley Water District (BCVWD) and the City of Banning obligates the City to share operation, maintenance, repair and replacement costs of Well Nos. 25 and 26.

**BACKGROUND:** Beaumont-Cherry Valley Water District (BCVWD) and the City of Banning serve the largest number of domestic water users in the San Geronio Pass area and collectively rely in substantial part on the Beaumont Basin as a source for water. The agencies desire to promote conjunctive use of the Basin and to jointly address the long-term reliability of the Basin as a source of portable water, including the use of water recycling and the treatment and use of imported water.

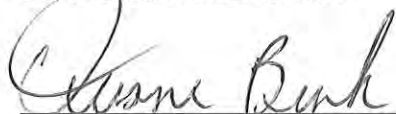
As a result, in December of 2003, BCVWD and the City entered into an agreement for the construction of production Well Nos. 25 and 26 attached as Exhibit "A". The agencies agreed to equally share the cost of constructing the referenced wells. These wells are jointly operated and owned with BCVWD being the lead agency with primary responsibility for the operation and maintenance of the joint facilities.

As part of its maintenance responsibility, BCVWD recently performed a round of chromium-6 monitoring of all of its groundwater sources. This monitoring was conducted in response to the recent adoption of the Maximum Contaminant Level (MCL) for hexavalent chromium (Cr-6) by the California Department of Public Health which became effective July 1, 2014.

Consequently, it was discovered that Well Nos. 25 and 26 have tested over the MCL. In order to understand if a modification to the well screens may provide a cost effective solution to lower the total Cr-6 levels, BCVWD has identified the need to perform a dynamic survey on these wells. A letter from BCVWD requesting the City of Banning's agreement with the performance of the dynamic profiling survey and associated costs is provided as Exhibit "B". Additionally, BCVWD has the proposed utilizing BESST Inc. Global Subsurface Technologies to perform the services; attached hereto as Exhibit "C" is the proposal of services.

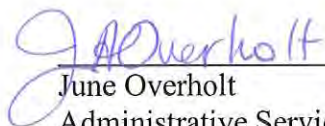
**FISCAL DATA:** Water Capital Facility Funds are available in the amount of \$28,525.00 Account No. 661-6300-471.95-08 (Wells/Pumping Equipment).

**RECOMMENDED BY:**



Duane Burk  
Director of Public Works

**REVIEWED BY:**



June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**



Interim City Manager

**Attachments:**

1. Exhibit "A" - Agreement between BCVWD and the City
2. Exhibit "B" - BCVWD Letter Dated November 17, 2014
3. Exhibit "C" - BESST Proposal



**RESOLUTION NO. 2015-02 UA**

**A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE DYNAMIC SURVEY OF WELL NOS. 25 AND 26 TO ADDRESS HIGH CONTAMINANT LEVELS**

**WHEREAS**, in December of 2003, BCVWD and the City entered into an agreement for the construction of production Well Nos. 25 & 26 and the agencies agreed to equally share the cost of constructing the referenced wells; and

**WHEREAS**, these wells are jointly operated and owned with BCVWD being the lead agency with primary responsibility for the operation and maintenance of the joint facilities; and

**WHEREAS**, as part of its maintenance responsibility, BCVWD recently performed a round of chromium-6 monitoring of all of its groundwater sources which was conducted in response to the recent adoption of the Maximum Contaminant Level (MCL) for hexavalent chromium (Cr-6) by the California Department of Public Health which became effective July 1, 2014; and

**WHEREAS**, it was discovered that Well Nos. 25 and 26 have tested over the MCL and in order to understand if a modification to the well screens may provide a cost effective solution to lower the total Cr-6 levels, BCVWD identified the need to perform a dynamic survey on these wells; and

**WHEREAS**, BCVWD requested the City of Banning's agreement with the performance of the dynamic profiling survey and associated costs in the amount of \$28,525.00.

**WHEREAS**, Water Capital Facility Funds are available in the amount of \$28,525.00, Account No. 661-6300-471.95-08 (Wells/Pumping Equipment).

**NOW, THEREFORE, BE IT RESOLVED** by the Banning Utility Authority of the City of Banning as follows:

**SECTION 1.** The City Council approves payment to the Beaumont Cherry-Valley Water District (BCVWD) in the amount of \$28,525.00 for the dynamic survey of Well Nos. 25 and 26 per the joint agreement with BCVWD.

**PASSED, ADOPTED AND APPROVED** this 13<sup>th</sup> day of January, 2015.

\_\_\_\_\_  
Deborah Franklin, Chairman  
Banning Utility Authority

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, Secretary

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

\_\_\_\_\_  
David J. Aleshire, Authority Counsel  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, Secretary to the Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-02 UA was adopted by the Banning Utility Authority of the City of Banning at its Joint Meeting thereof held on the 13th day of January, 2015.

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Marie A. Calderon, Secretary  
Banning Utility Authority

**Attachment 1 - Exhibit "A"**  
**Agreement between BCVWD and the City**

# ORIGINAL

## AGREEMENT

THIS AGREEMENT is by and between the City of Banning ("City") and the Beaumont-Cherry Valley Water District ("District"), sometimes jointly referred to as the "Parties."

## RECITALS

WHEREAS, the Parties are the agencies serving the largest number of domestic water users in the San Geronio Pass area and collectively rely in substantial part on the Beaumont Basin ("Basin") as a source of water; and

WHEREAS, the Parties desire to promote conjunctive use of the Basin and desire to jointly address issues concerning the long-term reliability of the Basin as a source of potable water, including the use of water recycling and the treatment and use of imported water.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

### I. PRODUCTION FACILITIES.

The Parties shall share the cost of constructing and operating three new production wells as follows:

#### A. Description.

The production wells shall be located west of Highland Springs Road at mutually agreed locations; shall be at least 1,500 feet deep; shall have minimum diameters of 18"; and each shall be capable of producing a minimum of 2,000 gallons per minute ("gpm").

#### B. Construction Costs.

The costs of constructing the production wells shall be shared equally between the Parties. The costs of constructing facilities to connect a Party's distribution system to any or all of said wells shall be borne by that Party.

#### C. Ownership.

The District and the City shall own and operate the wells jointly, on a 50-50 basis. District shall function as the lead operating agency with primary responsibility for the operation and maintenance of the joint facilities.

#### D. Operation, Maintenance, Repair and Replacement Costs.

(1). Operating and maintenance costs for each well shall be assessed to each Party on a per well basis. "Operating and maintenance costs" are defined as direct labor costs, electric costs, and costs of routine maintenance of the pumping facilities. "Repair and Replacement Cost: are defined as necessary costs of required repair or replacement of equipment and facilities. The District shall deliver the water to a tie-in point with City's water system at Highland Springs Avenue from the joint facilities at the Operating and maintenance costs of the water and without any wheeling cost.

*AMB*  
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(2). The cost shall be assessed based on the ratio of water supplied to that Party from a well/wells to the total water produced from that source.

(3). Each Party shall bear as its separate obligation those costs related to operation of facilities that it owns and that are used to deliver water to its distribution system.

(4). The District will submit the actual operation costs to operate the joint well/wells along with the necessary back up information on quarterly basis to the City. City will reimburse the District the said operation costs on quarterly basis subject to verification of such actual costs.

E. Production & Supply Pending Construction of Wells.

With respect to each production well, commencing on the date hereof and pending construction and development of the well to the point where total production from the well reaches 2,000 gpm, the District shall supply up to 1,000 gpm during Southern California Edison ("SCE") off peak hours to the City on an as-needed basis, at the District's cost of production. "Costs of production" are hereby defined as costs of electricity and direct labor costs required to bring the water to the surface and make it available to the City at the tie-in point.

F. Production & Supply Following Construction of Wells

(1). When the combined, total production from the three production wells reaches 6,000 gpm on a continuous basis, City shall be entitled to receive the greater of 3,000 gpm or 50% of the production at the District's Operating and Maintenance costs as defined above.

(2). The quantity of water delivered to City from the wells shall be charged to the City's total entitlement water from the Beaumont Basin set forth on Exhibit "Appropriators and Their Rights and Shares of Safe Yield and Operating Yield" of (Column number 6, "Operating Yield") the Stipulated Judgment in the Riverside County Superior Court case, San Timoteo Watershed Management Authority, etc. v. City of Banning, et al., Riverside County Superior Court case No. RIC 389197.

II. WATER TREATMENT PLANT.

A. Development of Joint Water Treatment Facilities.

The District has plans to build a water treatment facility for the treatment of state water project water on the District property located in Cherry Valley adjacent to District's Taylor reservoir. The Parties hereby express their intent to share the cost for design and construction of proposed treatment facilities. However, such agreement shall not prevent any party from unilaterally commencing the construction of the treatment plant. Should a Party elect to proceed with the design and construction of the treatment plant, it will not preclude the second party from constructing additions to the plant at a later date at the discretion of that Party. If construction on such water treatment plant has not commenced within 10 years of date hereof, Section II of this agreement "Water Treatment Plant" shall become void and of no further effect, unless otherwise mutually agreed by the Parties.

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(1) Construction Costs.

Costs shall be shared based on percentage of participation in the total capacity of the plant: the City's percentage participation shall be determined by City, but shall not exceed 50% of rated plant capacity.

(2) Operation and Maintenance, Repair and Replacement Costs.

Operations and Maintenance shall be assessed on each Party according to its percentage of participation in the cost of operating and maintaining said water treatment facilities. "Repair and Replacement Cost" repair and replacement costs shall be assessed on each party according to its percentage of participation in the operation of the plant.

B. Treated Water Allocation.

Each party will be entitled to its prorata share of State Water Project water treated by the water treatment plant, based on its percentage of financial participation in the construction of the plant.

III. INTERCONNECTION OF SYSTEMS.

A. Connections.

City's and District's existing potable water distribution systems and recycled water systems (as the same are developed) shall be interconnected in order that each system will serve as a backup to the other. Connections will be at mutually agreed upon points between compatible pressure zones. Each connection shall be metered. Interconnection shall be established at such times and such places as are mutually agreed by the Parties in writing.

B. Cost Sharing.

(1) Construction Costs.

The costs of constructing/installing connections, meters and related facilities shall be borne equally by the Parties unless otherwise agreed in writing.

(2) Operation, Maintenance, Repair and Replacement

Each Party shall be responsible for operation, maintenance, repair and replacement of connections, meters, and related interconnection facilities assigned to it, as shown on Exhibit "A," attached hereto. Said exhibit may be amended from time to time. Each agency shall annually invoice the other for one-half of the total costs incurred for the operation and maintenance of said connections, etc.

C. Excess Deliveries Charges.

Water delivered to City by District shall be charged to City's entitlement to production from the wells as set forth in Paragraph 1(E) and 1(F) above. Deliveries by District to City in excess of said quantities shall be charged to City at District's lowest domestic water rate. Conversely, deliveries



by City to District shall be charged to District at City's lowest domestic water rate.

#### IV. RECYCLED WATER AND IN-LIEU WATER.

The District shall give the City first-take on any excess recycled water of the District. The decision to accept the water made available under this section shall be at the sole discretion of the City. The District and the City will work together to develop a system for deliveries to be made to the City under this subsection.

#### V. 1960, 1966 MEMORANDA OF UNDERSTANDING.

The 1960 and 1966 Memoranda of Understanding between the Parties are hereby modified to the extent necessary to allow for the construction and operation of the wells described in Paragraph 1 above, for the benefit of both parties. Consistent with those Memoranda of Understanding, either Party may, without consulting the other, develop additional water supplies within its boundaries, provided that it observes the one-half mile setback or buffer zone on each side of Highland Springs Road as created by said MOU's.

#### VI. Effective Date.

This MOU shall become effective when both Parties have executed this MOU and have executed the Stipulation for Judgment in the adjudication action, San Timoteo Watershed Management Authority v. City of Banning, et al., Riverside County Superior Court, Case No. RIC 389197.

#### VII. TERMINATION.

This Agreement may be terminated by written consent of both parties.

#### VIII. JOINT FUNDING EFFORT.

The Parties agree to work together to obtain Federal and State funding for projects that will jointly benefit both Parties, including the development of Supplemental Water Master Plans to include importation of State Water Project water, the capture and recharge of urban and storm runoff, recycled water systems, interconnection of domestic water systems, and State Water Project water treatment facilities. In addition, the Parties hereby agree to work with the California Department of Water Resources, the San Geronio Pass Water Agency ("Pass") and others, to develop supplemental water and recycled water supplies and will work closely with Pass to obtain access to and storage and distribution of State Water Project water.

#### IX. AMENDMENT.

This Agreement may be amended only by written amendment signed by the Parties.

#### X. SEVERABILITY.

In the event a portion of this Agreement is illegal or unenforceable, the remaining provisions will be given effect in order to preserve the original intent of the Parties.

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XI. NOTICES.

Notices shall be sent as follows:

City of Banning:

Beaumont-Cherry Valley Water District:

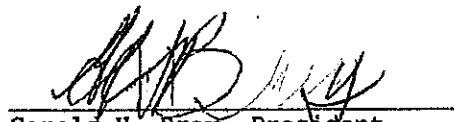
DATED, 12/23/ 2003 CITY OF BANNING

By

  
Arthur L. Welch, Mayor

DATED, 2003 BEAUMONT-CHERRY VALLEY WATER DISTRICT

By

  
Gerald H. Brey, President

**Attachment 2 - Exhibit "B"**

**BCVWD Letter Dated November 17, 2014**

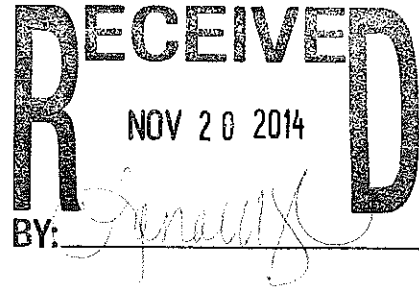


www.bcwvd.org

# Beaumont-Cherry Valley Water District

Phone: (951) 845-9581 Fax: (951) 845-0159

November 17, 2014



## Board of Directors

Dr. Blair Ball  
Division 5

John Guldseth  
Division 4

Daniel Slawson  
Division 3

Kenneth Ross  
Division 2

Vacant  
Division 1

Duane Burk  
Director of Public Works  
City of Banning  
P.O. Box 998  
Banning, CA 92220

Dear Mr. Burk,

The Beaumont Cherry Valley Water District (District) recently completed a round of chromium-6 monitoring of all of its groundwater sources. This monitoring was conducted in response to the recent adoption of the Maximum Contaminant Level (MCL) for hexavalent chromium (Cr-6) by the California Department of Public Health which became effective July 1, 2014.

Based on the results of this monitoring the District has determined that three (3) wells have tested over the MCL. Two of these wells (Well No.'s 25 and 26) were constructed and are operated in accordance with the joint financing agreement between the District and the City of Banning (City) dated December 2003. Well 25 had a measured Cr-6 level of 11PPB and Well 26 had a measured Cr-6 level of 14 PPB.

A preliminary review of construction documents related to drilling Well 26 indicates that the high Cr-6 levels may be contributed from the geologic formation from a lense of material located between 775 ± and 916± feet below ground surface. In order to understand if a modification to the well screens may provide a cost effective solution to lower the total Cr-6 levels in these wells below the MCL, the District has identified the need to perform a dynamic survey of the wells with high Cr-6 levels. This includes Well No.'s 25 and 26.

At this time the District has solicited a proposal from BESST Inc. to perform dynamic profiling of the affected wells to determine the concentration of the Cr-6 on a zone by zone basis within each well. BESST Inc. appears to be the only locally available vendor providing this service at this time. Our intent is to present the Besst Inc. proposal to the District's Board of Directors for approval as part of the District's Operating Budget for the upcoming year.

A copy of the proposal from BESST Inc., the joint financing agreement, and the monitoring results from Well No.'s 25 and 26 are enclosed for your consideration.

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www.bcvwd.org

# Beaumont-Cherry Valley Water District

Phone: (951) 845-9581 Fax: (951) 845-0159

## Board of Directors

Dr. Blair Ball  
Division 5

John Guldseth  
Division 4

Daniel Slawson  
Division 3

Kenneth Ross  
Division 2

Vacant  
Division 1

BESST Inc.'s proposal identifies the cost for performing surveys on all three wells is \$83,900. The cost associated with performing the surveys on Wells 25 and 26 is \$57,050. 50% of this cost or \$28,525 would be attributable equally to the District and the City per the 2003 agreement.

Upon approval of our Board of Directors as well as the City of Banning, it is the District's intent to contract for the services proposed by BESST Inc. and pay costs as invoices are submitted. Subsequently, the District will invoice the City for reimbursement of 50% of the costs for work performed under this contract as it relates to jointly owned facilities (Wells 25 and 26)

Please confirm in writing that you are in agreement with the performance of the well dynamic profiling survey and associated costs as it pertains to Wells 25 and 26 and are in agreement with the cost sharing provisions of the agreement.

Should you have any questions or concerns please don't hesitate to contact me at (951) 845- 9581 ext.: 29, or at [tony.lara@bcvwd.org](mailto:tony.lara@bcvwd.org).

Sincerely,

Anthony L. Lara,  
Director of Operations  
Beaumont Cherry Valley Water District

## **Attachment 3 - Exhibit “C”**

### **BESST Proposal**



November 06, 2014

Tony Lara  
Director of Operations, Beaumont - Cherry Valley Water District  
560 Magnolia Avenue  
Beaumont, CA 92223-2258

**Subject: Proposal for Beaumont - Cherry Valley Water District, Well(s): 3, 25, and 26**

Dear Tony Lara:

BESST Inc. Global Subsurface Technologies (BESST) is the US leader in providing minimally invasive down-hole water well data using our patented miniaturized technologies. Hundreds of US entities have used our services to identify low cost "selective extraction" strategies to enhance their wells, while reducing or eliminating above-ground treatment and the need for new well construction.

Per your request, BESST offers the following proposal for the subject well(s):

**Scope of Work**

BESST will perform Dynamic Profiling on the subject well(s). The constituent of concern for the well(s) is/are: chloride, Cr6, and total chromium, and the purpose of this study is to quantify the source on a zone by zone basis within the well.

Dynamic flow measurements will be made utilizing the USGS Dye Tracer method with depth specific samples to be collected using the Hydrobooster sampling method. These methods utilize miniaturized technologies that enable BESST to provide the highest quality data at a minimum of time and expense. The data will be used to determine if well modification is a viable option for reducing constituents of concern without above-ground treatment.

**Design Considerations**

In order to maximize the efficiency of the well head data collection the subject well should be equipped with a PVC or steel "access pipe" that ends below the pump. A minimum of 1.25" PVC (1.66" OD) is requested to provide the ideal access. The section of access pipe that passes by the bowls and intake should be of steel and terminate below the pump/intake/motor with a flared cone provided by BESST. Please note the attached PDF that describes the simple assembly design of the preferred access pipe.

Subject: Proposal for Dynamic Profiling; Beaumont - Cherry Valley Water District, Wells: 3, 25, and 26

**Deliverables**

BESST Inc. will provide a dynamic flow and chemistry report that details the zonal chemical contribution in the subject well(s). This report is included as a line item in the quote; however, it is inclusive within the service. Our professional hydrogeologists have extensive training in analyzing flow and chemistry data, which becomes a critical and essential part of our services. If applicable, a well modification scenario will be provided as an exercise to show the theoretical flow and chemical results if the well were to be modified. Included in this proposal is one hour of consulting time with the BESST staff for presentation of findings and follow-up dialog.

**Cost Breakdown**

The BESST quote for \$83,900.00 is an inclusive price for all services stated on the attached project detail sheet. This offer is good for 60 days from this date.

Please note that this quote does not include the cost of temporary casing, access pipe materials (other than the flared cone) or installation/removal costs of the pump and access pipe. If the client wishes, BESST can provide flush-threaded PVC and steel riser for an additional cost depending on the depth of the pump.

**We encourage you to review the attached project detail sheet and if acceptable, please sign and return a scanned copy at your convenience.**

Please contact me at (512) 785-6813 if you have any questions or comments. We look forward to working with you on this project and to establish a collaborative relationship for the future.

Sincerely,

Debra Cerda  
Director of Sales and Logistics  
50 Tiburon Suite 7  
San Rafael, CA 94901

BESST, Inc., 50 Tiburon St, Ste 7, San Rafael, CA 94901 \* (P) 415/453-2501 \* (F) 415/453-2509

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Water Supply Well Diagnostic Services Quotation - Beaumont - Cherry Valley Water District

Quotation Code: 130\_11062014\_FDP

FullDynamicFlow

AUTHORIZED  
(INITIALS)

Point of Contact

Tony Lara

Director of Operations, Beaumont - Cherry Valley Water District

951-282-0398 cell; 951-845-9581 direct

tony.lara@bcvwd.org

560 Magnolia Avenue

Beaumont, CA 92223-2258

Quote Prepared By:

Debra Cerda, Director of Sales and Logistics

BESST INC.

50 Tiburon, Suite 7

San Rafael, CA 94901

Cell: (512) 785-6813

dcerda@besstinc.com

Well/Facility Name: 3

Well depth: 812 Feet : continuous screen

Total Well Screen (feet) 580

Max Flow Injections: 20 Foot Centers= 30

Max Water Samples: 15

Constituents of Concern: chloride, Cr6, and total chromium

Well/Facility Name: 25

Well depth: 1470 Feet - 3 well segments

Total Well Screen (feet) 800

Max Flow Injections: 20 Foot Centers= 42

Max Water Samples: 21

Constituents of Concern: chloride, Cr6, and total chromium

Well/Facility Name: 26

Well depth: 1070 Feet - 2 well segments

Total Well Screen (feet) 520

Max Flow Injections: 20 Foot Centers= 27

Max Water Samples: 14

Constituents of Concern: chloride, Cr6, and total chromium

				AUTHORIZED (INITIALS)
<b>Basic Items: 3 Profile</b>	Quantity	Unit	Fee	Total
Access Survey Performed by BESST	1	Each	\$1,750	\$1750
Flared Cone For Access Pipe	1	Each	\$450	\$450
Video Survey Performed by BESST	0	Each	-	0
Mob/Demob	1	Each	-	\$2750
Set Up Fee	1	Each	-	\$1500
Dynamic Flow Profile (up to 20 Injection Points)	1	Each	\$6,000	\$6000
Dynamic Water Chemistry Profile (up to 8 1-liter water samples)	1	Each	\$7,000	\$7000
Detailed Flow and Water Chemistry Mass Balance Report with Recommendations for Well Modification	1	Each	-	\$4500
<b>Additional Charges</b>				
Minibailer(Required if VOC sampling performed)	0	Each	\$200	\$0
Extra Injection Points	10	Each	\$150	\$1500
Extra Sample Points	7	Each	\$200	\$1400
Standby Rate	1	Hour	\$250	-
Additional Sample Volume (If > 1 liter required per sample)	0	0	\$30	\$0
Additional Mob Fee (Associated with additional Sample Volume)	0	Each	\$500	\$0
Oil Lube Fee: Fee covers decontamination of equipment and/or replacement tubing.	0	Fee	\$1500	\$0
<b>BESST Services Total 3</b>				<b>\$26850</b>

<b>Basic Items: 25 Profile</b>	Quantity	Unit	Fee	Total
Access Survey Performed by BESST	1	Each	\$1,750	\$1750
Flared Cone For Access Pipe	1	Each	\$450	\$450
Video Survey Performed by BESST	0	Each	-	0
Mob/Demob	1	Each	-	\$3750
Set Up Fee	1	Each	-	\$1500
Dynamic Flow Profile (up to 20 Injection Points)	1	Each	\$6,000	\$6000
Dynamic Water Chemistry Profile (up to 8 1-liter water samples)	1	Each	\$7,000	\$7000
Detailed Flow and Water Chemistry Mass Balance Report with Recommendations for Well Modification	1	Each	-	\$4500
<b>Additional Charges</b>				
Minibailer(Required if VOC sampling performed)	0	Each	\$200	\$0
Extra Injection Points	22	Each	\$150	\$3300
Extra Sample Points	13	Each	\$200	\$2600
Standby Rate	1	Hour	\$250	-
Additional Sample Volume (If > 1 liter required per sample)	0	0	\$30	\$0
Additional Mob Fee (Associated with additional Sample Volume)	0	Each	\$500	\$0
Oil Lube Fee: Fee covers decontamination of equipment and/or replacement tubing.	0	Fee	\$1500	\$0
<b>BESST Services Total 25</b>				<b>\$30850</b>

Basic Items: 26 Profile	Quantity	Unit	Fee	Total
Access Survey Performed by BESST	1	Each	\$1,750	\$1750
Flared Cone For Access Pipe	1	Each	\$450	\$450
Video Survey Performed by BESST	0	Each	-	0
Mob/Demob	1	Each	-	\$2750
Set Up Fee	1	Each	-	\$1500
Dynamic Flow Profile (up to 20 Injection Points)	1	Each	\$6,000	\$6000
Dynamic Water Chemistry Profile (up to 8 1-liter water samples)	1	Each	\$7,000	\$7000
Detailed Flow and Water Chemistry Mass Balance Report with Recommendations for Well Modification	1	Each	-	\$4500
<b>Additional Charges</b>				
Minibailer(Required if VOC sampling performed)	0	Each	\$200	\$0
Extra Injection Points	7	Each	\$150	\$1050
Extra Sample Points	6	Each	\$200	\$1200
Standby Rate	1	Hour	\$250	-
Additional Sample Volume (If > 1 liter required per sample)	0	0	\$30	\$0
Additional Mob Fee (Associated with additional Sample Volume)	0	Each	\$500	\$0
Oil Lube Fee: Fee covers decontamination of equipment and/or replacement tubing.	0	Fee	\$1500	\$0
BESST Services Total 26				\$26200
<b>Grand Total</b>				<b>\$83900</b>

#### TERMS and CONDITIONS

All customer wells are to be access surveyed before BESST profiling activities start.

Services cover and include the following:

- all travel expenses (except in special conditions)
- assumes a standard work day to be 8 hours and up to 10 hours

Services do not include the following:

- Night Work: Defined as any time equal to or greater than 6 hours between hours of 6 PM to 6 AM. Rate = \$3,250/night in addition to regular fees.
- Night Work Special Case: Defined as any time less than 6 hours between time of 6 PM and 6 AM. Rate = \$350/hour in addition to regular fees.

Required Items:

- sample tap with standard threaded spigot on discharge line for flow profiling
- water storage and disposal, lab bottles and analytical services are the client's expense. Sample handling and transport is performed by the client
- flowmeter which is required for the duration of the profiling event
- power source, which may including generator and fuel
- water level sounder or meter

These items can be made available at cost by BESST or an alternate provider.

Additional Notes: Client to ensure that pumping water level in well has reached steady state drawdown before service begins. If steady state drawdown has not been reached and BESST must wait more than 30 minutes for stable PWL, then the standby rate will apply until such time that the drawdown has been achieved. This fee will be added to the service fee for profiling each well. If there is a significant change in PWL during testing which results in a re-profile, the client will be charged for the itemized injection and sampling fee for each additional injection and sample that exceeds the package price.

#### AUTHORIZATION

**BESST Inc. is hereby authorized to proceed with outlined services above in the amount of \$83,900.00 and following payment terms and agreed upon: 5% 15, NET 30 (5% discount if payment is postmarked or received in 15 days or less).**

**All unauthorized estimates/quotations provided by third parties, that are not approved by BESST Inc., are not valid by BESST INC.**

Authorized by:

Billing Contact:

_____ Name	_____ Name
_____ Title	_____ Street Address
_____ Company	_____ City/State/Zip
_____ Date Accepted:	_____ Phone
	_____ Purchase Order Number

Scan and send the signed and completed document to Debra Cerda at dcerda@besstinc.com for processing and scheduling.

## CITY COUNCIL AGENDA

**DATE:** January 13, 2015

**TO:** City Council

**FROM:** Brian Guillot, Acting Community Development Director

**SUBJECT:** Resolution No. 2015-06:

- (i) Approving the Subcommittee Report regarding Commercial Infeasibility of a Hotel on the Hotel Parcel, (as defined in certain Purchase and Sale Agreement between the City of Banning and JMA Village, LLC dated June 10, 2012);
- (ii) Finding that JMA Village, LLC used diligent good faith efforts to find a hotel user for the Hotel Parcel but was unsuccessful; and
- (iii) Approving Developer's proposed alternate tenant for the Hotel Parcel being the Riverside County Probation Department.

**RECOMMENDATION:** That the City Council adopt Resolution No. 2015-06:

(i) Approving the report by the City Council's Subcommittee ("**Subcommittee**") that a hotel on the Hotel Parcel (as defined in that certain Purchase and Sale Agreement ("**Purchase Agreement**") between the City of Banning and JMA Village, LLC ("**Developer**") which report determined that a hotel on the Hotel Parcel is not economically feasible based on the Marketing Report prepared by NAI Capital ("**NAI Capital Report**") and other information provided by Developer to the Subcommittee;

(ii) Finding that, based on the NAI Capital Report, other information provided by the Developer to the Subcommittee and the investigation by the Subcommittee, Developer used diligent good faith efforts to find a hotel user but was unable to do so; and

(iii) Approving a proposed alternate tenant for the Hotel Parcel being the Riverside County Probation Department ("**Department**").

Passage of the Resolution is required in order to allow the Department's tenancy on the Hotel Parcel.

**JUSTIFICATION:**

(a) The Purchase Agreement was amended by that certain First Amendment dated June 10, 2014 ("**First Amendment**"). Section 3 of the First Amendment sets forth specific duties of Developer to renew its efforts for 6 months to identify a hotel user using the "List of Qualified Hotels" and to submit a report to the Subcommittee. The Subcommittee was to review the information provided by the Developer and submit its determination to the Council at an open session during which the Council is to make a determination by resolution whether to (i) accept the Subcommittee's determination that it is not commercially feasible to locate a hotel user for the Hotel Parcel, (ii) determine whether the Developer used diligent good faith efforts to locate a hotel user, and (iii) state its factual and policy bases for such holdings.



(b) Pursuant to the First Amendment, if the Council makes the foregoing determination, then Developer may propose an alternate user for the Hotel Parcel.

**BACKGROUND:** On January 10, 2012, the City approved the Purchase Agreement for conveyance to Developer those certain parcels of vacant real property consisting of a total of 5.25 acres, or 228,690 square feet, for the property located across the street from City Hall (“**Development Site**”). The Purchase Agreement designated a parcel within the Development Site for hotel use which parcel was designated as the Hotel Parcel. The Purchase Agreement was subsequently amended by the First Amendment.

It was a primary objective of the City to have a hotel developed on the Hotel Parcel.

Section 11.9(b)(3) of the Purchase Agreement was amended by Section 3 of the First Amendment and reads as follows:

*“It is acknowledged that Buyer has made efforts to find a hotel use previously without success and the Parties are concerned that within the development cycle of the Project, a hotel use may not be commercially feasible for location on the Property, despite Buyer’s diligent good faith effort. At the City’s request, Buyer has agreed to renew its efforts to identify a hotel user and will use a list of Qualified Hotels as shown on the a “List of Qualified Hotels” attached as Exhibit A. Buyer shall be deemed to have used diligent good faith effort if during a six (6) month period they have submitted written proposals and have written rejections from all such Qualified Hotels in writing. When Buyer has exhausted its due diligence effort to find a hotel tenant as set forth above, Buyer may so inform City in writing. The Council has apointed (sic) a Council Subcommittee (sic) to work with Developers in this effort. Buyer shall report its findings in a letter to the City Council supported by documentation of Buyer’s diligent efforts. The City Council shall schedule the matter on the next regular City Council agenda at an open public meeting subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. Based upon evidence presented at said public meeting, the Council shall determine by resolution, whether to accept that the Developer has used diligent good faith effort within the meaning of this Amendment. The Council shall state its factual and policy bases for such holding. The City Council shall not unreasonably withhold its concurrence with the Buyer’s determination that development of a hotel is not feasible.”*

On December 18, 2014, the Subcommittee (composed of Councilmember Welch and Councilmember Miller) met with the Developer’s representatives to consult regarding the due diligence effort to find a hotel tenant. The NAI Capital Report (see Exhibit “A” of Resolution No. 2015-06) details the efforts made to locate a hotel user and concludes that the search was not successful. On December 18, 2014, the Subcommittee met with Art Pearlman, Steve MacDonald and Lynn Coker to consult regarding Developer’s due diligence efforts to locate a hotel user. The Subcommittee accepted the NAI Capital Report and completed the consultation with the Developer.

As noted above, the City Council must present the matter at an open session and (i) determine by resolution, whether to accept that Developer has used diligent good faith effort within the

meaning of the Amendment and (ii) state its factual and policy bases for such holding. The First Amendment specifically requires that the City Council shall not unreasonably withhold its concurrence with Developer's determination that development of a hotel is not feasible.

The Purchase Agreement as amended by the First Amendment also provided for a list of "Pre-Qualified Tenants" intended and pre-approved to occupy the "Hotel Parcel" (all as such terms are defined in the Agreement). The Agreement further provided that any request by Developer for approval of a particular tenant that is not Pre-Qualified to occupy the Hotel Parcel shall be in writing and shall include such supporting information as may be reasonably required in order to enable the City to determine whether to approve or disapprove the identity of an alternative tenant. The matter shall be scheduled as an open public hearing item and, based upon substantial evidence presented at said hearing, the Council shall determine by resolution, whether to approve or disapprove a proposal for an alternative user for the Hotel Parcel.

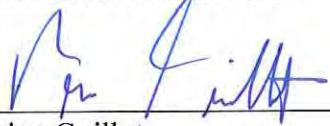
Given the market-driven inability to secure a hotel tenant for the Hotel Parcel, Developer proposes the Department as an alternative tenant for the Hotel Parcel. Tenancy by the Department provides the following community and policy benefits:

- i. Proximity to the new County Courthouse makes the Hotel Parcel a particularly suitable and efficient location for the Department.
- ii. Occupancy of the Hotel Parcel by the Department will support and expand pedestrian use of the Downtown Commercial zoning district through demand for secondary services required for office workers and support staff such as restaurants and specialty retail uses.

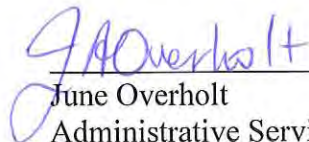
**STRATEGIC PLAN:** The occupancy of an office building in the Downtown Commercial zoning districts conforms with Goal #5 of the Strategic Plan listed as follows: "***QUALITY OF LIFE - Build and maintain a high standard of community appearance, character and livability by effective planning and code enforcement, attention to long term vision and citizen involvement and recreation facilities and services.***" More specifically Strategic Priority Action Step A5 of the plan identifies the goal of "*continuing to build attractive and walkable Downtown.*" Occupancy of the office building will support and expand pedestrian use of the Downtown Commercial zoning district through demand for secondary services required for office workers and support staff such as restaurants and specialty retail uses.

**FISCAL DATA:** A hotel constructed in the City would be subject to the transient occupancy tax in accordance with Chapter 3.16 of the Municipal Code. Therefore, accepting the alternate tenant would ultimately result in forgoing transient occupancy tax revenue. However, occupancy of the office building may partially offset this loss through demand for secondary services required for office workers and support staff such as restaurants and specialty retail uses.

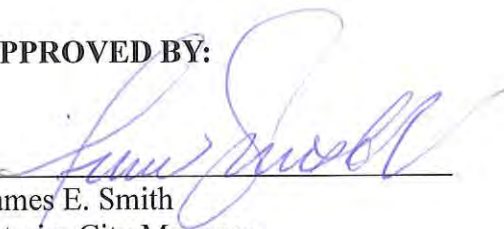
**RECOMMENDED BY:**

  
\_\_\_\_\_  
Brian Guillot  
Acting Director of Community  
Development

**REVIEWED BY:**

  
\_\_\_\_\_  
June Overholt  
Administrative Services Director  
Deputy City Manager

**APPROVED BY:**

  
\_\_\_\_\_  
James E. Smith  
Interim City Manager

**RESOLUTION NO. 2015-06**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, (I) APPROVING COUNCIL'S SUBCOMMITTEE REPORT REGARDING COMMERCIAL INFEASIBILITY OF A HOTEL ON HOTEL PARCEL (AS DEFINED IN CERTAIN PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF BANNING AND JMA VILLAGE, LLC DATED JUNE 10, 2012); (II) FINDING THAT JMA VILLAGE, LLC USED DILIGENT GOOD FAITH EFFORTS TO FIND A HOTEL FOR THE HOTEL PARCEL BUT WAS UNSUCCESSFUL; AND (III) APPROVING DEVELOPER'S PROPOSED ALTERNATE TENANT FOR THE HOTEL PARCEL BEING THE RIVERSIDE COUNTY PROBATION DEPARTMENT.**

**WHEREAS**, On January 10, 2012, the City approved a Purchase and Sale Agreement ("**Purchase Agreement**") pertaining to the City's conveyance to JMA Village, LLC ("**Developer**"), those certain parcels of vacant real property consisting of a total of 5.25 acres, or 228,690 square feet, in the City of Banning bounded on the west by San Geronio Avenue, on the north by Ramsey Street, to the east by Martin Street and to the south by Livingston Street ("**Development Site**"). The Purchase Agreement designated a parcel within the Development Site for a hotel use which parcel was designated as the Hotel Parcel.

**WHEREAS**, The Purchase Agreement was amended by that certain First Amendment dated June 10, 2014 ("**First Amendment**").

**WHEREAS**, Section 11.9(b)(3) of the Purchase Agreement was amended by Section 3 of the First Amendment and reads as follows:

*"It is acknowledged that Buyer has made efforts to find a hotel use previously without success and the Parties are concerned that within the development cycle of the Project, a hotel use may not be commercially feasible for location on the Property, despite Buyer's diligent good faith effort. At the City's request, Buyer has agreed to renew its efforts to identify a hotel user and will use a list of Qualified Hotels as shown on the a "List of Qualified Hotels" attached as Exhibit A. Buyer shall be deemed to have used diligent good faith effort if during a six (6) month period they have submitted written proposals and have written rejections from all such Qualified Hotels in writing. When Buyer has exhausted its due diligence effort to find a hotel tenant as set forth above, Buyer may so inform City in writing. The Council has apointed (sic) a Council Subcommittee (sic) to work with Developers in this effort. Buyer shall report its findings in a letter to the City Council supported by documentation of Buyer's diligent efforts. The City Council shall schedule the matter on the next regular City Council agenda at an open public meeting subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. Based upon evidence presented at said public meeting, the Council shall determine by resolution, whether to accept that the Developer has used diligent good faith effort*

*within the meaning of this Amendment. The Council shall state its factual and policy bases for such holding. The City Council shall not unreasonably withhold its concurrence with the Buyer's determination that development of a hotel is not feasible."*

**WHEREAS**, In accordance with the requirements of Section 3 of the First Amendment, the City Council created an ad hoc subcommittee comprised of Councilmember Welch and Councilmember Miller ("**Subcommittee**").

**WHEREAS**, On December 18, 2014, the Subcommittee met with the Developer's representatives to consult regarding Developer's due diligence efforts to find a hotel tenant. Developer retained the services of an expert consultant, NAI Capital, to market the Hotel Parcel to the list of hotel users. NAIL Capital prepared a marketing report ("**NAI Capital Report**") detailing the efforts made to locate a hotel user and concluding that the search was not successful. The Subcommittee reviewed the NAI Capital Report and completed the consultation with the Developer.

**WHEREAS**, The Developer was unsuccessful in its efforts to secure a hotel user as the such potential hotel users were unwilling to commit to the Hotel Parcel as a result of several economic factors, including without limitation:

- i. Market area occupancy rates being less than needed for a new hotel;
- ii. Average daily rates being low in the market area; and
- iii. Lack of direct freeway access and signage.

**WHEREAS**, Pursuant to Section 11.9(b)(3) of the Purchase Agreement as amended by Section 3 of the First Amendment, the City Council must (a) present the matter at an open session and (i) determine by resolution, whether to accept that Developer has used diligent good faith effort within the meaning of the Amendment and (ii) state its factual and policy bases for such holding; and (b) not unreasonably withhold its concurrence with Developer's determination that development of a hotel is not feasible on the Hotel Parcel.

**WHEREAS**, The Purchase Agreement as amended by the First Amendment also provided that any request by Developer for approval of a particular tenant as an alternate user for the Hotel Parcel shall be in writing and shall include such supporting information as may be reasonably required in order to enable the City to determine whether to approve or disapprove the identity of an alternative tenant. The matter must be scheduled as an open public hearing item and, based upon substantial evidence presented at said hearing, the Council shall determine by resolution, whether to approve or disapprove a proposal for an alternative user for the Hotel Parcel.

**WHEREAS**, Given the market-driven inability to secure a hotel user for the Hotel Parcel, Developer proposes the Riverside County Probation Department ("**Department**") as an alternate user for the Hotel Parcel. In addition, a tenancy by the Department provides the following community and policy benefits:

(i) Proximity to the new County Courthouse makes the Hotel Parcel a particularly suitable and efficient location for the Department.

(ii) Occupancy of the Hotel Parcel by the Department will support and expand pedestrian use of the Downtown Commercial zoning district through demand for secondary services required for office workers and support staff such as restaurants and specialty retail uses.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The above Recitals and facts therein are true and correct and are incorporated into the terms of this Resolution in their entirety by this reference.

Section 2. The City Council hereby finds that securing a hotel user for the Hotel Parcel is not commercially feasible. This conclusion is based on the NAI Capital Report and the information provided to the Subcommittee, no hotel users identified in Section 11.9 of the Purchase Agreement as amended by the First Amendment were willing to commit to the Hotel Parcel site as a result of several economic factors, including without limitation:

- i. Market area occupancy rates being less than needed for a new hotel;
- ii. Average daily rates being low in the market area;
- iii. Lack of direct freeway access and signage; and
- iv. Such other factors and reasons described in that Marketing Report prepared by NAI Capital attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 3. The City Council finds, based on the NAI Capital Report and the information provided to the Subcommittee noted above, that Developer used diligent good faith efforts to secure a hotel user from the List of Qualified Hotels but was unsuccessful.

Section 4. Pursuant to Section 11.9(b) of the Agreement, the City Council hereby accepts the Developer's alternative proposal for leasing the Hotel Parcel to the Department. The City Council hereby finds and declares that tenancy by the Department at the Hotel Parcel provides substantial community benefits based on the following factual and policy bases:

- i. Proximity to the new County Courthouse makes the Hotel Parcel a particularly suitable and efficient location for the Department.
- ii. Occupancy of the Hotel Parcel by the Department will support and expand pedestrian use of the Downtown Commercial zoning district through demand for secondary services required for office workers and support staff such as restaurants and specialty retail uses.

Section 5. Based on the foregoing, the City Council hereby accepts the Department as an approved tenant for the Hotel Parcel.

Section 6. The Mayor and City Manager are authorized and directed to take such actions and execute such documents as may be necessary to implement and effect this Resolution and the Purchase Agreement as amended by the First Amendment (“**Amended Purchase Agreement**”) on behalf of the City. Consistent with the Amended Purchase Agreement, the City’s right to approve tenants for the Hotel Parcel shall expire after a total of five (5) years, consecutive or non-consecutive, of occupancy of the Hotel Parcel. Except as specifically provided herein, nothing in this Resolution otherwise waives or amends the City’s tenant approval rights under the Amended Purchase Agreement.

**Section 7.** City Clerk shall certify to the passage and adoption hereof.

**PASSED, APPROVED, AND ADOPTED** at a regular meeting of the Banning City Council this \_\_\_\_ day of January 2015.

DEBORAH FRANKLIN  
MAYOR

ATTEST:

MARIE CALDERON  
CITY CLERK

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss.  
CITY OF BANNING )

I, MARIE CALDERON, City Clerk of the City of Banning, California, hereby certify that Resolution No. \_\_\_\_\_ was adopted by the City Council of the City of Banning at a regular meeting held on the \_\_\_\_ day of January 2015, and that the same was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:



# Exhibit “A”

(Marketing Report NAI Capital)

November 4, 2014

Homer Croy  
City Manager  
99 E. Ramsey Street  
Banning, CA 92220

Dear Mr. Croy;

Pursuant to our plans and conversations with the Pearlman Frost Company, which initially began over thirty-six months ago yet concluded just this month, regarding the effort to solicit a suitable hotel developer, franchisee or operator to your Banning, CA, downtown development venture (Village at Paseo San Gorgonio), please find the attached final marketing report generated by Savills Studley and NAI Capital.

Unfortunately, after reaching out to several dozens of hotel brands managed through a variety of major US and International hotel chains, the reaction has been universally negative. As represented through the feedback from the major hotel chains, the Banning, CA, market in general and your project site in particular is perceived to be an inferior and risky site for hotel development and subsequent operation on at least four levels, as follows:

1. The hotel daily occupancy rates for the area are much less than required for successful new hotel development and operation. The occupancy in the Banning, CA, market is reported to be in the low 60% range yet successful profitable new hotel development, construction and operation requires occupancy nearer 70%.
2. The average daily rate for the trade area doesn't support successful new hotel development, construction or operation.
3. Because of the intense competition for hotel-guests to fill rooms and the generally low/poor daily room rate, it is perceived neither the expected revenue per available room (RevPAR) nor the total revenue per available room (TRevPAR) support new hotel development, construction and operation within your project site.
4. Finally, your project site along East Ramsey across the street from the new downtown Banning, CA, Superior Courthouse is generally considered a secondary, or even tertiary, hotel site given its significant distance from either the Hargrave or 8<sup>th</sup> Street north/south corridor arterial roadways which offer visibility plus direct ingress and egress to Interstate 10.

We thank the Pearlman Frost Company for the opportunity to present to market its Village at Paseo San Gorgonio development venture to the hotel industry yet are disappointed to report to you such consistent negative "push-back" to the notion of new hotel development, construction and operation within the subject project area.

Sincerely,

*Steve McDonald*

Steve McDonald  
Savill-Studley

*Lynn F. Coker*

Lynn F. Coker  
NAI Capital

Cc: Pearlman Frost Company, Brian Guillot- City of Banning

# VILLAGE AT PASEO SAN GORGONIO HOTEL MARKETING REPORT - OCTOBER, 2014

Contact First Name	Contact Last Name	Contact Title	Headquarters Name	Comments	Summary
Tim	Powell	Senior Director	Hilton Worldwide, Inc.	SOLICITATION LETTER SENT JULY 3, 2014. FOLLOW UP PHONE CALL JULY 25- MR. POWELL SAID "NOT IN BANNING...NO INTEREST AT THIS TIME".	DECLINED
Bobby	Molinary	Regional VP Development	InterContinental Hotels Group	SOLICITATION LETTER SENT JULY 3, 2014. FOLLOW UP PHONE CALL JULY 25- MR. MOLINARY SAID "NOT IN BANNING...HIS FIRM IS LOOKING FOR UPSCALE SITES AT THIS TIME".	DECLINED
Richard	Carlson	Regional Director	InterContinental Hotels Group	SOLICITATION LETTER SENT JULY 3, 2014. FOLLOW UP PHONE CALL JULY 25. LEFT MESSAGE. FOLLOW UP EMAIL PACKAGE SENT JULY 25. FOLLOW UP PHONE CALL AND EMAIL AUG. 20. NO RESPONSE	DECLINED

Robert	Ekman	Regional Director Franchising	InterContinental Hotels Group	SOLICITATION LETTER SENT JULY 3, 2014. FOLLOW UP PHONE CALL JULY 25. LEFT MESSAGE. FOLLOW UP EMAIL PACKAGE SENT JULY 25. FOLLOW UP PHONE CALL AND EMAIL AUG. 20. NO RESPONSE	DECLINED
Ed	Shaw	Regional Director	InterContinental Hotels Group	SOLICITATION LETTER SENT JULY 3, 2014. FOLLOW UP PHONE CALL JULY 25. FOLLOW UP EMAIL PACKAGE SENT JULY 25. FOLLOW UP PHONE CALL AND EMAIL AUG. 20. NO RESPONSE.	DECLINED
Rajiv K.	Trivedi	EVP & Chief Development Officer	La Quinta Inns & Suites	SOLICITATION LETTER SENT JULY 7, 2014. FOLLOW UP PHONE CALL JULY 25. LEFT MESSAGE. BELIEVED HE HAD BETTER SITES FOR HIS FRANCHISEE.	DECLINED
		ALAN BOWLES- WEST COAST DEVELOPMENT EXECUTIVE	La Quinta Inns & Suites		



Donald	Wen	Director North American Development	Starwood Hotels & Resorts	<p>SOLICITATION LETTER SENT JULY 7, 2014. FOLLOW UP PHONE CALL JULY 25. DONALD REVIEWED PACKAGE, DISCUSSED OPPORTUNITY AND CONCLUDED OUR BANNING SITE WAS NOT FINANCIALLY VIABLE. HE WOULD NEED ABOUT 2 - 2.5 ACRES PLUS AN AVERAGE RENT RATE SOMEWHERE BETWEEN \$120 - \$130 TO MEET MINIMUM DEVELOPMENT STANDARDS.</p>	DECLINED
Don	Ayres		Ares Hotels	<p>DON INITIALLY DECLINED IN LATE 2013. NEW LETTER SENT TO DON TO RECONSIDER ON JULY 2, 2014. DON INITIALLY SAID HE WOULD RE-LOOK AT SITE BUT NEVER RESPONDED TO OTHER EMAIL OR PHONE CALLS.</p>	DECLINED
Hiral	Patel	Principal & Franchisee	Hilton Hotels	<p>MR. PATEL DECLINED IN LATE 2013. NEW SOLICITATION EFFORT STARTED IN JULY, 2014. MR. PATEL RECONFIRMED HIS DECLINATION. HIS BUSINESS REASONS FOR DECLINING WERE TOO MANY EXISTING VACANT ROOMS, AVERAGE DAILY RATE LOW IN BANNING AREA AND PREFERENCES HIGHWAY INGRESS/EGRESS LOCATION.</p>	DECLINED

Joe	Wojdowski	Epstein & Associates	Choice Hotels International, Inc.	SOLICITATION LETTER SENT JULY 3, 2014. FOLLOW UP PHONE CALL JULY 25. LEFT MESSAGE. FOLLOW UP EMAIL PACKAGE SENT JULY 25.	NO INTEREST
Michael	Mueller	President & CEO	NYLO Hotels, LLC	SOLICITATION LETTER SENT JULY 3, 2014. FOLLOW UP PHONE CALL JULY 25. LEFT MESSAGE. FOLLOW UP EMAIL PACKAGE SENT JULY 25. FOLLOW UP PHONE CALL AND EMAIL AUG. 20. NO RESPONSE	NO INTEREST
Nasir	Raja	Executive VP of Franchise Development & Operations	Northcott Hospitality	SOLICITATION LETTER SENT JULY 3, 2014. FOLLOW UP PHONE CALL JULY 25. LEFT MESSAGE. FOLLOW UP EMAIL PACKAGE SENT JULY 25. FOLLOW UP PHONE CALL AND EMAIL AUG. 21. NO RESPONSE	NO INTEREST
Clyde/LAWRENCE	Guinn/LUI	President, Days Inn Worldwide	Wyndham Hotel Group	SOLICITATION LETTER SENT JULY 3, 2014. FOLLOW UP PHONE CALL JULY 25. ADDITIONAL SOLICITATION LETTER SENT TO NEW PRESIDENT JULY 25. FOLLOW UP PHONE CALL AND EMAIL AUG. 21. NO RESPONSE	NO INTEREST

Steve	Miller	Regional Vice President of Franchise Development	Wyndham Hotel Group	SOLICITATION LETTER SENT JULY 3, 2014. FOLLOW UP PHONE CALL JULY 25. LEFT MESSAGE. FOLLOW UP EMAIL PACKAGE SENT JULY 25. FOLLOW UP PHONE CALL AND EMAIL AUG 22. NO RESPONSE.	NO INTEREST
Craig	Leitch	VP of Operations	Vantage Hospitality Group, Inc.	SOLICITATION LETTER SENT JULY 7, 2014. FOLLOW UP PHONE CALL JULY 25. LEFT MESSAGE. FOLLOW UP PHONE CALL AND EMAIL AUG. 22. NO RESPONSE	NO INTEREST



## **APPENDIX A**

JMA previously provided copies of the following report to the City of Banning appointed Sub-Committee members regarding the Pearlman Frost Company effort to market the Village at Paseo San Geronio site for hotel use.

## VPSG – HOTEL HISTORY

### WYNDAHM:

- 1-2-10: Our first meeting with Bill Lanting, Director of Franchise Development
- 1-19-12: Signed LOI for a Ground Lease (59 rooms, no restaurant. This includes staff of 9 low level employees (5 housekeepers + 2 laundry workers + 1 maintenance person + 1 housekeeping person) and 9 mid-level jobs (1 manager + 5 Front Desk persons + 2 night auditors + 1 bookkeeper) NOTE: compare these (up to two floors of County of Riverside high-paying jobs plus 6,000 s.f. of County wide Training facility that would create 300% increase in jobs + hundreds of County trainees0 !
- 4-26-12: Wyndahm changed to private "Hotelco"
- 4-26-12: No personal guarantees
- 5-14-12: Lost his financing for a Banning Hotel
- 6-13-12: Wyndahm / Hotelco backed out of deal.

### STARWOOD:

- 5-10-11: First verbal communication with Tiffany Cooper, Vice President
- 5-11-11: Meeting with Tiffany Cooper in Orange County
- 5-20-11: Follow up meeting with Tiffany Cooper (No Restaurant)
- 12-11-11: Meeting with Starwood Exclusive Broker, Rod Apodaca regarding Banning
- 7-19-12: Meeting with Tiffany Cooper; rejected site and Banning for Starwood

### HILTON GARDEN INN:

- 9-27-10 : first meeting with Michael Boreli, operator for Hilton Inn (no restaurant)
- 9-28-10: Corporate fly-by of Banning
- 10-19-10: Franchise and Corporate concern due to lack of occupancy in Banning
- 10-20-10: Update meeting with Andy Takata and meeting scheduled with tenant
- 12-1-10: Hilton rejected site and Banning due lack of occupancy history

### AYRES HOTEL:

- 2-7-11: first meeting with Don Ayres (no restaurant)
- 4-20-11: Requested meeting with Ayres, Andy, Zai
- 5-2-11: Ayres drove the site; concerned about vacancy in other Banning Hotels
- 7-27-11: Ayres family determined Banning not a good hotel site for them due to vacancy.
- 11-21-11: Ayres rejected site and City of Banning due to lack of occupancy history.

### HAMPTON INN:

- 8-20-11: first meeting with Hiral Patel, owner of 3 other Banning Hotels (west of site)
- 9-25-12: Set up meeting for Hiral to meet with Bill Manis, Andy Takata to discuss city incentives due to lack of occupancy in city and forecast of occupancy at VPSG (no restaurant).
- 10-5-12: Letter of Intent developed and presented to Hiral subject to City incentives, cost and fee write-downs
- 11-15-12: Hiral rejected our site. Ramada Inn selected perfect off-ramp location for its proposed hotel

**CITY COUNCIL AGENDA  
REPORTS OF OFFICERS**

**DATE:** January 13, 2015

**TO:** City Council

**FROM:** Duane Burk, Director of Public Works

**SUBJECT:** Resolution No. 2015-01, "Authorizing the Lease of One (1) New Elgin CNG Crosswind J Sweeper with an Option to Purchase"

**RECOMMENDATION:** Adopt City Council Resolution No. 2015-01:

- I. Authorizing the lease, with an option to purchase, of one (1) 2014 New Elgin CNG Crosswind J Street Sweeper (Model No. J30243) from Haaker Equipment Company utilizing the National Joint Powers Alliance (NJPA) Cooperative Agreement for an amount "Not to Exceed" \$325,000.00.
- II. Authorizing the Administrative Services Director to make necessary related budget adjustments and appropriations for the lease and purchase of one (1) 2014 New Elgin CNG Crosswind J Street Sweeper (Model No. J30243).
- III. Authorizing the City Manager to execute the Lease and Purchase Agreement with Haaker Equipment Company.

**JUSTIFICATION:** Street sweeping is a crucial function in keeping the City's streets and community clean, as well as, helps prevent debris and contamination from entering storm drains which eventually flow into local waterways.

**BACKGROUND:** The City of Banning provides street sweeping services for its businesses and residences which includes the cleaning and clearing of trash and debris from streets and gutters. These services are provided for public streets throughout the City excluding Sun Lakes Country Club, which is a private development that provides their own street sweeper services. On average, it takes four to six weeks to cycle through the street sweeping schedule.

Since November of 2013, with the exception of when the City had a demonstration of street sweeper equipment, street sweeping services have been abandoned due to inoperable equipment. Currently, the City owns Unit No. 600, a 2001 Tymco 600 motor sweeper that has accumulated approximately 58,928 miles and 12,242 engine hours. Unit No. 600 has exceeded its life expectancy of 12 years and currently requires an engine replacement which would cost approximately \$40,000.00. Additionally, the equipment does not meet Air Quality Management District (AQMD) emissions requirements per Rule 1186.1 and would require upgrades. For these reasons, staff has determined a lease with a purchase option for a new street sweeper would be most cost effective in meeting the the needs of the City and to provide reliable services to the public.

In order to obtain this equipment, the City is recommending to utilize its membership with National Joint Powers Alliance (NJPA) which is a public corporation agency serving as a municipal contracting agency. NJPA creates national cooperative contract purchasing opportunities and solutions on behalf of its members which include government, education and non-profit agencies nationwide. These cooperative contract purchasing opportunities present both time and money savings for its members by consolidating numerous individually prepared solicitations to one cooperatively shared process.

As a member, the City of Banning is able to efficiently obtain a street sweeper as described above. NJPA solicited bids and Elgin, a subsidiary of Federal Signal Corporation, received an award. As a result, NJPA issued Contract No. 022014-FSC attached hereto as Exhibit "A". As part of the agreement with NJPA, when a company is awarded a NJPA contract, all authorized distributors and dealers of that company are able to sell through the contract. These sales are reportable on a quarterly basis at which time the manufacturer is responsible to pay an administration fee to NJPA. HAAKER Equipment Company of La Verne, California is an Elgin confirmed authorized dealer and distributor and has provided a proposal as shown in Exhibit "B" in the amount of \$150,076.00 for the street sweeper which meets the obligations of NJPA contract.

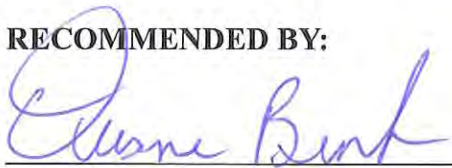
It should be noted that the purchase of the street sweeper is approved through the NJPA; however, the pricing for the chassis was not included in the award. As a result, staff solicited bids from Elgin/HAAKER Equipment Company, Los Angeles Freightliner and MAR-CO Equipment Company obtaining the results as listed below. Elgin/HAAKER was the lowest responsible bidder and bids are attached as Exhibit "C".

<u>Company</u>	<u>Total Bid</u>
1. Elgin / HAAKER Equipment Company, La Verne, CA	\$127,640.00
2. Los Angeles Freightliner, Whittier, CA	\$130,256.00
3. MAR-CO Equipment Company, Pomona, CA	\$149,750.00

Consequently, staff recommends the approval of the lease, with the option to purchase, of one (1) 2014 New Elgin CNG Crosswind J Street Sweeper (Model No. J30243) from Haaker Equipment Company utilizing the NJPA Cooperative Agreement for an amount "Not to Exceed" \$325,000.00. This amount includes the street sweeper and equipment approved by the NJPA (\$150,076.00), chassis (\$127,640.00), taxes (\$22,218.00) and leasing finance charge (\$25,066.00). Jules and Associates, Inc. Equipment Finance Specialist, has partnered with Haaker Equipment Company and will provide financing for a five (5) year term with annual payments of \$65,000.00 as shown in Exhibit "D". Air Quality Management District AB 2766 funding, which can be utilized to replace older vehicles and equipment in order to reduce emissions, will be utilized to fund this lease and purchase.

**FISCAL DATA:** The lease amount of one (1) Elgin CNG Crosswind J Sweeper (Model No. J30243) amounts to \$325,000.00 with the option to purchase the equipment at the end of the 5 year term for \$1.00. Funds are currently available for FY 2015 and FY 2016 in Account No. 132-4900-446.63-31 (Street Sweeper Lease) for the first and second lease annual payments. Air Quality Management District (FUND 132) AB 2766 Subvention funding will be utilized and appropriated for lease payment years three through five.

**RECOMMENDED BY:**



Duane Burk  
Director of Public Works

**APPROVED BY:**



June Overholt  
Administrative Services Director  
Deputy City Manager

**APPROVED BY:**



Interim City Manager

Attachments:

1. Exhibit "A" – NJPA Vendor Contract Summary
2. Exhibit "B" – HAAKER Equipment Company Proposal
3. Exhibit "C" – Chassis Bids
4. Exhibit "D" – Jules and Associates, Inc. Lease Proposal

## **RESOLUTION NO. 2015-01**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING THE LEASE OF ONE (1) NEW ELGIN CNG CROSSWIND J SWEEPER WITH AN OPTION TO PURCHASE**

**WHEREAS**, the City of Banning provides street sweeping services for the public streets throughout the City keeping the community clean while also preventing debris and contamination from entering storm drains which eventually flow into local waterways; and

**WHEREAS**, the Fleet Division has determined that it is more cost effective to replace the City's current equipment, Unit No. 600, an inoperable 2001 Tymco 600 motor sweeper which has approximately 58,928 miles and 12,242 engine hours on it and has exceeded its 12 year life expectancy; and

**WHEREAS**, the City is a member of National Joint Powers Alliance (NJPA) and has opted to obtained one (1) 2014 New Elgin CNG Crosswind J Street Sweeper (Model No. J30243) through a cooperative purchase agreement, NJPA Contract No. 022014-FSC; and

**WHEREAS**, the purchase of the street sweeper is approved through the NJPA; however, the pricing for the chassis was not included in the award therefore, staff solicited bids from Elgin/HAAKER Equipment Company, Los Angeles Freightliner and MAR-CO Equipment Company with Elgin/HAAKER being the lowest responsible bid; and

**WHEREAS**, Jules and Associates, Inc. has partnered with Haaker Equipment Company and will provide financing for a five (5) year term with annual payments of \$65,000.00; and

**WHEREAS**, Air Quality Management District AB 2766 funding will be utilized to fund this lease and purchase.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning as follows:

SECTION 1. City Council adopt Resolution No. 2015-01 approving the lease, with an option to purchase, one (1) 2014 New Elgin CNG Crosswind J Street Sweeper (Model No. J30243) from Haaker Equipment Company utilizing the National Joint Powers Alliance (NJPA) Cooperative Agreement for an amount "Not to Exceed" \$325,000.00.

SECTION 2. The Administrative Services Director is authorized to make necessary related budget adjustments and appropriations for the lease and purchase of one (1) 2014 New Elgin CNG Crosswind J Street Sweeper (Model No. J30243).

SECTION 3. The City Manager is authorized to execute the Lease and Purchase Agreement with Haaker Equipment Company/Jules and Associate, Inc. This authorization will be rescinded if the contract agreements are not executed within sixty (60) days of the date of this resolution.

**PASSED, ADOPTED AND APPROVED** this 13<sup>th</sup> day of January, 2015.

\_\_\_\_\_  
Deborah Franklin, Mayor  
City of Banning

ATTEST:

\_\_\_\_\_  
Marie A. Calderon, City Clerk

APPROVED AS TO FORM AND  
LEGAL CONTENT:

\_\_\_\_\_  
David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-01, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of January, 2015.

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Marie A. Calderon, City Clerk  
City of Banning, California



## **ATTACHMENT 1**

### **Exhibit “A”- NJPA Vendor Contract Summary**

# NJPA AWARDED CONTRACT



## NJPA VENDOR CONTRACT SUMMARY – FEDERAL SIGNAL

<b>DATE</b> May 27, 2014	<b>RFP #</b> 022014
<b>AWARDED CONTRACT NUMBER</b> 022014-FSC Contract covers both Elgin Sweepers & Vactor Mfg.	<b>NJPA RFP TITLE &amp; CATEGORY</b> SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES
<b>CONTRACT PERIOD</b> May 27, 2014 through March 18, 2018	<b>PRICING MODEL</b> Discount from MSRP (List)
<b>DESCRIPTION</b> Street Sweepers & Sewer Vac Trucks/Catch Basin Cleaners	
<b>VENDOR NAME AND ADDRESS</b> Federal Signal ESG 1415 West 22 <sup>nd</sup> Street, Suite 1100 Oak Brook, IL 60523	<b>VENDOR CONTACT</b> David Panizzi, Business Development Manager Office: (847)622-7153 Cell: (630) 240-2385 DPanizzi@elginsweeper.com <a href="http://www.vactor.com">www.vactor.com</a> <a href="http://www.elginsweeper.com">www.elginsweeper.com</a>

<b>NJPA CONTRACTS CONSIST OF THE FOLLOWING DOCUMENTS</b> "Contract" as used herein shall mean cumulative documentation consisting of this RFP, an entire Proposers response, and a fully executed "Acceptance and Award" pursuant to this RFP. <ul style="list-style-type: none"> <li>• <a href="#">Request for Proposal (RFP)</a></li> <li>• <a href="#">Bid Acceptance &amp; Award</a></li> <li>• Bidder's Response and Pricing - Available upon request from the NJPA Contract Manager</li> </ul>	<b>RELATED CONTRACT DOCUMENTATION</b> <a href="#">Bid Evaluation</a> <a href="#">Bid Comment &amp; Review</a> <a href="#">Bid Opening Witness Page</a> <a href="#">Affidavit of Advertisement</a> <a href="#">Board Minutes</a>
<b>DOCUMENTATION OF CONTRACT MAINTENANCE</b>	<b>ADDITIONAL INFORMATION:</b>

## NJPA INFORMATION

<b>NJPA CONTACT</b> Tony Glenz	<b>TITLE</b> Contract Manager
<b>PHONE</b> 218-894-5491	<b>EMAIL</b> <a href="mailto:tony.glenz@njpacoop.org">tony.glenz@njpacoop.org</a>
<b>ADDRESS</b> 202 12th Street NE, P.O. Box 219, Staples, MN 56479	<b>WEBSITE</b> <a href="http://www.njpacoop.org">www.njpacoop.org</a>

National Joint Powers Alliance®

Contract Purchasing Department

## **REQUEST FOR PROPOSALS (RFP)**



# National Joint Powers Alliance® (herein NJPA)

## REQUEST FOR PROPOSAL (herein RFP)

for the procurement of

### SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES

#### RFP Opening

February 21, 2014

8:00 A.M. Central Time

At the offices of the

National Joint Powers Alliance®

202 12<sup>th</sup> Street Northeast, Staples, MN 56479

#### **RFP #022014**

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, and all other Public Agencies located nationally in all fifty states and potentially internationally, issues this Request For Proposal (RFP) to result in a national contract solution for the procurement of SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES. Details of this RFP are available beginning January 9, 2014 and continuing until February 13, 2014. Details may be obtained by letter of request to Maureen Knight, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at [RFP@njpacoop.org](mailto:RFP@njpacoop.org). Proposals will be received until February 20, 2014 at 4:30 p.m. Central Time at the above address and opened February 21, 2014 at 8:00 A.M. Central Time.

#### RFP Timeline

January 9, 2014

*Publication of RFP in the print and online Minneapolis Star Tribune, in the print version of the Salt Lake News within the state of Utah, in the print and online Daily Journal of Commerce within the State of Oregon, the NJPA website, and on the website of [noticetobidders.com](http://noticetobidders.com)*

February 6, 2014

10:00 A.M. Central Time

*Pre-Proposal Conference (webcast – conference call - Connection info sent to all inquirers two business days prior to the event)*

February 13, 2014

*Deadline for RFP requests and questions*

February 20, 2014

4:30 P.M. Central Time

*Deadline for Submission of Proposals*

February 21, 2014

8:00 A.M. Central Time

*Public Opening of Proposals*

Direct questions regarding this RFP to:  
Maureen Knight at [maureen.knight@njpacoop.org](mailto:maureen.knight@njpacoop.org) or (218)895-4114



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## I. INTRODUCTION

### A. ABOUT NJPA

- 1.1** The National Joint Powers Alliance®- (NJPA)- is a public agency serving as a national municipal contracting agency established under the Service Cooperative statute by Minnesota Legislative Statute §123A.21 with the authority to develop and offer, among other services, cooperative procurement services to its membership. Eligible membership and participation includes states, cities, counties, all government agencies, both public and non-public educational agencies, colleges, universities and non-profit organizations.
- 1.2** Under the authority of Minnesota state laws and enabling legislation, NJPA facilitates a competitive bidding and contracting process on behalf of the needs of itself and the needs of current and potential member agencies nationally. This process results in national procurement contracts with various Vendors of products/equipment and services which NJPA Member agencies desire to procure. These procurement contracts are created in compliance with applicable Minnesota Municipal Contracting Laws. A complete listing of NJPA cooperative procurement contracts can be found at [www.njpacoop.org](http://www.njpacoop.org).
- 1.3** NJPA is a public agency governed by publicly elected officials that serve as the NJPA Board of Directors. NJPA's Board of Directors calls for all proposals, awards all Contracts, and hosts those resulting Contracts for the benefit of its own and its Members use.
- 1.3.1 Subject to Approval of the NJPA Board:** NJPA contracts are awarded by the action of NJPA Board of Directors. This action is based on the open and competitive bidding process facilitated by NJPA. The evaluation and resulting recommendation is presented to the Board of Directors by the NJPA Proposal Evaluation Committee.
- 1.4** NJPA currently serves over 47,000 member agencies nationally. Both membership and utilization of NJPA contracts continue to expand, due in part to the increasing acceptance of Cooperative Purchasing throughout the government and education communities nationally.

### B. JOINT EXERCISE OF POWERS LAWS

- 1.5** NJPA cooperatively shares those contracts with its Members nationwide through various "Joint Exercise of Powers Laws" established in Minnesota and other States. The Minnesota "Joint Exercise of Powers Law" is Minnesota Statute §471.59 which states "Two or more governmental units...may jointly or cooperatively exercise any power common to the contracting parties..." Similar Joint Exercise of Powers Laws exists within the laws of each State of the United States. This Minnesota Statute allows NJPA to serve Member agencies located in all other states. Municipal agencies nationally have the ability to participate in cooperative purchasing activities as a result of specific laws of their own state. These laws can be found on our website at <http://www.njpacoop.org/national-cooperative-contract-solutions/legal-authority/>.

### C. WHY RESPOND TO A NATIONAL COOPERATIVE PROCUREMENT CONTRACT

- 1.6** National Cooperative Procurement Contracts create value for Municipal and Public Agencies, as well as for Vendors of products/equipment and services in a variety of ways:
- 1.6.1** National cooperative contracts potentially **save the time and effort** of Municipal and Public Agencies who would have been otherwise charged with soliciting vendor responses to individual RFP's, resulting in individual contracts, to meet the procurement needs of their respective agencies. Considerable time and effort is also potentially saved by the Vendors who would have had to otherwise respond each of those individual RFPs. A single, nationally advertised RFP, resulting in a single, national cooperative contract can potentially replace



thousands of individual RFPs for the same products/services that might have been otherwise advertised by individual NJPA member agencies.

**1.6.2** NJPA contracts offer our Members nationally leveraged **volume purchasing discounts**. Our contract terms and conditions offer the opportunity for Vendors to recognize individual member procurement volume commitment through additional volume based contract discounts.

**1.7** State laws that permit or encourage cooperative purchasing contracts do so with the belief that cooperative efficiencies will result in lower prices, better overall value, and considerable time savings.

**1.8** The collective purchasing power of thousands of NJPA Member agencies nationwide offers the opportunity for volume pricing discounts. Although no sales or sales volume is guaranteed by an NJPA Contract resulting from this RFP, substantial volume is anticipated and volume pricing is requested and justified.

**1.9** NJPA and its Members desire the best value for their procurement dollar as well as a competitive price. Pre-competed procurement contracts offer NJPA and its Member agencies the ability to directly compare non-price factors in their procurement analysis. Vendors have the opportunity to display and highlight value added attributes of their company, equipment/products and services without constraints of a typical individual proposal process.

#### **D. THE INTENT OF THIS RFP**

**1.10. A national contract awarded by the NJPA Board of Directors:** The intent of this RFP is to award a national contract by the action of the NJPA Board of Directors. This action will be influenced by the recommendation of the NJPA Proposal Evaluation Committee, and as a result of the competitive proposal and evaluation process which has been designed to reflect the best interests of NJPA and its Member agencies. NJPA is seeking the most responsive Vendor relationship(s) to meet this need. The goal and intent of this RFP is to follow through with an award and contract, which will be marketed nationally through a cooperative effort between the awarded vendor(s) and NJPA.

**1.11** NJPA's primary intent is to establish and provide a national cooperative procurement contract, offering opportunities for NJPA and our Member agencies to procure quality product/equipment and services as desired and needed. Contracts are expected to offer price levels reflective of the potential and collective volume of NJPA and the nationally established NJPA membership base.

**1.11.1** Beyond our primary intent, NJPA further desires to:

- Award a four year term contract with a fifth year contract option resulting from this RFP;
- Offer and apply any applicable technological advances throughout the term of a contract resulting from this RFP;
- Deliver "Value Added" aspects of the company, equipment/products and services as defined in the "Proposer's Response";
- Deliver wide spectrums of solutions to meet the needs and requirement of NJPA and NJPA Member agencies.
- Award an exclusive contract to the most responsive vendor when it is deemed to be in the best interest of NJPA and the NJPA Member agencies.

**1.12 Non-Manufacturer Awards:** NJPA reserves the right to make an award related to this invitation to a non-manufacturer or dealer/distributor if such action is in the best interests of NJPA and its Members.

**1.13 Exclusive or Multiple Awards:** Based on the goals and scope of this RFP, NJPA is requesting responders to demonstrate their ability to serve the needs of NJPA's national membership. It is NJPA's



intent and desire to award a contract to a single exclusive Vendor to serve our membership's needs. To meet the goals of this RFP, NJPA reserves the right to award a Contract to multiple Proposers where the result of the responding Proposers justifies a multiple award and multiple contracts are deemed to be in the best interests of NJPA Member agencies.

#### **E. SCOPE OF THIS RFP**

**1.14** The scope, goal and intent of this RFP is to award a contract to a qualifying vendor defined as a manufacturer, provider, or dealer/distributor, established as a Proposer, and deemed responsive through our open and competitive proposal process. Vendors will be awarded contracts based on the proposal and responders demonstrated ability to meet the expectations of the RFP and demonstrate the overall highest valued solutions which meet and/or exceed the current and future needs and requirements of NJPA and its Member agencies nationally within the scope of **SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES**. Qualifying Proposers who are able to anticipate the current and future needs and requirements of NJPA and NJPA member agencies; demonstrate the knowledge of any and all applicable industry standards, laws and regulations; and possess the willingness and ability to distribute, market to and service NJPA Members in all 50 states are preferred. NJPA requests proposers submit their entire product line as it applies and relates to the scope of this RFP. All proposals deemed responsive will be evaluated based on their ability to provide the overall highest value to NJPA and NJPA Member agencies. One of the measures of overall highest value will be the proposed breadth and depth of products and services.

**1.15 Best and Most Responsive – Responsible Proposer:** It is the intent of NJPA to award a Contract to the best and most responsible and responsive Proposer(s) offering the best overall quality and selection of equipment/products and services meeting the commonly requested specifications of the NJPA and NJPA Members, provided the Proposer's Response has been submitted in accordance with the requirements of this RFP.

**1.16 Sealed Proposals:** NJPA will receive sealed proposal responses to this RFP in accordance with accepted standards set forth in the Minnesota Procurement Code and Uniform Municipal Contracting Law. Awards may be made to responsible and responsive Proposers whose proposals are determined in writing to be the most advantageous to NJPA and its current or qualifying future NJPA Member agencies.

**1.17 Use of Contract:** Any Contract resulting from this solicitation shall be awarded with the understanding that it is for the sole convenience of NJPA and its Members. NJPA and/or its members reserve the right to obtain like product/equipment and services solely from this Contract or from another contract source of their choice or from a contract resulting from their own procurement process.

**1.18 NJPA's interest in a contract resulting from this RFP:** Notwithstanding its own use, to the extent NJPA issues this RFP and any resulting contract for the use of its Members, NJPA's interests and liability for said use shall be limited to the competitive proposal process performed and terms and conditions relating to said contract and shall not extend to the products, services, or warranties of the Awarded Vendor or the intended or unintended effects of the product/equipment and services procured there from.

**1.19 Awarded Vendor's interest in a contract resulting from this RFP:** Awarded Vendors will be able to offer to NJPA, and current and potential NJPA Members, only those products/equipment and services specifically awarded on their NJPA Awarded Contract(s). Awarded Vendors may not offer as "contract compliant", products/equipment and services which are not specifically identified and priced in their NJPA Awarded Contract.

**1.20 Sole Source of Responsibility-** NJPA desires a "Sole Source of Responsibility" Vendor meaning the Vendor will take sole responsibility for the performance of delivered products/services. NJPA also desires sole responsibility with regard to:

**1.20.1 Scope of Products/Services:** NJPA desires a provider for the broadest possible scope of products/equipment and services being proposed over the largest possible geographic area and to the largest possible cross-section of NJPA current and potential Members.

**1.20.2 Vendor use of sub-contractors in sourcing or delivering product/equipment and services:** NJPA desires a single source of responsibility for equipment/products and services proposed. Proposers are assumed to have sub-contractor relationships with all organizations and individuals whom are external to the Proposer and are involved in providing or delivering the product/equipment and services being proposed. Vendor assumes all responsibility for the equipment/products and services and actions of any such Sub-Contractor.

**1.21 Additional Definitions** for the scope of this solicitation.

**1.21.1** In addition to **SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES**, this solicitation should be read to include, but not limited to:

**1.21.1.1** N/A

**1.21.2** NJPA reserves the right to limit the scope of this solicitation for NJPA and current and potential NJPA member agencies.

**1.22 Suggested Solutions Options**

**1.22.1** All potential Proposers are assumed to be professionals in their respective fields. As professionals you are deemed to be intimately familiar with the spectrum of NJPA and NJPA Members' needs and requirements with respect to the scope of this RFP.

**1.22.2** With this intimate knowledge of NJPA and NJPA Members' needs, Proposers are instructed to provide their proposal response in a format describing their solutions to those current and future needs and requirements. Proposers should take care to be economical in their response to this RFP.

**1.22.3** Multiple solutions to the needs of NJPA and NJPA Members are possible. **Examples could include:**

**1.22.3.1 Equipment/Products Only Solution:** Equipment/products Only Solution may be appropriate for situations where NJPA or NJPA Members possess the ability, either in-house or through local third party contractors, to properly install and bring to operation those equipment/products being proposed.

**1.22.3.2 Turn-Key Solutions:** A Turn-Key Solution is a combination of equipment/products and services which provides a single price for equipment/products, delivery, and installation to a properly operating status. Generally this is the most desirable solution as NJPA and NJPA Members may not possess, or desire to engage, personnel with the necessary expertise to complete these tasks internally or through other independent contractors

**1.22.3.3 Good, Better, Best:** Where appropriate and properly identified, Proposers are invited to offer the CHOICE of good – better – best multiple grade solutions to NJPA and NJPA Members' needs.

**1.22.3.4 Proven – Accepted – Leading Edge Technology:** Where appropriate and

properly identified, Proposers are invited to provide an appropriate identified spectrum of technology solutions to compliment or enhance the functionality of the proposed solutions to NJPA and NJPA Members' needs both now and into the future.

### **1.23 Overlap of Scope:**

**1.23.1** When considering equipment, products, or groups of product/equipment and services submitted as a part of your response, and whether inclusion of such will fall within a "Scope of Proposal", please consider the validity of an inverse statement.

- For example, pencils and post-it-notes can generally be classified as office supplies and office supplies generally include pencils and post-it-notes.
- In contrast, computers (PCs and peripherals) can generally be considered office supplies; however, the scope of office supplies does not generally include computer servers and infrastructure.
- In conclusion: With this in mind, individual products and services must be examined individually by NJPA, from time to time and in its sole discretion, to determine their compliance and fall within the original "Scope" as intended by NJPA.

**1.24 Geographic Area to be Proposed:** This RFP invites proposals to provide **SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES** to NJPA and NJPA Members throughout the entire United States and possibly internationally. Proposers will be expected to express willingness to explore service to NJPA Members located abroad; however the lack of ability to serve Members outside of the United States will not be cause for non-award. The ability and willingness to serve Canada, for instance, will be viewed as a value-added attribute.

**1.25 Manufacturer as a Proposer:** If the Proposer is a Manufacturer or wholesale distributor, the response received will be evaluated on the basis of a response made in conjunction with that Manufacturer's authorized Dealer Network. Unless stated otherwise, a Manufacturer or wholesale distributor Proposer is assumed to have a documented relationship with their Dealer Network where that Dealer Network is informed of, and authorized to accept, purchase orders pursuant to any Contract resulting from this RFP on behalf of the Manufacturer or wholesale distributor Proposer. Any such dealer will be considered a sub-contractor of the Proposer/Vendor. The relationship between the Manufacturer and wholesale distributor Proposer and its Dealer Network may be proposed at the time of the proposed submission if that fact is properly identified.

**1.26 Dealer/Re-seller as a Proposer:** If the Proposer is a dealer or re-seller of the products and/or services being proposed, the response will be evaluated based on the Proposer's authorization to provide those products and services from their manufacturer. Where appropriate, Proposers must document their authority to offer those products and/or services.

**1.27 Contract Term:** At NJPA's option a contract resulting from this RFP will become effective either; 1) The date awarded by the NJPA Board of Directors, or 2) The day following the expiration date of an existing NJPA procurement contract for the same or similar product/equipment and services.

**1.27.1** NJPA is seeking a Contract base term of four years as allowed by Minnesota Contracting Law. Full term is expected. One additional one-year renewal-extension may be offered by NJPA to Vendor beyond the original four year term if NJPA deems such action to be in the best interests of NJPA and its Members. NJPA reserves the right to conduct periodic business reviews throughout the term of the contract.



**1.28 Minimum Contract Value:** NJPA anticipates considerable activity resulting from this RFP and subsequent award; however, no commitment of any kind is made concerning actual quantities to be acquired. NJPA does not guarantee usage. Usage will depend on the actual needs of the NJPA Members and the value of the awarded contract.

**1.29 Estimated Contract Volume:** Estimated quantities and sales volume are based on potential usage by NJPA and NJPA Member agencies nationally.

**1.30 Largest Possible Solution:** If applicable, Contracts will be awarded to Proposer(s) able to deliver a proposal meeting the entire needs of NJPA and its Members within the scope of this RFP. NJPA prefers Proposers submit their complete product line of products and services described in the scope of this RFP. NJPA reserves the right to reject individual, or groupings of specific equipment/products and services proposals as a part of the award.

**1.31 Contract Availability:** This Contract must be available to all current and potential NJPA Members who choose to utilize this NJPA Contract to include all governmental and public agencies, public and private primary and secondary education agencies, and all non-profit organizations nationally.

**1.32 Proposer's Commitment Period:** In order to allow NJPA the opportunity to evaluate each proposal thoroughly, NJPA requires any response to this solicitation be valid and irrevocable for ninety (90) days after the date proposals were opened regarding this RFP.

#### F. EXPECTATIONS FOR EQUIPMENT/PRODUCTS AND SERVICES BEING PROPOSED

**1.33 Industry Standards:** Except as contained herein, the specifications or solutions for this RFP shall be those accepted guidelines set forth by the **SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES** industry, as they are generally understood and accepted within that industry across the nation. Submitted products/equipment, related services, and their warranties and assurances are required to meet and/or exceed all current, traditional and anticipated needs and requirements of NJPA and its Members.

**1.33.1 Deviations from industry standards** must be identified by the Proposer and explained how, in their opinion, the equipment/products and services they propose will render equivalent functionality, coverage, performance, and/or related services. Failure to detail all such deviations may comprise sufficient grounds for rejection of the entire proposal.

**1.33.2 Technical Descriptions/Specifications.** Proposers must supply **sufficient** information to:

- Demonstrate the Proposer's knowledge of industry standards, and
- Identify the equipment/products and services being proposed, and
- Differentiate those products and services from others.

Excessive technical descriptions and specifications which, in the opinion of NJPA unduly enlarge the proposal response may reduce evaluation points awarded on Form G.

**1.34 Important note:** NJPA does not typically provide product and service specifications; rather NJPA is requesting an industry standard or accepted specification for the requested product/equipment and services. Where specific line items are specified, those line items should be considered the minimum which can be expanded by the Proposer to deliver the Proposer's "Solution" to NJPA and NJPA Members' needs.

**1.35 Commonly used Product/Equipment and Services:** It is important that the equipment/products and services submitted are the equipment/products and services commonly used by public sector entities.



**1.36 New Current Model Product/Equipment:** Proposals submitted shall be for new, current model products and services with the exception of certain close-out products allowed to be offered on the Proposer's "Hot List" described herein.

**1.37 Compliance with laws and standards:** All items supplied on this Contract shall comply with any current applicable safety or regulatory standards or codes.

**1.38 Delivered and operational;** Products/equipment offered herein are to be proposed based upon being delivered and operational at the NJPA Member's site. Exceptions to "delivered and operational" must be explicitly disclosed in the "Total Cost of Acquisition" section of your proposal response.

**1.39 Warranty:** The Proposer warrants that all products, equipment, supplies, and services delivered under this Contract shall be covered by the industry standard or better warranty. All products and equipment should carry a minimum industry standard manufacturer's warranty that includes materials and labor. The Proposer has the primary responsibility to submit product specific warranty as required and accepted by industry standards. Dealer/Distributors agree to assist the purchaser in reaching a solution in a dispute over warranty's terms with the manufacturer. Any manufacturer's warranty which is effective past the expiration of the warranty will be passed on to the NJPA member. Failure to submit a minimum warranty may result in non-award.

**1.40 Proposer's Warrants:** The Proposer warrants all products/equipment and related services furnished hereunder will be free from liens and encumbrances; defects in design, materials, and workmanship; and will conform in all respects to the terms of this RFP including any specifications or standards. In addition, Proposer/Vendor warrants the products/equipment and related services are suitable for and will perform in accordance with the purposes for which they were intended.

## G. SOLUTIONS BASED SOLICITATION

**1.41** NJPA solicitations and contract process will not offer specific specifications for proposers to meet or base your response on. This RFP is a "Solutions Based Solicitation." This means the proposers are asked to understand and anticipate the current and future needs of NJPA and the nationally located NJPA membership base, within the scope of this RFP, and including specifications commonly desired or required by law or industry standards. Your proposal will be evaluated in part on your demonstrated ability to meet or exceed the needs and requirements of NJPA and our member agencies within the defined scope of this RFP.

## H. INQUIRY PERIOD

**1.42** The inquiry period shall begin at the date of first advertisement and continue to the "Deadline for Requests." RFP packages shall be distributed to Potential Bidders during the inquiry period. The purpose for the defined "Inquiry Period" is to ensure proposers have enough time to complete and deliver the proposal to our office.

## I. PRE-PROPOSAL CONFERENCE

**1.43** Potential Proposers inquiring before the optional "Pre-Proposal Conference" will be invited via the e-mail address used to make their inquiry. The purpose of the pre-proposal conference is to allow Potential Proposers to ask questions and hear answers from their own questions and the questions of other Potential Proposers.

# 2. DEFINITIONS

## A. PROPOSER - VENDOR

**2.1 Exclusive Vendor-** A sole Vendor awarded in a product category. NJPA reserves the right to award to an Exclusive Vendor in the event that such an award is in the best interests of NJPA Members nationally. A Proposer that exhibits and demonstrates the ability to offer and execute an outstanding overall program, demonstrates the ability and willingness to serve NJPA current and qualifying Members in all 50 states and comply with all other requirements of this RFP, is preferred.

**2.2 Potential Proposer-** A person or entity requesting a copy of this RFP.

**2.3 Proposer-** A company, person, or entity delivering a timely response to this RFP.

**2.4 Vendor-** One of a number of Proposers whose proposal has been awarded a contract pursuant to this RFP.

**2.5 Request for Proposal-** Herein referred to as RFP.

## B. CONTRACT

**2.6** "Contract" as used herein shall mean this RFP, pricing, and fully executed forms P, C, D and E ("Acceptance and Award") with final terms and conditions. Form E will be executed on or after award and will provide final clarification of terms and conditions of the award.

## C. TIME

**2.7** Periods of time, stated as number of days, shall be in calendar days.

## D. PROPOSER'S RESPONSE

**2.8** A Proposer's Response is the entire collection of documents as they are received by NJPA from a Potential Proposer in response to this RFP.

## E. CURRENCY

**2.9** All transactions are payable in U.S. dollars on U.S. sales. All administrative fees are to be paid in U.S. dollars.

## F. FOB

**2.10** FOB stands for "Freight On Board" and defines the point at which responsibility for loss and damage of product/equipment purchased is transferred from Seller to Buyer. "FOB Destination" defines that transfer of responsibility for loss is transferred from Seller to Buyer at the Buyer's designated delivery point.

**2.11** FOB does not identify who is responsible for the costs of shipping. The responsibility for the costs of shipping is addressed elsewhere in this document.

# 3. INSTRUCTIONS FOR PREPARING YOUR PROPOSAL

## A. PRE-PROPOSAL CONFERENCE

**3.1** A non-mandatory pre-proposal conference will be held at the date and time specified in the time line on page one of this RFP. Conference call and web connection information will be sent to all Potential Proposers through the same means employed in their inquiry. The purpose of this conference call is to allow Potential Proposers to ask questions regarding this RFP. Only answers issued in writing by NJPA to questions asked before or during the Pre-proposal Conference shall be considered binding.



## B. IDENTIFICATION OF KEY PERSONNEL

**3.2** Vendor will designate one senior staff individual who will represent the awarded Vendor to NJPA. This contact person will correspond with members for technical assistance, questions or problems that may arise including instructions regarding different contacts for different geographical areas as needed.

**3.3** Individuals should also be identified (if applicable) as the primary contacts for the contents of this proposal, marketing, sales, and any other area deemed essential by the Proposer.

## C. PROPOSER'S EXCEPTIONS TO TERMS AND CONDITIONS

**3.4** Any exceptions, deviations, or contingencies a Proposer may have to the terms and conditions contained herein must be documented on Form C.

**3.5** Exceptions, deviations or contingencies stipulated in Proposer's Response, while possibly necessary in the view of the Proposer, may result in disqualification of a Proposal Response.

## D. FORMAL INSTRUCTIONS TO PROPOSERS

**3.6** It is the responsibility of all Proposers to examine the entire RFP package, to seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a Proposal. Negligence in preparing a Proposal confers no right of withdrawal after the deadline for submission of proposals.

**3.7** All proposals must be sent to "The National Joint Powers Alliance®, 202 12th ST NE Staples, MN 56479."

**3.8 Format for proposal response:** All proposals must be physically delivered to NJPA at the above address in the following format:

**3.8.1** Hard copy original signed, completed, and dated forms C,D,F, and hard copy signed signature page only from forms A and P from this RFP,

**3.8.2** Hard copies of all addenda issued for the RFP with original counter signed by the Proposer,

**3.8.3** Certificate of insurance verifying the coverage identified in this RFP,

**3.8.4** A complete copy of your response on a CD (Compact Disc) or flash drive. The copy shall contain completed Forms A,B,C,D,F & P, your statement of products and pricing (including apparent discount) together with all appropriate attachments. Everything you send with your hard copy should also be included in the electronic copy. As a public agency, NJPA proposals, responses and awarded contracts are a matter of public record, except for that data included in the proposals, responses and awarded contracts that is classified as nonpublic; thus, pursuant to NJPA policies and RFP terms and conditions, all documentation, except for that data which is nonpublic is available for review by the public through a public records request. If you wish to request that certain information that falls within Minnesota Statute §13.37 be redacted, such request must be made within thirty-days of award/non-award.

**3.9** All Proposal forms must be submitted in English and be legible. All appropriate forms must be executed by an authorized signatory of the Proposer. Blue ink is preferred for signatures.

**3.10** Proposal submissions should be submitted using the electronic forms provided. If a Proposer chooses to use alternative documents for their response, the proposer will be responsible for ensuring the content is effectively equal to the NJPA form and the document is in a format readable by NJPA.



**3.11** It is the responsibility of the Proposer to be certain the proposal submittal is in the physical possession of NJPA on or prior to the deadline for submission of proposals.

**3.11.1** Proposals must be submitted in a sealed envelope or box properly addressed to NJPA and prominently identifying the proposal number, proposal category name, the message **“Hold for Proposal Opening”**, and the deadline for proposal submission. NJPA cannot be responsible for late receipt of proposals. Proposals received by the correct deadline for proposal submission will be opened and the name of each Proposer and other appropriate information will be publicly read.

**3.12** Corrections, erasures, and interlineations on a Proposer’s Response must be initialed by the authorized signer in original ink on all copies to be considered.

**3.13** Addendums to the RFP: The Proposer is responsible for ensuring receipt of all addendums to this RFP.

**3.13.1** Proposer’s are responsible for checking directly with the NJPA website for addendums to this RFP.

**3.13.2** Addendums to this RFP can change terms and conditions of the RFP including the deadline for submission of proposals.

#### **E. QUESTIONS AND ANSWERS ABOUT THIS RFP**

**3.14** Upon examination of this RFP document, Proposer shall promptly notify the NJPA of any ambiguity, inconsistency, or error they may discover. Interpretations, corrections and changes to this RFP will be made by NJPA through addendum. Interpretations, corrections, or changes made in any other manner will not be binding and Proposer shall not rely upon such.

**3.15** Submit all questions about this RFP, in writing, referencing **“SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES** to Maureen Knight, NJPA 202 12th Street NE, Staples, MN 56479 or [RFP@njpacoop.org](mailto:RFP@njpacoop.org). Those not having access to the Internet may call Maureen Knight at (218) 895-4114. Requests for additional information or interpretation of instructions to Proposers or technical specifications shall also be addressed to Maureen Knight. NJPA urges Potential Proposers to communicate all concerns well in advance of the deadline to avoid misunderstandings. Questions received less than seven (7) days ending at 4:00 p.m. Central Time of the seventh (7<sup>th</sup>) calendar day prior to proposal due-date cannot be answered.

**3.16** If the answer to a question is deemed by NJPA to have a material impact on other potential proposers or the RFP itself, the answer to the question will become an addendum to this RFP.

**3.17** If the answer to a question is deemed by NJPA to be a clarification of existing terms and conditions and does not have a material impact on other potential proposers or the RFP itself, no further documentation of that question is required.

**3.18** As used in this solicitation, clarification means communication with a Potential Proposer for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the RFP.

**3.19** Addenda are written instruments issued by NJPA that modify or interpret the RFP. All addenda issued by NJPA shall become a part of the RFP. Addenda will be delivered to all Potential Proposers using the same method of delivery of the original RFP material. NJPA accepts no liability in connection with the delivery of said materials. Copies of addenda will also be made available on the NJPA website at [www.njpacoop.org](http://www.njpacoop.org) by clicking on “Current and Pending Solicitations” and from the NJPA offices. No questions will be accepted by NJPA later than seven (7) days prior to the deadline for receipt of proposals, except an addendum withdrawing the request for proposals or one that includes postponement of the date of receipt of proposals. Each Potential Proposer shall ascertain prior to submitting a Proposal



that it has received all addenda issued, and the Proposer shall acknowledge their receipt in its Proposal Response.

**3.20** An amendment to a submitted proposal must be in writing and delivered to NJPA no later than the time specified for opening of all proposals.

#### F. MODIFICATION OR WITHDRAWAL OF A SUBMITTED PROPOSAL

**3.21** A submitted proposal may not be modified, withdrawn from or cancelled by the Proposer for a period of ninety (90) days following the date proposals were opened regarding this RFP. **Prior** to the deadline for submission of proposals, any proposal submitted may be modified or withdrawn by notice to the NJPA Manager of Bids and Contracts. Such notice shall be submitted in writing and include the signature of the Proposer and shall be delivered to NJPA prior to the deadline for submission of proposals and it shall be so worded as not to reveal the content of the original proposal. However, the original proposal shall not be physically returned to the Potential Proposer until after the official proposal opening. Withdrawn proposals may be resubmitted up to the time designated for the receipt of the proposals if they are then fully in conformance with the Instructions to Proposer.

#### G. VALUE ADDED ATTRIBUTES, PRODUCTS/SERVICES

**3.22 Examples of Value Added Attributes:** Value-Added attributes, products and services are items offered in addition to the products and services being proposed which adds value to those items being proposed. The availability of a contract for maintenance or service after the initial sale, installation, and set-up may, for instance, be "Value Added Services" for products where a typical buyer may not have the ability to perform these functions.

**3.23 Where to document Value Added Attributes:** The opportunity to indicate value added dimensions and such advancements will be available in the Proposer's Questionnaire and Proposer's product and service submittal.

**3.24** Value added equipment/products and services and expanded services, as they relate to this RFP, will be given positive consideration in the award selection. Consideration will be given to an expanded selection of "SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES", and advances to provide products/services, supplies meeting and/or exceeding today's industry standards and expectations. A value add would include a program or service that further serves the members needs above and possibly beyond standard expectation and complements the equipment/products and services and training. Value added could include areas of product and service, sales, ordering, delivery, performance, maintenance, technology, and service that furthers the functionality and effectiveness of the procurement process while remaining within the scope of this RFP.

**3.25 Minority, Small Business, and Women Business Enterprise (WMBE) participation:** It is the policy of some NJPA Members to involve Minority, Small Business, and WMBE contractors in the process to purchase product/equipment and related services. Vendors should document WMBE status for their organization AND any such status of their affiliates (i.e. Supplier networks) involved in carrying out the activities invited. The ability of a Proposer to provide "Credits" to NJPA and NJPA Members in these subject areas, either individually or through related entities involved in the transaction, will be evaluated positively by NJPA and reflected in the "value added" area of the evaluation. NJPA is committed to facilitating the realization of such "Credits" through certain structuring techniques for transactions resulting from this RFP.

**3.26 Environmentally Preferred Purchasing Opportunities:** There is a growing trend among NJPA



Members to consider the environmental impact of the equipment/products and related services they purchase. "Green" characteristics demonstrated by responding companies will be evaluated positively by NJPA and reflected in the "value added" area of the evaluation. Please identify any Green characteristics of the product/equipment and related services in your proposal and identify the sanctioning body determining that characteristic. Where appropriate, please indicate which products have been certified as "green" and by which certifying agency.

**3.27 On-Line Requisitioning systems:** When applicable, on-line requisitioning systems will be viewed as a value-added characteristic. Proposer shall include documentation about user interfaces that make on-line ordering easy for NJPA Members as well as the ability to punch-out from mainstream e-Procurement or Enterprise Resource Planning (ERP) systems that NJPA Members may currently utilize.

**3.28 Financing:** The ability of the Proposer to provide financing options for the products and services being proposed will be viewed as a Value Added Attribute.

#### H. CERTIFICATE OF INSURANCE

**3.29** Vendors shall provide evidence of liability insurance coverage identified below in the form of an ACCORD binder form with their proposal. Upon Award issued pursuant to this contract, and prior to the execution of any commerce relating to such award, Vendor will be responsible for providing verification, in the form of an ACCORD binder identifying the coverage required below and identifying NJPA as a "Certificate Holder." Vendor will be responsible to maintain such insurance coverage at their own expense throughout the term of any contract resulting from this solicitation.

**3.30** Any exceptions and/or assumptions to the insurance requirements *must* be identified on *Attachment C*. Exceptions and/or assumptions will be taken into consideration as part of the evaluation process; however, vendors must be specific. If vendors do not specify any exceptions and/or assumptions at time of proposal submission, NJPA will not consider any additional exceptions and/or assumptions during negotiations. Upon contract award, the successful vendor *must* provide the Certificate of Insurance identifying the coverage as specified.

**3.31** The awarded vendor must maintain, for the duration of its contract, \$1.5 million in General Liability insurance coverage or General Liability insurance in conjunction with an Umbrella for a total combined coverage of \$1.5 million. Work on the contract shall not begin until after the awarded vendor has submitted acceptable evidence of the required insurance coverage. Failure to maintain any required insurance coverage or acceptable alternative method of insurance will be deemed a breach of contract.

**MINIMUM SCOPE AND LIMITS OF INSURANCE:** Vendor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

##### **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability and XCU coverage.

Each Occurrence

\$1,500,000

**3.32** The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. NJPA in no way warrants that the minimum limits contained herein are sufficient to protect the Vendor from liabilities that might arise out of the performance of the work under this Contract by the Vendor, his agents, representatives, employees or subcontractors and Vendor is free to purchase additional insurance as may be determined necessary.



3.33 Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Minnesota and with an "A.M. Best" rating of not less than A- VII. NJPA in no way warrants that the above required minimum insurer rating is sufficient to protect the Vendor from potential insurer solvency.

3.34 Subcontractors: Vendors' certificate(s) shall include all subcontractors as additional insureds under its policies **or** Vendor shall furnish to NJPA separate certificates for each subcontractor. All coverage for subcontractors shall be subject to the minimum requirements identified above.

#### **I. ORDER PROCESS AND/OR FUNDS FLOW**

3.32 Please propose an order process and funds flow. Please choose from one of the following:

3.32.1 B-TO-G: The Business-to-Government order process and/or funds flow model involves NJPA Members issuing Purchase Orders directly to a Vendor and pursuant to a Contract resulting from this RFP. Administrative fees may also be used for purposes as allowed by Minnesota State Law and approved by the Board of Directors.

3.32.3 Other: Please fully identify.

#### **J. ADMINISTRATIVE FEES**

3.33 Proposer agrees to authorize and/or allow for an administrative fee payable to NJPA by an Awarded Vendor in exchange for its facilitation and marketing of a Contract resulting from this RFP to current and potential NJPA Members. This Administration Fee shall be:

3.33.1 Calculated as a percentage of the dollar volume of all equipment/products and services provided to and purchased by NJPA Members or calculated as reasonable and acceptable method applicable to the contracted transaction, and

3.33.2 Included in, and not added to, the pricing included in Proposer's Response to this RFP, and

3.33.3 Designed to offset the anticipated costs of NJPA's involvement in contract management, facilitating marketing efforts, Vendor training, and any order processing tasks relating to the Contract resulting from this RFP. Administrative fees may also be used for other purposes as allowed by Minnesota law. Administrative fees may also be used for other purposes as allowed by Minnesota law.

3.33.3.1 Typical administrative fees for a B-TO-G order process and funds flow is 2.0%.

3.34 The opportunity to propose these factors and an appropriate administrative fee is available in the Proposer's Questionnaire.

#### **4. PRICING STRATEGIES**

4.1 NJPA requests Potential Proposers respond to this RFP only if they are able to offer a wide array of equipment/products and services and at prices lower and better value than what they would ordinarily offer to single government agency, larger school district, or regional cooperative.

4.2 RFP is an "Indefinite Quantity Product/Equipment and Related Service Price and Program Request" with potential national sales distribution and service. Proposers are agreeing to fulfill Contract obligations regarding each product/equipment to which you provide a description and a price. If Proposer's solution requires additional supporting documentation, describe where it can be found in your submission. If Proposer offers the solution in an alternative fashion, describe your solution to be easily understood. All pricing must be copied on a CD along with other requested information as a part of a Proposer's



Response.

**4.3** Regardless of the payment method selected by NJPA or NJPA Member, a total cost associated with any purchase option of the equipment/products and services and being supplied must always be disclosed at the time of purchase.

**4.4 Primary Pricing/Secondary Pricing Strategies-** All Proposers will be required to submit "Primary Pricing" in the form of either "Line-Item Pricing," or "Percentage Discount from Catalog Pricing," or a combination of these pricing strategies. Proposers are also encouraged to offer OPTIONAL pricing strategies such as but not limited to "Hot List," "Sourced Product/Equipment" and "Volume Discounts," as well as financing options such as leasing.

#### A. LINE-ITEM PRICING

**4.5 Line-Item pricing-** A pricing format where specific individual products and/or services are offered at specific individual Contract prices. Products/equipment and/or related services are individually priced and described by characteristics such as manufacture name, stock or part number, size, or functionality. This method of pricing offers the least amount of confusion as products/equipment and prices are individually identified however, Proposers with a large number of products/equipment to propose may find this method cumbersome. In these situations, a percentage discount from catalog or category pricing model may make more sense and increase the clarity of the contract pricing format.

**4.6** All Line-Item Pricing items must be numbered, organized, sectioned, including SKU's (when applicable) and easily understood by the Evaluation Committee and members.

**4.7** Line-Item Pricing items are to be submitted in an Excel spreadsheet format provided and are to include all appropriate identification information necessary to discern the line item from other line items in each Responder's proposal.

**4.8** The purpose for the excel spreadsheet format for Line-Item Pricing is to be able to use the "Find" function to quickly find any particular item of interest. For that reason, Proposers are responsible for providing the appropriate product and service identification information along with the pricing information which is typically found on an invoice or price quote for such products/equipment and related services.

**4.9** All products/equipment and related services typically appearing on an invoice or price quote must be individually priced and identified on the line-item price sheet, including any and all ancillary costs.

**4.10** Proposers are asked to provide both a published "List" price as well as a "Proposed Contract Price" in their pricing matrix. "The published List" price will be the standard "quantity of one" price currently available to government and educational customers excluding cooperative and volume discounts.

#### B. PERCENTAGE DISCOUNT FROM CATALOG OR CATEGORY

**4.11 Percent Discount From Catalog, list or Category Pricing-** A specific percentage discount from a "Catalogue or List Price" defined as a published Manufacturer's Suggested Retail Price (MSRP) for the products/equipment or related services being proposed.

**4.12** Individualized percentage discounts can be applied to any number of defined product groupings.

**4.13** A Percentage Discount from MSRP may be applied to all elements identified in MSRP including all Manufacturer Options applicable to the product/equipment or related service.

**4.14** Accessory options requested by the customer and related to the general scope of this RFP but are not under the current contract will be priced using a "Sourced Product/equipment pricing model" as



defined herein. See Section F

**4.15** When a Proposer elects to use "Percentage Discount from Catalog or Category," Proposer will be responsible for providing and maintaining current published "MSRP" with NJPA and must be included in their proposal and provided throughout the term of any Contract resulting from this RFP.

**4.16** NJPA reserves the right to review catalogs submitted to determine if the represented products and services reflect and relate to the scope of this RFP. Each new catalog received may have the effect of adding new product offerings and deleting products no longer carried by the Vendor. New catalogs shall apply to the Contract only upon approval of the NJPA. Non-approved use of catalogs may result in termination for convenience. New price lists or catalogs found to be offering non-contract items during the Contract may be grounds for terminating the Contract for convenience. New optional accessories for product/equipment and related services may be added to the Contract through the NJPA approval process at the time they become available.

### C. HOT LIST PRICING

**4.17** Where applicable, NJPA also invites the Vendor, at their option, to offer a specific selection of products/services, defined as a Hot List selection offer pricing at greater discounts or related advantages than those listed in the standard Contract pricing. All product/service pricing, including the Hot List Pricing, must be submitted electronically provided in Excel format. Hot List pricing must be submitted in a Line-Item format. Providing or offering a "Hot List Selection" of equipment/products and related services is optional. Equipment/products and related services may be added or removed from the "Hot List" at any time.

**4.18** Hot List program and pricing when applicable may also be used to discount and liquidate close-out and discontinued equipment/products and related services as long as those close-out and discontinued items are clearly labeled as such. Current ordering process and administrative fees apply. This option must be published and made available to all NJPA Members.

**4.19** Hot List Program and Pricing is allowed to change at the discretion of the Vendor within the definition of Hot List Pricing. The Vendor is responsible to maintain current Hot List product/equipment and related service descriptions and Pricing with NJPA.

### D. CEILING PRICE

**4.20** Proposal pricing is to be established as a ceiling price. At no time may the proposed equipment/products and related services be offered pursuant to this Contract at prices above this ceiling price without request and approval by NJPA. **IMPORTANT NOTE:** Contract prices may be reduced to allow for volume considerations and commitments and to meet the specific and unique needs of an NJPA Member.

**4.21** Allowable specific needs may include competitive situations, certain purchase volume commitments or the creation of custom programs based on the individual needs of NJPA Members.

### E. VOLUME PRICE DISCOUNTS

**4.22** Proposers are free to offer volume commitment discounts from the contract pricing documented in a Contract resulting from this RFP. Volume considerations shall be determined between the Vendor and individual NJPA Members on a case-by-case basis.

**4.23** Nothing in this Contract establishes a favored member relationship between the NJPA or any NJPA Member and the Vendor. The Vendor will, upon request by NJPA Member, extend this same reduced price offered or delivered to another NJPA Member provided the same or similar volume commitment, specific needs, terms, and conditions, a similar time frame, seasonal considerations, locations,

competitively situations and provided the same manufacturer support is available to the Vendor.

**4.24** All price adjustments are to be offered equally to all NJPA Members exhibiting the same or substantially similar characteristics such as purchase volume commitments, and timing including the availability of special pricing from the Vendor's suppliers.

**4.25** Additional Quantities:

**4.25.1** The contract awarded vendor will accept orders for additional quantities at the same prices, terms and conditions, providing the NJPA Member exercises the option before a specific date, mutually agreed upon between member and contract awarded vendor at time of original purchase order.

**4.25.2** Any extension(s) of pricing beyond the specific date shall be upon mutual consent between the NJPA Member and the contract awarded vendor.

**F. SOURCED PRODUCT/EQUIPMENT /OPEN MARKET ITEMS**

**4.26** NJPA or NJPA Members may from time to time, request product/equipment and/or equipment/products and related services that are within the related scope of this RFP, which are not included in an awarded Vendor's line-item product/equipment and related service listing or "list or catalog." These items are known as Sourced Product/Equipment or Open Market Items.

**4.27** An awarded Vendor resulting from this RFP may "Source" equipment/products and related services for NJPA or an NJPA Member to the extent they:

**4.27.1** Identify all such equipment, products and services as "Sources Product/Equipment" or "Open Market Items" on any quotation issued in reference to an NJPA awarded contract, and provided to either NJPA or an NJPA Member, and

**4.27.2** All applicable acquisition regulations pertaining to the purchase of such equipment, products and services have been followed, as defined by NJPA or the NJPA Member receiving quotation from Vendor, and

**4.27.3** NJPA or the NJPA Member has determined the prices as quoted by Vendor for such equipment, products and services are deemed to be fair and reasonable and are acceptable to the member.

**G. COST PLUS A PERCENTAGE OF COST**

**4.28** Cost plus a percentage of cost as a primary pricing mechanism is not desirable.

**H. TOTAL COST OF ACQUISITION**

**4.29** The Total Cost of Acquisition for the equipment/products and related services being proposed, including those payable by NJPA Members to either the Proposer or a third party, shall be defined as:

- The cost of the proposed equipment/products product/equipment and related services delivered and operational for its intended purpose in the end-user's location.

**4.30** For example, if you are proposing equipment/products only (IE, FOB Proposer's dock) your proposal would identify your deviation from the "Total Cost of Acquisition" of contracted equipment/products. The "Proposal should reflect that the contract does not provide for delivery beyond



Proposer's dock, nor any set-up activities or costs associated with those delivery or set-up activities." In contrast, proposed terms including all costs for product/equipment and services delivered and operational at to the end-user's location would require a disclosure of "None."

#### I. REQUESTING PRODUCT/EQUIPMENT AND RELATED SERVICE ADDITIONS/DELETIONS

**4.31** Requests for product/equipment and related services, price changes, additions, deletions, or any related contract changes must be made in written form and shall be subject to approval by NJPA.

**4.32** New equipment/products and related services may be added to a Contract resulting from this RFP at any time during that Contract to the extent those equipment/products and related services are within the scope of this RFP. Those requests are subject to review and approval of NJPA. Allowable new equipment/products and related services generally include new updated models of equipment/products and related services and or enhanced services previously offered which could reflect new technology and improved functionality.

**4.33** Proposers representing multiple manufacturers, or carrying multiple related product lines may also request the addition of new manufacturers or product lines to their Contract to the extent they remain within the scope of this RFP.

**4.34** NJPA's due diligence in analyzing any request for change is to determine if approval of the request is 1) within the scope of the original RFP, and 2) in the "Best Interests of NJPA and NJPA Members." We are looking for consistent pricing and delivery mechanisms and an understanding of what value the proposal brings to NJPA and NJPA Members.

**4.35** Documenting the "Best Interests of NJPA and NJPA Members" when outdated equipment is being deleted is fairly straight forward since the product is no longer available and not relevant to the procurement Contract.

**4.36** Requests must be in the form of 1) an NJPA Vendor Price and Product Change Request Form which includes a request to add the product/equipment line, a general statement identifying how the products to be added are within the scope of the original RFP, and making a general statement identifying that, if appropriate, the pricing is consistent with the existing Contract pricing. Further, provide detail as to what is being added at what price in the request form. Pending approval of your request by NJPA you will need to provide a complete re-statement of all pricing including all new prices/products AND existing prices and products/equipment.

**4.37** NJPA's intent is to encourage Proposers to provide and document NJPA's due diligence in a clear and concise one page format on which we can approve and sign our acknowledgment and acceptance. This information must ultimately come from Proposers, and NJPA is requiring it in this format.

#### J. REQUESTING PRICING CHANGES

**4.38 Price Decreases:** Requests for standard Contract price decrease adjustments (percentage discount increases) are encouraged and will be allowed at any time based on market place efficiencies, market place competitiveness, improved technologies and/or improved methods of delivery or if Vendor engages in innovative procurement practices such as strategic sourcing, aggregate and volume purchasing. NJPA expects Vendors to propose their very best prices and anticipates price reductions due to the advancement of technologies and market place efficiencies. Documenting the "Best Interests of NJPA and NJPA Members" is highly valued when we are documenting price reductions.

**4.39 Price increases:** Requests for standard contract price increases (or the inclusion of new generation products/equipment/services at higher prices) can be made at any time. These requests will again be evaluated by NJPA based on the best interests of NJPA and NJPA Members. As an example, typically



acceptable requests for price increases for existing equipment/products and services may cite increases to the Vendor of input costs such as petroleum or other applicable commodities. Typically acceptable requests for price increases for new equipment/products and services enhance or improve on the current solutions currently offered as well as cite increases in utility of the new compared to the old. Vendors are requested to reasonably document the claims cited in their requests. Your written request for a price increase, therefore, is an exercise in describing what you need, and a justification for why you need it in sufficient detail for NJPA to deem such change to be in the best interests of ourselves and our Members.

**4.40 Price Change Request Format:** An awarded Proposer will use the format of a NJPA Vendor Price and Product Change Request Form to request price increases in general terms (a 5% increase in product line X) and stating their justification for that price increase (due to the recent increase in petroleum or raw material costs) by product category. Specific details for the requested price change must be attached to the request letter identifying product/services where appropriate, both current and proposed pricing. Attachments such as letters from suppliers announcing price increases are appropriate for documenting your requests here.

#### K. PRICE AND PRODUCT CHANGES FORMAT

**4.41** All price and product change requests must be submitted using the **NJPA VENDOR PRICE AND PRODUCT CHANGE REQUEST FORM** found at the very end of this solicitation. NJPA's due diligence regarding product and price change requests is to consider the reasonableness of the request and document consideration on behalf of our members. Submit the following documentation to request a pricing change:

- 4.41.1** An excel spreadsheet identifying all equipment/products and services being offered and their pricing. Each subsequent pricing update will be saved using the naming convention of "(Vendor Name) pricing effective XX/XX/XXXX."
- a. Include all equipment/products and services regardless of whether their prices have changed. By observing this convention we will:
    - i. Reduce confusion by providing a single, easy to find, current pricing sheet for each Vendor.
    - ii. Create a historical record of pricing."

#### L. SINGLE STATEMENT OF PRICING/HISTORICAL RECORD OF PRICING

**4.42** Initially; and again with each request for product addition, deletion, and/or pricing change; you must state all pricing for all equipment/products and services available. The request for price changes described above will serve as the documentation for those requested changes. Each complete pricing list will be identified by its "Effective Date." Each successive price listing identified by its "Effective Date" will create a "Product and Price History" for the Contract.

**4.43** Proposers may use the multiple tabs available in an Excel workbook to separately list logical product groupings or to separately list product and service pricing as they see fit.

**4.44** All equipment/products and services together with their pricing, whether changed within the request or remaining unchanged, will be stated on each "Pricing" sheet created as a result of each request for product, service, or pricing change.

**4.45** Each subsequent "Single Statement of Product and Pricing" will be archived by its effective date therefore creating a product and price history for any Contract resulting from this RFP. Proposers are required to create a historical record of pricing annually by submitting updated pricing referred to as a "Single Statement of Product/Equipment and Related Services Contract Price Update". This pricing update is required at a minimum of once per contract year.

#### M. PAYMENT TERMS



**4.46** Payment terms will be defined by the Proposer in the Proposer's Response. Proposers are encouraged to offer payment terms through P Card services if applicable to the customary method of procurement relating to the contracted product/equipment and related services.

**4.47** Leasing- If available, identify any leasing programs available to NJPA and NJPA Members as part of your proposal. Proposers should submit an example of the lease agreement to be used. Proposers should identify:

- General leasing terms such as:
  - The percentage adjustment over/under an index rate used in calculating the internal rate of return for the lease; and
  - The index rate being adjusted; and
  - The "Purchase Option" at lease maturity (\$1, or fair market value); and
  - The available term in months of lease(s) available.
- Leasing company information such as:
  - The name and address of the leasing company; and
  - Any ownership, common ownership, or control between the Proposer and the Leasing Company.

#### N. SALES TAX

**4.48** Sales and other taxes, where applicable, shall not be included in the prices quoted. Vendor will charge state and local sales and other taxes on items for which a valid tax exemption certification has not been provided. Each NJPA Member is responsible for providing verification of tax exempt status to Vendor. When ordering, if applicable, NJPA Members must indicate that they are tax exempt entities. Except as set forth herein, no party shall be responsible for taxes imposed on another party as a result of or arising from the transactions contemplated by a Contract resulting from this RFP.

#### O. SHIPPING AND SHIPPING PROGRAM

**4.49** Shipping program for material only proposals, or sections of proposals, must be defined as a part of the cost of product/equipment. If shipping is charged to NJPA or NJPA Member, only the actual cost of delivery may be added to an invoice. Shipping charges calculated as a percentage of the product price may not be used, unless such charges are lower than actual delivery charges. No COD orders will be accepted. It is desired that delivery be made within ninety-days (90) of receipt of the Purchase Order. See "The Total Cost of Acquisition" for the equipment/products and related services.

**4.50** Any shipping cost charged to NJPA or NJPA Members will be considered to be part of "proposal pricing."

**4.51** Additional costs for expedited deliveries will be at the additional shipping or handling expense to the NJPA Member.

**4.52** Selection of a carrier for shipment will be the option of the party paying for said shipping. Use of another carrier will be at the expense of the requester.

**4.53** Proposers must define their shipping programs for Alaska and Hawaii and any location not served by conventional shipping services. Over-size and over-weight items and shipments may be subject to custom freight programs.

**4.54** Proposals containing restocking fees are less advantageous than those not containing re-stocking fees. That being said, certain industries cannot avoid restocking fees. Certain industries providing made to order product/equipment may not allow returns. With regard to returns and restocking fees, Proposers will be evaluated based on the relative flexibility extended to NJPA and NJPA Members relating to those subjects. Where used, restocking fees in excess of 15% will be considered excessive. Restocking fees may



be waived, at the option of the Proposer/Vendor. Indicate all shipping and re-stocking fees in price program.

**4.55** Proposer agrees shipping errors will be at the expense of the Vendor. For example, if a Vendor ships a product that was not ordered by the member, it is the responsibility of the Vendor to pay for return mail or shipment at the convenience of the member.

**4.56** Unless specifically stated otherwise in the "Shipping Program" of a Proposer's Response, all prices quoted must be F.O.B. destination with the freight prepaid by the Vendor. Delivery effectiveness is very important aspect of this Contract. If completed deliveries are not made at the time agreed, NJPA or NJPA Member reserves the right to cancel and purchase elsewhere and hold Vendor accountable. If delivery dates cannot be met, Vendor agrees to advise NJPA or NJPA Member of the earliest possible shipping date for acceptance by NJPA or NJPA Member.

**4.57** Delivered products/equipment must be properly packaged. Damaged products/equipment will not be accepted, or if the damage is not readily apparent at the time of delivery, the products/equipment product/equipment shall be returned at no cost to NJPA or NJPA Member. NJPA and NJPA Members reserve the right to inspect the product/equipment at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the product/equipment at the time of delivery.

**4.58** Vendor shall deliver Contract conforming products/equipment in each shipment and may not substitute products/equipment without approval from NJPA Member.

**4.59** NJPA reserves the right to declare a breach of Contract if the Vendor intentionally delivers substandard or inferior products/equipment which are not under Contract and described in its paper or electronic price lists or sourced upon request to any member under this Contract. In the event of the delivery of a non-conforming product/equipment, NJPA Member will immediately notify Vendor and the Vendor will replace non-conforming product/equipment with conforming product/equipment acceptable to the NJPA member.

**4.60** Throughout the term of the Contract, Proposer agrees to pay for return shipment on product/equipment that arrives in a defective or inoperable condition. Proposer must arrange for the return shipment of damaged product/equipment.

**4.61** Unless contrary to other parts of this solicitation, if the product/equipment or the tender of delivery fail in any respect to conform to this Contract, the purchasing member may: 1) reject the whole, 2) accept the whole or 3) accept any commercial unit or units and reject the rest.

#### **P. NORMAL WORKING HOURS**

**4.62** Prices quoted are for equipment/products and services delivered during normal business hours. Normal Business hours will be as specifically defined herein, defined through industry standards OR defined through statement contained in the purchase/work order issued pursuant to a Contract resulting from this RFP.

#### **5. MARKETING PLAN**

**5.1 Internal Marketing Plan:** If you are awarded a contract based on this solicitation, your sales force will be the primary source of the contract success. Your sales force needs to be aware that the value of the contract includes:

- The use of the NJPA Contract will save their customer (NJPA's Member) the time and effort of bringing a new individual Request For Proposal (RFP).
- The use of the NJPA Contract will save you and your sales force the time and effort of responding to individual Request For Proposals (RFPs).



- The use of the NJPA Contract will offer NJPA members the opportunity to have the ability to choose your company's contracted product/equipment and related services.

An award of Contract resulting from this RFP is an opportunity for the awarded Vendor to pursue commerce with, and deliver valued contracted products/equipment and related service solutions to NJPA and NJPA Members nationwide. Your internal marketing plan should serve to:

**5.1.1** Identify the appropriate levels of sales management whom will need to understand the value of, and the internal procedures necessary to deliver your Contract solution to NJPA and NJPA Members through your marketing and sales efforts.

**5.1.2** Identify, in general, your national footprint and dedicated feet-on-the-street sales force that will be carrying this Contract message and opportunity in the field to NJPA Members. Outline the sale force network in terms of numbers and geographic location and distribution of the product/equipment and related services. Service may be independent of the sales of the product/equipment. Demonstrate fully the sales and service capabilities of your company through your response.

**5.1.2.1** Identify whether your sales force are employees or independent contractors. Identify whether your dealers are company owned or independently owned.

**5.1.3** Identify your plan for delivering training to these individuals.

**5.1.3.1** Will you have your sales force or dealer network gathered at national or regional events in the near future? Does your sales force or dealer network have the ability to participate in sales training webinar or webcast events?

**5.1.3.2** NJPA is prepared to provide our personnel for sales training and/or on a webinar or webcast or other methodologies to effectively reach the appropriate groups within your sales management, dealer network and sales force.

**5.1.4** Sales Management Contract Training.

**5.1.4.1** NJPA will commit to providing contract sales training regarding all aspects of communicating the value of the Contract itself, the authority of NJPA to offer the Contract to its Members, the value the Contract delivers to NJPA Members, the scope of NJPA Membership, and the authority of NJPA Members to utilize NJPA procurement contracts.

**5.1.4.2** Your Sales Management will be needed to provide training regarding employee compensation and internal procedures when delivering the Contract opportunity, and how this Contract purchasing opportunity relates with other such opportunities available.

**5.2** Success in marketing is dependent upon 1) the delivery of value as defined in section 1.4, 2) the delivery of knowledge of the contract and its proper use and utility, and 3) the delivery of the contracted products/equipment and related services and the sales reward which creates a personal commitment to the contract. NJPA desires a marketing plan that:

**5.2.1** identifies the value to a member of a delivered a competitively proposed national cooperative procurement contract that reduces the need by both the NJPA Member and the Vendor/Vendor's sales staff of the responsibility to facilitate and responding to multiple and similar individual RFP's;

**5.2.2** identifies the appropriate Vendor personnel from both management and sales staff who will be trained on the sales and marketing methods, strategy, use and utility of such a contract and a

general schedule of when and how those individuals will be trained; and

**5.2.3** identifies in general how the reward system for the marketing, delivery, and service chain of the Vendor will be affected by the implementation of the proposed Contract and how that will be proposed to those individuals in terms of the value created for them and their departments in 5.1.1 above.

**5.3 External Marketing Plan:** NJPA is seeking the ability to serve all our current and potential members nationwide. The Proposer must demonstrate the ability to both market and service their products/equipment and related services to NJPA current and potential members nationwide. As a part of your Marketing Plan, demonstrate your sales and service network and the capability to staff, communicate and offer the contract opportunity while demonstrating your commitment to serving NJPA and NJPA Members nationwide through the awarded contract.

**5.4** The Proposer must exhibit the willingness and ability to develop marketing materials and participate in marketing venues such as:

**5.4.1 Printed Marketing Materials.** Proposer will initially produce and thereafter maintain full color print advertisements in camera ready electronic format including company logos, identifying the Vendor, the Vendor's general utility for NJPA and NJPA Members, and contact information to be used by NJPA and NJPA Members in a full page, half page, and quarter page formats. These advertisements will be used in the NJPA directory and other marketing publications.

**5.4.2 Contract announcements and advertisements.** Proposer will identify a marketing plan identifying their anticipated contract announcements, advertisements in industry periodicals, or other direct or indirect marketing activities.

**5.4.3 Proposer's Website.** Proposer will identify how an Awarded Contract will be displayed on the Proposer's website. An on-line shopping experience for NJPA and NJPA Members is desired when applicable and will be viewed as a value-added attribute to a Proposer's Response.

**5.4.4 Trade Shows.** Proposer will outline their proposed involvement in the promotion of a Contract resulting from this RFP through applicable trade shows. Proposers are encouraged to identify tradeshow and other appropriate venues for the promotion of any such Contract. Proposers are encouraged to consider participation with NJPA at NJPA embraced national trade shows. Examples of such could include:

NAEP                      National Association of Education Procurement

I-ASBO                    International Association of School Business Officials

NIGP                        National Institute of Government Purchasing

**5.5 Proposer must** also work in cooperation with NJPA to develop a marketing strategy and provide avenues to equally market and drive sales through the Contract and program to all NJPA Members nationally. Awarded Vendor agrees to actively market in cooperation with NJPA all contracted equipment/products and services to current and potential NJPA Members. NJPA reserves the right to deem a Proposer non-responsive or to waive an award based on an unacceptable marketing plan.

**5.6 As a part of this response,** submit a complete Marketing Plan on how you would help NJPA roll out this program to current and potential NJPA Members. NJPA requires the Awarded Vendors actively promote the Contract in cooperation with the NJPA. Proposers are advised to consider marketing efforts in the areas of 1) Website Link from Proposer's website to NJPA's website, 2) Attendance and participation with a display booth at national and regional trade shows and meetings when the event is

applicable to the Proposer's customer vertical, and 3) Sales team and sales training programs involving both Proposer's sales management and NJPA staff.

**5.7 Facilitating NJPA Membership:** Proposer should express their commitment to develop a process to establish membership status of current and potential agencies with NJPA as a part of the sales or customer communication process.

**5.7.1 Membership information:** Proposer should further express their commitment to capturing sufficient member information as is deemed necessary by NJPA to appropriately facilitate membership.

## 6. PROPOSAL OPENING PROCEDURE

**6.1** Sealed and properly identified Proposer's Responses for this RFP entitled "**SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES**" will be received by Maureen Knight, Contracts and Compliance Manager, at NJPA Offices, 202 12th Street NE, Staples, MN 56479 until the deadline for receipt of, and proposal opening identified on page one of this RFP. **We document the receipt by using an atomic clock; an NJPA employee electronically time and date stamps all Proposals immediately upon receipt.** The NJPA Director of Contracts and Marketing, or Representative from the NJPA Proposal Evaluation Committee, will then read the Proposer's names aloud. A summary of the responses to this RFP will be made available for public inspection in the NJPA office in Staples, MN. A letter or e-mail request is required to receive a complete RFP package. Send or communicate all requests to the attention of Maureen Knight 202 12th Street Northeast Staples, MN 56479 or [RFP@njpacoop.org](mailto:RFP@njpacoop.org) to receive a complete copy of this RFP. Method of delivery needs to be indicated in the request; an email address is required for electronic transmission. Oral, facsimile, telephone or telegraphic Proposal Submissions or requests for this RFP are invalid and will not receive consideration. All Proposal Responses must be submitted in a sealed package. The outside of the package shall plainly identify "**SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES**" To avoid premature opening, it is the responsibility of the Proposer to label the Proposal Response properly.

## 7. EVALUATION OF PROPOSALS

### A. PROPOSAL EVALUATION PROCESS

**7.1 Overall Evaluation (FORM G)** - The NJPA Proposal Evaluation Committee will evaluate proposals received based on a 1,000 point evaluation system. The Committee will establish both the evaluation criteria and designate the relative importance of those criteria by assigning possible scores for each category.

**7.2** NJPA will use a 1,000 Point Evaluation System to help determine the best overall Proposer(s) selection.

**7.3** NJPA shall use a final overall scoring system to include consideration for best price and cost evaluation. The total possible score is 1,000 points. NJPA reserves the right to assign any number of point awards or penalties it considers warranted if a Proposer stipulates exceptions, exclusions, or limitations of liabilities.

**7.4** Responses will be evaluated first for responsiveness and thereafter for content. The NJPA Board of Directors will make awards to the selected Proposer(s) based on the recommendations of the Proposal Evaluation Committee.

**7.5** To qualify for the final evaluation, a Proposer must have been deemed responsive as a result of the criteria set forth under "Proposer Responsiveness."



7.6 NJPA uses a variety of evaluation methodologies, including but not limited to a cost comparison of specific and deemed to be like equipment/products. These processes establish final points for submitted price levels.

7.7 The procurement activities of the NJPA Proposal Evaluation Committee are limited to document preparation, answering Proposer questions, advertising the solicitation, distribution of this RFP upon request, conducting an evaluation and making recommendation for possible approval to NJPA Board of Directors.

## **B. PROPOSER RESPONSIVENESS**

7.8 Proposer's Response received after the deadline for submission will be invalid and returned to the Potential Proposer unopened.

7.9 An essential part of the proposal evaluation process is an evaluation to qualify the Proposer being considered. All proposals must contain answers or responses to the information requested in the proposal forms. Any Proposer failing to provide the required documentation may be considered non-responsive.

7.10 Deviations or exceptions stipulated in Proposer's Response may result in the proposal being classified as non-responsive.

7.11 To qualify for evaluation, a proposal must have been submitted on time and materially satisfy all mandatory requirements identified in this document. A proposal must reasonably and substantially conform to all the terms and conditions in the solicitation to be considered responsive.

7.12 The Proposal Evaluation Committee shall utilize the evaluation criteria indicated in section 7.14 below. The following items constitute the test for "Level One Responsiveness" and are determined on the proposal opening date. If these are not received your response may be disqualified as non-responsive. Level One Responsiveness includes:

1. The proposal response is received prior to the deadline for submission.
2. The proposal package was properly addressed and identified as a sealed proposal with a specific opening date and time.
3. The proposal response contains the required certificate of liability insurance, pricing document (with apparent discounts), answer to the level of discount (Form P, question 19) and all forms fully completed even if "not applicable" is the answer.
4. The proposal response contains original signed, completed and dated RFP forms C, D, and F hard copy signed signature page only from forms A and P from this RFP and if applicable, all counter signed addenda issued in relation to this RFP.
5. The proposal response contains an electronic copy (CD or flash drive) of the entire response.

7.13 "Level 2" responsiveness is determined through the evaluation of the remaining items listed under Proposal Evaluation Criteria. These items are not arranged in order of importance and each item may encompass multiple areas of information requested. Any questions not answered will result in a loss of points from relevant Form G criteria and may lead to non-award if too many areas are unanswered resulting in the inability for evaluation team to effectively review your response.

## **C. PROPOSAL EVALUATION CRITERIA**

7.14 **Reduction of Evaluation Points.** The following items will be sufficient cause to reduce evaluation points.

7.14.1 If a manufacturer or supplier chooses not to produce or supply a full selection and representation of product/equipment and related services it has available which fall within the



scope of this RFP, such action will be considered sufficient cause to reduce evaluation points.

**7.15 Evaluation Criteria:** Evaluation of each Proposer's Response will take into consideration as a minimum response but not necessarily limited to the following:

1. Adherence to all requirements of this RFP as defined by industry standards.
2. Prior knowledge of and experience with a Proposer in terms of past performance and market place success.
3. Capability of meeting or exceeding current and future needs or requirements of NJPA and NJPA Members.
4. Evaluation of Proposer's ability to market to and provide service to all NJPA Members nationally.
5. Financial condition of the Proposer.
6. Nature and extent of company data furnished in Proposer's Response.
7. Quality of products, equipment, and services offered including value added related services.
8. History of member service to NJPA type customers.
9. Overall ability to perform sales, solutions and contract support as submitted.
10. Ability to meet service and warranty needs.
11. History of meeting shipping and delivery expectations of contracted products/ services.
12. Technology advancements and related provisions.
13. Ability to market and promote the Contract within current business practices.
14. Willingness to develop and enter into NJPA Contract and business relations.
15. Favorable bond rating and applicable industry standard licensing ability.
16. Past market place successes and brand recognition.
17. Demonstrated warranty and product/service responsibility.
18. Possesses qualifications as a responding Proposer that meets or exceeds those set within the solicitation.
19. Information from government and education references and past performance information including past agency approval.
20. Demonstrates that they offer the most current industry standard equipment/products and related services and/or services.
21. Demonstrates financial stability as a company and a favorable banking line of credit.
22. Demonstrates their equipment/products and related services proposed meet and/or exceed industry standards accepted by educational or governmental agencies nationally.
23. Demonstrates market place success and their past performance exhibits an acceptable reputation nationally within the government and education market place.
24. Demonstrates that the company possesses the background, knowledge, capacity, and ability to sell, deliver, and support equipment/products and related services offered to government and education and related agencies.
25. Response's conformance to terms and conditions as described in the solicitation, including documentation.
26. Has provided documentation defining, outlining, and describing their concept of a national marketing program they will be implementing to facilitate and coordinate the cooperative activities required by an awarded NJPA Contract.
27. Has provided all of the required and applicable documentation required i.e. insurance certificates, licenses, and/or registration certificates required to do business nationally.
28. Line-Item Pricing, or acceptable pricing model in approved excel format, listing of all of the proposed equipment/products and related services and warranty provisions with their associated units of costs.
29. Hot List Pricing equipment/products and related services in a Line-Item Pricing format (when applicable).
30. Contract Pricing submitted as requested to include selection of products/equipment and related services in a Line-Item Pricing and/or Percentage Discount from a published gov/ed price list or Catalog.

#### D. OTHER CONSIDERATION



7.16 Consideration will be given in the award based on the completion and degree of information provided regarding available products/equipment, and accessories, and related services as well as, applicable parts of the Proposer Information and Questionnaire.

7.17 The Proposer is required to have extensive knowledge and at least three (3) years of experience with the related activities surrounding the selling of the product/equipment, related services or related products/equipment offered.

7.18 NJPA reserves the right to accept or reject newly formed companies solely based on information provided in the proposal and/or its own investigation of the company.

7.19 The fact a manufacturer or supplier chooses not to produce or provide equipment products or services to meet the intent and scope of this RFP will not be considered sufficient cause to adjudge this RFP as restrictive.

7.20 Consideration will be given in the proposal evaluation based upon the selection, variety, technological advances, and demonstrated quality of products submitted, technological advances, and pricing. A positive review will reflect the ability of the Proposer to communicate the value of these factors and to demonstrate how the depth and breadth of their product and service offerings provide NJPA and NJPA Members comfort and assurance understanding that the proposer accepts the sole source of responsibility of the response to the scope of this RFP.

7.21 Consideration will also be given to proposals demonstrating technological advances, provide increased efficiencies, expanded service and other related improvements beyond today's NJPA member's needs and applicable standards.

7.22 Strong consideration will be given to a Proposer's past performance, distribution model, and the demonstration their ability to effectively market and service NJPA Membership nationally.

7.23 Strong consideration will be given to the best price as it relates to the quality of the product and service. However, price is ultimately only one of the factors taken into consideration in the evaluation and award.

7.24 The Proposer's ability to follow the proposal preparation instructions set forth in this solicitation will also be considered to be an indicator of the Proposer's ability to follow other future instructions should they receive an award as a result of this solicitation. Any Contract between NJPA and a Proposer requires the delivery of information and data. The quality of organization and writing reflected in the proposal will be considered an indication of the quality of organization and writing which would be prevalent if a Contract was awarded. As a result, the proposal will be evaluated as a sample of data submission.

7.25 Proposer's financial strength and stability is requested and reviewed to get a general feel for the size, strength, and probable scope of the Proposer.

7.26 NJPA reserves the right to reject the Proposer's Response of the apparent successful Proposer where the available evidence or information does not exhibit the ability or intent to satisfy NJPA that the potential Vendor is unable to properly carry out the terms of this RFP and potential Contract.

7.27 NJPA shall reserve the right to reject any or all proposals. NJPA also reserves the right to reject a proposal not accompanied by required certificate of insurance, other data required by this RFP, or if a Proposer's Response is incomplete or irregular. The NJPA shall reject all proposals where there has been proven or suspicion of collusion among the Proposers.

#### E. COST COMPARISON



7.28 NJPA reserves the right to use this process in the event the Proposal Evaluation Committee feels it is necessary to make a final determination.

7.29 This process will be based on a point system with points being awarded for being low to high Proposer for each cost evaluation item selected. A "Market Basket" of identical (or substantially similar) equipment/products and related services may be selected by the NJPA Evaluation Committee and the unit cost will be used as a basis for determining the point value. The "Market Basket" will be selected by NJPA from all product categories as determined appropriate by NJPA. The low priced Proposer will receive the full point value and all other Proposers will receive points as follows: Lowest price Proposal = 5 (where there are five proposers), and inferior proposals = 4, 3, 2, 1 points each. The Total Score for each proposer will be the sum of all points earned. The result of this process shall not be the sole determination for award.

#### F. PRODUCT TESTING

7.30 NJPA reserves the right to request and test equipment/products and related services from the apparent successful Proposer. Prior to the award of the Contract, the apparent successful Proposer, if requested by NJPA, shall furnish current information and data regarding the Proposer's resources, personnel, and organization within three (3) days.

#### G. PAST PERFORMANCE INFORMATION

7.31 Past performance information is relevant information regarding a Proposer's actions under previously awarded contracts to schools, local, state, and governmental agencies and non-profit agencies. It includes the Proposer's record of conforming to specifications and standards of good workmanship. The Proposer's history for reasonable and cooperative behavior and commitment to member satisfaction shall be under evaluation. Ultimately, Past Performance Information can be defined as the Proposer's businesslike concern for the interests of the NJPA Member.

#### H. WAIVER OF FORMALITIES

7.32 NJPA reserves the right to waive any minor formalities or irregularities in any proposal and to accept proposals, which, in its discretion and according to the law, may be in the best interest of its members.

### 8. POST AWARD OPERATING ISSUES

#### A. SUBSEQUENT AGREEMENTS

8.1 Purchase Order- Purchase Orders for product/equipment and related services may be executed between NJPA or NJPA Members (Purchaser) and awarded Vendor(s) or Vendor's sub-contractors pursuant to this invitation and any resulting Contract. NJPA Members are instructed to identify on the face of such Purchase orders that "This purchase order is issued pursuant to NJPA procurement contract #XXXXXX." A Purchase Order is an offer to purchase product/equipment and related services at specified prices by NJPA or NJPA Members pursuant to a Contract resulting from this RFP. Purchase Order flow and procedure will be developed jointly between NJPA and an Awarded Vendor after an award is made.

8.2 Governing Law- Purchase Orders, as identified above, shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the purchaser. Each and every provision of law and clause required by law to be included in the Purchase Order shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either part the Contract shall be physically amended to make such inclusion or correction. The venue for any litigation arising out of disputes related to Purchase



Order(s) shall be a court of competent jurisdiction to the Purchaser.

**8.3 Additional Terms and Conditions-** Additional terms and conditions to a Purchase Order may be proposed by NJPA, NJPA Members, or Vendors. Acceptance of these additional terms and conditions is OPTIONAL to all parties to the Purchase Order. The purpose of these additional terms and conditions is to, among other things; formally introduce job or industry specific requirements of law such as prevailing wage legislation. Additional terms and conditions can include specific local policy requirements and standard business practices of the issuing Member. Said additional terms and conditions shall not interfere with the general purpose, intent or currently established terms and conditions contain in this RFP document.

**8.4 Specialized Service Requirements-** In the event service requirements or specialized performance requirements such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements not addressed in the Contract resulting from this RFP, NJPA Member and Vendor may enter into a separate, standalone agreement, apart from a Contract resulting from this RFP. Any proposed service requirements or specialized performance requirements require pre-approval by Vendor. Any separate agreement developed to address these specialized service or performance requirements is exclusively between the NJPA Member and Vendor. NJPA, its agents, Members and employees shall not be made party to any claim for breach of such agreement. Product sourcing is not considered a service. NJPA Members will need to conduct procurements for any specialized services not identified as a part or within the scope of the awarded Contract.

**8.5 Performance Bond-** At the request of the member, a Vendor will provide all performance bonds typically and customarily required in their industry. These bonds will be issued pursuant to the requirements of Purchase Orders for product/equipment and related services. If a purchase order is cancelled for lack of a required performance bond by the member agency, it shall be the recommendation of NJPA that the current pending Purchase Order be canceled. Each member has the final decision on Purchase Order continuation. ANY PERFORMANCE BONDING REQUIRED BY THE MEMBER OR CUSTOMER STATE LAWS OR LOCAL POLICY IS TO BE MUTUALLY AGREED UPON AND SECURED BETWEEN THE VENDOR AND THE CUSTOMER/MEMBER.

## B. NJPA MEMBER SIGN-UP PROCEDURE

**8.6** Awarded Vendors will be responsible for familiarizing their sales and service forces with the various forms of NJPA Membership documentation and shall encourage and assist potential Members in establishing Membership with NJPA. NJPA membership is at no cost, obligation or liability to the member or the vendor.

## C. REPORTING OF SALE ACTIVITY

**8.7** A report of the total gross dollar volume of all equipment/products and related services purchased by NJPA Members as it applies to this RFP and Contract will be provided quarterly to NJPA. The form and content of this reporting will be developed by NJPA in cooperation with the Vendor to include, but not limited to, name and address of purchasing agency, amount of purchase, and a description of the items purchased.

**8.7.1 Zero sales reports:** Awarded Vendors are responsible for providing a quarterly sales report of contract sales EVERY QUARTER regardless of the existence or amount of sales.

## D. AUDITS

**8.8** During the Term, however no more than once per calendar year, Vendor(s) may be required to make available to NJPA at the Vendor's corporate offices (during normal business hours) the invoice reports and/or invoice documents from Vendor pertaining to all invoices sent by Vendor and all payments made by NJPA members for all equipment/products and related services purchased under the awarded Contract.



NJPA must provide written notice of exercise of this requirement with no less than fourteen (14) business days' notice. NJPA may employ an independent auditor or NJPA may choose to conduct such audit on its own behalf. Vendor shall have the right to approve the independent auditor, which approval shall not be unreasonably withheld. Upon approval and after the auditor has executed an appropriate confidentiality agreement, Vendor will permit the auditor to review the relevant Vendor documents. NJPA shall be responsible for paying the auditor's fees. The parties will make every reasonable effort to fairly and equitably resolve discrepancies to the satisfaction of both parties. Vendor agrees that the NJPA may audit their records with a reasonable notice to establish total compliance and to verify prices charged hereunder of the Contract are being met. Vendor agrees to provide verifiable documentation and tracking in a timely manner.

#### E. HUB PARTNER

**8.9 Hub Partner:** Where applicable, NJPA Members may, from time to time, request to be served in some way through a "Hub Partner" for the purposes of complying with a Law, Regulation, or Rule to which that individual NJPA Member deems to be applicable in their jurisdiction. Hub Partners may bring value to the proposed transactions through consultancy, Disadvantaged Business Entity Credits, or other considerations.

**8.10 Hub Partner Fees:** Fees, costs, or expenses from this Hub Partner levied upon a transaction resulting from this contract, shall be payable by the NJPA Member provide that:

**8.10.1** The fees, costs, or expenses levied by the Hub Vendor must be clearly itemized in the transaction; and

**8.10.2** To the extent that the Vendor stands in the chain of title during a transaction resulting from this RFP, the documentation shall be documented to show it is "Executed for the Benefit of [NJPA Member Name]."

#### F. TRADE-INS

**8.11** Where Appropriate, the value in US Dollars for Trade-ins will be negotiated between NJPA or an NJPA Member, and an Awarded Vendor. That identified "Trade-In" value shall be credited in full against the NJPA purchase price identified in a purchase order issued pursuant to any Awarded NJPA procurement contract. The full value of the trade-in will be consideration to that purchase order.

#### G. OUT OF STOCK NOTIFICATION

**8.12** Vendor shall immediately notify NJPA members upon receipt of order(s) when an out-of-stock occurs. Vendor shall inform the NJPA member regarding the anticipated date of availability for the out-of-stock item(s), and may suggest equivalent substitute(s).

- The ordering organization shall have the option of accepting the suggested equivalent substitute, or canceling the item from the order.
- Under no circumstance is Proposer permitted to make unauthorized substitutions.
- Unfilled or substituted item(s) shall be indicated on the packing list.

#### H. TERMINATION OF CONTRACT RESULTING FROM THIS RFP

**8.13** NJPA reserves the right to cancel the whole or any part of a resulting Contract due to failure by the Vendor to carry out any obligation, term or condition as described in the below procedure. Prior to any termination for cause, the NJPA will provide written notice to the Vendor, opportunity to respond and opportunity to cure according to the steps in the procedure in this Cancellation Section. Some examples of material breach are the following:

- The Vendor provides products/equipment or related services that does not meet reasonable quality standards and is not remedied under the warranty;

- The Vendor fails to ship the products/equipment or related services or provide the delivery and services within a reasonable amount of time;
- NJPA has reason to believe the Vendor will not or cannot perform to the requirements or expectations of the Contract and issues a request for assurance as described herein and Vendor fails to respond;
- The Vendor fails to observe any of the material terms and conditions of the Contract;
- The Vendor fails to follow the established procedure for purchase orders, invoices and/or receipt of funds as established by the NJPA and the Vendor in the Contract.
- The Vendor fails to report quarterly sales;
- The Vendor fails to actively market this Contract within the guidelines provided in this RFP and the expectations of NJPA defined in the NJPA Contract Launch.
- In the event the contract has no measurable and defining value or benefit to NJPA or the NJPA member.

**8.14** Each party shall follow the below procedure if the Contract is to be terminated for violations or non-performance issues:

**Step 1:** Issue a warning letter outlining the violations and/or non-performance and state the length of time (10 days) to provide a response and correct the problem(s) if reasonably possible in such time frame.

**Step 2:** Issue a letter of intent to cancel Contract, if the problem(s) is not resolved within fifty (50) days.

**Step 3:** Issue letter to cancel Contract for cause.

**8.15** Upon receipt of the written notice of concern, the Vendor shall have ten (10) business days to provide a satisfactory response to the NJPA. Failure on the part of the Vendor to reasonably address all issues of concern may result in Contract cancellation pursuant to this Section.

**8.16** Any termination shall have no effect on purchases that are in progress at the time the cancellation is received by the NJPA. The NJPA reserves the right to cancel the Contract immediately for convenience, without penalty or recourse, in the event the Vendor is not responsive concerning the remedy, the performance, or the violation issue within the time frame, completely or in part.

**8.17** NJPA reserves the right to cancel or suspend the use of any Contract resulting from this RFP if the Vendor files for bankruptcy protection or is acquired by an independent third party. Awarded Vendor will be responsible for disclosing to NJPA any litigation, bankruptcy or suspensions/disbarments that occur during the contract period. Failure to disclose may result in an immediate termination of the contract. Prior to commencing services under this Contract, the Proposer/Vendor must furnish NJPA certification from insurer(s) proving level of coverage usual and customary to the specific industry. The coverage is to be maintained in full effect during the Contract period. Vendor must be willing to provide, upon request, certification of insurance to any NJPA member or member using this Contract.

**8.18** Either party may execute Contract termination without cause with a required 60-day written notice of termination. Termination of Contract shall not relieve either party of financial, product or service obligations incurred or accrued prior to termination.

**8.19** NJPA may cancel any Contract resulting from this solicitation without any further obligation if any NJPA employee significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the NJPA is found to be in collusion with any Proposer to this RFP for their personal gain. Such cancellation shall be effective upon written notice from the NJPA or a later date if so designated in the notice given. A terminated Contract shall not relieve either party of financial, product or service obligations due to participating member or NJPA.

**8.20** Events of Automatic termination to include:



- Vendor's failure to remedy a material breach of a Contract resulting from this RFP within sixty (60) days of receipt of notice from NJPA specifying in reasonable detail the nature of such breach; and/or,
- Receipt of written information from any authorized agency finding activities of Vendors engaged in pursuant to a Contract resulting from this RFP to be in violation of the law.

## 9. GENERAL TERMS AND CONDITIONS

### A. ADVERTISEMENT OF RFP

**9.1** NJPA shall advertise this solicitation 1) for two consecutive weeks in both the hard copy print and on-line editions of the MINNEAPOLIS STAR TRIBUNE, 2) Once each in Oregon's Daily Journal of Commerce; and Utah's Salt Lake Tribune, and the Desert News 3) it shall be placed on a national wire service and website by the MINNEAPOLIS STAR TRIBUNE, 4) it shall be posted on NJPA's website, 5) it shall be posted to the "Noticetobidders.com" website, and 6) it shall be posted to other third-party websites deemed appropriate by NJPA. Other third party advertisers may include Onvia and Bidsync.

NJPA also notifies and provides solicitation documentation to each State level procurement departments for possible re-posting of the solicitation within their systems and at their option for future use and to meet specific state requirements.

### B. ADVERTISING OF A CONTRACT RESULTING FROM THIS RFP

**9.2** Proposer/Vendor shall not advertise or publish information concerning this Contract prior to the award being announced by the NJPA. Once the award is made, a Vendor is expected to advertise the awarded Contract to both current and potential NJPA Members.

### C. APPLICABLE LAW

**9.3 NJPA Compliance with Minnesota Procurement Law:** Contracts awarded through NJPA are intended to meet the procurement laws of all states and NJPA will exhaust all avenues to comply with each unique state law or requirement whenever possible. It is the responsibility of each participating NJPA member to ensure to their satisfaction that NJPA contracting process falls within these laws and applicable laws are satisfied. An individual NJPA member using these contracts is deemed by their own accord to be in compliance with their own requirements and procurement regulations.

**9.4 Governing Law with respect to delivery and acceptance:** All applicable portions of the Minnesota Uniform Commercial Code, all other applicable Minnesota laws, and the applicable laws and rules of delivery and inspection of the Federal Acquisition Regulations (FAR) laws shall govern NJPA contracts resulting from this solicitation.

**9.5 Jurisdiction:** Any claims pertaining to this RFP and any resulting Contract that develop between NJPA and any other party must be brought forth only in courts in Todd County in the State of Minnesota.

**9.5.1** Purchase Orders issued pursuant to a contract resulting from this solicitation shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the purchaser.

**9.6 Vendor Compliance with applicable law:** Vendor(s) shall comply with all federal, state, or local laws applicable to or pertaining to the transaction, acquisition, manufacturer, suppliers or the sale of the equipment/products and relating services resulting from this RFP.

**9.7 Applicable Laws,** whether or not herein contained, shall be included by this reference. It shall be Proposer's/Vendor's responsibility to determine the applicability and requirements of any such laws and



to abide by them.

**9.8 Indemnity:** Each party agrees it will be responsible for its own acts and the result thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. NJPA's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section §3.736, and other applicable law.

**9.9 Prevailing Wage:** It shall be the responsibility of the Vendor to comply, when applicable, with prevailing wage legislation in effect in the jurisdiction of the purchaser (NJPA or NJPA Member). It shall be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this Contract and adjust wage rates accordingly.

**9.10 Patent and Copyright infringement:** If an article sold and delivered to NJPA or NJPA Members hereunder shall be protected by any applicable patent or copyright, the Vendor agrees to indemnify and save harmless NJPA and NJPA Members against any and all suits, claims, judgments, and costs instituted or recovered against it by any person whosoever on account of the use or sale of such articles by NJPA or NJPA Members in violation or right under such patent or copyright.

#### D. ASSIGNMENT OF CONTRACT

**9.11** No right or interest in this Contract shall be assigned or transferred by the Vendor without prior written permission by the NJPA. No delegation of any duty of the Vendor shall be made without prior written permission of the NJPA. The NJPA shall notify the members within fifteen (15) days of receipt of written notice by the Vendor. After issuance the awarded Contract may be reassigned to a comparable and acceptable Vendor at the discretion of NJPA.

**9.12** If the original Vendor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor in interest must guarantee to perform all obligations under this Contract. NJPA reserves the right to reject the acquiring person or entity as a Vendor. A simple change of name agreement will not change the contractual obligations of the Vendor.

#### E. LIST OF PROPOSERS

**9.13** NJPA will not maintain or communicate to a list of proposers. All interested proposers must respond to the solicitation as a result of NJPA solicitation advertisements indicated. Because of the wide scope of the potential Members and qualified national Vendors, NJPA has determined this to be the best method of fairly soliciting proposals.

#### F. CAPTIONS, HEADINGS, AND ILLUSTRATIONS

**9.14** The captions, illustrations, headings, and subheadings in this solicitation are for convenience and ease of understanding and in no way define or limit the scope or intent of this request.

#### G. DATA PRACTICES

**9.15** All materials submitted in response to this RFP will become property of the NJPA and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. If the Responder submits information in response to this RFP that it believes to be nonpublic information, as defined by the Minnesota Government Data Practices Act, Minnesota Statute § 13.37, the Responder must:

- make the request within thirty days of award/non-award, and include the appropriate statutory justification. The NJPA Legal Department shall review the statement to determine whether the



information shall be withheld. If the NJPA determines to disclose the information, the Contracts department of the NJPA shall inform the Proposer, in writing, of such determination

- defend any action seeking release of the materials it believes to be nonpublic information, and indemnify and hold harmless the NJPA, its agents and employees, from any judgments or damages awarded against the NJPA in favor of the party requesting the materials, and any and all costs connected with that defense.

This indemnification survives the NJPA's award of a contract. In submitting a response to this RFP, the Responder agrees that this indemnification survives as long as the confidential information are in possession of the NJPA. Proposer can redact additional nonpublic information at any time after the evaluation process if appropriate legal justification is provided.

#### H. ENTIRE AGREEMENT

**9.16** The Contract, as defined herein, shall constitute the entire understanding between the parties to that Contract.

**9.17** A Contract resulting from this RFP is formed when the NJPA Board of Directors approves and signs the applicable Contract Award Form document (see Form E).

#### I. FORCE MAJEURE

**9.18** Except for payments of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented due to force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence including, but not limited to, the following: acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, snow, earthquakes, tornadoes or violent wind, tsunamis, wind shears, squalls, Chinooks, blizzards, hail storms, volcanic eruptions, meteor strikes, famine, sink holes, avalanches, lockouts, injunctions-intervention-acts, terrorist events or failures or refusals to act by government authority and/or other similar occurrences where such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with a Contract resulting from this RFP. Force majeure shall not include late deliveries of equipment/products and services caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or other similar occurrences. If either party is delayed at any time by force majeure, then the delayed party shall notify the other party of such delay within forty-eight (48) hours.

#### J. GRATUITIES

**9.19** NJPA may cancel an awarded Contract by written notice if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Vendor or any agent or representative of the Vendor, to any employee of the NJPA are deemed to be excessive with a view or demonstrated intent toward securing a contract or with respect to the performance of a pending or awarded Contract.

#### K. HAZARDOUS SUBSTANCES

**9.20** Proper and applicable Material Safety Data Sheets (MSDS) that are in full compliance with OSHA's Hazard Communication Standard must be provided by the Vendor to NJPA or NJPA Member at the time of purchase.

## L. LEGAL REMEDIES

**9.21** All claims and controversies between NJPA and Vendor shall be subject to the laws of the State of Minnesota and are to be resolved in Todd County, Minnesota, the county in which NJPA is located and domiciled.

## M. LICENSES

**9.22** Proposer shall maintain a current status on all required federal, state, and local licenses, bonds and permits required for the operation of the business that is anticipated to be conducted with NJPA and NJPA members by the Proposer.

**9.23** All responding Proposers must be licensed (where required) and have the authority to sell and distribute offered equipment/products and related services to NJPA and NJPA Members nationally. Documentation of required said licenses and authorities, if applicable, is requested to be included in the proposer's response.

## N. MATERIAL SUPPLIERS AND SUB-CONTRACTORS

**9.24** The awarded Vendor shall be required to supply the names and addresses of sourcing suppliers and sub-contractors as a part of the purchase order when requested by NJPA or the NJPA member.

**9.25** Awarded Vendors under this RFP will be the sole source of responsibility for transactions originating that award. The Awarded Vendor is solely responsible for equipment/products and related services and products/equipment and related services provided by third-party sourcing or service providers.

## O. NON-WAIVER OF RIGHTS

**9.26** No failure of either party to exercise any power given to it hereunder, nor to insistence upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under a Contract resulting from this RFP shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Failure by NJPA to take action or assert any right hereunder shall not be deemed as waiver of such right.

## P. PROTESTS OF AWARDS MADE

**9.27** Protests shall be filed with the NJPA's Executive Director and shall be resolved in accordance with appropriate Minnesota state statutes. Protests will only be accepted from Proposers. A protest must be in writing and filed with NJPA. A protest of an award or proposed award must be filed within ten (10) days after the public notice or announcement of the award. No protest shall lie for a claim that the selected Proposer is not a responsible Proposer. A protest must include:

1. The name, address and telephone number of the protester;
2. The original signature of the protester or its representative (you must document the authority of the Representative);
3. Identification of the solicitation by RFP number;
4. Identification of the statute or procedure that is alleged to have been violated;
5. A precise statement of the relevant facts;
6. Identification of the issues to be resolved;
7. The aggrieved party's argument and supporting documentation;
8. The aggrieved party's statement of potential financial damages;
9. A protest bond in the name of NJPA and in the amount of 10% of the aggrieved party's statement of potential financial damages.



#### Q. PROVISIONS REQUIRED BY LAW

**9.28** Proposer agrees in the performance of a Contract resulting from this RFP, it has complied with or will comply with all applicable statutes, laws, regulations, and orders of the United States and any State thereof.

#### R. RIGHT TO ASSURANCE

**9.29** Whenever one party to the awarded Contract has reason to question the other party's intent to perform, he/she may demand a written assurance of this intent. In the event a demand is made and no written assurance is given, the demanding party may treat this failure as an anticipatory repudiation of the Contract provided, however, in order to be effective, any such demand shall be addressed to the authorized signer for the party from whom the assurance is being sought, and sent via U.S. Postal Service, certified mail, return receipt requested or national overnight delivery service with proof of delivery.

#### S. SUSPENSION OR DISBARMENT STATUS

**9.30** If within the past five (5) years, any firm, business, person or Proposer responding to NJPA solicitation and submitting a proposal has been lawfully terminated, suspended or precluded from participating in any public procurement activity with a federal, state or local government or education agency the Proposer must include a letter with its response setting forth the name and address of the public procurement unit, the effective date of the suspension or debarment, the duration of the suspension or debarment and the relevant circumstances relating to the suspension or debarment. Any failure to supply such a letter or to disclose pertinent information may result in the cancellation of any Contract. By signing the proposal affidavit, the Proposer certifies that no current suspension or debarment exists.

#### T. AFFIRMATIVE ACTION AND IMMIGRATION STATUS CERTIFICATION

**9.32** An Affirmative Action Plan, Certificate of Affirmative Action or other documentation regarding Affirmative Action may be required by certain Members may be required by NJPA or NJPA Members relating to a transaction relating to this RFP. Vendors shall comply with any such requirements or requests.

**9.33** Immigration Status Certification may be required by NJPA or NJPA Members relating to a transaction relating to this RFP. Vendors shall comply with any such requirements or requests.

#### U. SEVERABILITY

**9.34** In the event that any of the terms of a Contract resulting from this RFP are in conflict with any rule, law, statutory provision or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from an awarded Contract resulting from this RFP, but such invalidity or unenforceability shall not invalidate any of the other terms of an awarded Contract resulting from this RFP.

#### V. RELATIONSHIP OF PARTIES

**9.35** No Contract resulting from this RFP shall be considered a contract of employment. The relationship between NJPA and an Awarded Contractor is one of independent contractors each free to exercise judgment and discretion with regard to the conduct of their respective businesses. The parties do not intend the proposed Contract to create, or is to be construed as creating a partnership, joint venture, master-servant, principal-agent, or any other relationship. Except as provided elsewhere in this RFP, neither party may be held liable for acts of omission or commission of the other party and neither party is authorized or has the power to obligate the other party by contract, agreement, warranty, representation or otherwise in any manner whatsoever except as may be expressly provided herein.



## 10. FORMS

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NEXT PAGE]

### Form A



**PROPOSER QUESTIONNAIRE- General Business Information**  
(Products, Pricing, Sector Specific, Services, Terms and Warranty are addressed on **Form P**)

Proposer Name: \_\_\_\_\_ Questionnaire completed by: \_\_\_\_\_

Please identify the person NJPA should correspond with from now through the Award process:

Name: \_\_\_\_\_, E-Mail address: \_\_\_\_\_

Please provide an answer to all questions below and address all requests made in this RFP. Please use the Microsoft Word/Excel document version of this questionnaire to respond to the questions contained herein. Please provide your answer to each question indented below the question. Please supply any applicable supporting information and documentation you feel appropriate in addition to answers entered to the Word document. All information must be typed, organized, and easily understood by evaluators.

#### **Company Information**

- 1) Why did you respond to this RFP?
- 2) What are your company's expectations in the event of an award?
- 3) Provide the full legal name, address, tax identifications number, and telephone number for your business.
- 4) Demonstrate your financial strength and stability.
- 5) Are you now, or have you ever been the subject of a bankruptcy action? Please explain.
- 6) Provide a brief history of your company that includes your company's core values and business philosophy.
- 7) How long has your company been in the "**SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES**", industry?
- 8) Is your organization best described as a manufacturer or a distributor/dealer/re-seller for a manufacturer of the products/equipment and related services being proposed?
  - a) If the Proposer is best described as a re-seller, manufacturer aggregate, or distributor, please provide evidence of your authorization as a dealer/re-seller/manufacturer aggregate for the manufacturer of the products/equipment and related services you are proposing.
  - b) If the Proposer is best described as a manufacturer, please describe your relationship with your sales/service force and/or Dealer Network in delivering the products/equipment and related services proposed.
  - c) Are these individuals your employees, or the employees of a third party?
  - d) If applicable, is the Dealer Network independent or company owned?
- 9) Please provide your bond rating, and/or a credit reference from your bank.
- 10) Provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held by your organization in pursuit of the commerce and business contemplated by this RFP.
- 11) Provide a detailed explanation outlining licenses and certifications both required to be held, and actually held, by third parties and sub-contractors to your organization in pursuit of the commerce contemplated by this RFP. If not applicable, please respond with "Not Applicable."
- 12) Provide all "Suspension or Disbarment" information as defined and required herein.
- 13) In addition to the \$1.5 million in General Liability and/or in conjunction with umbrella insurance coverage, what level of automobile and workers compensation insurance does your organization currently have? If none, please explain.
- 14) Within the RFP category there is potential to be several different sub-categories of solutions. What sub category title/s

would best describe your products, services and supplies?

### **Industry-Marketplace Successes**

- 15) List and document recent industry awards and recognition.
- 16) Supply three references/testimonials from customers of like status to NJPA Members to include Government and Education agencies. Please include the customer's name, contact, and phone number.
- 17) Provide names and addresses of the top five (5) government or education agency customers to include the scope of projects, size of transaction, and dollar volumes from the past three (3) fiscal years.
- 18) What percentages of your current (within the past three (3) fiscal years) national sales are to the government and education verticals? Indicate government and education verticals individually

### **Proposer's ability to sell and service nationwide**

- 19) Please describe your company sales force in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sale and services of the equipment/products contemplated in this RFP?
- 20) Please describe your dedicated dealer network and number of individual sales force within your dealer network in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sales distribution and delivery of your equipment/products and related services contemplated in this RFP?
- 21) Please describe your dedicated company service force or dedicated network in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sale of the equipment/products and related services contemplated in this RFP?
- 22) Please describe your dedicated dealer service force or network in terms of numbers geographic dispersion, and the proportion of their attention focused on the sale of the equipment/products and related services contemplated in this RFP? Additionally, please describe any applicable road service and do they offer the ability to service customers at the customer's location?
- 23) Describe in detail your customer service program regarding process and procedure. Please include, where appropriate, response time capabilities and commitments as a part of this RFP response and awarded contract.
- 24) Identify any geographic areas or NJPA market segments of the United States you will NOT be fully serving through the proposed contract.
- 25) Identify any of NJPA Member segments or defined NJPA verticals you will NOT be offering and promoting an awarded contract to? (Government, Education, Non-profit)
- 26) Define any specific requirements or restrictions as it applies to our members located off shores such as Hawaii and Alaska and the US Islands. Address your off shore shipping program on the Pricing form P of this document.

### **Marketing Plan**

- 27) Describe your contract sales training program to your sales management, dealer network and/or direct sales teams relating to a NJPA awarded contract.
- 28) Describe how you would market/promote an NJPA Contract nationally to ensure success.
- 29) Describe your marketing material, and overall marketing ability, relating to promoting this type of partnership and contract opportunity. Please send a few representative samples of your marketing materials in electronic format.
- 30) Describe your use of technology and the internet to provide marketing and ensure national contract awareness.
- 31) Describe your perception of NJPA's role in marketing the contract and your contracted products/equipment and related services.
- 32) Describe in detail any unique marketing techniques and methods as a part of your proposal that would separate you from other companies in your industry.
- 33) Describe your company's Senior Management level commitment with regards to embracement, promoting, supporting and managing a resultant NJPA awarded contract
- 34) Do you view your products/equipment applicable to an E-procurement ordering process? Yes/ No.
  - a) If yes, describe examples of E-procurement system/s or electronic marketplace solutions that your products/equipment was available through. Demonstrate the success of government and educations customers to ordering through E-procurement.
- 35) Please describe how you will communicate your NJPA pricing and pricing strategy to your sales force nationally?

### **Other Cooperative Procurement Contracts Held**

- 36) Identify all cooperative contracts hosted by any government or education agency or government or education cooperative or by a third party marketing company, which are marketed in more than one state, held or utilized by the Proposer.
- 37) What is the annual dollar sales volume generated through each of the contract(s) identified in your answer to the previous question.
- 38) Identify awarded WSCA or specific state procurement contracts held or utilized by the Proposer with any State of the United States.
- 39) What is the annual combined dollar sales volume for each of these contracts?
- 40) Identify any GSA Contracts held or utilized by the Proposer.
- 41) If you are awarded the NJPA contract, are there any market segments or verticals (e.g., higher education, K-12 local governments, non-profits etc.) or geographical markets where the NJPA contract will not be your primary contract purchasing vehicle? If so, please identify those markets and which cooperative purchasing agreement will be your primary vehicle.
- 42) If you are awarded the NJPA contract, is it your intention and commitment to lead with your NJPA contract? \_\_\_\_ Yes \_\_\_\_ No Explain and demonstrate your commitment and/or restrictions.
- 43) Identify a proposed administrative fee payable to NJPA for facilitation, management and promotion of the NJPA contract, should you be awarded. This fee is typically calculated as a percentage of Contract sales and not a line item addition to the customers cost of goods.

### **Value Added Attributes**

- 44) If applicable, describe any product/equipment training programs available as options for NJPA members. If applicable, do you offer equipment operator training as well as maintenance training? \_\_\_\_ Yes \_\_\_\_ No
- 45) Is this training standard as a part of a purchase or optional?
- 46) Describe current technological advances your proposed equipment/products and related services offer.
- 47) Describe your "Green" program as it relates to your company, your products/equipment, and your recycling program, including a list of all green products accompanied by the certifying agency for each (if applicable).
- 48) Describe any Women or Minority Business Entity (WMBE) or Small Business Entity (SBE) accreditations and the general minority and small business program of your organization as it relates to a Contract resulting from this RFP.
- 49) Identify any other unique or custom value added attributes of your company or your products/equipment or related services.
- 50) Other than what you have already demonstrated or described, what separates your company, your products/equipment and related services from your competition? What makes your proposed solutions unique in your industry as it applies to NJPA members?
- 51) Identify and describe any service contract options included in the proposal, or offered as a proposed option, for the products/equipment being offered.
- 52) Identify your ability and willingness to offer an awarded contract to qualifying member agencies in Canada specifically and internationally in general.
- 53) Describe any unique distribution and/or delivery methods or options offered in your proposal.

**(Products, Pricing, Sector Specific, Services, Terms and Warranty are addressed on Form P)**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Form B**



**PROPOSER INFORMATION**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Toll Free Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

Web site: \_\_\_\_\_

VOIDS sometimes exist between management (those who respond to RFPs) and sales staff (those who contact NJPA Members) that result in communication problems. Due to this fact, provide the names of your key sales people, phone numbers, and geographic territories for which they are responsible

**COMPANY PERSONNEL CONTACTS**

**Authorized Signer for your organization\*:**

Name: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

\* By executing Form F, the "Proposer's Assurance of Compliance," you are certifying this person identified here has their authorization to sign on behalf of your organization:

**Author of your proposal response**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

**Your Primary Contact person regarding your proposal:**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

**Other important contact information:**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

## EXCEPTIONS TO PROPOSAL, TERMS, CONDITIONS AND SOLUTIONS REQUEST



**Note: Original must be signed** and inserted in the inside front cover pouch.

[illegible]

**Proposer's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**NJPA's clarification on exception/s listed above:**

**Contract Award**  
**RFP #022014**

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**FORM D**



**Formal Offering of Proposal**  
(To be completed Only by Proposer)

**SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES.**

In compliance with the Request for proposal (RFP) for "SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES", the undersigned warrants that I/we have examined this RFP and, being familiar with all of the instructions, terms and conditions, general specifications, expectations, technical specifications, service expectations and any special terms, do hereby propose, fully commit and agree to furnish the defined equipment/products and related services in full compliance with all terms, conditions of this RFP, any applicable amendments of this RFP, and all Proposer's Response documentation. Proposer further understands they accept the full responsibility as the sole source of responsibility of the proposed response herein and that the performance of any sub-contractors employed by the Proposer in fulfillment of this proposal is the sole responsibility of the Proposer.

Company Name: \_\_\_\_\_ Date: \_\_\_\_\_

Company Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Authorized Signature (ink only): \_\_\_\_\_  
(Name printed or typed)

*202*

**Form E**



**Contract Acceptance and Award**

**(To be completed only by NJPA)**

NJPA \_\_\_\_\_

\_\_\_\_\_  
**Proposer's full legal name**

Your proposal is hereby accepted and awarded. As an awarded Proposer, you are now bound to provide the defined product/equipment and services contained in your proposal offering according to all terms, conditions, and pricing set forth in this RFP, any amendments to this RFP, your Response, and any exceptions accepted or rejected by NJPA on Form C.

The effective start date of the Contract will be \_\_\_\_\_, 20\_\_\_\_ and continue for four years from the board award date. This contract has the consideration of a fifth year renewal option at the discretion of NJPA.

**National Joint Powers Alliance® (NJPA)**

NJPA Authorized signature: \_\_\_\_\_  
NJPA Executive Director (Name printed or typed)

Awarded this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ NJPA Contract Number **# 022014**

NJPA Authorized signature: \_\_\_\_\_  
NJPA Board Member (Name printed or typed)

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ NJPA Contract Number **# 022014**

Proposer hereby accepts contract award including all accepted exceptions and NJPA clarifications identified on FORM C.

**Vendor Name** \_\_\_\_\_

Vendor Authorized signature: \_\_\_\_\_  
(Name printed or typed)

Title: \_\_\_\_\_

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ NJPA Contract Number **# 022014**

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**PROPOSER ASSURANCE OF COMPLIANCE**



**Proposal Affidavit Signature Page**

**PROPOSER'S AFFIDAVIT**

The undersigned, representing the persons, firms and corporations joining in the submission of the foregoing proposal (such persons, firms and corporations hereinafter being referred to as the "Proposer"), being duly sworn on his/her oath, states to the best of his/her belief and knowledge:

1. The undersigned certifies the Proposer is submitting their proposal under their true and correct name, the Proposer has been properly originated and legally exists in good standing in its state of residence, that the Proposer possesses, or will possess prior to the delivery of any product/equipment and related services, all applicable licenses necessary for such delivery to NJPA members agencies nationally, and that they are authorized to act on behalf of, and encumber the "Proposer" in this Contract, and
2. To the best of my knowledge, no Proposer or Potential Proposer, nor any person duly representing the same, has directly or indirectly entered into any agreement or arrangement with any other Proposers, Potential Proposers, any official or employee of the NJPA, or any person, firm or corporation under contract with the NJPA in an effort to influence either the offering or non-offering of certain prices, terms, and conditions relating to this RFP which tends to, or does, lessen or destroy free competition in the letting of the Contract sought for by this RFP, and
3. The Proposer or any person on his/her behalf, has not agreed, connived or colluded to produce a deceptive show of competition in the manner of the proposal or award of the referenced contract, and
4. Neither I, the Proposer, nor, any officer, director, partner, member or associate of the Proposer, nor any of its employees directly involved in obtaining contracts with the NJPA or any subdivision of the NJPA, has been convicted of false pretenses, attempted false pretenses or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985, and
5. The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications request and other documents of this solicitation and that any and all exceptions have been noted in writing and have been included with the proposal submittal, and
6. If awarded a contract, the Proposer will provide the equipment/products and services and/or services to qualifying members of the NJPA in accordance with the terms, conditions, scope of this RFP, Proposer offered specifications and other documents of this solicitation, and
7. The undersigned, being familiar with and understand the expectations requested and outlined in this RFP under consideration, hereby proposes to deliver through valid requests, Purchase Orders or other acceptable forms ordering and procurement by NJPA Members. Unless otherwise indicated, requested and agreed to on a valid purchase order per this RFP, only new, unused and first quality equipment/products and related services are to be transacted with NJPA Members relating to an awarded contract, and
8. The Proposer has carefully checked the accuracy of all proposed products/equipment and related services and listed total price per unit of purchase in this proposal to include shipping and delivery considerations. In addition, the Proposer accepts all general terms and conditions of this RFP, including all responsibilities of commitment as outlined and proposed, and
9. In submitting this proposal, it is understood that the right is reserved by the NJPA to reject any or all proposals

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and it is agreed by all parties that this proposal may not be withdrawn during a period of 90 days from the date proposals were opened regarding this RFP, and

10. The Proposer certifies that in performing this Contract they will comply with all applicable provisions of the federal, state, and local laws, regulations, rules, and orders, and
11. The Proposer understands that submitted proposals which are marked "confidential" in their entirety, or those in which a significant portion of the submitted proposal is marked "nonpublic" **will not** be accepted by NJPA. Pursuant to Minnesota Statute §325C.01, subd. 5 and §13.03, subd. 1, only specific parts of the proposal may be labeled a "trade secret". All proposals are nonpublic until the contract is awarded; at which time, both successful and unsuccessful vendors' proposals become public information.
12. The Proposer understands and agrees that NJPA will not be responsible for any information contained within the proposal. Should Vendors not comply with the labeling and packing requirements, proposals will be released as submitted.
13. By signing below, the Proposer understands it is his or her responsibility as the Vendor to act in protection of labeled information and agree to defend and indemnify NJPA for honoring such designation. Proposer duly realizes failure to so act will constitute a complete waiver and all submitted information will become public information; additionally failure to label any information that is released by NJPA shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

[The rest of this page has been left intentionally blank. Signature page below]

By signing below, Proposer is acknowledging that he or she has read, understands and agrees to comply with the terms and conditions specified above.

Company Name: \_\_\_\_\_

Contact Person for Questions: \_\_\_\_\_

\_\_\_\_\_  
(Must be individual who is responsible for filling out this Proposer's Response form)

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Authorized Name (typed): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Notarized**

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Notary Public in and for the County of \_\_\_\_\_ State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Signature: \_\_\_\_\_



Form G.



### OVERALL EVALUATION AND CRITERIA

For the Proposed Subject **"SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES"**

Conformance to terms and conditions to include documentation	50	
Pricing	400	
Financial, Industry and Marketplace Successes	75	
Bidder's Ability to Sell and Service Contract Nationally	100	
Bidder's Marketing Plan	50	
Value Added Attributes	75	
Warranty Coverages and Information.	50	
Selection and Variety of Products and Services Offered	200	
Total Points	1000	0

Reviewed by: \_\_\_\_\_ Its \_\_\_\_\_  
\_\_\_\_\_ Its \_\_\_\_\_



**Form P**

**PROPOSER QUESTIONNAIRE**  
**Products/Equipment, Pricing, Sector Specific, Services, Terms and Warranty**

Proposer Name: \_\_\_\_\_

Questionnaire completed by: \_\_\_\_\_

**Payment Terms and Financing Options**

- 1) Identify your payment terms if applicable. (Net 30, etc.)
- 2) Identify any applicable leasing or other financing options as defined herein.
- 3) Briefly describe your proposed order process for this proposal and contract award. (Note: order process may be modified or refined during an NJPA member's final Contract phase process).
  - a. Please specify if you will be including your dealer network in this proposal. If so, please specify how involved they will be. (For example, will the Dealer accept the P.O.?), and how are we to verify the specific dealer is part of your network?
- 4) Do you accept the P-card procurement and payment process?

**Warranty**

- 5) Describe, in detail, your Manufacture Warranty Program including conditions and requirements to qualify, claims procedure, and overall structure.
- 6) Do all warranties cover all products/equipment parts and labor?
- 7) Do warranties impose usage limit restrictions?
- 8) Do warranties cover the expense of technicians travel time and mileage to perform warranty repairs?
- 9) Please list any other limitations or circumstances that would not be covered under your warranty.
- 10) Please list any geographic regions of the United States for which you cannot provide a certified technician to perform warranty repairs. How will NJPA Members in these regions be provided service for warranty repair?

**Equipment/Products and Related Services and Pricing**

- 11) Provide a general narrative description of the equipment/products and related services you are offering in your proposal.
- 12) Provide a general narrative description of your pricing model identifying how the model works (line item and/or published catalog percentage discount).
- 13) Please quantify the discount range presented in this response pricing as a percentage discount from MSRP/published list.
- 14) Provide an overall proposed statement of method of pricing for individual line items, percentage discount off published product/equipment catalogs and/or category pricing percentage discount with regard to all equipment/products and related services and being proposed. Provide a SKU number for each item being proposed.
- 15) Propose a strategy, process, and specific method of facilitating "Sourced Product/Equipment and Related Services" (AKA, "Open Market" items or "Non-Standard Options").
- 16) Provide your NJPA customer volume rebate programs, as applicable.
- 17) Identify any Total Cost of Acquisition (as defined herein) cost(s) which is **NOT** included "Pricing" submitted with your proposal response. Identify to whom these charges are payable to and their relationship to Proposer.
- 18) If freight, delivery or shipping is an additional cost to the NJPA member, describe in detail the complete shipping and delivery program.

19) As an important part of the evaluation of your offer, you must indicate the level of pricing you are offering.  
Prices offered in this proposal are **(Your proposal will be deemed "Non-Responsive" if this question is not answered)**:

- \_\_\_\_\_ a. Pricing is the same as typically offered to an individual municipality, Higher ed or school district.  
\_\_\_\_\_ b. Pricing is the same as typically offered to GPOs, cooperative procurement organizations or state purchasing departments.  
\_\_\_\_\_ c. Better than typically offered to GPOs, cooperative procurement organizations or state purchasing departments.

20) Do you offer quantity or volume discounts? \_\_\_\_\_ YES \_\_\_\_\_ NO Outline guidelines and program.

21) Describe in detail your proposed exchange and return program(s) and policy(s).

22) Specifically identify those shipping and delivery and exchange and returns programs as they relate to Alaska and Hawaii and any related off shore delivery of contracted products/ equipment and related services

23) Please describe any self-audit process/program you plan to employ to verify compliance with your anticipated contract with NJPA. Please be as specific as possible.

#### **Industry or Sector Specific Questions**

24) NA

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



## 11. PRE-SUBMISSION CHECKLIST

### Pre-submission Checklist

- ☐ Have you read, and do you understand the intent this RFP?
- ☐ Have you attended the Pre-Proposal Conference for this RFP?
- ☐ Have you completed the questionnaires (Forms A & P) to the best of your ability?
- ☐ Have you submitted pricing for all of the product/equipment and related services you are proposing within the scope of this RFP?
- ☐ Have you packaged your Proposal submission identifying conspicuously "Competitive Proposal Enclosed, Please hold for public opening XX-XX-XXX"?
- ☐ Have you sent your package in sufficient time for physical delivery at 202 12th ST NE Staples, MN 56479 to occur prior to the deadline for delivery?
- ☐ Have you submitted hard copy original signed, completed, and dated forms C, D, E, and hard copy signed signature page only from forms A and P of this RFP?
- ☐ Have you submitted verification of liability insurance with the coverage and limits required in the RFP?
- ☐ If any addendum/s to RFP were issued, have you submitted a signed copy of such addendum/s?
- ☐ Have you provided an electronic copy (saved on a CD or flash drive) of your **entire** proposal including, but not limited to, Forms A, B, C, D, E, F, & P in your proposal?

### Contents of your Proposal response:

- ☐ **Hard copy original signed, completed, and dated forms C, D, F, and hard copy signed signature page only from forms A and P.**
- ☐ **Electronic submission of proposal forms A, B, C, D, E, & P (CD or flash drive).**
- ☐ **Certificate of Insurance (demonstration of insurability)**

### FORM TITLES

Form A	Proposer Questionnaire – General Business Information
Form B	Proposer Information
Form C	Exceptions to Proposal, Terms, Conditions, and Solutions Request
Form D	Formal Offering of Proposal
Form E	Contract Acceptance and Award
Form F	Proposer Assurance of Compliance
Form G	Overall Evaluation and Criteria
Form P	Proposer Questionnaire – Products/equipment, Pricing, Sector Specific, Services, Terms and Warranty



## NJPA VENDOR PRICE AND PRODUCT CHANGE REQUEST FORM

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### Section 1. Instructions For Vendor

Pursuant to section 4 of the NJPA RFP, requests for equipment/products or service changes, additions or deletions will be allowed at any time throughout the awarded contract term. All requests must be made in written format by completing sections 2, 3 and 4 of the NJPA Price and Product Change Request Form and signature of an authorized Vendor employee in section 5. All changes are subject to review and approval by the NJPA Contracts & Compliance Manager, signed in acceptance by the NJPA Executive Director and acknowledged by the NJPA Contract Council. Submit request via email to your Contract Manager **AND: PandP@njpacoop.org**.

NJPA's due diligence in analyzing any request for change is to determine if approval of the request is: 1) within the scope of the original RFP and 2) in the "Best Interests of NJPA and NJPA Members." A signed Price and Product Change form will be returned to vendor contact via email.

Vendor must complete this change request form and individually list or attach all items or services subject to change, provide sufficiently detailed explanation and documentation for the change, and include a complete restatement of pricing document in appropriate format (preferably Excel). The pricing document must identify all equipment/products and services being offered and must conform to the following NJPA product/price change naming convention: (Vendor Name) (NJPA Contract #) (effective pricing date); for example, "COMPANY 012411-CPY eff 02-12-2013."

*NOTE:* New pricing restatement must include all equipment/products and services offered regardless of whether their prices have changed and include a new "effective date" on the pricing documents. This requirement reduces confusion by providing a single, current pricing sheet for each vendor and creates a historical record of pricing.

**ADDITIONS.** New equipment/products and related services may be added to a contract if such additions are within the scope of the RFP.

**DELETIONS.** New equipment/products and related services may be deleted from a contract if an item or service is no longer available and thus not relevant to the contract; for example, discontinued, improved, etc.

**PRICE CHANGES:** Request prices changes in general terms along with the justification by product category for the change; for example, a 3% increase in XYZ Product Line is due to a 3% increase in petroleum, or this list of SKUs/ product descriptions is increasing X% due to X% increase in cost of raw materials.

*Price decreases:* NJPA expects Vendors to propose their very best prices and anticipates price reductions are due to advancement of technologies and market place efficiencies.

*Price increases:* Typical acceptable increase requests include increases to Vendor input costs such as petroleum or other applicable commodities, increases in product utility of new compared to old equipment/product or service, etc. Vendor must include reasonable documentation for the claims cited in their request along with detailed justification for why the increase is needed. Special details for price changes must be included with the request along with both current and proposed pricing. Appropriate documentation should be attached to this form, including letters from suppliers announcing price increases.

Refer to section 4 of the RFP for complete "Pricing" details.

---

### Section 2. Vendor Name and Type of Change Request

APPLY:

AWARDED VENDOR

NAME: \_\_\_\_\_

CHECK ALL CHANGES THAT

- ☐ Adding Products/Services
- ☐ Deleting/Discontinuing Products/services
- ☐ Price Increase





## NJPA VENDOR PRICE AND PRODUCT CHANGE REQUEST FORM

NJPA CONTRACT  
NUMBER: \_\_\_\_\_

☐ Price Decrease

### Section 3. Detailed Explanation of Need for Changes

List equipment/products and/or services that are changing, being added or deleted from previous contract price list along with the percentage change for each item or category. (Attach a separate, detailed document if more than 10 items.)

Provide a general statement and documentation explaining the reasons for these price and/or product changes.

*SAMPLES: 1-All paper equipment/products and services increased 5% in price due to transportation and fuel costs (see attached documentation of raw materials increase). 2-The 6400 series floor polisher is added to the product list as a new model replacing the 5400 series. The 6400 series 3% increase reflects technological improvements made that improve the rate of efficiency and useful life. The 5400 series is now included in the "Hot List" at a 20% discount from previous pricing until remaining inventory is liquidated.*

If adding product/s, provide a general statement how these are in the scope.

If changing prices and/or products, provide a general statement that the pricing is consistent with existing NJPA contract pricing.



## NJPA VENDOR PRICE AND PRODUCT CHANGE REQUEST FORM

### Section 4. Complete Restatement of Pricing Submitted

A COMPLETE restatement of the pricing including all new and existing equipment/products and services is attached and/or has been emailed to PandP@njpacoop.org.

☐ Yes

☐ No

### Section 5. Signatures

\_\_\_\_\_  
Vendor Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title of Authorized Signer

\_\_\_\_\_  
NJPA Executive Director Signature

\_\_\_\_\_  
Date



**ADDENDUM ONE (1)**

To that certain

**NJPA RFP #022014**

Issued by

National Joint Powers Alliance®

For the procurement of

**SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES**

Consider the following to be part of the above titled RFP:

- 1) Questions submitted by Potential Responders at the Pre-Proposal Conference on February 6, 2014 are listed in black font and NJPA Answers are listed in blue:

Q: What percentage of your client base are public works departments versus school systems.

A: Approximately 30% of NJPA's membership is in Government and about 40% of membership is in Education.

Q: How many contracts do you expect to award in this category?

A: Per section 1.13 of the RFP, NJPA's intent is to award a contract to a single exclusive vendor but reserves the right to award to multiple Proposers where the result of the responding Proposers justifies a multiple award and multiple contracts are deemed to be in the best interests of the NJPA member agencies.

Q: Clarify the normal purchase order and payment flow for a manufacturer that utilizes distributors. manufacturer accepts order from distributor, and manufacturer pays admin fee to NJPA quarterly?

A: When a vendor is awarded an NJPA contract all authorized distributors/dealers are able to sell through the contract. The PO would be accepted at the distributor/dealer level and the administrator/manufacture would be responsible to submit a cumulative sales report to NJPA on a quarterly basis with admin fee payment.

Q: How and where in your point scale will you recognize a successful previous NJPA awarded vendor?

A: Form A questions address this and could be reflected in a number of different criteria including but not limited to: Industry & Marketplace Success and Ability to Sell and Service Nationwide.

**ACKNOWLEDGMENT OF ADDENDUM ONE (1) TO RFP DISTRIBUTED VIA EMAIL ON FEBRUARY 6, 2014**

COMPANY NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

## **BID ACCEPTANCE & AWARD**

**FORM D**



**Formal Offering of Proposal**  
(To be completed Only by Proposer)

**SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES,**

In compliance with the Request for proposal (RFP) for "SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES", the undersigned warrants that I/we have examined this RFP and, being familiar with all of the instructions, terms and conditions, general specifications, expectations, technical specifications, service expectations and any special terms, do hereby propose, fully commit and agree to furnish the defined equipment/products and related services in full compliance with all terms, conditions of this RFP, any applicable amendments of this RFP, and all Proposer's Response documentation. Proposer further understands they accept the full responsibility as the sole source of responsibility of the proposed response herein and that the performance of any sub-contractors employed by the Proposer in fulfillment of this proposal is the sole responsibility of the Proposer.

Company Name: Federal Signal Corp. Date: Feb. 17, 2014

Company Address: 1415 W. 22<sup>nd</sup> Street Suite 1100

City: Oak Brook State: IL Zip: 60523

Contact Person: David Panizzi Title: Business Development Mgr. - ESG

Authorized Signature (ink only): David Panizzi David Panizzi  
(Name printed or typed)





## Contract Acceptance and Award

(To be completed only by NJPA)

NJPA D22014 Sewer Vacuum, Hydro Excavators and/or Street Sweepers Equipment with Related Accessories + supplies  
Federal Signal Corp  
 Proposer's full legal name

Your proposal is hereby accepted and awarded. As an awarded Proposer, you are now bound to provide the defined product/equipment and services contained in your proposal offering according to all terms, conditions, and pricing set forth in this RFP, any amendments to this RFP, your Response, and any exceptions accepted or rejected by NJPA on Form C.

The effective start date of the Contract will be May 27<sup>th</sup>, 20 14 and continue for four years from the board award date. This contract has the consideration of a fifth year renewal option at the discretion of NJPA.

National Joint Powers Alliance® (NJPA)

NJPA Authorized signature:

NJPA Executive Director

Dr. Chad Crowder  
 (Name printed or typed)

Awarded this

18<sup>th</sup>

day of

March

, 20

14NJPA Contract Number # 022014 -FSC

NJPA Authorized signature:

NJPA Board Member

Scott Veronen  
 (Name printed or typed)

Executed this

18<sup>th</sup>

day of

March

, 20

14NJPA Contract Number # 022014 -FSC

Proposer hereby accepts contract award including all accepted exceptions and NJPA clarifications identified on FORM C.

Vendor Name

Federal Signal Corp.

Vendor Authorized signature:

David PanizziDavid Panizzi

(Name printed or typed)

Title:

Business Development Manager

Executed this

24<sup>th</sup>

day of

March

, 20

14NJPA Contract Number # 022014 -FSC

## BIDDER'S RESPONSE



**PROPOSER QUESTIONNAIRE- General Business Information**  
(Products, Pricing, Sector Specific, Services, Terms and Warranty are addressed on **Form P**)

Proposer Name: Federal Signal Corp. (Elgin & Vector) Questionnaire completed by: David Panizzi

Please identify the person NJPA should correspond with from now through the Award process:

Name: David Panizzi E-Mail address: dpanizzi@federalsignal.com

Please provide an answer to all questions below and address all requests made in this RFP. Please use the Microsoft Word/Excel document version of this questionnaire to respond to the questions contained herein. Please provide your answer to each question indented below the question. Please supply any applicable supporting information and documentation you feel appropriate in addition to answers entered to the Word document. All information must be typed, organized, and easily understood by evaluators.

**Company Information**

- 1) Why did you respond to this RFP?

We would like to continue the excellent relationship that we have established with NJPA and their Membership.

- 2) What are your company's expectations in the event of an award?

We would expect continued cooperation with increased sales to the ever growing NJPA membership.

- 3) Provide the full legal name, address, tax identifications number, and telephone number for your business.

TAX ID Number 36-2351764

Federal Signal Corporation

1415 W. 22<sup>nd</sup> Street

Suite 1100

Oak Brook, IL 60523

630-954-2000

- 4) Demonstrate your financial strength and stability.

The link shown here will provide the latest quarterly and annual reports. These reports will clearly show Federal Signal's financial strength and stability. [http://www.federalsignal.com/AnnualQuarterlyReports\\_3977.asp](http://www.federalsignal.com/AnnualQuarterlyReports_3977.asp)

- 5) Are you now, or have you ever been the subject of a bankruptcy action? Please explain.

Federal Signal Corporation has never been the subject of a bankruptcy action.

- 6) Provide a brief history of your company that includes your company's core values and business philosophy.

Federal Signal Corporation (NYSE: FSS) enhances the safety, security and well being of communities and workplaces around the world. Founded in 1901, Federal Signal is a leading global designer and manufacturer of products and total solutions that serve municipal, governmental, industrial and institutional customers.

**Federal Signal Environmental Solutions Group**

As we embark on the 21<sup>st</sup> century, we are faced with many new opportunities and challenges providing the necessary cleaning and maintenance services to our cities, airports and industries in an environmentally friendly manner. With clean air and clean water at the forefront of today's concerns - now is the time to think about how the environmental risks will affect communities, business and government worldwide. To meet these challenges, Federal Signal Corporation has created the **Environmental Solutions Group**.

This group includes industry leading solutions from **Elgin Sweeper Company and Vector Manufacturing** each with a large, innovative and productive line of environmental cleaning products. Our mission is to enhance the safety, security and well-being of communities and workplaces around the world.

- 7) How long has your company been in the "SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES", industry?

Elgin Sweeper Company has been cleaning roadways since 1914 - picking up and disposing of harmful debris before it contaminates surface runoff and accumulates into roadside pollution. Today Elgin is the leading manufacturer of sweepers for municipal, contractor, airport and industrial sweeping needs. Elgin Sweeper offers the world's broadest selection of street sweepers and includes all variations of today's sweeping technology - mechanical, vacuum, regenerative air, and now waterless dust control, PM10-compliance, and alternatively fueled sweepers. Elgin Sweeper is leading the way for testing sweeper effectiveness and for BMP-qualification. From general street maintenance to special industrial and airport applications, Elgin puts its customers in the sweeper that best meets their needs.

Vactor Manufacturing, located in Streator, IL, is a world leader in high quality sewer cleaning and Hydro excavation solutions. For 50 years Vactor has been advancing their expertise in air conveyance and high pressure water. Starting with agricultural conveyor products that led to engineering and manufacturing quality products for sewer cleaning, line jetting, vacuum excavating and hydro excavating. Vactor products feature a unique design and Vactor's exclusive Jet Rodder water pump, designed for the most efficient use of water. Vactor Manufacturing is ISO9001 and ISO14001 certified and takes pride in enhancing the well being of workplaces and communities around the world.

- 8) Is your organization best described as a manufacturer or a distributor/dealer/re-seller for a manufacturer of the products/equipment and related services being proposed?

Elgin Sweeper and Vactor Manufacturing are best described as manufacturers.

- a) If the Proposer is best described as a re-seller, manufacturer aggregate, or distributor, please provide evidence of your authorization as a dealer/re-seller/manufacturer aggregate for the manufacturer of the products/equipment and related services you are proposing.
- b) If the Proposer is best described as a manufacturer, please describe your relationship with your sales/service force and/or Dealer Network in delivering the products/equipment and related services proposed.

Both Elgin and Vactor products are sold and serviced through a network of more than 100 factory trained dealer locations worldwide.

Are these individuals your employees, or the employees of a third party?

The dealer network is a third party and their employees are of a third party.

- c) If applicable, is the Dealer Network independent or company owned?

The Dealer Network is independently owned.

- 9) Please provide your bond rating, and/or a credit reference from your bank.

Wells Fargo Bank, N.A.

MAC D1109-019

1525 WT Harris Blvd. 1A1

Charlotte, NC 28262

Latolia Attidzah, Dealer Administrator, [latolia.attidzah@wellsfargo.com](mailto:latolia.attidzah@wellsfargo.com), 704-590-2755

Chanue Bynos, Dealer Administrator, [chanue.bynos@wellsfargo.com](mailto:chanue.bynos@wellsfargo.com), 704-590-2735

Group mailbox: [agencyservicesrequests@wellsfargo.com](mailto:agencyservicesrequests@wellsfargo.com)

- 10) Provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held by your organization in pursuit of the commerce and business contemplated by this RFP.

While not required both Elgin and Vactor Facilities are ISO 9001 certified. This means that we adhere to appropriate manufacturing and quality processes and procedures.

- 11) Provide a detailed explanation outlining licenses and certifications both required to be held and actually held by third parties and sub-contractors to your organization in pursuit of the commerce contemplated by this RFP. If not applicable, please respond with "Not Applicable."

Many States require sellers/services of our products to maintain State or local level business licenses. Where required our third party dealers hold applicable business licenses.

12) Provide all "Suspension or Disbarment" information as defined and required herein.  
None

13) In addition to the \$1.5 million in General Liability and/or in conjunction with umbrella insurance coverage, what level of automobile and workers compensation insurance does your organization currently have? If none, please explain.

Please see attached certificate of liability insurance describing our automobile liability and workman's compensation.

14) Within the RFP category there is potential to be several different sub-categories of solutions. What sub category title/s would best describe your products, services and supplies?

The only Sub Category that would apply would be High Pressure Sewer Cleaner.

#### Industry-Marketplace Successes

15) List and document recent industry awards and recognition.

Not applicable.

16) Supply three references/testimonials from customers of like status to NJPA Members to include Government and Education agencies. Please include the customer's name, contact, and phone number.

Brigham Young University

Scott Sherwood

801-422-5412

Midvale City, Utah

Ken Vance

801-256-2575

Lehi City, Utah

Jeremy Estes

801-341-9198

17) Provide names and addresses of the top five (5) government or education agency customers to include the scope of projects, size of transaction, and dollar volumes from the past three (3) fiscal years.

Confidential

18) What percentages of your current (within the past three (3) fiscal years) national sales are to the government and education verticals? Indicate government and education verticals individually.

Confidential

#### Proposer's ability to sell and service nationwide

19) Please describe your company sales force in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sale and services of the equipment/products contemplated in this RFP?

Environmental Solutions Group (ESG) North American Sales division consists of a Director of Sales with eight Regional Sales Managers (RSM) reporting to him. 100% of their time is dedicated to the sales and dealer support of Elgin and Vactor equipment.

20) Please describe your dedicated dealer network and number of individual sales force within your dealer network in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sales distribution and delivery of your equipment/products and related services contemplated in this RFP?

Each RSM has a Dealer network within their respective territory that is managed by the RSM. As previously stated, the Dealer network is a third party with approximately 50 dealer locations and well over 200 dealer sales personnel covering all of North America.



- 21) Please describe your dedicated company service force or dedicated network in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sale of the equipment/products and related services contemplated in this RFP?

ESG Service division consists of a VP of Parts and Service with 5 Regional Operations and Service Managers (ROSM) reporting through a field parts and service manager. This covers all of North America and many countries throughout the developed world.

- 22) Please describe your dedicated dealer service force or network in terms of numbers geographic dispersion, and the proportion of their attention focused on the sale of the equipment/products and related services contemplated in this RFP? Additionally, please describe any applicable road service and do they offer the ability to service customers at the customer's location?

ESG dealers have factory trained service technicians fully trained to service Elgin and Vactor products. 100 % of North American ESG dealers have the ability to provide some level of road service for ESG Equipment. ESG dealers attention to Elgin and Vactor products will vary from 50 -100 % depending on dealership.

- 23) Describe in detail your customer service program regarding process and procedure. Please include, where appropriate, response time capabilities and commitments as a part of this RFP response and awarded contract.

Any sale or servicing of equipment to the NJPA member will be conducted through our dealer network. All paperwork (i.e. Purchase Orders, Warranty Claims, etc) will be submitted by the NJPA member to the ESG Dealer. The ESG Dealer network is a well established group of first class organizations having a vast array of knowledge and experience in the municipal equipment market. Elgin and Vactor Service Department maintain a 24 hour a day service support line as an additional resource for dealer or customer issues.

- 24) Identify any geographic areas or NJPA market segments of the United States you will NOT be fully serving through the proposed contract.

All US Market segments will be fully served.

- 25) Identify any of NJPA Member segments or defined NJPA verticals you will NOT be offering and promoting an awarded contract to? (Government, Education, Non-profit)

Elgin and Vactor products will be made available to all NJPA member segments. Promotion to non-profit organizations is limited as this market segment typically does not have a need for Elgin or Vactor Products.

- 26) Define any specific requirements or restrictions as it applies to our members located off shores such as Hawaii and Alaska and the US Islands. Address your off shore shipping program on the Pricing form P of this document.

No Restrictions

#### Marketing Plan

- 27) Describe your contract sales training program to your sales management, dealer network and/or direct sales teams relating to a NJPA awarded contract.

ESG'S four year relationship with NJPA has provided a solid base of knowledge from both sales management and dealer network with regard to use of the contract for ongoing sales. NJPA contract training at both national and local sales meetings is ongoing (performed as required by our RSMs). This has also been facilitated by presentations from our NJPA contract manager and managers from within the company.

- 28) Describe how you would market/promote an NJPA Contract nationally to ensure success.

ESG has annual Sales Meetings for our dealer network. As in the past, we would welcome an NJPA representative to attend and present at our annual dealer sales meetings (Tony is already scheduled for our annual meeting this year in June). Our dealers and regional sales managers attend local NJPA/GTKU events. In addition, we have a section for the NJPA program on both dealer and public websites. We also advertise our NJPA contract at national (and local) trade shows.

- 29) Describe your marketing material, and overall marketing ability, relating to promoting this type of partnership and contract opportunity. Please send a few representative samples of your marketing materials in electronic format.

ESG marketing literature is currently available on the dealer and public websites for NJPA members to download electronic copies. We also participate in and will continue to participate in, a very active PR program, do direct mailings, attend tradeshow, write and publish application stories—all of the traditional Marketing Communication tactics that are being applied to promoting this program will continue. This is facilitated through our full service Marketing Communications Department.

- 30) Describe your use of technology and the internet to provide marketing and ensure national contract awareness. Elgin Sweeper Company and Vactor Manufacturing have embraced the use of technology in five primary ways that would impact marketing and product awareness:
1. Public Websites - we employ a webmaster and staff that makes updating and improving the public websites a priority - our current NJPA relationship is reflected on these website.
  2. Dealer Website - we have a secure dealer website that is constantly updated with new program, promotional and product information that is relevant - all programs, including our current NJPA purchasing contract is listed on that website complete with appropriate link.
  3. ESGU - we have an on-line "University" training curriculum and system that allow us to produce on-line classes and learning modules, hold meetings, and collaborate. These training classes can be accessed at a users location and provide real-time essential training and information.
  4. E-Newsletter - ESG has a monthly newsletter that updates our dealers with new information they should be aware of, including marketing updates, training information, and any other pertinent sales or service information.
  5. Product Sales Configurator - both Elgin and Vactor will have an on-line configurator available to the dealers to build customer products for presentation and proposals as well as eventual order entry and production planning. Ability to provide NJPA proposals for our equipment is/will be available.
- 31) Describe your perception of NJPA's role in marketing the contract and your contracted products/equipment and related services.
- We would expect NJPA to support the Elgin and Vactor product line and supply us with information and materials making it the most advantageous cooperative purchasing program in the country.
- 32) Describe in detail any unique marketing techniques and methods as a part of your proposal that would separate you from other companies in your industry.
- Both Elgin and Vactor are the # 1 manufacturer in their respective industry based on overall sales. Our distributor network experience and breadth of sales and service coverage enables Elgin and Vactor to maintain their market leadership positions.
- 33) Describe your company's Senior Management level commitment with regards to embracement, promoting, supporting and managing a resultant NJPA awarded contract.
- Senior management has fully embraced our current NJPA contract and is wanting to continue this relationship going forward. Administrative effort for our current contract and possible future contract is fully supported.
- 34) Do you view your products/equipment applicable to an E-procurement ordering process? Yes/ No.
- No, not at the user/member level. Our scope of option and special content is too great.
- a) If yes, describe examples of E-procurement system/s or electronic marketplace solutions that your products/equipment was available through. Demonstrate the success of government and education customers to ordering through E-procurement.
- 35) Please describe how you will communicate your NJPA pricing and pricing strategy to your sales force nationally?
- Elgin and Vactor communicate our NJPA pricing through price sheets. The price sheets are available to our Dealer Network through a secure Dealer website. Also, RSMs are aware of all potential NJPA sales and ensure pricing accuracy and provide dealer training and support if required.

#### Other Cooperative Procurement Contracts Held

- 36) Identify all cooperative contracts hosted by any government or education agency or government or education cooperative or by a third party marketing company, which are marketed in more than one state, held or utilized by the Proposer.
- While not held by our company, several of our third party dealers do hold state and local purchasing contracts. While utilized by our local dealers these purchasing contracts do not necessitate specific pricing discounts.
- 37) What is the annual dollar sales volume generated through each of the contract(s) identified in your answer to the previous question?
- Unknown
- 38) Identify awarded WSCA or specific state procurement contracts held or utilized by the Proposer with any State of the United States.
- As noted in question 36, several of our dealers hold specific state or DOT purchasing contracts. While these contracts are utilized specific factory discount are minimal if any.
- 39) What is the annual combined dollar sales volume for each of these contracts?
- Unknown

40) Identify any GSA Contracts held or utilized by the Proposer.

We do not hold a GSA contract, however, we do utilize a GSA contract help by one of our dealers.

GS-30F-1012H

41) If you are awarded the NJPA contract, are there any market segments or verticals (e.g., higher education, K-12 local governments, non-profits etc.) or geographical markets where the NJPA contract will not be your primary contract purchasing vehicle? If so, please identify those markets and which cooperative purchasing agreement will be your primary vehicle.

Our NJPA contract is the lead purchasing vehicle on a national level with the only possible exception of local dealer sponsored procurement contracts. It should be noted that these local dealer sponsored contracts do not enjoy the same level of discounted pricing from manufacture.

42) If you are awarded the NJPA contract, is it your intention and commitment to lead with your NJPA contract?

☒ Yes ☐ No Explain and demonstrate your commitment and/or restrictions.

Our intentions can be seen with the annual growth from our current NJPA contract from March of 2010 to the present.

43) Identify a proposed administrative fee payable to NJPA for facilitation, management and promotion of the NJPA contract, should you be awarded. This fee is typically calculated as a percentage of Contract sales and not a line item addition to the customers cost of goods.

We propose the fee payable to NJPA for facilitation, management, and promotion of the NJPA contract to be 0.3% of the contract sale (less third party supplied items, same as current arrangement).

#### Value Added Attributes

44) If applicable, describe any product/equipment training programs available as options for NJPA members. If applicable, do you offer equipment operator training as well as maintenance training? ☒ Yes ☐ No

BSG offers hands on training programs to our end users at both the Elgin and Vector facilities. These classes are geared primarily towards maintenance and are most appropriate for new customers or new users. In addition, our dealers provide user training and basic maintenance upon product deliver, most dealers have annual product training programs ("Refresher classes") held at their facilities for their area customers.

45) Is this training standard as a part of a purchase or optional?

The basic training as part of the delivery is a standard offering with purchase of equipment. In-depth operator or mechanics training can be arranged and is optional.

46) Describe current technological advances your proposed equipment/products and related services offer.

Both Elgin and Vector offer our various models in Alternative Fuel configurations. Elgin also offers Waterless Sweeping technologies.

47) Describe your "Green" program as it relates to your company, your products/equipment, and your recycling program, including a list of all green products accompanied by the certifying agency for each (if applicable).

#### Elgin

1. Recycle Steel
2. Recycle Aluminum
3. Recycle Copper
4. Recycle Cardboard
5. Recycle Bulk Plastic
6. Recycle Oil/Coolant
7. Recycle Wood Pallets
8. Have some returnable pallets
9. Cleaning agent of choice is "Simple Green"
10. Fluorescent bulbs recycled
11. Powder Coat Paint - no VOC's
12. Run Energy Efficient Compressors (Variable Drive)
13. Run Energy Efficient Boilers (Localized heating)
14. Have ability to run air compressors on natural gas
15. Recycle Computer equipment
16. Dispose of hazardous and non-hazardous waste efficiently
17. Current Plan to implement energy management system
18. An environmentally sound spill clean-up program that minimizes waste is in-place
19. Old batteries are recycled

20. All Units Re-circulate water on assembly line water testing
21. Installed flushless toilets and faucets
22. Participate in ComEd Curtailment program (not all companies can or do)

Vactor

1. White Office Paper
  2. Colored Paper
  3. Computer Paper
  4. Envelopes And Junk Mail Minus The Plastic Wrap
  5. Newsprint
  6. Glossy Magazines, Catalogs And Phone Books
  7. Wire
  8. Cans
  9. All Grades Of Scrap Steel Incl. Carbon Steel, Stainless Steel, Aluminum, & Shavings From Machinery Work
  10. Solvent From Painting Operations
  11. Recycle wood pallets
  12. Recycle cardboard
- 48) Describe any Women or Minority Business Entity (WMBE) or Small Business Entity (SBE) accreditations and the general minority and small business program of your organization as it relates to a Contract resulting from this RFP.  
Not Applicable.
- 49) Identify any other unique or custom value added attributes of your company or your products/equipment or related services.  
Both Elgin and Vactor are American made products.
- 50) Other than what you have already demonstrated or described, what separates your company, your products/equipment and related services from your competition? What makes your proposed solutions unique in your industry as it applies to NJPA members?  
Elgin offers a full range of mechanical, vacuum, and regenerative air sweeper products in various sizes, sold and serviced through the largest dealer network in North America. Vactor offers a full range of truck-mounted sewer line cleaning equipment with various debris body sizes, including the ability to customize with user specific features. Also, Vactor offers several sizes of truck-mounted hydro-excavation products designed to suit specific needs and applications.
- 51) Identify and describe any service contract options included in the proposal, or offered as a proposed option, for the products/equipment being offered.  
Service contracts are not offered at the manufacture level. Most ESG dealerships do offer service contract options.
- 52) Identify your ability and willingness to offer an awarded contract to qualifying member agencies in Canada specifically and internationally in general.  
Both Elgin and Vactor products are sold and serviced through a network of more than 100 factory trained dealer locations worldwide. We have thorough dealer sales and service support throughout Canada. Elgin and Vactor are willing to explore international contract sales opportunities assuming currency fluctuation risks can be mitigated.
- 53) Describe any unique distribution and/or delivery methods or options offered in your proposal.  
Not Applicable

(Products, Pricing, Sector Specific, Services, Terms and Warranty are addressed on Form P)

Signature: D. P. [Signature]

Date: Feb. 17, 2014

PROPOSER INFORMATIONCompany Name: Federal Signal Corp.Address: 1415 W. 22<sup>nd</sup> Street Suite 1100City/State/Zip: Oak Brook, IL 60523Phone: 630-954-2000

Fax: \_\_\_\_\_

Toll Free Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Web site: www.federal-signal.com

Volts sometimes exist between management (those who respond to RFPs) and sales staff (those who contact NJPA Members) that result in communication problems. Due to this fact, provide the names of your key sales people, phone numbers, and geographic territories for which they are responsible

COMPANY PERSONNEL CONTACTSAuthorized Signer for your organization\*:Name: David PanizziEmail: dpanizzi@federal-signal.comPhone: 847-622-7153

\* By executing Form P, the "Proposer's Assurance of Compliance," you are certifying this person identified here has their authorization to sign on behalf of your organization:

Author of your proposal responseName: David PanizziTitle: Business Development Mgr.Email: dpanizzi@federal-signal.comPhone: 847-622-7153Your Primary Contact person regarding your proposal:Name: David Panizzi

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Other important contact information:Name: Dan FedericoTitle: Director, Dealer SalesEmail: d.federico@federal-signal.comPhone: 813-713-1455

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_



**Form C****EXCEPTIONS TO PROPOSAL TERMS, CONDITIONS  
AND SOLUTIONS REQUEST**Company Name: Federal Signal Corp. (Elgin and Vector)Note: Original must be signed and inserted in the inside front cover pouch.

Any exceptions to the Terms, Conditions, Specifications, or Proposal Forms contained herein shall be noted in writing and included with the proposal submittal. Proposer acknowledges that the exceptions listed may or may not be accepted by NJPA and may or may not be included in the final contract. NJPA may clarify exceptions listed here and document the results of those clarifications in the appropriate section below.

Section/page	Term, Condition, or Specification	Exception		
		None		

Proposer's Signature: D. J. P. [Signature]Date: Feb. 17, 2014

**FORM D****Formal Offering of Proposal**  
(To be completed Only by Proposer)**SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES.**

In compliance with the Request for proposal (RFP) for "SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES", the undersigned warrants that I/we have examined this RFP and, being familiar with all of the instructions, terms and conditions, general specifications, expectations, technical specifications, service expectations and any special terms, do hereby propose, fully commit and agree to furnish the defined equipment/products and related services in full compliance with all terms, conditions of this RFP, any applicable amendments of this RFP, and all Proposer's Response documentation. Proposer further understands they accept the full responsibility as the sole source of responsibility of the proposed response herein and that the performance of any sub-contractors employed by the Proposer in fulfillment of this proposal is the sole responsibility of the Proposer.

Company Name: Federal Signal Corp. Date: Feb. 17, 2014  
Company Address: 1415 W. 22nd Street Suite 1100  
City: Oak Brook State: IL Zip: 60523  
Contact Person: David Panizzi Title: Business Development Mgr. - ESS  
Authorized Signature (ink only): David Panizzi David Panizzi  
(Name printed or typed)



## Contract Acceptance and Award

(To be completed only by NJPA)

NJPA 022014 Sewer Vacuum Hydro Excavators and/or Street Sweepers Equipment with related accessories + supplies

Federal Signal Corp.

Proposer's full legal name

Your proposal is hereby accepted and awarded. As an awarded Proposer, you are now bound to provide the defined product/equipment and services contained in your proposal offering according to all terms, conditions, and pricing set forth in this RFP, any amendments to this RFP, your Response, and any exceptions accepted or rejected by NJPA on Form C.

The effective start date of the Contract will be May 27th, 20 14 and continue for four years from the board award date. This contract has the consideration of a fifth year renewal option at the discretion of NJPA.

National Joint Powers Alliance (NJPA)

NJPA Authorized signature:

[Signature]  
NJPA Executive Director

Dr. Chad Connette  
(Name printed or typed)

Awarded this 18th day of March, 20 14 NJPA Contract Number # 022014-FSC

NJPA Authorized signature:

[Signature]  
NJPA Board Member

Scott Veronen  
(Name printed or typed)

Executed this 18th day of March, 20 14 NJPA Contract Number # 022014-FSC

Proposer hereby accepts contract award including all accepted exceptions and NJPA clarifications identified on FORM C.

Vendor Name Federal Signal Corp.

Vendor Authorized signature:

[Signature]

David Panizzi

(Name printed or typed)

Title: Business Development Manager

Executed this 24th day of March, 20 14 NJPA Contract Number # 022014-FSC

**PROPOSER ASSURANCE OF COMPLIANCE**

Proposal Affidavit Signature Page

**PROPOSER'S AFFIDAVIT**

The undersigned, representing the persons, firms and corporations joining in the submission of the foregoing proposal (such persons, firms and corporations hereinafter being referred to as the "Proposer"), being duly sworn on his/her oath, states to the best of his/her belief and knowledge:

1. The undersigned certifies the Proposer is submitting their proposal under their true and correct name, the Proposer has been properly originated and legally exists in good standing in its state of residence, that the Proposer possesses, or will possess prior to the delivery of any product/equipment and related services, all applicable licenses necessary for such delivery to NJPA members agencies nationally, and that they are authorized to act on behalf of, and encumber the "Proposer" in this Contract, and
2. To the best of my knowledge, no Proposer or Potential Proposer, nor any person duly representing the same, has directly or indirectly entered into any agreement or arrangement with any other Proposers, Potential Proposers, any official or employee of the NJPA, or any person, firm or corporation under contract with the NJPA in an effort to influence either the offering or non-offering of certain prices, terms, and conditions relating to this RFP, which tends to, or does, lessen or destroy free competition in the letting of the Contract sought for by this RFP, and
3. The Proposer or any person on his/her behalf, has not agreed, connived or colluded to produce a deceptive show of competition in the manner of the proposal or award of the referenced contract, and
4. Neither I, the Proposer, nor any officer, director, partner, member or associate of the Proposer, nor any of its employees directly involved in obtaining contracts with the NJPA or any subdivision of the NJPA, has been convicted of false pretenses, attempted false pretenses or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985, and
5. The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications, request and other documents of this solicitation and that any and all exceptions have been noted in writing and have been included with the proposal submittal, and
6. If awarded a contract, the Proposer will provide the equipment/products and services and/or services to qualifying members of the NJPA in accordance with the terms, conditions, scope of this RFP, Proposer offered specifications and other documents of this solicitation, and
7. The undersigned, being familiar with and understand the expectations requested and outlined in this RFP under consideration, hereby proposes to deliver through valid requests, Purchase Orders or other acceptable forms ordering and procurement by NJPA Members. Unless otherwise indicated, requested and agreed to on a valid purchase order per this RFP, only new, unused and first quality equipment/products and related services are to be transacted with NJPA Members relating to an awarded contract, and
8. The Proposer has carefully checked the accuracy of all proposed products/equipment and related services and listed total price per unit of purchase in this proposal to include shipping and delivery considerations. In addition, the Proposer accepts all general terms and conditions of this RFP, including all responsibilities of commitment as outlined and proposed, and
9. In submitting this proposal, it is understood that the right is reserved by the NJPA to reject any or all proposals

and it is agreed by all parties that this proposal may not be withdrawn during a period of 90 days from the date proposals were opened regarding this RFP, and

10. The Proposer certifies that in performing this Contract they will comply with all applicable provisions of the federal, state, and local laws, regulations, rules, and orders, and
11. The Proposer understands that submitted proposals which are marked "confidential" in their entirety, or those in which a significant portion of the submitted proposal is marked "nonpublic" will not be accepted by NJPA. Pursuant to Minnesota Statute §325C.01, subd. 5 and §13.03, subd. 1, only specific parts of the proposal may be labeled a "trade secret". All proposals are nonpublic until the contract is awarded; at which time, both successful and unsuccessful vendors' proposals become public information.
12. The Proposer understands and agrees that NJPA will not be responsible for any information contained within the proposal. Should Vendors not comply with the labeling and packing requirements, proposals will be released as submitted.
13. By signing below, the Proposer understands it is his or her responsibility as the Vendor to act in protection of labeled information and agree to defend and indemnify NJPA for honoring such designation. Proposer duly realizes failure to so act will constitute a complete waiver and all submitted information will become public information; additionally failure to label any information that is released by NJPA shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

[The rest of this page has been left intentionally blank. Signature page below]



By signing below, Proposer is acknowledging that he or she has read, understands and agrees to comply with the terms and conditions specified above.

Company Name: Federal Signal Corp.

Contact Person for Questions: David Panizzi 847-622-7153

(Must be individual who is responsible for filling out this Proposer's Response form)

Address: 1415 W. 22<sup>nd</sup> Street Suite 1100

City/State/Zip: Oak Brook, IL 60521

Telephone Number: 847-622-7153 Fax Number: 847-622-7191

E-mail Address: dpanizzi@federalsignal.com

Authorized Signature: D. Panizzi

Authorized Name (typed): David Panizzi

Title: Business Development Manager - ESC

Date: Feb. 17, 2014

Notarized

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public in and for the County of \_\_\_\_\_ State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Signature: \_\_\_\_\_



## PROPOSER QUESTIONNAIRE

Products/Equipment, Pricing, Sector Specific, Services, Terms and Warranty

Proposer Name: Federal Signal Corp. (Elgin and Vector)

Questionnaire completed by: David Panizzi

### Payment Terms and Financing Options

- 1) Identify your payment terms if applicable. (Net 30, etc.)  
Payment Terms are determined between the ESG Dealer and the NJPA member. General terms between dealer and ESG are Net 30.
- 2) Identify any applicable leasing or other financing options as defined herein.  
Available leasing programs are determined between the ESG Dealer and NJPA member. We do sponsor third party full service lease and turnkey maintenance program for our dealers.
- 3) Briefly describe your proposed order process for this proposal and contract award. (Note: order process may be modified or refined during an NJPA member's final Contract phase process).
  - a. Please specify if you will be including your dealer network in this proposal. If so, please specify how involved they will be. (For example, will the Dealer accept the P.O.?), and how are we to verify the specific dealer is part of your network?  
NJPA member submits a Purchase Order to the ESG Dealer with payment made by the NJPA member to the ESG Dealer. ESG dealer will facilitate all product orders. Elgin and Vector equipment is exclusively provided by contracted dealers. If required, a detailed listing of dealers can be provided.
- 4) Do you accept the F-card procurement and payment process?  
Not Applicable.

### Warranty

- 5) Describe, in detail, your Manufacture Warranty Program including conditions and requirements to qualify, claims procedure, and overall structure.  
Standard Warranty is for 12 months on the complete unit, but certain components have longer standard warranties. These are identified in our Standard Limited Warranty Statement. The Statement also defines start date, application, etc. Units are registered for warranty in our on-line warranty system. Claims are filed by the ESG Service provider within this system, as well. Additionally, the ESG Service Parts and Warranty Guide is published on the ESG Dealer website, and contains claim submission standards, and guidelines for conducting warranty repairs.
- 6) Do all warranties cover all products/equipment parts and labor?  
All Standard Warranties include material and labor to either repair or replace, at our option.
- 7) Do warranties impose usage limit restrictions?  
Standard Limited Warranty is based on days in service only. There is no restriction on operating hours.
- 8) Do warranties cover the expense of technicians travel time and mileage to perform warranty repairs?  
ESG dealers are compensated for travel time up to 3 hours round trip, per reasonably required trip.
- 9) Please list any other limitations or circumstances that would not be covered under your warranty.  
Such conditions are defined in the Standard Limited Warranty Statement, such as customer abuse, misuse, or lack of proper maintenance, etc.
- 10) Please list any geographic regions of the United States for which you cannot provide a certified technician to perform warranty repairs. How will NJPA Members in these regions be provided service for warranty repair?  
ESG dealer network covers the entire U.S. NJPA member can arrange with ESG dealer in their respective area to receive warranty work.

### Equipment/Products and Related Services and Pricing

- 11) Provide a general narrative description of the equipment/products and related services you are offering in your proposal.

Elgin Street Sweepers and Vactor Combination Sewer Cleaners and Hydro Excavation Machines.

- 12) Provide a general narrative description of your pricing model identifying how the model works (line item and/or published catalog percentage discount).

Excel Spread sheets for both Elgin Street Sweepers and Vactor Combination Sewer Cleaners are listed in separate folders on the electronic (CD) version of this submittal. Each model has a base unit price with options listed as line items.

- 13) Please quantify the discount range presented in this response pricing as a percentage discount from MSRP/published list.

NJPA members enjoy a 3% minimum discount from list price. The price sheets provided will show line item pricing and calculate and apply the 3% NJPA discount.

- 14) Provide an overall proposed statement of method of pricing for individual line items, percentage discount off published product/equipment catalogs and/or category pricing percentage discount with regard to all equipment/products and related services and being proposed. Provide a SKU number for each item being proposed.

The end user is able to configure a machine to meet their needs using the Excel Spreadsheet. Each model and all options have a part number and all manufacture supplied options receive a 3% discount (minimum).

- 15) Propose a strategy, process, and specific method of facilitating "Sourced Product/Equipment and Related Services" (AKA, "Open Market" items or "Non-Standard Options").

Elgin and Vactor offer "special" option capability which allows engineering to research and design unique product features. These "Specials" will be priced using our specials process and discounted at the 3% level (minimum). The only exception being our "sourced product" chassis or special chassis options to which the 3% would not apply. Chassis are a pass through cost item.

- 16) Provide your NJPA customer volume rebate programs, as applicable.

Reviewed on an individual basis.

- 17) Identify any Total Cost of Acquisition (as defined herein) cost(s) which is **NOT** included "Pricing" submitted with your proposal response. Identify to whom these charges are payable to and their relationship to Proposer.

Any dealer costs for dealer installed items including local freight and PDI are not included in our pricing submittal.

Any costs associated with the delivery of a piece of equipment to an NJPA member AFTER it has been delivered to the respective ESG dealer is negotiated between the ESG Dealer and the NJPA member. Such costs could be delivery from the ESG Dealer to the NJPA member, putting the unit into service, special training, recommended spare parts list, etc.

- 18) If freight, delivery or shipping is an additional cost to the NJPA member, describe in detail the complete shipping and delivery program.

Any costs associated with the delivery of a piece of equipment to an NJPA member AFTER it has been delivered to the respective ESG dealer is negotiated between the ESG Dealer and the NJPA member. Such costs could be delivery from the ESG Dealer to the NJPA member, putting the unit into service, training, recommended spare parts list, etc.

- 19) As an important part of the evaluation of your offer, you must indicate the level of pricing you are offering.

Prices offered in this proposal are (Your proposal will be deemed "Non-Responsive" if this question is not answered):

☐ a. Pricing is the same as typically offered to an individual municipality, Higher ed or school district.

☒ b. Pricing is the same as typically offered to GPOs, cooperative procurement organizations or state purchasing departments.

☐ c. Better than typically offered to GPOs, cooperative procurement organizations or state purchasing departments.

- 20) Do you offer quantity or volume discounts? ☒ YES ☐ NO Outline guidelines and program.

Volume discounts are evaluated on a case-by-case basis.

- 21) Describe in detail your proposed exchange and return program(s) and policy(s).

Products exchanges and returns are extremely rare. Should an exchange or return be warranted because of product failure appropriate accommodations would be handled on a case-by-case basis.

22) Specifically identify those shipping and delivery and exchange and returns programs as they relate to Alaska and Hawaii and any related off shore delivery of contracted products/ equipment and related services

Products exchanges and returns are extremely rare. Should an exchange or return be warranted because of product failure appropriate accommodations would be handled on a case by case basis including shipping charges?

23) Please describe any self-audit process/program you plan to employ to verify compliance with your anticipated contract with NIPA. Please be as specific as possible.

Dealers are required to indicate an NIPA purchase on their purchase order. Dealers are required to report customer information including Name, Contact information, and transaction price. ESC Director of Sales tracks and reports on all NIPA contract sales on a quarterly basis.

Industry or Sector Specific Questions

24) NA

Signature: D. P. [Signature]

Date: Feb. 17, 2014

**ADDENDUM ONE (1)**

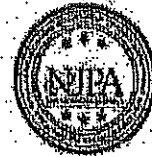
To that certain

**NJPA RFP #022014**

Issued by

National Joint Powers Alliance®

For the procurement of



**SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES**

Consider the following to be part of the above titled RFP:

- 1) Questions submitted by Potential Responders at the Pre-Proposal Conference on February 6, 2014 are listed in black font and NJPA Answers are listed in blue:

Q: What percentage of your client base are public works departments versus school systems.

A: Approximately 30% of NJPA's membership is in Government and about 40% of membership is in Education.

Q: How many contracts do you expect to award in this category?

A: Per section 1.13 of the RFP, NJPA's intent is to award a contract to a single exclusive vendor but reserves the right to award to multiple Proposers where the result of the responding Proposers justifies a multiple award and multiple contracts are deemed to be in the best interests of the NJPA member agencies.

Q: Clarify the normal purchase order and payment flow for a manufacturer that utilizes distributors. manufacturer accepts order from distributor, and manufacturer pays admin fee to NJPA quarterly?

A: When a vendor is awarded an NJPA contract all authorized distributors/dealers are able to sell through the contract. The PO would be accepted at the distributor/dealer level and the administrator/manufacturer would be responsible to submit a cumulative sales report to NJPA on a quarterly basis with admin fee payment.

Q: How and where in your point scale will you recognize a successful previous NJPA awarded vendor?

A: Form A questions address this and could be reflected in a number of different criteria including but not limited to: Industry & Marketplace Success and Ability to Sell and Service Nationwide.

**ACKNOWLEDGMENT OF ADDENDUM ONE (1) TO RFP DISTRIBUTED VIA EMAIL ON FEBRUARY 6, 2014**

COMPANY NAME:

Federal Signal Corp.

SIGNATURE:

[Signature]

DATE:

Feb. 17, 2014





# CERTIFICATE OF LIABILITY INSURANCE

DATE: 01/01/2014  
11/01/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed, if SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> ACR Risk Services Central, Inc. Chicago IL Office 200 East Randolph Chicago IL 60601 USA	<b>CONTACT</b> NAME: [blank] TEL: [blank] FAX: [blank] E-MAIL: [blank]										
<b>INSURED</b> Federal Signal Corporation Its divisions and subsidiaries 1415 West 22nd Street, Suite 1100 Oak Brook IL 60521-9945 USA	<b>INSURER(S) AFFORDING COVERAGE</b> <table border="1"> <tr> <th>INSURER</th> <th>POLICY NUMBER</th> </tr> <tr> <td>National Union Fire Ins Co of Pittsburgh</td> <td>19143</td> </tr> <tr> <td>New Hampshire Ins Co</td> <td>13841</td> </tr> <tr> <td>Insurance Co of the State of PA</td> <td>19128</td> </tr> <tr> <td>Lloyd's Syndicate No. 2623</td> <td>AJ1178623</td> </tr> </table>	INSURER	POLICY NUMBER	National Union Fire Ins Co of Pittsburgh	19143	New Hampshire Ins Co	13841	Insurance Co of the State of PA	19128	Lloyd's Syndicate No. 2623	AJ1178623
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COVERAGES: CERTIFICATE NUMBER: 010618R0383 REVISION NUMBER: [blank]

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WHICH APPEARS TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF EACH POLICY. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. Limits shown are as required in

TYPE OF INSURANCE	POLICY NUMBER	POLICY PERIOD	COVERAGE	LIMITS
<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	010618R0383 G. Proffice 010618R0383 G. Proffice	11/01/2013 11/01/2014 11/01/2013 11/01/2014	EACH OCCURRENCE COVERED TO RESIDENTS PRODUCTS-CONSUMER BODILY INJURY (Per person) PERSONAL & ADJ INJURY GENERAL AGGREGATE PRODUCTS-CONSUMER AGG Pro-Design-Oper-Est Contr COMBINED SINGLE LIMIT (Per accident)	\$3,000,000 \$1,000,000 \$10,000 \$1,000,000 \$2,000,000 \$5,000,000 \$3,000,000 \$1,000,000
<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS NON-OWNED AUTOS HIRE AUTOS	CA6579515 ACS CA6579517 PA CA6579516 VA	11/01/2013 11/01/2014 11/01/2013 11/01/2014 11/01/2013 11/01/2014	BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	\$1,000,000 \$1,000,000 \$1,000,000
<b>UMBRELLA LIA</b> EXCESS LIA CLAIMS-MADE OCCUR			EACH OCCURRENCE AGGREGATE	
<b>WORKERS COMPENSATION AND EMPLOYERS LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/EMPLOYEE/EMPLOYEE'S FAMILY MEMBER/STUDENT/DEPENDENT OF OPERATIONS/OTHER	N/A N/A N/A	11/01/2013 11/01/2014 11/01/2013 11/01/2014	X NO STAT-TOY LIMIT EL EACH ACCIDENT EL DISEASE-CA EMPLOYER EL DISEASE-POLICY LIMIT EL DISEASE-POLICY LIMIT	\$500,000 \$500,000 \$500,000
<b>PROD-MPL Primary</b>	010618R0383 010618R0383	11/01/2013 11/01/2014	EL EACH ACCIDENT EL DISEASE-CA EMPLOYER EL DISEASE-POLICY LIMIT	\$1,000,000 \$1,000,000 \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if space is required)  
 Evidence of Insurance:

<b>CERTIFICATE HOLDER</b> Federal Signal Corporation Its Divisions and Subsidiaries 1415 West 22nd Street, Suite 1100 Oak Brook IL 60521-9945 USA	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREON, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/02/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Adm Risk Services Central, Inc. Chicago IL office 200 East Randolph Chicago IL 60601 USA	<b>INSURER(S) AFFORDING COVERAGE</b> <table border="1"> <tr> <th>INSURER</th> <th>NAIC#</th> </tr> <tr> <td>INSURER A: National Union Fire Ins Co of Pittsburgh</td> <td>19441</td> </tr> <tr> <td>INSURER B: New Hampshire Ins Co</td> <td>23841</td> </tr> <tr> <td>INSURER C: The Insurance Co of the State of PA</td> <td>19429</td> </tr> <tr> <td>INSURER D: HSUI Indemnity Company</td> <td>22314</td> </tr> <tr> <td>INSURER E: Berkley National Insurance Company</td> <td>38911</td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER	NAIC#	INSURER A: National Union Fire Ins Co of Pittsburgh	19441	INSURER B: New Hampshire Ins Co	23841	INSURER C: The Insurance Co of the State of PA	19429	INSURER D: HSUI Indemnity Company	22314	INSURER E: Berkley National Insurance Company	38911	INSURER F:	
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INSURER F:															

**COVERAGES** CERTIFICATE NUMBER: 67005216815 REVISION NUMBER:

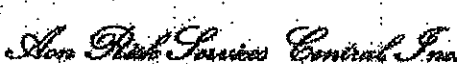
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TYPE	TYPE OF INSURANCE	ACORD FORM NO.	POLICY NUMBER	POLICY EFF. DATE	POLICY EXPI. DATE	COVERAGE	LIMITS
A	GENERAL LIABILITY		GL6819408	11/01/2013	11/01/2014	EACH OCCURRENCE	\$1,000,000
A	COMMERCIAL GENERAL LIABILITY		GL Premaise			ADDITIONAL COVERAGES	\$1,000,000
	CLAIMS-MADE	<input checked="" type="checkbox"/> OCCUR	GL6819409	11/01/2013	11/01/2014	ADDITIONAL COVERAGES	\$1,000,000
			GL Products			MED EXP (Any one person)	\$10,000
						PERSONAL & ADV INJURY	\$1,000,000
						GENERAL AGGREGATE	\$2,000,000
						PRODUCTS & COMPLETION AGG	\$6,000,000
						Post Completion - Ea Occur	\$1,000,000
A	AUTOMOBILE LIABILITY		CAG578515	11/01/2013	11/01/2014	COMBINED SINGLE LIMIT (Each auto)	\$1,000,000
A	ANY AUTO		AOS	11/01/2013	11/01/2014	BODILY INJURY (Per person)	
A	ALL OWNED AUTOS		CAG579517	11/01/2013	11/01/2014	BODILY INJURY (Per person)	
	SCHEDULED AUTOS		NA	11/01/2013	11/01/2014	PROPERTY DAMAGE (Per person)	
	HOLED AUTOS		CAG579516	11/01/2013	11/01/2014	PROPERTY DAMAGE (Per person)	
	NON-OWNED AUTOS		VA				
U	UMBRELLA LIA	<input checked="" type="checkbox"/> OCCUR	UIN085443	11/01/2013	11/01/2014	EACH OCCURRENCE	\$1,000,000
	EXCESS LIA	<input checked="" type="checkbox"/> CLAIMS-MADE	SIN applies per policy terms & conditions			AGGREGATE	\$1,000,000
	DED	<input checked="" type="checkbox"/> RETENTION					
B	WORKERS COMPENSATION AND EMPLOYERS LIABILITY		WC026020465	11/01/2013	11/01/2014	EL TWO STATUS - BOTH	
B	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/RENDER EXCLUDED?	<input checked="" type="checkbox"/> YES	AOS	11/01/2013	11/01/2014	EL EACH ACCIDENT	\$500,000
	Is your description of operations below?		WC026020469	11/01/2013	11/01/2014	EL DISEASE-AS EMPLOYEE	\$500,000
	DESCRIPTION OF OPERATIONS below		CA			EL DISEASE-POLICY LIMIT	\$500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 Named Insured includes: Elgin Sweeney Co. & Vector Manufacturing, 1300 W. Bartlett Road, Elgin, IL 60120. Ref Rfp. No. 05110. Certificate holder is included as Additional Insured as required by written contract, but limited to the operations of the Insured under said contract, with respect to the General Liability policy.

## CERTIFICATE HOLDER

## CANCELLATION

National Joint Powers Alliance Attn: Andy Campbell 200 First Street Northeast Staples MN 55479 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE:  
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ACORD 25 (2010/05)

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## Page of

ADDITIONAL REMARKS

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER		
INSURER		
INSURER		
INSURER		

### ADDITIONAL POLICIES

[illegible]

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[www.njpacoop.org](http://www.njpacoop.org)



202 12th Street NE  
P.O. Box 219  
Staples, MN 56479

Pricing, financials and marketing material were submitted with the response and is available upon request. Due to the difficulty in emailing such a large file they were not included.

As a public agency, NJPA proposals, responses and awarded contracts are a matter of public record, except for that data included in the proposals, responses and awarded contracts that is classified as nonpublic; thus, pursuant to NJPA policies and RFP terms and conditions, all documentation, except for data which is nonpublic, is available for review through a formal request process including a written request.



MODEL: CROSSWIND TIER III  
CNG ALTERNATIVE FUEL  
EFFECTIVE DATE: 11/01/2014  
SUPERCEDES ALL PREVIOUS PRICE LISTS  
NJPA PRICE LIST (U.S. DOLLARS)

Purchase Order #	Ship To Address:
Order Date:	
Delivery Date Requirement If Any:	State Penalty Clause If Applicable:

QUANTITY	PART NUMBER	MODEL DESCRIPTION	2015 NJPA PRICE	2015EXTENDED
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0	1099090	<b>CROSSWIND DUAL SIDEBROOMS - CNG</b> 2010 spark ignited emissions, GM 5.7L, 115 HP natural gas engine, 8.0 cu. Yd. Hopper, right and left side brooms, sweeper is powder coated from powder coatings chart 2003/N with powder coated gray undercarriage.	\$136,125	\$0.00
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#### CHASSIS

0	SPECIAL	2016 DUAL STEER M2 112 CNG W/ 60 DGE TANKS, W/METHANE DETECTION SYSTEM DGE = Diesel Gallon Equivalent	CONTACT INSIDE SALES	\$0.00
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#### CHASSIS MOUNTING CHARGES

0	1115150	M2 DUAL STEER - ALTERNATIVE FUEL	\$2,135	\$0.00
0	SPECIAL	CUSTOMER SUPPLIED CHASSIS ALTERATIONS	CONTACT INSIDE SALES	\$0.00
0		CUSTOMER SUPPLIED HANDLING CHARGE	\$2,815	\$0.00

NOTE: Customer Supplied Cassis Requires Both The Chassis Alterations and the Handling Charge

1	4820001	PAINT CAB STANDARD WHITE	N/C	\$0.00
1	4810001	PAINT SWEEPER STANDARD WHITE	N/C	\$0.00
		SWEEPER COLOR OTHER THAN STANDARD WHITE	SEE INSIDE SALES	\$0.00

NOTE: A BODY includes the cost of Elgin standard white finish paint. It does not however, include the price of the chassis.

NOTE: The chassis being supplied by a customer or dealer must comply completely with all Elgin requirements or the chassis will be modified at dealer's expense.

NOTE: For cost of sweeper mounted on any other chassis, consult factory.

NOTE: One year warranty on all Elgin supplied parts and labor. Consult your Elgin dealer for full warranty details.

\*\*\*FOR A SKID MOUNT UNIT, PLEASE CONSULT FACTORY FOR FUTHER DETAILS.

#### STANDARD FEATURES

1	0701425	CROSSWIND OPERATORS MANUAL	STANDARD	\$0.00
1	0702216	CROSSWIND PARTS BOOK	STANDARD	\$0.00
1	0700979	CROSSWIND PARTS BOOK - CNG	STANDARD	\$0.00
1	0701421	CROSSWIND OPERATORS MANUAL - CNG	STANDARD	\$0.00
1	0730166	BROOM MEASUREMENT RULER	STANDARD	\$0.00
1	1032481	16' 8" WATER FILL HOSE	STANDARD	\$0.00
1	0701707	MACHINE DELIVERY PACKET	STANDARD	\$0.00
1	0702020	ELGIN SAFETY MANUAL	STANDARD	\$0.00

Alternator, 95 amp  
Auto Shutdown, Aux. Engine  
Backup Alarm, electric  
Blower, 20,000 CFM rating with linatex lined housing  
Brooms, hydraulic rotation  
Brooms, Dual with side broom lights for night operation  
Camera, rear mounted  
Console, w/rocker switches for all sweep functions, including memory sweep with full gauge package including tachometer, engine hour meter, oil pressure indicator, coolant temperature, voltmeter and fuel lever indicator, water level gauge and warning lights for hopper "up", hopper rear door "open" and hopper "full", with auxillary engine, RPM control, side broom down pressure controls and manual reset circuit breakers  
Doors, access fiberglass doors provide easy service and maintenance on auxillary engine, hydraulic and electrical system  
Electronic Throttle, sweep resume/sweep transport/reverse pick-up  
Fuel Water Separator on Aux Engine

Hopper rear door, hydraulically opened/closed and locked/unlocked with external controls.  
Hose, hydrant fill, 16'8" (5080 mm) with coupling  
In-Cab Hopper Dump  
LED Clearance Lights  
Lights, rear clearance and rear identification  
Manuals, operator and parts  
Mirrors, West Coast type with 8" convex inserts, one each side  
Pick-up head, hydraulically operated, 14" (355 mm) outside diameter pressure hose, 12-3/4" (324mm) inside diameter (11" on FSX) suction hose with quick disconnect on suctions side  
Spray nozzles, sixteen (16), seven (7) in the pick-up head, three (3) in the suction nozzle, three (3) at each side broom  
Side Broom Outer Position Stop  
Trans Oil Cooler  
Vacuum enhancer, in-cab operated  
Water tank, molded polyethylene, 240 gallons (907L)  
Water pre-filter, hydrant fill hose

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MODEL: CROSSWIND TIER III  
CNG ALTERNATIVE FUEL  
EFFECTIVE DATE: 11/01/2014  
SUPERCEDES ALL PREVIOUS PRICE LISTS  
NJPA PRICE LIST (U.S. DOLLARS)

QUANTITY	PART NUMBER	MODEL DESCRIPTION	2015 NJPA PRICE	2015EXTENDED
-----ALARMS-----				
0	1048703	BACKUP ALARM, SMART	\$405.00	\$0.00
-----AUTO LUBE-----				
0	1068972	AUTO LUBE SWEEPER ONLY	\$4,160.00	\$0.00
-----DECALS-----				
0	1090150	RED LOGO/CROSSWIND	N/C	\$0.00
-----HOPPER OPTIONS-----				
0	1085864	RIGHT HAND INSPECTION DOOR	\$420.00	\$0.00
0	1085882	LEFT HAND INSPECTION DOOR	\$420.00	\$0.00
0	1085883	RIGHT HAND INSPECTION DOOR & STEP	\$750.00	\$0.00
0	1085884	LEFT HAND INSPECTION DOOR & STEP	\$750.00	\$0.00
0	1101937	STAINLESS STEEL RIGHT HAND INSPECTION DOOR & STEP	\$770.00	\$0.00
0	1101938	STAINLESS STEEL LEFT HAND INSPECTION DOOR & STEP	\$770.00	\$0.00
0	1085887	6" HOPPER DRAIN	\$790.00	\$0.00
0	1110030	AUXILIARY HYDRAULIC PUMP	\$1,320.00	\$0.00
----SS HOPPER LINERS-----				
0	1089326	6" HOPPER DRAIN, STAINLESS STEEL DOOR	\$1,680.00	\$0.00
0	1089443	LINED HOPPER (USE W/NO INSPECTION DOOR, NO DRAIN)	\$6,905.00	\$0.00
0	1089445	LINED HOPPER (USE W/RH INSPECTION DOOR, NO DRAIN)	\$6,905.00	\$0.00
0	RFQ 54131	STAINLESS STEEL 304 HOPPER/ HOPPER DOOR/HARDWARE	\$15,745.00	\$0.00
0	RFQ 54132	STAINLESS STEEL 304 HOPPER /HOPPER DOOR/HARDWARE/6" DRAIN	\$16,900.00	\$0.00
-----LIFELINER HOPPER-----				
0	1092227	LIFELINER HOPPER SYSTEM W/WARRANTY	\$7,660.00	\$0.00
-----MANUALS-----				
0	0701425	CROSSWIND OPERATORS MANUAL	\$45.00	\$0.00
0	0702216	CROSSWIND PARTS BOOK	\$90.00	\$0.00
0	0702430	CROSSWIND SERVICE MANUAL	\$90.00	\$0.00
0	1103918	CNG MANUAL PACKAGE	\$575.00	\$0.00
0	0700979	CROSSWIND PARTS BOOK - CNG	\$90.00	\$0.00
0	0701421	CROSSWIND OPERATORS MANUAL - CNG	\$45.00	\$0.00
-----LIGHTING-----				
0	1088228	ARROWBOARD	\$1,980.00	\$0.00
0	1088230	WIRE/MOUNT - ARROWBOARD	\$2,065.00	\$0.00
0	1088231	WIRE/MOUNT - LED ARROWBOARD	\$2,970.00	\$0.00
0	1088233	REAR BEACON / ARROWBOARD	\$2,175.00	\$0.00
0	1088234	REAR STROBE / ARROWBOARD	\$2,155.00	\$0.00
0	1088246	REAR STROBE / LED ARROWBOARD	\$2,755.00	\$0.00
0	1090458	(2) ALTERNATING FLASHING REAR LIGHTS	\$870.00	\$0.00
0	1100375	LED ID LIGHT	\$105.00	\$0.00
-----PAINT-----				
0	4811018	PAINT SWEEPER YELLOW RAL 1018	\$500.00	\$0.00
0	4811023	PAINT SWEEPER YELLOW RAL 1023	\$500.00	\$0.00
0	4811037	PAINT SWEEPER YELLOW RAL 1037	\$500.00	\$0.00
0	4811023	PAINT SWEEPER ORANGE RAL 1023	\$500.00	\$0.00
0	SPECIAL	PAINT SWEEPER OTHER RAL THAN ABOVE	\$3,790.00	\$0.00
0	SPECIAL	PAINT SWEEPER NON RAL COLOR	\$4,640.00	\$0.00

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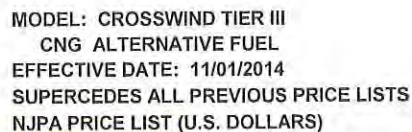


MODEL: CROSSWIND TIER III  
CNG ALTERNATIVE FUEL  
EFFECTIVE DATE: 11/01/2014  
SUPERCEDES ALL PREVIOUS PRICE LISTS  
NJPA PRICE LIST (U.S. DOLLARS)

QUANTITY	PART NUMBER	MODEL DESCRIPTION	2015 NJPA PRICE	2015EXTENDED
-----SAFETY-----				
0	1093019	2 1/2 LB. FIRE EXTINGUISHER	\$205.00	\$0.00
0	1048643	SLOW MOVING VEHICLE SIGN	\$145.00	\$0.00
0	1095548	LEFT HAND SIDE CAMERA NOT COMPATIBALE WITH RIGHT HAND SIDE CAMERA	\$560.00	\$0.00
0	1096442	RIGHT HAND SIDE CAMERA NOT COMPATIBALE WITH LEFT HAND SIDE CAMERA	\$695.00	\$0.00
0	1103333	(2) FRONT MOUNT CAMERAS AND (1) REAR CAMERA	\$965.00	\$0.00
0	5007219	HYDRAULIC JACK, 5 TON	\$255.00	\$0.00
0	9306848	TRIANGLE REFLECTOR FLARES (3)	\$70.00	\$0.00
----SIDE BROOM OPTIONS----				
0	1087729	LEFT HAND SIDEBROOM TILT	\$1,075.00	\$0.00
0	1087730	RIGHT HAND SIDEBROOM TILT	\$1,075.00	\$0.00
-----SWEEPER ENGINE-----				
0	1066340	BATTERY DISCONNECT SWITCH	\$495.00	\$0.00
0	6063004	ADDITIONAL IGNITION KEY	\$40.00	\$0.00
-----SWEEP COMPONENTS-----				
0	SPECIAL	CENTERBROOM	\$4,645.00	\$0.00
0	1066939	CASTERS FOR CENTERBROOM	\$4,075.00	\$0.00
-----TOOLS/TOOL BOX-----				
0	1036150	HYDRANT WRENCH	\$80.00	\$0.00
0	1053426	TOOL KIT	\$720.00	\$0.00
0	1057687	TOOL BOX W/TOOLS	\$695.00	\$0.00
-----WANDERING HOSE-----				
0	1086441	HYDRAULIC WANDERING HOSE	\$4,605.00	\$0.00
0	1059263	4 FT. ALUMINUM WANDERING HOSE EXTENSION REAR MOUNT	\$735.00	\$0.00
0	1063656	(2) 4 FT. ALUMINUM WANDERING HOSE EXTENSION REAR MOUNT	\$1,490.00	\$0.00
0	1065243	WANDERING HOSE LIGHT DUTY SPRING	\$3,295.00	\$0.00
-----PM10-----				
0	1099939	PM-10 WATER SYSTEM - CNG	\$2,900.00	\$0.00
0	1099940	PM-10 WATER SYSTEM (USE W/CENTERBROOM)-CNG	\$2,900.00	\$0.00
0	1100507	AIR PURGE SYSTEM PM-10	\$375.00	\$0.00
-----WATER SYSTEM-----				
0	1032484	25' WATER FILL HOSE (ILO 16' 8")	\$185.00	\$0.00
0	1040094	QUICK DISCONNECT WATER FILL	\$495.00	\$0.00
0	1059209	HOPPER DELUGE	\$990.00	\$0.00
0	1061652	ANTI SIPHON 2-1/2" AIR GAP	\$175.00	\$0.00
0	1066013	SPRAY NOZZLES FOR CENTERBROOM	\$530.00	\$0.00
0	1070059	AIR PURGE FOR WATER SYSTEM	\$365.00	\$0.00
0	1071989	LOW PRESSURE WASH DOWN	\$1,145.00	\$0.00
----- M2 CHASSIS OPTIONS -----				
0	1075400	AM/FM/CD RADIO	\$870.00	\$0.00
0	1081188	EXTRA KEY	\$40.00	\$0.00
0	1081746	(1) BOSTROM 905 VINYL MID-BACK	\$870.00	\$0.00
0	1092147	FRONT SPRAY BAR	\$525.00	\$0.00
0	1070639	LED / STOP / TAIL / REAR TURN LIGHT	\$600.00	\$0.00

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QUANTITY	PART NUMBER	MODEL DESCRIPTION	2015 NJPA PRICE	2015EXTENDED
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-----WARRANTY-----

WARRANTY				
0	EW-125-2P	CROSSWIND 2ND YEAR PARTS ONLY	\$1,165.00	\$0.00
0	EW-125-2PL	CROSSWIND 2ND YEAR PARTS/LABOR	\$1,930.00	\$0.00
0	EW-125-3P	CROSSWIND 3RD YEAR PARTS ONLY	\$2,210.00	\$0.00
0	EW-125-3PL	CROSSWIND 3RD YEAR PARTS/LABOR	\$3,675.00	\$0.00
0	EW-125-4P	CROSSWIND 4TH YEAR PARTS ONLY	\$3,130.00	\$0.00
0	EW-125-4PL	CROSSWIND 4TH YEAR PARTS/LABOR	\$5,200.00	\$0.00
0	EW-125-5P	CROSSWIND 5TH YEAR PARTS ONLY	\$3,925.00	\$0.00
0	EW-125-5PL	CROSSWIND 5TH YEAR PARTS/LABOR	\$6,325.00	\$0.00

## FREIGHT RATES

FREIGHT RATES				
0	FRT-125-001	SELF SHIPPING DOCK CHARGE	\$580.00	\$0.00
0	FRT-125-002	FREIGHT-IL,WI,IA,IN,MI,MN,KY	\$1,285.00	\$0.00
0	FRT-125-003	FREIGHT-TN,WV,PA,NY	\$2,795.00	\$0.00
0	FRT-125-004	FREIGHT-NH,VT,ME	\$3,485.00	\$0.00
0	FRT-125-005	FREIGHT-NEW YORK CITY	\$4,030.00	\$0.00
0	FRT-125-006	FREIGHT-ND,SD,NE,OK,KS,AR,AL,MO	\$2,660.00	\$0.00
0	FRT-125-007	FREIGHT-AZ,UT	\$5,285.00	\$0.00
0	FRT-125-008	FREIGHT-CA,NV,ID,OR,WA	\$6,220.00	\$0.00
0	FRT-125-009	FREIGHT-CHICAGO/MILWAUKEE	\$880.00	\$0.00
0	FRT-125-010	FREIGHT - FL,LA,TX,NM,CO,WY,MT	\$3,950.00	\$0.00
0	FRT-125-011	FREIGHT- OH,ST,LOUIS METRO	\$1,500.00	\$0.00
0	FRT-125-012	FREIGHT- MS,GA,SC,NC,VA,MD	\$3,130.00	\$0.00
0	FRT-125-013	FREIGHT - RI,DE,CT,NJ,MA	\$2,610.00	\$0.00
0	FRT-125-014	FREIGHT - LAREDO, TX	\$6,565.00	\$0.00
0	FRT-125-015	SPECIALIZED TRANSPORT EQUIPMENT	\$1,010.00	\$0.00

SUB TOTAL	\$0.00
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-----DISCOUNTS-----

0	DISC-125-ADDL	NJPA 3 % DISCOUNT	\$0.00	\$0.00
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## SPECIAL RFQ OPTIONS / OTHER DESCRIPTIONS

[illegible]

GRAND TOTAL	\$0.00
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## BID EVALUATION

**SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES**

**FORM G**

Possible Points	Atlantic Machinery, Inc.	EnviroSight, LLC	Federal Signal Corporation	Gap Vax, Inc.	Global Environmental Products, Inc.	Gradall Industries, Inc.	H-Vac Corporation	RapidView, LLC	Ring-O-Matic, Inc.	SB Manufacturing, Inc.	Sewer Equipment Co. of America	Stewart-Ames Equipment Co.	Super-Products, LLC	Thompson Pump & Manufacturing Co., Inc.
Conformance to terms and conditions to include documentation	50	46.25	45.00		41.25	42.00	46.00	45.75	44.75	42.50	45.50	44.25	45.50	
Pricing	400	395.75	301.25	309.50	302.50	316.25	370.00	340.00	320.00	326.25	350.00	293.75	303.75	
Financial, Industry and Marketplace Successes	75	62.50	63.25	66.25	57.50	64.50	67.50	62.50	58.25	53.75	55.00	56.25	58.00	
Bidder's Ability to Sell and Service Contract Nationally	100	90.00	81.25	85.00	75.00	82.00	87.50	76.25	65.00	73.75	82.00	71.25	83.75	
Bidder's Marketing Plan	50	45.00	43.50	44.50	31.25	42.50	45.00	41.75	38.25	38.75	44.00	45.50	45.25	
Value Added Attributes	75	63.75	62.00	63.75	62.50	62.50	66.75	62.50	62.50	56.25	65.00	62.50	66.25	
Warranty Coverages and Information	50	43.00	43.25	43.75	43.75	43.75	45.75	41.25	41.25	41.25	43.75	45.00	43.75	
Selection and Variety of Products and Services	200	177.50	153.75	166.25	155.25	171.25	172.50	165.00	156.25	128.75	178.75	155.00	169.50	
Offered		886.75	791.75	824.00	770.00	824.75	903.00	835.00	766.75	761.25	864.00	773.50	815.75	
Total Points	1,000													

*[Signature]*  
3/7/2014  
Ginger Lier, CPPB, NUPA

*[Signature]*  
3/7/2014  
Facy Pineda, NUPA

*[Signature]*  
Keith Hansen, CPA, NUPA

*[Signature]*  
3/7/2014  
Naureen Knight, BBA, JD, NUPA

*[Signature]*  
3/7/2014  
Gregg Meender, CPFA, NUPA



## **BID COMMENT & REVIEW**



**COMMENT AND REVIEW**

To the  
REQUEST FOR PROPOSAL (RFP) #022014  
Entitled

**SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT  
WITH RELATED ACCESSORIES AND SUPPLIES**

The following advertisement was placed in the Minneapolis, MN Star Tribune on January 9, 2013 and January 16, 2014 and Oregon's Daily Journal of Commerce on January 10, 2014, The Salt Lake Tribune on January 9, 2014 and on the NJPA website [www.njpacoop.org](http://www.njpacoop.org), Onvia website [www.onvia.com](http://www.onvia.com), Notice to Bidders website [www.noticetobidders.com](http://www.noticetobidders.com), PublicPurchase.com, Merx and Biddingo:

*The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, and all other Public Agencies located nationally in all fifty states and potentially internationally, issues this Request For Proposal (RFP) to result in a national contract solution for the procurement of SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES. Details of this RFP are available beginning January 9, 2014 and continuing until February 13, 2014. Details may be obtained by letter of request to Maureen Knight, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at [RFP@njpacoop.org](mailto:RFP@njpacoop.org). Proposals will be received until February 20, 2014 at 4:30 p.m. Central Time at the above address and opened February 21, 2014 at 8:00 A.M. Central Time.*

RFPs were requested from and distributed to:

Alamo Group, Inc.  
Federal Signal Corp.  
Azaimi  
C&B Operations  
EKA  
Gap Vax, Inc.  
Hi-Vac Corporation  
Ingram Equipment Co., LLC  
Macdonald Equipment Co.  
Prime Vendor Inc.  
Ring-O-Matic, Inc.  
SB Manufacturing, Inc.  
SFG Road Maintenance  
Super Products LLC  
Thompson Pump & Manufacturing Co. Inc.  
Wayne Sweepers

Atlantic Machinery, Inc.  
Gradall Industries, Inc.  
Boyer Ford Trucks  
Cobra Technologies  
Envirosight, LLC  
Global Environmental Products, Inc.  
Hol-Mac Corp./ Pac-Mac  
Johnston North America  
NiteHawk Sweepers  
RapidView, LLC  
Sanitation Products, Inc.  
Sewer Equipment Company of America  
Stewart-Amos Equipment Co.  
Tessco  
Vector Technologies, Ltd.

Bids were opened on February 21, 2014 at the NJPA offices located at 202 12th Street Northeast in Staples, Minnesota 56479. Bids were received from the following:

- Atlantic Machinery, Inc
- Envirosight, LLC
- Federal Signal Corporation
- Gap Vax, Inc.
- Global Environmental Products, Inc.
- Gradall Industries, Inc./Vacall Product Line
- Hi-Vac Corporation
- RapidView, LLC
- Ring-O-Matic, Inc.
- SB Manufacturing, Inc.
- Sewer Equipment Co. of America
- Stewart-Amos Equipment Co.
- Super Products, LLC
- Thompson Pump & Manufacturing Co., Inc.

Bids were reviewed by the Proposal Evaluation Committee consisting of:

- Ginger Line, CPPB, NJPA Contract Specialist
- Gregg Meierhofer, CPPO, NJPA Bids and Contracts Officer
- Tracy Plinske, NJPA Contract Specialist
- Keith Hanson, CPA, NJPA Accounting Manager
- Maureen Knight, BBA and JD, NJPA Contracts and Compliance Manager

The findings of the Proposal Evaluation Committee are summarized as follows:

The Proposal Evaluation Committee used the established NJPA RFP evaluation criteria and determined that Gap Vax, Inc. and Thompson Pump & Manufacturing Co., Inc. did not meet Level One Responsiveness. Gap Vax, Inc. had missing electronic files and Thompson Pump & Manufacturing, Inc. was deemed Out Of Scope. All other responders did meet Level One Responsiveness and Level Two Responsiveness.

Hi-Vac Corporation provided an exceptionally strong overall response with very competitive pricing and demonstrated exceptional industry and marketplace success. They also manage a nationwide sales force and utilize an extensive dealer network for sales, training and service. They offer a wide array of products and equipment for use in wastewater and storm sewer maintenance, lead pickup, road spill response and hydro-excavation including Aquatech combination jet/vac cleaning equipment, O'Brien Jet cleaning equipment and a full range of X-Vac Hydro Excavation equipment.

Atlantic Machinery, Inc. provided strong overall response with very competitive pricing and demonstrated an exceptional ability to sell and service nationwide through their large sales and service network. They offer a wide variety of quality products including combo jet vacuums, basin cleaners, rodders, pumper trucks and a variety of street sweepers from VacCon, Schwarze and Cues.

Sewer Equipment Co. of America submitted a strong overall response with very competitive pricing and offered a wide variety of products and equipment including enclosed and heated jet trucks, jet trailer nozzles, rodder trucks and trailers, bucket machines and easement machines. They also exhibited a solid ability to sell and service nationwide.

RapidView, LLC provided a solid overall response with competitive pricing, a great selection of products and the ability to sell and service nationwide through established dealerships. They offered high quality sewer, water, industrial and other pipeline inspection cameras, sewer inspection software and sewer pipe rehabilitation robotics.

Gradall Industries, Inc. submitted a solid overall response with competitive pricing and strong industry and marketplace success along with the ability to sell and service nationwide through their large dealer network. Through Gradall/Vacall they offer a specialized line of vacuum trucks, combo unites, street sweepers and catch basins.


Federal Signal Corp. provided a solid overall response with competitive pricing, exception industry and marketplace success, and a demonstrated ability to sell and service nationwide through their very extensive dealer network including Elgin and Vactor dealers. They offered a full range of mechanical, vacuum and regenerative air sweeper products in various sizes and quality high pressure sewer cleaners.

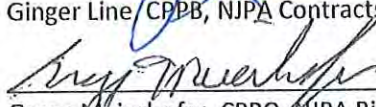
Super Products, LLC had a good response with very competitive pricing and the ability to sell, service and strongly market nationwide. They offer unique, high quality equipment including sewer and catch basin cleaner, ejector, and hydro excavation products. In addition to the purchase of products, they also submitted a rent to own option.

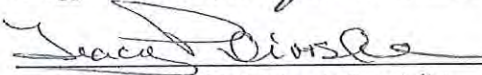
Envirosight, LLC had a good response with competitive pricing and the ability to sell, service, and market across the U.S. through an established dealer network. They offer a variety of sewer inspection equipment including panoramic cameras and pipe cutters to inspect underground infrastructure.

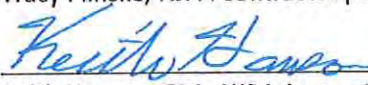
For these reasons the NJPA Proposal Review Committee recommends award of NJPA #011014 to

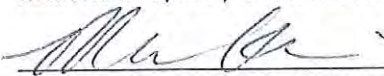
Atlantic Machinery, Inc.	022014-AMI
Envirosight, LLC	022014-EVS
Federal Signal Corporation	022014-FSC
Gradall Industries, Inc.	022014-GRD
Hi-Vac Corporation	022014-HVC
RapidView, LLC	022014-RVL
Sewer Equipment Co. of America	022014-SCA
Super-Products, LLC	022014-SPL

  
\_\_\_\_\_  
Ginger Line, CPPB, NJPA Contracts Specialist

  
\_\_\_\_\_  
Gregg Meierhofer, CPPO, NJPA Bids and Contracts Officer

  
\_\_\_\_\_  
Tracy Plinske, NJPA Contracts Specialist

  
\_\_\_\_\_  
Keith Hanson, CPA, NJPA Accounting Manager

  
\_\_\_\_\_  
Maureen Knight, BBA & JD, NJPA Contracts and Compliance Manager

2-21-14  
\_\_\_\_\_  
Date

2-21-14  
\_\_\_\_\_  
Date

2-21-14  
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2-21-14  
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2-21-14  
\_\_\_\_\_  
Date

**BID OPENING WITNESS PAGE**



Proposal Opening Witness

Date of opening: February 21, 2014

The witnesses signed below hereby witness they were present on the above date and in witness of the public opening of all responses received to the Request For Proposal #022114 for the procurement of SEWER VACUUM, HYDRO-EXCAVATION AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES by NJPA and NJPA Members.

Proposals are evaluated first on responsiveness then on the other criteria included in the RFP. Responsiveness consists of the following criteria:

1. Was the response received prior to the deadline of submission?
2. Was the response properly packaged and addressed?
3. Did the response contain the proper bid bond?
4. Did the response include documents with original signatures that were required?

Responses were received from the following:

**Atlantic Machinery, Inc. – received 2/17/14 at 11:19am**  
Bidder deemed responsive

**Envirosight, LLC – received 2/19/14 at 11:40am**  
Bidder deemed responsive

**Federal Signal Corporation – received 2/19/14 at 1:16pm**  
Bidder deemed responsive

**Gap Vax, Inc. – received 2/20/14 at 11:00am**  
Bidder deemed non-responsive  
Forms – no electronic copy

**Global Environmental Products, Inc. – received 2/17/14 at 12:34pm**  
Bidder deemed responsive

**Gradall Industries, Inc./Vacall Product Line – received 2/18/14 at 11:15am**  
Bidder deemed responsive

**Hi-Vac Corporation – received 2/20/14 at 11:01am**  
Bidder deemed responsive

**RapidView, LLC – received 2/20/14 at 11:00am**  
Bidder deemed responsive

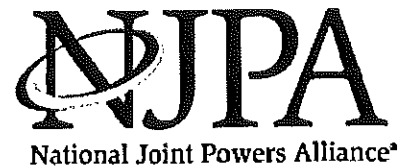
**Ring-O-Matic, Inc. – received 2/20/14 at 11:04am**  
Bidder deemed responsive

**SB Manufacturing, Inc. – received 2/12/14 at 9:24am**  
Bidder deemed responsive

**Sewer Equipment Co. of America – received 2/17/14 at 11:06am**  
Bidder deemed responsive

**Stewart-Amos Equipment Co. – received 2/20/14 at 11:01am**  
Bidder deemed responsive

www.njpacoop.org



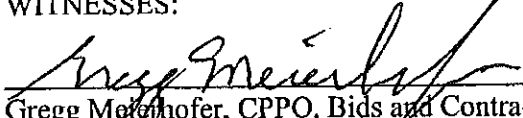
200 First Street NE  
Staples, MN 56479

Responses continued

**Super Products, LLC – received 2/18/14 at 11:14am**  
Bidder deemed responsive

**Thompson Pump & Manufacturing Co., Inc. – received 2/19/14 at 1:16pm**  
Bidder deemed non-responsive-out of scope


WITNESSES:

  
\_\_\_\_\_  
Gregg Meierhofer, CPPO, Bids and Contracts Officer, NJPA

\_\_\_\_\_  
2/21/14

  
\_\_\_\_\_  
Tracy Plinske, Contracts Specialist, NJPA

\_\_\_\_\_  
2/21/14

  
\_\_\_\_\_  
Sheila Christoffersen, Administrative Specialist, NJPA

\_\_\_\_\_  
2/21/14

  
\_\_\_\_\_  
Kelly Busker, Administrative Specialist, NJPA

\_\_\_\_\_  
2/21/14

**AFFIDAVIT OF ADVERTISEMENT**



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EDUCATIONAL

EQUIPMENT, RELATED

SUPPLIES, ACCESSORIES,

AND SERVICES

- COMMERCIAL KITCHEN

EQUIPMENT & RELATED

SUPPLIES

- MUNICIPAL WATER

AND/OR SEWER

INFRASTRUCTURE WITH

RELATED SUPPLIES AND/OR

EQUIPMENT

## - SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, and all other Public Agencies located nationally in all fifty states and potentially internationally, issues this Request For Proposal (RFP) to result in a national contract solution for the procurement of SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES. Details of this RFP are available beginning January 9, 2014 and continuing until February 13, 2014. Details may be obtained by letter of request to Maureen Knight, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at [RFP@njpacoop.org](mailto:RFP@njpacoop.org). Proposals will be received until February 20, 2014 at 4:30 p.m. Central Time at the above address and opened February 21, 2014 at 8:00 A.M. Central Time.

### To Obtain RFP documents:

Send a letter of request to

National Joint Powers Alliance  
Attn: Maureen Knight  
202 12th Street NE, Staples, MN 56479  
or by e-mail at [RFP@njpacoop.org](mailto:RFP@njpacoop.org)

- Pre-Proposal Conference: February 6, 2014 at 10:00 am.
- Sealed proposals due: February 20, 2014 at 4:30pm
- Proposals will be publicly opened: February 21, 2014 at 8:00am CST

NJPA reserves the right to reject any and all proposals.





Welcome to NoticeToBidders.com website. Please send all questions or comments to Maureen Knight at 218-895-4114 or [maureen.knight@njpacoop.org](mailto:maureen.knight@njpacoop.org)

#### SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES

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#### MEDICAL THERAPY MANAGEMENT (MTM) SERVICES AND/OR OTHER HEALTH RELATED SERVICES AND SUPPLIES

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, and all other Public Agencies located nationally in all fifty states and potentially internationally, issues this Request For Proposal (RFP) to result in a national contract solution for the procurement of MEDICAL THERAPY MANAGEMENT (MTM) SERVICES AND/OR OTHER HEALTH RELATED SERVICES AND SUPPLIES. Details of this RFP are available beginning December 20, 2013 and continuing until January 22, 2014. Details may be obtained by letter of request to Maureen Knight, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at [RFP@njpacoop.org](mailto:RFP@njpacoop.org). Proposals will be received until January 30, 2014 at 4:30 p.m. Central Time at the above address and opened January 31, 2014 at 8:00 A.M. Central Time.

#### POWER TRANSMISSION COMPONENTS WITH RELATED ACCESSORIES, SERVICES AND SUPPLIES

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, and all other Public Agencies located nationally in all fifty states and potentially internationally, issues this Request For Proposal (RFP) to result in a national contract solution for the procurement of POWER TRANSMISSION COMPONENTS WITH RELATED ACCESSORIES, SERVICES AND SUPPLIES. Details of this RFP are available beginning December 5, 2013 and continuing until January 9, 2014. Details may be obtained by letter of request to Maureen Knight, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at [RFP@njpacoop.org](mailto:RFP@njpacoop.org). Proposals will be received until January 16, 2014 at 4:30 p.m. Central Time at the above address and opened January 17, 2014 at 8:00 A.M. Central Time.

#### State of California - Mitigation and Restoration

The National Joint Powers Alliance® (NJPA) issues this Invitation For Bid (IFB) on behalf of, and to provide Indefinite Quantity Construction Contracting (IQCC) services to all current and potential NJPA Members including all government agencies, education agencies to include colleges and universities, and non-profit agencies in the State of California. It is the intention of NJPA to award multiple contracts for; Mitigation and Restoration services in each of the areas. Each contract has an estimated annual value of \$2,000,000 and the term of the contract is four years. One additional one-year renewal-extension may be offered by NJPA to Vendor beyond the original four year term if NJPA deems such action to be in the best interests of NJPA and its Members.

IQCC is a construction contracting procurement system that provides facility owners' access to competitively bid "on-call" general contractors to provide immediate construction services over an extended period of time.

Intending bidders are required to attend the pre-bid seminar for the purpose of discussing the IQCC procurement system, the contract documents, and bid forms. Mandatory pre-bid seminar will be held as follows:

A Pre-Bid Webinar will be hosted by NJPA on December 17, 12:30 p.m. CST. The Webinar will require the Contractor to pre-register at [www.njpacoop.org/eziqc-registration](http://www.njpacoop.org/eziqc-registration). Go to the Website, select the appropriate Webinar and fill-in the information

An electronic (CD) copy of the IFB Documents which include the instructions for submitting a bid and the bid documents may be obtained by letter of request to Matthew Peterson, NJPA, 202 12th Street NE, Staples, MN 56479, or by visiting our website at [www.njpacoop.org/eziqc-bid-document-request](http://www.njpacoop.org/eziqc-bid-document-request) select desired bid documents from drop down list and complete the requested information. All requests must include; mailing address, email address, contact name, phone number. Bids are due by 4:30 pm CST on January 7, 2014 and will be opened at 9:00 am on January 8, 2014. IFB Documents will be available until January 7, 2014.

#### FIRE TRUCKS AND FIRE APPARATUS WITH RELATED ACCESSORIES AND SUPPLIES

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, and all other Public Agencies located nationally in all fifty states and potentially internationally, issues this Request For Proposal (RFP) to result in a national contract solution for the procurement of FIRE TRUCKS AND FIRE APPARATUS WITH RELATED ACCESSORIES AND SUPPLIES. Details of this RFP are available beginning [November 22, 2013] and continuing until [January 9, 2014]. Details may be obtained by letter of request to Maureen Knight, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at [RFP@njpacoop.org](mailto:RFP@njpacoop.org). Proposals will be received until January 16, 2014 at 4:30 p.m. Central Time at the above address and opened January 17, 2014 at 8:00 A.M. Central Time.

Addendum #1



[Addendum #2](#)[Addendum #3](#)**MULTI-MODE MOVING AND TRANSPORTATION RELATED SERVICES**

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, and all other Public Agencies located nationally in all fifty states and potentially internationally, issues this Request For Proposal (RFP) to result in a national contract solution for the procurement of MULTI-MODE MOVING AND TRANSPORTATION RELATED SERVICES. Details of this RFP are available beginning November 15, 2013 and continuing until January 3, 2014. Details may be obtained by letter of request to Maureen Knight, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at [RFP@njpacoop.org](mailto:RFP@njpacoop.org). Proposals will be received until January 10, 2014 at 4:30 p.m. Central Time at the above address and opened January 13, 2014 at 8:00 A.M. Central Time.

[Addendum #1](#)**MUNICIPAL WATER AND/OR SEWER INFRASTRUCTURE WITH RELATED SUPPLIES AND/OR EQUIPMENT**

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, and all other Public Agencies located nationally in all fifty states and potentially internationally, issues this Request For Proposal (RFP) to result in a national contract solution for the procurement of MUNICIPAL WATER AND/OR SEWER INFRASTRUCTURE WITH RELATED SUPPLIES AND/OR EQUIPMENT. Details of this RFP are available beginning October 18, 2013 and continuing until November 27, 2013. Details may be obtained by letter of request to Maureen Knight, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at [RFP@njpacoop.org](mailto:RFP@njpacoop.org). Proposals will be received until December 4, 2013 at 4:30 p.m. Central Time at the above address and opened December 5, 2013 at 8:00 A.M. Central Time.

**COMMERCIAL KITCHEN EQUIPMENT & RELATED SUPPLIES**

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, and all other Public Agencies located nationally in all fifty states and potentially internationally, issues this Request For Proposal (RFP) to result in a national contract solution for the procurement of COMMERCIAL KITCHEN EQUIPMENT & RELATED SUPPLIES. Details of this RFP are available beginning September 17, 2013 and continuing until October 23, 2013. Details may be obtained by letter of request to Maureen Knight, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at [RFP@njpacoop.org](mailto:RFP@njpacoop.org). Proposals will be received until October 30, 2013 at 4:30 p.m. Central Time at the above address and opened October 31, 2013 at 8:00 A.M. Central Time.

[Addendum #1](#)**CURRICULUM AND EDUCATIONAL EQUIPMENT, RELATED SUPPLIES, ACCESSORIES, AND SERVICES**

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, and all other Public Agencies located nationally in all fifty states and potentially internationally, issues this Request For Proposal (RFP) to result in a national contract solution for the procurement of CURRICULUM AND EDUCATIONAL EQUIPMENT, RELATED SUPPLIES, ACCESSORIES, AND SERVICES. Details of this RFP are available beginning September 4, 2013 and continuing until October 10, 2013. Details may be obtained by letter of request to Maureen Knight, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at [RFP@njpacoop.org](mailto:RFP@njpacoop.org). Proposals will be received until October 17, 2013 at 4:30 p.m. Central Time at the above address and opened October 18, 2013 at 8:00 A.M. Central Time.

[Addendum #1](#)[Addendum #2](#)[Addendum #3](#)

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### Bid RFP #022014 - SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES

Bid Type RFP

Bid Number 022014

Title **SEWER VACUUM,  
HYDRO-EXCAVATION,  
AND/OR STREET  
SWEEPER EQUIPMENT  
WITH RELATED  
ACCESSORIES AND  
SUPPLIES**

Start Date **Jan 9, 2014 9:28:51 AM  
CST**

End Date **Feb 20, 2014 4:30:00 PM  
CST**

Agency **NJPA**

Bid Contact **Ginger Line**  
(218) 894-5483  
ginger.line@njpacoop.org  
202 12th Street NE  
P.O. Box 219  
Staples, MN 56479-0219

#### Questions

0 Questions

[View/Ask  
Questions]

#### Description

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, and all other Public Agencies located nationally in all fifty states and potentially internationally, issues this Request For Proposal (RFP) to result in a national contract solution for the procurement of SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES. Details of this RFP are available beginning January 9, 2014 and continuing until February 13, 2014. Details may be obtained by letter of request to Maureen Knight, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at RFP@njpacoop.org. Proposals will be received until February 20, 2014 at 4:30 p.m. Central Time at the above address and opened February 21, 2014 at 8:00 A.M. Central Time.

#### Delivery Information

Maureen Knight, NJPA, 202 12th Street Northeast,  
P.O. Box 219, Staples, MN 56479

**Pre-Bid Conference**

Date **Feb 6, 2014 10:00:00 AM CST**

Location **Webcast - Conference Call**

Notes **Connection info sent with the RFP and also  
two business days before the pre-bid.**

We request that you please register with the agency before viewing the bid documents.

This process takes only a couple of minutes. [Register with this agency]

**Documents**

No Documents for this bid

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The Public Group





Minneapolis | St. Paul

425 Portland Avenue  
Minneapolis, MN 55488

STATE OF MINNESOTA     )  
COUNTY OF HENNEPIN    )

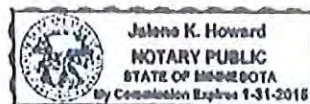
Karen Greenhoe, being duly sworn, on oath says she is and during all times herein stated has been an employee of Star Tribune Media Company LLC, a Delaware limited liability company with offices at 425 Portland Avenue, Minneapolis, Minnesota 55488, publisher and printer of the *Star Tribune* newspaper (the "Newspaper"), published 7 days a week, and has full knowledge of the facts herein stated as follows:

1. The Newspaper meets the following qualifications:
  - (a) The Newspaper is printed in the English language in newspaper format and in column and sheet form equivalent in printed space to at least 1,000 square inches;
  - (b) The Newspaper is printed daily and distributed at least five days each week;
  - (c) In at least half of its issues each year, the Newspaper has no more than 75 percent of its printed space comprised of advertising material and paid public notices. In all of its issues each year, the Newspaper has not less than 25 percent of its news columns devoted to news of local interest to the community that it purports to serve. Not more than 25 percent of the Newspaper's non-advertising column inches in any issue duplicates any other publication;
  - (d) The Newspaper is circulated in the local public corporation which it purports to serve, and has at least 500 copies regularly delivered to paying subscribers;
  - (e) The Newspaper has its known office of issue established in either the county in which it lies, in whole or in part, the local public corporation which the Newspaper purports to serve, or in an adjoining county;
  - (f) The Newspaper files a copy of each issue immediately with the state historical society;
  - (g) The Newspaper is made available at single or subscription prices to any person, corporation, partnership, or other unincorporated association requesting the Newspaper and making the applicable payment;
  - (h) The Newspaper has complied with all the foregoing conditions for at least one year immediately preceding the date of the notice publication which is the subject of the Affidavit; and
  - (i) Between September 1 and December 31 of each year, the Newspaper publishes and submits to the secretary of state, along with a filing fee of \$25, a sworn United States Post Office periodical class statement of ownership and circulation.
2. The printed copy of the matter attached hereto (the "Notice") was copied from the columns of the Newspaper and was printed and published in the English language on the following days and dates: Thursday, January 9, 2014; and Thursday, January 16, 2014.
3. Except as otherwise directed by a particular statute requiring publication of a public notice, the Notice was printed in a typeface no smaller than six point with a lowercase alphabet of 90 point.
4. The Newspaper's lowest classified rate paid by commercial users for space comparable to the space in which the Notice was published is \$305.10.

Karen Greenhoe

Subscribed and sworn to before me on January 16, 2014

Jalene K. Howard





# StarTribune

Thursday, January 09, 2014

Ad Number: 13984815  
 Advertiser: National Joint Powers Alliance  
 Insertion Number: N/A  
 Agency: N/A  
 Size: 1 Col x 2.378 in  
 Section-Page-Zone(s): K-1-Southwest  
 Color Type: 0  
 Description:

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**General Public**

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**Classified Index**

100-109: Real Estate  
 110-119: Autos  
 120-129: Services  
 130-139: Business  
 140-149: Education  
 150-159: Health  
 160-169: Legal  
 170-179: Travel  
 180-189: Entertainment  
 190-199: Other

**100-109: Real Estate**

101: Apartments  
 102: Condos  
 103: Houses  
 104: Lots  
 105: Mobile Homes  
 106: Other Real Estate

**110-119: Autos**

111: Cars  
 112: Trucks  
 113: Vans  
 114: Other Autos

**120-129: Services**

121: Accounting  
 122: Consulting  
 123: Insurance  
 124: Marketing  
 125: Other Services

**130-139: Business**

131: Franchises  
 132: Other Business

**140-149: Education**

141: Schools  
 142: Other Education

**150-159: Health**

151: Medical  
 152: Other Health

**160-169: Legal**

161: Attorneys  
 162: Other Legal

**170-179: Travel**

171: Hotels  
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181: Music  
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**190-199: Other**

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CUSTOMER NAME AND ADDRESS	ACCOUNT NUMBER	DATE
NATIONAL JOINT POWERS ALLIANCE, ACCOUNTS PAYABLE PO BOX 219  STAPLES MN 56479	9001496962	1/9/2014

ACCOUNT NAME			
NATIONAL JOINT POWERS ALLIANCE,			
ADDITIONAL		ADDITIONAL INVOICE NUMBER	
2188945483		0000931440 /	
SCHEDULE			
Start 01/09/2014		End 01/09/2014	
COST CODE(S)			
Sewer / Equip RFP			
CARTON			
REQUEST FOR PROPOSALS The National Joint Powers Alliance (NJPA), on behalf of NJPA			
SIZE			
37 Lines		1.00 COLUMN	
PAGES		PAGE	
3			
MISC CHARGES		AD CHARGES	
TOTAL COST			
85.29			

**REQUEST FOR PROPOSALS**  
The National Joint Powers Alliance (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, and all other Public Agencies located nationally in all fifty states and potentially internationally, issues this Request For Proposal (RFP) to solicit in a national contract solution for the procurement of SEWER VACUUM, HYDRO-EXCAVATION, AND/OR STREET SWEEPER EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES. Details of this RFP are available beginning January 9, 2014 and continuing until February 13, 2014. Details may be obtained by letter of request to: Aileen Knight, NJPA, 202-12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at RFP@njpa.com. Proposals will be received until February 20, 2014 at 4:30 p.m. Central time at the above address and opened February 21, 2014 at 8:00 A.M. Central time.  
931440 UPALP

AFFIDAVIT OF PUBLICATION

AS NEWSPAPER AGENCY COMPANY, LLC dba MEDIAONE OF UTAH LEGAL BOOKER, I CERTIFY THAT THE ATTACHED ADVERTISEMENT OF **REQUEST FOR PROPOSALS The National Joint Powers Alliance (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Hig** FOR **NATIONAL JOINT POWERS ALLIANCE**, WAS PUBLISHED BY THE NEWSPAPER AGENCY COMPANY, LLC dba MEDIAONE OF UTAH, AGENT FOR THE SALT LAKE TRIBUNE AND DESERET NEWS, DAILY NEWSPAPERS PRINTED IN THE ENGLISH LANGUAGE WITH GENERAL CIRCULATION IN UTAH, AND PUBLISHED IN SALT LAKE CITY, SALT LAKE COUNTY IN THE STATE OF UTAH. NOTICE IS ALSO POSTED ON UTAHLEGALS.COM ON THE SAME DAY AS THE FIRST NEWSPAPER PUBLICATION DATE AND REMAINS ON UTAHLEGALS.COM INDEFINITELY. COMPLIES WITH UTAH DIGITAL SIGNATURE ACT UTAH CODE 46-2-101; 46-3-104.

PUBLISHED ON Start 01/09/2014 End 01/09/2014  
SIGNATURE   
DATE 1/9/2014



VIRGINIA CRAFT  
Notary Public State of Utah  
Commission# 581469  
My Commission Expires  
January 12, 2014

Virginia Craft  
NOTARY SIGNATURE

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## BOARD MINUTES

Regular Meeting & Retreat Minutes of the  
NATIONAL JOINT POWERS ALLIANCE®  
Board of Directors  
Tuesday, March 18, 2014  
Executive Conference Room

Chair Wolden called the Regular Board meeting to order at 5:53 p.m. with the following members present: Brian Lehman, Mike Wilson, Wayne Wolden, Mary Freeman, Scott Veronen, and Barb Neprud. Also present were Mary Klamm, Ex-Officio; Chad Coauette, Susan Nanik, Paul Drange, Diana Pihlaja, David Jessop, Paul Anderson, Misty Myers, and Deb Cervantez, NJPA staff.

Ms. Neprud moved, seconded by Mr. Veronen to accept the agenda as amended. Motion carried.

Mr. Lehman moved, seconded by Mr. Wilson to accept the minutes of the Regular Board Meeting held on February 18, 2014. Motion carried.

Ms. Pihlaja presented the monthly Financial Reports.

Ms. Neprud moved, seconded by Mr. Veronen to accept the Resolution of Signed Authority. Motion carried.

Mr. Wilson moved, seconded by Mr. Lehman to approve the check register and Treasurer's Report of Cash, Revenues, and Expenditures and to pay all vendor disbursements #80940 to #81170. Motion carried.

Mr. Lehman moved, seconded by Ms. Neprud to approve all Wire Transfers #243 to #259. Motion carried.

Mr. Lehman moved, seconded by Mr. Wilson to accept the Consent Agenda as follows:

- Updated Membership Agreements Members added February 1-28, 2014
- Approve Authorization to Re-Bid:
  - Facilities, Maintenance, Repair and Operating Related Supplies
  - Ag Tractors and Implements with Related Equipment and Accessories
- Approve Bid Evaluation Committee's Recommendation that no responders be awarded RFP #013014 for Medication Therapy Management (MTM) Services and/or other Health Related Screenings
- Approve Bid Evaluation Committee's Recommendation to Award RFP #022014 for Sewer Vacuum, Hydro-Excavation, and/or Street Sweeper Equipment with Related Accessories and Supplies to:
  - Atlantic Machinery, Inc. 022014
  - EnviroSight, LLC 022014
  - Federal Signal Corporation 022014
  - Gradall Industries, Inc. 022014
  - Hi-Vac Corporation 022014
  - RapidView, LLC 022014
  - Sewer Equipment Co. of America 022014
  - Super-Products, LLC 022014
- Approve Bid Evaluation Committee's Recommendation to Award RFP #031814 for Power ezIQC in Kansas to:
  - The Wilson Group KS01E-031814

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- Kellogg Brown Root KS02E-031814
  - The Wilson Group KS01W-031814
- Approve Bid Evaluation Committee's Recommendation to Award RFP #031814 for ezIQC in Sand Diego and Riverside Counties, California to:
  - ABC Construction Co., Inc. CA-SD01-031814
  - Grondin Construction, Inc. CA-SD02-031814
  - Tiller Constructors CA-RS01-031814
- Approve Bid Evaluation Committee's Recommendation to Award RFP #031114 for ezIQC in West Central Florida Housing to:
  - Johnson-Laux Construction, LLC FL-WCH01-031114
  - GFH Enterprises, Inc. FL-WCH02-031114
  - Bayshore Contracting Corporation FL-WCH03-031114
- Approve Renewal of Agreements with
  - See Appendix A
- Approve ezIQC Renewal of Agreements with
  - See Appendix B

Motion carried.

Mr. Jessop gave the Risk Management update and reviewed minutes of the March 12, 2014 RMPEC meeting.

Ms. Neprud moved, seconded by Mr. Veronen to:

- Approve refunding the PSIP account balances of Bertha Hewitt ISD, Mid-State Education District, Pequot Lakes ISD, Pillager ISD and Northland Community Schools
- Approve the July 1, 2014 health insurance renewal at an overall 0.13% increase in rates
- Approve moving the cost of the dental subsidy out of the operating budget and into the RSR beginning with the FY 2014-2015 budget year
- Approve the July 1, 2014 dental renewal with \$4.50 per contract per month subsidy
- Appoint Andrew Nelson as the School Labor Representative on the NJPA Risk Management Executive Committee

Motion carried.

Mr. Anderson gave an update on the Contract Purchasing department and discussed National Procurement Month.

Mr. Drange gave an update on Regional Services and discussed the Worlds Best Workforce, Education Solutions Summer Programming catalog, and the Teacher Recognition Banquet in May. He also updated on Anna Gruber's first few weeks working with the cities and counties to identify their needs.

Ms. Neprud moved, seconded by Mr. Wilson to approve the NJPA 2014-2015 Staffing & Program Recommendations and Rationale. Motion carried.

The board reviewed and discussed the Board Member Employment Application Procedure. Recommendations were made for edits and the procedure will be approved at a later meeting.

Dr. Coauette informed the board that the MPPA Termination Agreement has been signed by both parties.

Dr. Coauette reviewed the board retreat draft schedule for April 10, 2014.

Dr. Coauette presented the Strategic Planning Framework with Values information added.

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Mr. Veronen moved, seconded by Ms. Neprud to approve the Resolution Extending Board Member Terms. Motion carried.

Mr. Lehman moved, seconded by Mr. Wilson to approve the Resolution to Adopt a Records Retention Schedule. Motion carried.

Mr. Lehman moved, seconded by Ms. Neprud to approve the Marketing Specialist position description and open position. Motion carried.

Mr. Lehman moved, seconded by Mr. Wilson to accept the resignation of Molly Burke, Collaborative Service Worker, effective March 28, 2014 and open position. Motion carried.

Ms. Nanik gave an update on current staffing efforts.

Dr. Coauette reported on MSBA, ORB interior design and space utilization, and an upcoming meeting with the Initiative Foundation and Region 5 Development Commission.

Board members all reported on the high points in their area's within the last month.

Mr. Lehman moved, seconded by Ms. Freeman to adjourn the meeting at 8:12 p.m. Motion carried.



## **ATTACHMENT 2**

### **Exhibit “B” - Haaker Equipment Company Proposal**

# HAAKER

## EQUIPMENT COMPANY

2070 North White Avenue, La Verne, California 91750  
(909) 598-2706 ~ FAX (909) 598-1427 ~ haaker.com

## NJPA AWARDED CONTRACT

### PROPOSAL November 5, 2014

**TO:** CITY OF BANNING  
176 E. Lincoln St.  
Banning CA 92220

**ATTN:** Mr. Carl Szoyka  
951 922-3291  
Email: czoyka@ci-banning.ca.us

In accordance with your request, we are pleased to submit the following proposal for your consideration and approval based on the **NJPA Cooperative Purchasing Agreement – Contract #022014-FSC.**

#### **ONE (1) NEW ELGIN CNG CROSSWIND J SWEEPER (J30243)**

With 2010 Spark Ignited Emissions, GM 5.7L, 115 HP Natural Gas Engine, mounted on a 2014 Freightliner M2 Chassis with Cummins 5.9 CNG Engine, 4-Tank 50 DGE CNG Fuel System, 8.0 Cu. Yd. Hopper, Right and Left Trailing Arm Side Brooms. Unit Painted Elgin Standard White with Elgin Gray Undercarriage.

#### **Standard Equipment**

- ✓ 95 Amp Alternator
- ✓ Blower 20,000 CFM Rating with Linatex Lined Housing
- ✓ Control Console with Rocker Switches for all Sweep Functions with full Gauge Package, Including Tachometer, Engine Hour Meter, Oil Pressure Indicator, Coolant Temperature, Volt Meter & Fuel Level Indicator, Water Level Gauge and Warning Lights for Hopper Up, Hopper Read Door Open and Hopper Full
- ✓ Doors, Access Fiberglass
- ✓ Rear Door Hopper Hydraulically Opened/Closed
- ✓ Rear Clearance Lights, Rear Identification & Locked/Unlocked with External Controls
- ✓ Pick-up Head Hydraulically Operated 14" Diameter Pressure Hose, 12-3/4 Diameter Suction Hose Quick Disconnect on Suction Side
- ✓ Water Pre-Filter, Hydrant Fill Hose
- ✓ Carbide Drag Shoes Mode
- ✓ Electric Back-up Alarm
- ✓ Brooms, Dual Side Brooms with Side Broom Light, hydraulically Driven with Pneumatic Inward/Outward & Up/Down Motion, In-cab Down Pressure Control and Inward Motion Scrub Capabilities in front of the Pick-up Head
- ✓ Control Console, Pedestal, with Auxiliary Engine RPM Control, Side Broom Down Pressure Controls & Manual Rest Circuit Breakers
- ✓ Hydrant Fill Hose 16' 8" with Coupling
- ✓ Mirrors, West Coast with Convex Inserts, One (1) Each Side
- ✓ Vacuum Enhancer, In Cab Operated
- ✓ Water Tank Capacity 240 Gallon, Molded Polyethylene
- ✓ Water Spray Nozzles (18)
- ✓ Electric Throttle Auxiliary Engine Sweep Transport
- ✓ Back Up Camera

### Included Options

- |                                      |                                 |
|--------------------------------------|---------------------------------|
| ✓ Right Hand Inspection Door         | ✓ Triangle Flares               |
| ✓ 6" Hopper Door Drain               | ✓ Left Hand Fender Mount Mirror |
| ✓ Lifeliner Hopper Liner             | ✓ Front Spray Bar               |
| ✓ Auxiliary Hydraulic Pump           | ✓ Rear Strobe with Guard        |
| ✓ Crosswind Operators & Parts Manual | ✓ 25' Water Fill Hose           |
| ✓ Crosswind Service Manual           | ✓ Chassis Service Manual        |
| ✓ Right Side Broom Tilt              | ✓ Extra Key                     |
| ✓ PM10 Compliant                     | ✓ LED Stop/Turn/Tail Lights     |
| ✓ Anti-Siphon Air Gap                | ✓ Heated Remote Mirrors         |
| ✓ Hopper Deluge                      | ✓ AM/FM/CD Radio                |
| ✓ (1) Bostrom 905 Vinyl Mid-Back     |                                 |
| ✓ 5# Fire Extinguishers              |                                 |

Unit Price: .....\$ 277,716.00

Sales Tax (8.0%) .....\$ 22,218

**TOTAL PRICE, FOB, BANNING, CA: .....\$ 299,934.00**

THE PROPERTY HEREIN IS GUARANTEED BY MANUFACTURER'S WARRANTY ONLY AND SELLER MAKES NO WARRANTY EXPRESSED OR IMPLIED, OF MERCHANTABILITY OR OTHERWISE, OR OF FITNESS FOR ANY PARTICULAR PURPOSE, THAT EXTENDS BEYOND THE ABOVE DESCRIPTION OF THE EQUIPMENT.

**NOTE:** Price is good for 30 days. Cost increases due to the addition of Government mandated safety or environmental devices incurred after the date of this proposal, will be charged to you at our cost. Proof of such costs, if any, will be documented.

**TAXES:** SALES TAX applicable at time of delivery will be shown on our invoice. FEDERAL EXCISE TAXES, if applicable, will require payment unless a properly executed Exemption Certificate is submitted.

**DELIVERY:** 10-30 Days **TERMS:** Net 30 or Approved Lease

We appreciate the opportunity to present this proposal and look forward to being of further and continued service.

**HAAKER EQUIPMENT COMPANY** **ACCEPTED BY:** \_\_\_\_\_

**BY:** David Kane **DATE:** \_\_\_\_\_  
David Kane  
Sales Representative

DK/rp



MODEL: CROSSWIND TIER III  
CNG / LPG ALTERNATIVE FUELS  
NJPA PRICING  
SUPERCEDES ALL PREVIOUS PRICE LISTS  
DEALER PRICE LIST (U.S. DOLLARS)


-----DELIVERY ORDER REQUIREMENTS-----				
0		UNIT REQUIRED DATE	DATE:	
0		STATE PENALTY CLAUSE IF APPLICABLE		

1	1099090	CROSSWIND DUAL SIDEROOMS - CNG	\$130,885	\$130,885.00
2010 spark ignited emissions, GM 5.7L, 115 HP natural gas engine, 8.0 cu. Yd. Hopper, right and left side brooms, sweeper is powder coated from powder coatings chart 2003/N with powder coated gray undercarriage and includes the standard features listed below.				

#### CHASSIS

1	2205837	SP 2014 M2 112 W/60 DGE TANKS rfq 48849	\$127,640	\$127,640.00
DGE = Diesel Gallon Equivalent				

#### CHASSIS MOUNTING CHARGES

1	2205838	CHASSIS MODS M2 112	\$2,135	\$2,135.00
0	4820001	PAINT CAB STANDARD WHITE	N/C	\$0.00
0	4810001	PAINT SWEEPER STANDARD WHITE	N/C	\$0.00

#### STANDARD FEATURES

Alternator, 95 amp  
Auto Shutdown, Aux. Engine  
Backup Alarm, electric  
Blower, 20,000 CFM rating with linatex lined housing  
Brooms, hydraulic rotation  
Brooms, Dual with side broom lights for night operation  
Camera, rear mounted  
Console, w/rocker switches for all sweep functions, including memory sweep with full gauge package including tachometer, engine hour meter, oil pressure indicator, coolant temperature, voltmeter and fuel lever indicator, water level gauge and warning lights for hopper with auxiliary engine, RPM control, side broom down pressure controls and manual reset circuit breakers  
Doors, access fiberglass doors provide easy service and maintenance on auxiliary engine, hydraulic and electrical system  
Electronic Throttle, sweep resume/sweep transport/reverse pick-up  
Fuel Water Separator on Aux Engine

Hopper rear door, hydraulically opened/closed and locked/unlocked with external controls.  
Hose, hydrant fill, 16'8" (5080 mm) with coupling  
In-Cab Hopper Dump  
LED Clearance Lights  
Lights, rear clearance and rear identification  
Manuals, operator and parts  
Mirrors, West Coast type with 8" convex inserts, one each side  
Pick-up head, hydraulically operated, 14" (355 mm) outside diameter pressure hose, 12-3/4" (324mm) inside diameter (11" on FSX) suction hose with quick disconnect on suction side pick-up head, three (3) in the suction nozzle, three (3) at each side broom  
Side Broom Outer Position Stop  
Trans Oil Cooler  
Vacuum enhancer, in-cab operated  
Water tank, molded polyethylene, 240 gallons (907L)  
Water pre-filter, hydrant fill hose



MODEL: CROSSWIND TIER III  
CNG / LPG ALTERNATIVE FUELS

-----DECALS-----				
1	1090150	RED LOGO/CROSSWIND	N/C	\$0.00

-----HOPPER OPTIONS-----				
1	1085864	RIGHT HAND INSPECTION DOOR	\$390.00	\$390.00
1	1085887	6" HOPPER DRAIN	\$770.00	\$770.00
1	1099834	AUXILIARY HYDRAULIC PUMP	\$1,090.00	\$1,090.00

-----LIFELINER HOPPER-----				
1	1092227	LIFELINER HOPPER SYSTEM W/WARRANTY	\$7,000.00	\$7,000.00

-----MANUALS-----				
1	0702430	CROSSWIND SERVICE MANUAL	\$120.00	\$120.00

-----LIGHTING-----				
1	1088214	WIRE/MOUNT REAR STROBE WITH GUARD	\$630.00	\$630.00

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----SIDE BROOM OPTIONS----				
1	1087730	RIGHT HAND SIDE BROOM TILT	\$1,015.00	\$1,015.00

-----WATER SYSTEM-----				
1	1032484	25' WATER FILL HOSE (ILO 16' 8")	\$155.00	\$155.00
1	1061652	ANTI SIPHON 2-1/2" AIR GAP	\$170.00	\$170.00

----- M2 CHASSIS OPTIONS -----				
1	704007	M2 SERVICE MANUAL	\$0.00	\$0.00
1	1080756	LEFT HAND FENDER MOUNTED MIRROR	\$0.00	\$0.00
1	1081188	EXTRA KEY	\$0.00	\$0.00
1	1081746	(1) BOSTROM 905 VINYL MID-BACK	\$0.00	\$0.00
1	1070639	LED STOP/TURN/TAIL	\$565.00	\$565.00
1	1092147	FRONT SPRAY BAR	\$495.00	\$495.00
1	1081367	HEATED REMOTE MIRRORS	\$0.00	\$0.00

-----WARRANTY-----				
1	EW-125-2PL	CROSSWIND 2ND YEAR PARTS/LABOR	\$1,780.00	\$1,780.00

SPECIAL RFQ OPTIONS OR OTHER DESCRIPTIONS				
1	1087829	PM 10 WATER SYSTEM	\$2,750.00	\$2,750.00
		NEC ITEMS		
1	REQUIRED FOR ALL	5# FIRE EXTINGUISHER	\$94.00	\$94.00
1	REQUIRED FOR ALL	TRIANGLES	\$32.00	\$32.00
1	HEC	AM/FM/CD RADIO WITH SPEAKERS/ANTENNA	\$0.00	\$0.00
0				

GRAND TOTAL	\$277,716.00
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\$277,716 TOTAL COST  
 - \$127,640 CHASSIS  
 \$150,076 STREET SWEEPER



# **HAAKER**

**EQUIPMENT COMPANY**  
*SINCE 1972*

WARRENTY  
CNG CROSSWIND

THERE IS A ONE YEAR ON THE SWEEPER

THERE IS A ONE YEAR ON THE CAB

THERE IS A ONE YEAR ON THE ENGINE

THERE IS A ONE YEAR ON THE TRANSMISSION

MAINTENACE IS ON THE CITY, THERE WILL BE A TRANING CLASS FOR THE  
CITY ON THE MAINTENACE

THANK YOU  
DAVID KANE

## **ATTACHMENT 3**

### **Exhibit “C” – Chassis Bids**

## **CHASSIS BID**

**Elgin / HAAKER Equipment Company, La Verne, CA**



MODEL: CROSSWIND TIER III  
CNG / LPG ALTERNATIVE FUELS  
NJPA PRICING  
SUPERCEDES ALL PREVIOUS PRICE LISTS  
DEALER PRICE LIST (U.S. DOLLARS)


-----DELIVERY ORDER REQUIREMENTS-----

0	UNIT REQUIRED DATE	DATE:
0	STATE PENALTY CLAUSE IF APPLICABLE	

1	1099090	CROSSWIND DUAL SIDEBROOMS - CNG	\$130,885	\$130,885.00
2010 spark ignited emissions, GM 5.7L, 115 HP natural gas engine, 8.0 cu. Yd. Hopper, right and left side brooms, sweeper is powder coated from powder coatings chart 2003/N with powder coated gray undercarriage and includes the standard features listed below.				

CHASSIS

1	2205837	SP 2014 M2 112 W/60 DGE TANKS rfq 48849	\$127,640	\$127,640.00
DGE = Diesel Gallon Equivalent				

CHASSIS MOUNTING CHARGES

1	2205838	CHASSIS MODS M2 112	\$2,135	\$2,135.00
0	4820001	PAINT CAB STANDARD WHITE	N/C	\$0.00
0	4810001	PAINT SWEEPER STANDARD WHITE	N/C	\$0.00

STANDARD FEATURES

Alternator, 95 amp  
Auto Shutdown, Aux. Engine  
Backup Alarm, electric  
Blower, 20,000 CFM rating with linatex lined housing  
Brooms, hydraulic rotation  
Brooms, Dual with side broom lights for night operation  
Camera, rear mounted  
Console, w/rocker switches for all sweep functions, including memory sweep with full gauge package including tachometer, engine hour meter, oil pressure indicator, coolant temperature, voltmeter and fuel lever indicator, water level gauge and warning lights for hopper with auxiliary engine, RPM control, side broom down pressure controls and manual reset circuit breakers  
Doors, access fiberglass doors provide easy service and maintenance on auxiliary engine, hydraulic and electrical system  
Electronic Throttle, sweep resume/sweep transport/reverse pick-up  
Fuel Water Separator on Aux Engine

Hopper rear door, hydraulically opened/closed and locked/unlocked with external controls.  
Hose, hydrant fill, 16"8" (5080 mm) with coupling  
In-Cab Hopper Dump  
LED Clearance Lights  
Lights, rear clearance and rear identification  
Manuals, operator and parts  
Mirrors, West Coast type with 8" convex inserts, one each side  
Pick-up head, hydraulically operated, 14" (355 mm) outside diameter pressure hose, 12-3/4" (324mm) inside diameter (11" on FSX) suction hose with quick disconnect on suction side  
pick-up head, three (3) in the suction nozzle, three (3) at each side broom  
Side Broom Outer Position Stop  
Trans Oil Cooler  
Vacuum enhancer, in-cab operated  
Water tank, molded polyethylene, 240 gallons (907L)  
Water pre-filter, hydrant fill hose



MODEL: CROSSWIND TIER III  
CNG / LPG ALTERNATIVE FUELS

-----DECALS-----

1	1090150	RED LOGO/CROSSWIND	N/C	\$0.00
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-----HOPPER OPTIONS-----

1	1085864	RIGHT HAND INSPECTION DOOR	\$390.00	\$390.00
1	1085887	6" HOPPER DRAIN	\$770.00	\$770.00
1	1099834	AUXILIARY HYDRAULIC PUMP	\$1,090.00	\$1,090.00

-----LIFELINER HOPPER-----

1	1092227	LIFELINER HOPPER SYSTEM W/WARRANTY	\$7,000.00	\$7,000.00
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-----MANUALS-----

1	0702430	CROSSWIND SERVICE MANUAL	\$120.00	\$120.00
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-----LIGHTING-----

1	1088214	WIRE/MOUNT REAR STROBE WITH GUARD	\$630.00	\$630.00
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----SIDE BROOM OPTIONS----

1	1087730	RIGHT HAND SIDE BROOM TILT	\$1,015.00	\$1,015.00
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-----WATER SYSTEM-----

1	1032484	25' WATER FILL HOSE (ILO 16' 8")	\$155.00	\$155.00
1	1061652	ANTI SIPHON 2-1/2" AIR GAP	\$170.00	\$170.00

----- M2 CHASSIS OPTIONS -----

1	704007	M2 SERVICE MANUAL	\$0.00	\$0.00
1	1080756	LEFT HAND FENDER MOUNTED MIRROR	\$0.00	\$0.00
1	1081188	EXTRA KEY	\$0.00	\$0.00
1	1081746	(1) BOSTROM 905 VINYL MID-BACK	\$0.00	\$0.00
1	1070639	LED STOP/TURN/TAIL	\$565.00	\$565.00
1	1092147	FRONT SPRAY BAR	\$495.00	\$495.00
1	1081367	HEATED REMOTE MIRRORS	\$0.00	\$0.00

-----WARRANTY-----

1	EW-125-2PL	CROSSWIND 2ND YEAR PARTS/LABOR	\$1,780.00	\$1,780.00
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SPECIAL RFQ OPTIONS OR OTHER DESCRIPTIONS

1	1087829	PM 10 WATER SYSTEM	\$2,750.00	\$2,750.00
		HEC ITEMS		
1	REQUIRED FOR ALL	5# FIRE EXTINGUISHER	\$94.00	\$94.00
1	REQUIRED FOR ALL	TRIANGLES	\$32.00	\$32.00
1	HEC	AM/FM/CD RADIO WITH SPEAKERS/ANTENNA	\$0.00	\$0.00
0				

GRAND TOTAL \$277,716.00

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## **CHASSIS BID**

**Los Angeles Freightliner, Whittier, CA**

Prepared for:  
City of Banning  
176 E. Lincoln St.  
Banning, CA 92220  
Phone: (951)922-3284

Prepared by:  
James Blakely  
LOS ANGELES FTL - WST  
2429 PECK ROAD  
WHITTIER, CA 90601  
Phone: 714-357-0024

## QUOTATION

### M2 112 CONVENTIONAL CHASSIS

SET BACK AXLE - TRUCK  
CUM ISL G 300 HP @ 2100 RPM, 2200 GOV, N-GAS, 860  
LB/FT @ 1300 RPM  
ALLISON 3500 RDS AUTOMATIC TRANSMISSION WITH  
PTO PROVISION  
RS-23-160 23,000# R-SERIES SINGLE REAR AXLE  
HENDRICKSON HAS-230 REAR SUSPENSION @  
23,000#

DETROIT DA-F-10.0-3 10,000# FF1 71.5 KPI/3.74 DROP  
SINGLE FRONT AXLE  
12,000# DUAL TAPERLEAF FRONT SUSPENSION  
112 INCH BBC FLAT ROOF ALUMINUM CONVENTIONAL  
CAB  
4475MM (176 INCH) WHEELBASE  
9/32X3-7/16X10-1/16 INCH STEEL FRAME  
(7.14MMX255.6MM/0.281X10.06 INCH) 120KSI  
2050MM (81 INCH) REAR FRAME OVERHANG

	TOTAL # OF UNITS (1)	PER UNIT	TOTAL
VEHICLE PRICE	\$	119,856	\$ 119,856
EXTENDED WARRANTY	\$	200	\$ 200
DEALER INSTALLED OPTIONS	\$	10,200	\$ 10,200
<b>CUSTOMER PRICE BEFORE TAX</b>	<b>\$</b>	<b>130,256</b>	<b>\$ 130,256</b>

### TAXES AND FEES

TAXES AND FEES	\$	0	\$ 0
OTHER CHARGES	\$	0	\$ 0

### TRADE-IN

TRADE-IN ALLOWANCE	\$	(0)	\$ (0)
<b>BALANCE DUE</b>	<b>(LOCAL CURRENCY) \$</b>	<b>130,256</b>	<b>\$ 130,256</b>

### COMMENTS:

Projected delivery on \_\_\_ / \_\_\_ / \_\_\_ provided the order is received before \_\_\_ / \_\_\_ / \_\_\_.

### APPROVAL:

Please indicate your acceptance of this quotation by signing below:

Customer: X \_\_\_\_\_ Date: \_\_\_ / \_\_\_ / \_\_\_.

### Daimler Truck Financial

Financing that works for you.

See your local dealer for a competitive quote from Daimler Truck Financial, or contact us at [Information@dtfoffers.com](mailto:Information@dtfoffers.com).

Daimler Truck Financial offers a variety of finance, lease and insurance solutions to fit your business needs. For more information about our products and services, visit our website at [www.daimler-truckfinancial.com](http://www.daimler-truckfinancial.com).



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## **CHASSIS BID**

**MAR-CO Equipment Company, Pomona, CA**



City of Banning  
176 Lincoln St, P.O. Box 998  
Banning, CA 92220-0998

**Carl Szoyka**

Phone: 951-922-3286

Fax: 951-849-3891

**Date: 12/29/2014**



Mar-Co Equipment Company  
130 Atlantic Street  
Pomona, Ca 91768

**Bryan Saunders**

Mobile: 909-772-1545

Fax: 909-594-9493

Page # : 1

Quote #: 0814023-1

## TYMCO MODEL 600 2014 DEDICATED CNG REGENERATIVE AIR SWEEPER

### 600 CNG STANDARD EQUIPEMNT

220 gallon water  
Water level indicator  
Hopper spray nozzle  
Hopper suction partition  
Dual gutter broom flood lights  
Cable actuated bleeder door  
Amber beacon light  
Rubber lined blower

5 gpm electric pump  
Water fill hose & rack  
Complete cab instrumentation  
Hydraulic tank sight gauge  
8" convex front mirrors  
Duo skids 2yrs 2000 hours  
Rear hopper flood lights

Low water warning light  
Air gap water fill system  
Illuminated switch paddles  
Dual gutter brooms  
Pressure bleeder door  
Rear mount flashing lights  
Back-up alarm  
Severe weather wiring

### OPTIONAL EQUIPMENT INCLUDED

Gutter broom tilt ®  
Hopper deluge  
Low emissions PM 10  
Dump switch in cab

Hyd level/temp shutdown  
Auxiliary hydraulics  
Auxiliary fuse panel  
Extended gutter broom arm ®

Abrasion protection  
Broom assist head  
Reverse pick up head system  
Pick up head curtain lifter

### SWEEPER AUXILIARY ENGINE

GM 5.7 Kem Engine

Tier 4i Compliant

ULEV Certified

2010 Certified

### MAR-CO CUSTOMER SERVICE

- Unlimited free operator training
- Local parts warehouse
- Guaranteed service response time (16 business hours)
- On-site service support
- Dedicated account manager
- Free technical support

### WARRANTY

- One year sweeper warranty
- Chassis Manufacturer's warranty

130 Atlantic Street • Pomona, CA 91768 • (909)594-9493 • FAX (909)594-7436  
info@marcoequip.com • www.marcoequip.com

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City of Banning  
176 Lincoln St, P.O. Box 998  
Banning, CA 92220-0998

**Carl Szoyka**

Phone: 951-922-3286

Fax: 951-849-3891

**Date: 12/29/2014**



Mar-Co Equipment Company  
130 Atlantic Street  
Pomona, Ca 91768

**Bryan Saunders**

Mobile: 909-772-1545

Fax: 909-594-9493

Page # : 2  
Quote #:0814023-1

## TYMCO MODEL 600 2014 DEDICATED CNG FREIGHTLINER M2 112 CNG CHASSIS 31,000 LB. GVW – ULEV

### 2015 FREIGHTLINER M2-112 CHASSIS

Cummins ISL G 8.9L	300 HP @ 2100 RPM	860 lb-ft Torque @ 1300 RPM
176" Wheelbase	110" Cab to Axle (approximate)	Allison 3500 RDS-P Transmission 12,000 lb.
Front Axle	21,000 lb. Rear Axle	Single Speed (6.14 ratio)
Front Dust Shields	Integral Power Steering w/Cruise	18" Steering wheel, dual gauges
Air Brakes, Cam Type	Q-Plus w/18.7 CFM Air Compressor	Air Tanks mounted between rails
Anti-Lock Brake System	Automatic Slack Adjusters	Front Shock Absorbers
High Back Air Seats	Driver and Passenger	(Bostrom Talladega 910)
(2) Batteries 12 volt	1850 CCATotal Maintenance Free	Alternator - 160 Amp
AM/FM Stereo Radio	CD player, Weatherband and Clock	Tinted Glass
(6) 11Rx22.5 14 Ply	Radial Tires - Duals in Rear	12V Power Supply, in dash
(6) 10 Hole Disc Wheels	22.5 x 8.25, Hub Piloted (Painted White)	External/Internal Grab Handles
Remote Operated Mirror	8" convex mirrors	Left & Right fender mounted
Electric Window Wipers	w/ Washers	Dual Gauges
Voltmeter	Coolant Temperature	Oil Pressure
Tachometer,	Hour Meter	Transmission Temperature
Electronic Tachometer	Frame – 11/32" x 3-1/2" x 10-15/16"	Steel; 120,000 PSI
EnviroMech fuel rack	Behind cab w/Methane Detection System	Air Conditioner
Heater	DefrosterRight	
Frame Mounted	Catalytic Converter /Muffler	Freightliner Dual Steering w/Dual Gauge Package
Options:	Air dryer brakes	Arrow stick LED
LED stop / turn / tail lights	12" parabolic mirrors	
Color: White (N0770EA)		

TYMCO 600 CNG UNIT PRICE: 117,577.50

FREIGHTLINER M2 112 CHASSIS PRICE: 149,750.00

SALES TAX ( 8.0% ): 21,386.20

**TOTAL AMOUNT TO INVOICE: 288,713.70**

NOTE: F.O.B. Destination

Terms: Customer account terms

Quote Good for 30 Days

Delivery: In Stock Unit Immediate Delivery / Ordered unit 90-150 days

No Motor Vehicle Registration, Title or License Fees Included

130 Atlantic Street • Pomona, CA 91768 • (909)594-9493 • FAX (909)594-7436  
info@marcoequip.com • www.marcoequip.com

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## **ATTACHMENT 4**

**Exhibit “D” - Jules and Associates, Inc. Lease Proposal**



**JULES AND ASSOCIATES, INC.**  
EQUIPMENT FINANCE SPECIALISTS

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**Lease Proposal  
for  
City of Banning**

Presented by  
Jules and Associates, Inc.  
Tuesday, November 18, 2014

## Executive Summary

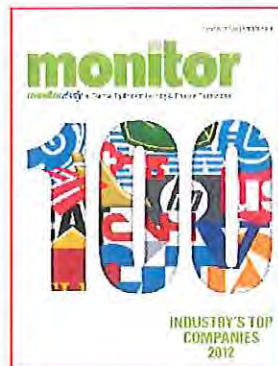
Founded in 1989, Jules and Associates, Inc. is one of the nation's fastest growing, privately held equipment lease financing corporations. Headquartered in Downtown Los Angeles, Jules and Associates serves companies and organizations in all 50 states and has achieved a client list that includes many Fortune 1000 companies. The company has maintained its position amongst the largest finance companies by creating specific programs and solutions for the various industries it serves. Thanks to its insight into American business, Jules and Associates has realized unprecedented growth and has been able to meet customers' needs through an aggressive, innovative and efficient approach to leasing and financing.

Today, Jules and Associates, Inc. serves its clients through a series of customized programs that vary from lease financing to asset tracking and management. The list below represents some highlights of the company.

- Consistently Ranked amongst the top 100 leasing companies (Monitor Magazine)
- Ranked in the Top 25 independent leasing companies (Monitor Magazine)
- Centralized Credit & Documentation department increasing efficiencies in communication to provide you with a fast credit process and funding process
- One designated point of contact for the life of the lease
- Same management in place in all departments for over 15 years with a combined 75 years of leasing experience, providing you with consistent service.
- State of the art software programs to assist with processing complex funding requests (multiple schedules, multiple vendors over various timelines)
- Over 90% of our lease schedules, include at least two vendors with various funding time lines, we have expertise in managing multiple vendors, different timelines and different needs
- Over \$1 billion in assets financed



**MINORITY BUSINESS  
ENTERPRISE  
2011-2014**



**MONITOR'S  
TOP 100  
2012**



**TOP PRIVATE  
INDEPENDENTS  
2011**



## Lease Summary

We are pleased to confirm the following Financing Proposal by Jules and Associates pursuant to the terms and conditions outlined herein:

**LESSEE:** City of Banning

**LESSOR:** Jules and Associates, Inc.

**EQUIPMENT:** One New Elgin CNG Crosswind J Sweeper (J30243)

**TRANSACTION TYPE:** Capital Lease

**Option #1 – Capital Lease with \$1.00 buyout**

**EQUIPMENT COST:** \$299,934.00 (Inclusive of Tax)

**TERM:** 5 Years

**ANNUAL PAYMENT AMOUNT:** \$65,000.00

**LEASE RATE FACTOR:** .2167143

**END OF TERM OPTIONS:** Purchase the equipment for \$1.00

**FINAL AMOUNT VARYING:** The payment is based on the final amount of \$299,934.00. Should the final amount differ due to taxes, changes in manufacturer/vendor cost, or changes in actual items purchased, the corresponding payment can be calculated by multiplying that said amount by the Lease Rate Factor.

**NON-UTILIZATION:** No penalties or fees shall be assessed on unused financed amounts.

**LOCATION:** USA

**INSURANCE:** Coverage naming Lessor as loss payee and additional insured for fire, theft and extended coverage.

**DOCUMENTATION:** Jules and Associates, Inc. standard documents are contemplated. Final terms and conditions are subject to the Lease Agreement between Lessee and Lessor, and all addenda, amendments and related documents thereto, as may be amended by the proposed transaction, all of which shall prevail. The Lessee hereby authorizes Jules and Associates, Inc. to file financing statements in advance of funding in any jurisdiction where permitted by law describing the collateral as set forth on this proposal along with all proceeds (as such term is defined in Article 9 of the Uniform Commercial Code) thereof, including insurance proceeds, and debtor's books and records relating thereto. Lessor to bill Lessee monthly lease payments in advance. The first regular rental payment will be due upon lease commencement. Any deposit received will be applied to the first regular rental payment.

**RATE INDEX:** The monthly payment quoted herein is based upon current money market conditions and is subject to adjustment based upon an increase in the like term SWAPS rate between now and lease schedule commencement(s). The base rate for comparison shall be 1.17% (3 year), and 1.77% (5 Year), respective to the above term, as of November 17th, 2014.

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**PROPOSAL DEPOSIT:** Upon approval a good faith deposit of one month's payment is due to Jules and Associates, Inc. This deposit will be applied to the last billing period, due upon lease schedule commencement(s). In the event that Jules and Associates, Inc. commits to this financing and the Lessee fails to close through no fault of Jules and Associates, Inc. this deposit will be returned minus the costs associated with this transaction. Should Jules and Associates Inc. not commit to this financing the deposit shall be returned in full. In consideration of Lessor's time and effort in reviewing and working on the offer, Lessee agrees that its offer shall be irrevocable for a period of thirty (30) business days after Jules and Associates, Inc. has received all credit information from Lessee.

**LATEST MONEY TAKEDOWN:** January 15<sup>th</sup>, 2015


Since we will be using a net lease, Lessee will be responsible for all costs of maintenance, operation, insurance, taxes, and all other terms and conditions of the Lease Agreement. This proposal is subject to final approval by Jules and Associates, Inc. Finance committee.

### Acceptance

Your confirmation of the terms and conditions being proposed by you as outlined herein will be indicated by signing a copy of this Proposal and returning it to us along with a deposit of one month's payment. **This Proposal will expire on December 1<sup>st</sup>, 2014 unless previously accepted.**

We look forward to working with you on this and future transactions.

Sincerely,  
Jules and Associates, Inc.

  
Michael Scott Behar  
Sales Manager

**AGREED AND ACCEPTED**  
**City of Banning**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## CITY COUNCIL AGENDA

**DATE:** January 13, 2014

**TO:** City Council

**FROM:** Duane Burk, Director of Public Works

**SUBJECT:** Resolution No. 2015-02, "Approving a Professional Services Agreement with Western Riverside Council of Governments for Residential and Commercial Diversion Services"

**RECOMMENDATION:** The City Council adopt Resolution No. 2015-02, "Awarding a Professional Services Agreement to Western Riverside Council of Governments for Residential and Commercial Diversion Services" in the amount of \$100,000.00 for a two year term (\$50,000.00 per year for FY 2014/2015 and FY 2015/2016).

**JUSTIFICATION:** It is essential to award a Professional Services agreement to Western Riverside Council of Governments ("WRCOG") in order to continue providing Residential and Commercial Diversion Services that assist the City with meeting the requirements of AB 939 and AB 341.

**BACKGROUND:** WRCOG is an association that represents member local governments, mainly cities and counties, that seek to provide cooperative planning, coordination, and technical assistance on issues of mutual concern that cross jurisdictional lines. WRCOG assists local agencies and counties with various aspects including, but not limited to, regional transportation issues, community growth and development, and environmental issues to name a few. WRCOG has continuously provided the City of Banning with valuable services within the realm of environmental compliance. The most recent Professional Services agreement between the City of Banning and WRCOG expired on June 30, 2014. This agreement covered activities that assisted the City in meeting AB 939 and AB 341 requirements. In order to remain in compliance, renewal of the agreement is prudent.

The scope of services include staffing for outreach events, promotional development, chamber events, commercial business visits, household hazardous waste and bulky goods events, business workshops, and franchise agreement assistance. The services provided ensure that the City is in compliance with AB939 which requires mandated local jurisdictions to meet the solid waste diversion goal of 50 percent. The California Integrated Waste Management Board determines this diversion by looking at the base-year solid waste generation to determine the amount of solid waste diverted. Each jurisdiction is required to create an Integrated Waste Management Plan that reviews recycling programs, purchasing of recycled products and waste minimization. WRCOG's services also ensure that the City is in compliance with AB341 which requires mandatory commercial recycling by certain businesses and public entities and sets a state wide 75 percent waste diversion goal.


Further information regarding the referenced assembly bills is provided in the memorandum from WRCOG dated October 31, 2014 attached hereto as Exhibit "A". This memorandum also provides a breakdown of WRCOG's responsibilities including education, outreach, monitoring and reporting, as well as, briefly defines the services provided by WRCOG and Waste Management. A summary of services provided by Waste Management is attached as Exhibit "B".

A rate comparison for surrounding areas served by Waste Management is attached as Exhibit "C". As reflected in the summary, the City of Banning experiences lower rates than those in surrounding areas. In order for Waste Management to provide these lower rates, the focus of services mainly relate to the operations of hauling waste opposed to the educational and outreach programs provided by WRCOG. Waste Management can expand its focus to include educational and outreach programs specifically focused on Banning; however, as a direct result, these services would be provided at an additional cost consequently increasing the rates for the City's residents and businesses.

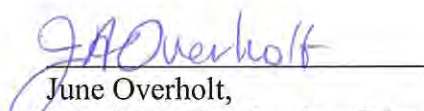
The proposed professional services agreement with WRCOG, attached hereto as Exhibit "D," is for a period of twenty-four (24) months beginning July 1, 2014 and ending June 30, 2016 with a thirty (30) day termination clause with a provision to extend the contract for an additional two years, based upon an annual review of the provided services.

**FISCAL DATA:** The term of the agreement is for a two year period for an amount of \$100,000.00 (\$50,000.00 per year for FY 2014/2015 and 2015/2016). The funds are available in Refuse Account No. 690-9600-453.33-11 (Professional Services).

**RECOMMENDED BY:**

  
Duane Burk,  
Director of Public Works

**REVIEWED BY:**

  
June Overholt,  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Interim City Manager

**Attachments:**

1. Exhibit "A" - Memorandum from WRCOG dated October 31, 2014
2. Exhibit "B" - Summarization of Services Provided by WM
3. Exhibit "C" - Comparison of Rates for Surrounding Areas
4. Exhibit "D" - Proposed Agreement with WRCOG dated August 1, 2014

## **RESOLUTION NO. 2015-02**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS FOR RESIDENTIAL AND COMMERCIAL DIVERSION SERVICES**

**WHEREAS**, Western Riverside Council of Governments (“WRCOG”) is an association that represents member local governments, mainly cities and counties, that seek to provide cooperative planning, coordination, and technical assistance on issues of mutual concern that cross jurisdictional lines such as regional transportation issues, community growth and development and environmental issues.; and

**WHEREAS**, WRCOG has continuously provided the City of Banning with valuable services within the realm of environmental compliance; and

**WHEREAS**, the most recent professional services agreement between the City of Banning and WRCOG expired on June 30, 2014 and thus it is prudent to issue a new contract Agreement; and

**WHEREAS**, scope of services include staffing for outreach events, promotional development, chamber events, commercial business visits, household hazardous waste and bulky goods events, business workshops, and franchise agreement assistance; and

**WHEREAS**, WRCOG’s services will ensure that the City of Banning remains in compliance with AB939 (solid waste diversion) and AB341 (commercial recycling); and

**WHEREAS**, the proposed professional services agreement is for two years: FY 2014/2015 and FY 2015/2016 and includes a provision to extend the agreement for an additional two years based upon a review of the services provided.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Banning, as follows:

SECTION 1. The City Council adopt Resolution No. 2015-02, “Approving a Professional Services Agreement to Western Riverside Council of Governments for Residential and Commercial Diversion Services” in the amount not to exceed \$100,000.00 (\$50,000.00 per year for FY 2014/2015 and 2015/2016).

SECTION 2. The City Manager is authorized to execute the professional services agreement between the City of Banning and WRCOG, in a form approved by the City Attorney, for two years: FY 2014/2015 and FY 2015/2016. This authorization will be rescinded if the contract agreements are not executed within sixty (60) days of the date of this resolution.

**PASSED, APPROVED, AND ADOPTED** this 13<sup>th</sup> day of January, 2015.

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Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

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Marie A. Calderon,  
City Clerk of the City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

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David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-02 was adopted by the City Council of the City of Banning at the regular meeting thereof held on the 13<sup>th</sup> day of January, 2015.

AYES:

NOES:

ABSENT:

ABSTAIN:

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Marie A. Calderon,  
City Clerk of the City of Banning

**ATTACHMENT 1 - EXHIBIT "A"**

**Memorandum from WRCOG dated October 31, 2014**





# Western Riverside Council of Governments

## Solid Waste Technical Committee

### Staff Report

**Subject:** WRCOG's Fiscal Year 2013/1014 Contract Activities with the City of Banning

**Contact:** Jennifer DiCiano, Program Manager, [diciano@wrcog.cog.ca.us](mailto:diciano@wrcog.cog.ca.us), (951) 955-8587

**Date:** October 31, 2014

WRCOG contracts with the City of Banning to implement mandated recycling outreach and educational programs that are required by the State of California under Assembly Bill (AB) 939 and AB 341, for local jurisdictions to meet solid waste diversion goals.

#### **Summary of local jurisdictions requirements under AB 939 and AB 341:**

**AB 939 Requirements:** Mandated local jurisdictions to meet solid waste diversion goals of 25 percent by 1995 and 50 percent by 2000. The California Integrated Waste Management Board determined this diversion by looking at the base-year solid waste generation (waste normally disposed of into landfills) to determine the amount of solid waste diverted. To help in the increase of diversion rates, each jurisdiction was required to create an Integrated Waste Management Plan that looked at recycling programs to include education/outreach, purchasing of products and waste minimization.

Although the City of Banning has met the 50 percent diversion goal mandate, educational programs remain to be critical for local jurisdictions in order to meet the mandatory commercial recycling measures listed under AB 341, and the recent statewide solid waste diversion goal of 75 percent by the year 2020.

**AB 341 Requirements:** On and after July 1, 2012, a business that generates more than four cubic yards of commercial solid waste per week or is a multifamily residential dwelling of five units or more shall arrange for recycling services, consistent with state or local laws or requirements, including a local ordinance or agreement, applicable to the collection, handling, or recycling of solid waste, to the extent that these services are offered and reasonably available from a local service provider.

**Purpose of AB 341:** To reduce GHG emissions by diverting commercial solid waste to recycling efforts and to expand the opportunity for additional recycling services and recycling manufacturing facilities in California.

#### **Key Roles:**

**Business Commercial Recycling Requirements:** A business (includes public entities) that generates more than four cubic yards of commercial solid waste per week or is a multifamily residential dwelling of five units or more shall arrange for recycling services. A commercial waste generator shall take at least one of the following actions:

- Source separate recyclable materials from solid waste and subscribe to a basic level of recycling service that includes collection, self-hauling, or other arrangements for the pickup of the recyclable materials.
- Subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation.

**Local Government Requirements (Your City):** The City of Banning shall implement a commercial solid waste recycling program that consists of education, outreach and monitoring of businesses, that is appropriate for that jurisdiction and is designed to divert commercial solid waste from businesses. The City shall report the

progress achieved in implementing its commercial recycling program, including education, outreach and monitoring, and if applicable, enforcement efforts and exemptions, by providing updates in its electronic AB 939 Annual report

The California Department of Resource Recycling and Recovery (CalRecycle) advises businesses to contact their local recycling coordinator to find out how to recycle in their community and if there are any specific requirements in their community. Communities may have mandatory commercial recycling ordinances with different thresholds or more specific business recycling requirements than the state law; however, ordinances are not mandatory actions at this time. WRCOG serves as the recycling coordinator for the City, implementing the education and outreach programs, and monitoring of businesses, all of which are required under AB 341. However, these educational programs are different from those required by the City's local waste hauler.

WRCOG Tasks include:

- Education
  - Work with Waste Management Inc., to acquire a list of businesses and multifamily (MF) dwellings that are required to recycle and do not currently have a recycling program
  - Call business and MF dwellings to introduce AB 341
  - Schedule on-site visits with business and MF dwellings
  - Provide business and MF dwellings with an overview of their requirements under AB 341
  - Provide business and MF dwellings with an overview of the City's requirements under AB 341
  - Provide business and MF dwellings with the best approach to start a recycling service
  - Provide business and MF dwelling with the contact person from Waste Management Inc., to assist them with setting up the recycling program
  - Follow-up with the business and MF dwelling to confirm that correspondence has been successful with Waste Management Inc., staff, and a recycling service option has been provided
  - Offer MF dwellings a short workshop for their tenants on best practices for recycling
  - Provide business workshops for local business (2 per year)
  - Provide presentations at Chamber of Commerce meetings
  - Provide business and MF dwellings with an AB 341 informational flyer to distribute to tenants and to post on their website
- Outreach
  - Provide articles for the Chamber of Commerce monthly newsletter on AB 341 and the benefits of recycling
  - Create a business Recycling Guide (Guide) and distribute to business and MF Dwellings
  - Update Guide as needed
  - Post AB 341 information on the City website and WRCOG website
  - Attend the Chamber of Commerce Business to Business meetings (two to three times /year)
  - Staff booths at community events and provide residents and businesses with recycling tools and kits, which are purchased and created with Contract funds
  - WRCOG provides a 1-800 number for residents, businesses, and MF dwellings to call for information regarding recycling, b goods days, and the proper disposal of household hazardous waste materials
- Monitoring
  - Follow-up with businesses that are not recycling and remind them about the state law and the various ways that they could recycle
  - Targeting the largest businesses the first year and bringing in other businesses in subsequent years
  - WRCOG works with Waste Management Inc., to monitor and notify businesses that are not recycling; however, WRCOG initiates site visits to provide the education
  - WRCOG contacts Waste Management Inc. to inform them of which businesses and MF dwellings have been revisited and are ready to begin a recycling service
- Reporting
  - WRCOG prepares the City's Annual AB 939 report and the report requires detailed information on the establishment, educational outreach efforts, successes, and follow-up of the AB 341 Mandatory Recycling Program



WRCOG's key goal and services: To provide residents and businesses/commercial sector with education informing them about reducing waste, reusing materials, and recycling. This education is performed by attending community events, community clean-ups, bulky Goods Day events, and other community functions upon request. In addition, WRCOG provides residents with an annual *The Complete Guide to Residential Recycling*, and provides businesses/commercial sector with an annual *Recycle Banning, A Guide to Smart Business Recycling*

Waste Management Inc.'s key goal and services: To provide residential curbside pick-up of trash, green waste and recyclables, to provide businesses/commercial sector with trash and recycling services, to provide roll-off bins during the City Bulky Goods Day events, and to provide the businesses/commercial sector with information on AB 341

#### WRCOG's Activities and Expenditures for Fiscal Year 2013/2014

Activity	<u>Waste Management Operations Services</u>	Waste Management Cost	<u>WRCOG Education and Outreach Services</u> WRCOG Staff Time	Hours Worked	Total Cost
Stagecoach Days	Provides recycling and trash containers		Jenn DiCiano set-up for Stagecoach Days	13	\$453.31
Stagecoach Days	Provided 60 event boxes for trash and 2 boxes for recycling	\$2,000	Jenn DiCiano	15	\$0.00
Stagecoach Days			Simone Blackwell	4	\$62.80
Stagecoach Days			Tyler Masters	5	\$102.30
Stagecoach Days			Araceli Ruiz	5	\$106.8
Stagecoach Days booth fees					\$80.00
Banning Railroad Festival			Jenn DiCiano	8	\$0.00
Spring Festival			Jenn DiCiano	6	\$0.00
Disaster Safety Fair	Host a booth and staff works		Jenn DiCiano	6	\$0.00
Earth Day			Araceli Ruiz	9	\$192.24
Invoice - Rad Hatter Vendor for the Annual Spring festival Provides participants materials to make paper bag hats from recycled materials, promoting the use of used materials to create something fun and creative					\$675.0
Assist Program Manager with researching promotional items for outreach			Mina Damavandi	20	\$240

Promotional Development			Jenn DiCiano	5	\$174.35
Items for educating businesses and multifamily complexes, an <u>AB 341 requirement</u> . Items include: pens, coffee mugs, and reusable grocery bags. Promotional items are ordered to hand out to residents promoting/educating recycling at 8 local community events, an <u>AB 939 requirement</u> . Ordered tools for community clean-ups (gloves, garbage bags, t-shirts)					\$13,857.37
Chamber of Commerce dues					\$60.00
HHW event			Taylor York	6	\$116.94
Oil Recycling event			Jenn DiCiano	6	\$0.00
Bulky Goods Day on 4/19/2014	Provides 6 roll-off bins and 2 to 3 drivers	\$3,500	Araceli Ruiz	5	\$106.8
Bulky Goods Day on 4/19/2014			Jenn DiCiano	6	\$0.00
Shredding at Bulky Goods Days					\$400.00
October and April events					\$400.00
Bulky Goods Day on 10/4/2014	Provides 6 roll-off bins and 2 to 3 drivers	\$3,500	Taylor York	5	\$97.45
Community Clean-Up Day			Jenn DiCiano	5.5	\$0.00
<u>Mileage</u> to drive to events and to storage to prepare for events 0.56/per mile			Jenn DiCiano		\$100.00
			Araceli Ruiz		\$6.72
			Jenn DiCiano		\$39.20
Infosend inserts the advertising/flyer for the Bulky Goods Day events Jenn creates flyers advertising the Bulky Goods Day and Free Shredding. Jenn worked with City of Banning Staff and infosend.			Jenn DiCiano	17	\$592.79
Infosend invoices - Bulky Goods Day flyer infosend inserted into the City of Banning' utility bill					\$579.72
					\$261.64
Record Gazette Invoices - ads for HHW and Bulky Goods Day events					\$998.50
					\$210.00
Filter Recycling – household battery pick-up cost Jenn arranges with Filter			Jenn DiCiano	4	\$139.48



Recycling to pick-up spent household batteries from Corp Yard					
Filter Recycling invoices - Cost for pick-up of batteries					\$667.58 \$634.05 \$175.95
Assist with researching the information for the Business Recycling Guide			Mina Damavandi	30	\$360
Create and printing of business brochures and recycling guide for residents- AB341 and AB 939 educational requirements			Taylor York	55	\$1,071.95
Protech Insurance - Certificate of Liability Insurance required for the Contract between WRCOG and Banning					\$250.00
Schedule meetings with businesses and Multifamily (MF) complexes and meet with these businesses to educate them on AB341 (called & scheduled meetings with 11 MF complexes and 10 businesses). Provides a presentation on AB 341 to the Chamber of Commerce Business-to-Business Group one time per year	Set up Pepper Tree Apartments with a 3 yard recycle bin on 8/2/2014 and literature regarding what goes into the recycle bin		Jenn DiCiano	35	\$1,220.45
Franchise agreement review			Jenn DiCiano	11	\$402.71
Chamber of Commerce news article – Jenn creates articles for the Chamber of Commerce monthly newsletter (as needed)			Jenn DiCiano	24	\$878.64
Chamber of Commerce - Donation for an event	Installation Dinner Sponsorship	\$500			\$100.00
Prepare reports and review staffs work on projects			Jenn DiCiano	51	\$1,867.11
Monthly meetings with Duane and Waste Management Inc.			Jenn DiCiano	36	\$1,317.96
WRCOG Over-Head Cost					\$13,000.80
WRCOG Benefits					\$5,460
<b>Total Expenses</b>		<b>\$9,500</b>			<b>\$47,461.41</b>

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**Staff time includes:**

Jennifer DiCiano - Program Manager - 74 hours at \$34.87/hr = \$2,580.38

Jennifer DiCiano - Program Manager – 122 hours at \$36.61/hr = \$4,466.42

Taylor York - Staff Analyst – 66 hours at \$19.49/hr = \$1,286.34

Tyler Masters - Staff Analyst – 5 hours at \$20.46/hr = \$102.30

Araceli Ruiz - Administrative Assistance – 19 hours at \$21.36/hr = \$405.84

Simone Blackwell -Technician – 4 hours at \$15.70/hr = \$62.80

Mina Damavani - Intern – 50 hours at \$12/hr = \$600.00

**Total Staff time = \$9,504.08**

WRCOG Benefits = \$5460.80

WRCOG Overhead cost = \$13,000.80

**Staff time including benefits and overhead - \$27,965.68**

**Total Budget: \$47,461.41**

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Bus date: 11/19/2014

WRCOG  
Project Detail Report By GLA

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Setup by: Amphonphong

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Amount Range...: \*\* All \*\*  
Journals.....: \*All\*  
Include Periods: Detail |Adj. period 1|Adj. period 2|Adj. period 3|  
Include Periods: Adj. period 4|  
Include Attrs...: EX | | | | | | | | | | | | | |  
Exclude Attrs...: | | | | | | | | | | | | | |  
Show detail....: Yes

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 Bus date: 11/19/2014

WRCOG  
 Project Detail Report By GLA

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Date	Transaction	Jnl	Description	Ref 1	Ref 2	Ref 3	Posted Amount
1162 00 00 110 8 0 60 0 01 Salaries & Wages-Fulltime							
07/01/2013	14279T-0000025	GJNL	To Corrt CompTime Bal from PR	07/01/13	sa	AJE#2	641.00
07/01/2013	14280T-0000025	GJNL	Rev14279 FY12-13 Adj Journal	07/01/13	sa	AJE#2	641.00CR
07/03/2013	12902T-0000063	LABOR	DiCiano, Jennifer L	57	H	15.00	502.95
07/03/2013	12917T-0000029	GJNL	Rev12916 Payroll Accrd 6/10-23	6/28/13	sa		502.95CR
07/18/2013	12952T-0000068	LABOR	DiCiano, Jennifer L	57	H	3.00	104.61
08/01/2013	12999T-0000061	LABOR	DiCiano, Jennifer L	57	H	4.00	139.48
08/15/2013	13031T-0000067	LABOR	DiCiano, Jennifer L	57	H	8.00	278.96
08/29/2013	13088T-0000061	LABOR	DiCiano, Jennifer L	57	H	2.00	69.74
09/12/2013	13163T-0000065	LABOR	DiCiano, Jennifer L	57	H	6.00	209.22
09/26/2013	13215T-0000067	LABOR	DiCiano, Jennifer L	57	H	7.00	244.09
09/26/2013	13215T-0000068	LABOR	Masters, Tyler A	66	H	5.00	102.30
09/26/2013	13215T-0000069	LABOR	Blackwell, Simone	73	H	4.00	62.80
10/10/2013	13285T-0000063	LABOR	DiCiano, Jennifer L	57	H	2.00	69.74
10/24/2013	13339T-0000068	LABOR	DiCiano, Jennifer L	57	H	5.00	174.35
11/07/2013	13399T-0000067	LABOR	DiCiano, Jennifer L	57	H	4.00	139.48
11/21/2013	13444T-0000061	LABOR	DiCiano, Jennifer L	57	H	4.00	139.48
12/05/2013	13482T-0000067	LABOR	DiCiano, Jennifer L	57	H	8.00	278.96
12/19/2013	13527T-0000078	LABOR	DiCiano, Jennifer L	57	H	9.00	313.83
01/02/2014	13570T-0000065	LABOR	DiCiano, Jennifer L	57	H	12.00	418.44
01/04/2014	13728T-0000001	GJNL	Adj TY 12/9-22 14hrs to 1162	1/04/14	sa		272.86
01/30/2014	13631T-0000061	LABOR	DiCiano, Jennifer L	57	H	10.00	366.10
02/13/2014	13665T-0000074	LABOR	DiCiano, Jennifer L	57	H	9.00	329.49
02/13/2014	13665T-0000075	LABOR	York, Taylor G	69	H	6.00	116.94
02/27/2014	13688T-0000064	LABOR	DiCiano, Jennifer L	57	H	7.00	256.27
02/27/2014	13688T-0000065	LABOR	York, Taylor G	69	H	18.00	350.82
03/13/2014	13747T-0000074	LABOR	DiCiano, Jennifer L	57	H	14.00	512.54
03/13/2014	13747T-0000075	LABOR	York, Taylor G	69	H	5.00	97.45
03/27/2014	13813T-0000070	LABOR	DiCiano, Jennifer L	57	H	13.00	475.93
03/27/2014	13813T-0000071	LABOR	York, Taylor G	69	H	6.00	116.94
04/10/2014	13860T-0000068	LABOR	York, Taylor G	69	H	12.00	233.88
04/24/2014	13931T-0000060	LABOR	Ruiz, Araceli	49	H	9.00	192.24
04/24/2014	13931T-0000061	LABOR	York, Taylor G	69	H	5.00	97.45
05/08/2014	13984T-0000057	LABOR	Ruiz, Araceli	49	H	10.00	213.60
05/08/2014	13984T-0000058	LABOR	DiCiano, Jennifer L	57	H	5.00	183.05
05/22/2014	14024T-0000059	LABOR	DiCiano, Jennifer L	57	H	27.00	988.47
06/05/2014	14082T-0000045	LABOR	DiCiano, Jennifer L	57	H	15.00	549.15
06/19/2014	14151T-0000065	LABOR	DiCiano, Jennifer L	57	H	13.00	475.93
06/27/2014	14252T-0000028	GJNL	Salaries & Wages Fulltime	06/27/14	sc		183.05
06/30/2014	14256T-0000010	GJNL	Payroll Accrd 6/23-6/30/14	6/30/14	sa	Envrmt	146.44
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1162 00 00 110 8 0 60 0 10 TEMPORARY SALARIES							
00/29/2013	13088T-0000069	LABOR	Damavandi, Mina A.	78	H	10.00	120.00
09/12/2013	13163T-0000070	LABOR	Damavandi, Mina A.	78	H	40.00	480.00
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07/31/2013	13259T-0000024	GJNL	7/13 Benefit Distribution	7/31/13	sa		334.75
08/30/2013	13261T-0000024	GJNL	8/13 Benefit Distribution	8/30/13	sa		334.75
09/30/2013	13263T-0000024	GJNL	9/13 Benefit Distribution	9/30/13	sa		334.75

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 Bus date: 11/19/2014

WRCOG  
 Project Detail Report By GLA

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	Date	Transaction	Jnl	Description	Ref 1	Ref 2	Ref 3	Posted Amount
1162	00 00 110 8 0 61 0 00	Fringe Benefits			** Continued **			
	10/02/2013	13265T-0000024	GJNL	10/13 Benefit Distribution	10/02/13	sa		334.75
	11/12/2013	13423T-0000024	GJNL	11/13 Benefit Distribution	11/13/13	sa		334.75
	12/04/2013	13504T-0000024	GJNL	Benefit Distribution 12/13	12/04/13	sa		334.75
	01/06/2014	13587T-0000024	GJNL	1/14 Benefit Distribution	1/06/14	sa		334.75
	02/27/2014	13719T-0000023	GJNL	Benefit Distribution 2/14	2/27/14	sa		334.75
	03/10/2014	13760T-0000024	GJNL	3/14 Benefit Distribution	3/10/14	sa		334.75
	04/24/2014	13967T-0000023	GJNL	4/14 Benefit Distributrion	4/24/14	sa		334.75
	04/30/2014	13979T-0000000	GJNL	Adj P1162Benefit Distribution	4/30/14	sa	P1162	1,443.80
	05/12/2014	14017T-0000023	GJNL	5/14 Benefit Distribution	5/12/14	sa	Environmen	334.75
	06/30/2014	14363T-0000023	GJNL	Benefit Distribution 6/14	6/30/14	sa	Environmnt	334.75
1162	00 00 110 8 0 61 0 00	Fringe Benefits						5,460.80
1162	00 00 110 8 0 63 0 00	Overhead Allocation						
	07/30/2013	13260T-0000023	GJNL	7/13 Overhead Distribution	7/30/13	sa		1,083.40
	08/30/2013	13262T-0000023	GJNL	8/13 Overhead Distribution	8/30/13	sa		1,083.40
	09/30/2013	13264T-0000023	GJNL	9/13 Overhead Distribution	9/30/13	sa		1,083.40
	10/02/2013	13266T-0000023	GJNL	10/13 Overhead Distribution	10/02/13	sa		1,083.40
	11/12/2013	13424T-0000023	GJNL	11/13 Overhead Distribution	11/12/13	sa		1,083.40
	12/04/2013	13505T-0000023	GJNL	Overhead Distribution 12/13	12/04/13	sa		1,083.40
	01/06/2014	13588T-0000023	GJNL	1/14 Overhead Distribution	1/06/14	sa		1,083.40
	02/27/2014	13720T-0000022	GJNL	Overhead Distribution 2/14	2/27/14	sa		1,083.40
	03/10/2014	13761T-0000023	GJNL	3/14 Overhead Distribution	3/10/14	sa		1,083.40
	04/24/2014	13969T-0000019	GJNL	4/14 Overhead Distribution	04/24/14	sa		1,083.40
	05/12/2014	14018T-0000019	GJNL	5/14 Overhead Distribution	5/12/14	sa	Environmen	1,083.40
	06/30/2014	14364T-0000019	GJNL	Overhead Distribution 6/14	6/30/14	sa	Environmnt	1,083.40
1162	00 00 110 8 0 63 0 00	Overhead Allocation						13,000.80
1162	00 00 110 8 0 73 1 07	Event Support						
	07/16/2013	12956T-0000001	PURCH	Banning Chmbr #4082 Real Estat	17080	4082		100.00
	08/29/2013	13109T-0000012	PURCH	Banning StageCoach 9/6-9/8/ Ba	17250	8/26/13		80.00
	09/18/2013	13203T-0000042	PURCH	Filter Recycling Service #1727	17349	172772		667.58
	10/03/2013	13274T-0000008	PURCH	Paper Recycling Banning 10/5/1	17388	10/3/13		400.00
	10/16/2013	13331T-0000040	PURCH	Infosend #73187 Bulky Goods 10	17470	73187		579.72
	10/30/2013	13384T-0000047	PURCH	ProTech Ins #355 (Added Bannin	17530	355		250.00
	12/12/2013	13523T-0000035	PURCH	Filter Recycling #174095 Batte	17714	174095		634.05
	02/05/2014	13821T-0000007	PURCH	Jenn DiCiano Mileage 2/19 - 3/	18171	3/24/14		100.00
	02/13/2014	13669T-0000021	PURCH	Creative Promo #586 Banning Ev	17983	586		2,678.23
	04/23/2014	13939T-0000054	PURCH	Filter Recycling #176758 Banni	18309	176758		175.95
	04/23/2014	14201T-0000001	GJNL	Rad Hatter #5032014 Recyc 5/3	04/23/14	sc	1167>1162	675.00
	04/29/2014	14203T-0000001	GJNL	Paper Recyc Banning Evt	04/29/14	sc	1167>1162	400.00
	04/30/2014	13978T-0000016	PURCH	Infosend #79381 Apr Blky Gds B	18323	79381		261.64
	05/07/2014	13994T-0000030	PURCH	Record Gazette Banning Shred A	18360	5/3/14		210.00
	05/29/2014	14073T-0000034	PURCH	Wells Fargo MC 4/15/14-5/16/14	18457	5/16/14		208.00
	06/11/2014	14143T-0000045	PURCH	Record Gazette 5/3/14 Banning	18543	5/3/14		998.50
	06/30/2014	14360T-0000135	GJNL	Creative Promo#604 Banning Eve	6/30/14	sa	14281	10,971.14
1162	00 00 110 8 0 73 1 07	Event Support						19,389.81
1162	00 00 110 8 0 73 1 13	Membership Dues						
	03/19/2014	13790T-0000025	PURCH	Banning Chmbr #4386 Membr Oues	18148	4386		60.00
1162	00 00 110 8 0 73 1 13	Membership Dues						60.00

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WRCOG  
Project Detail Report By GLA

Reporting: 07/01/2013 to 06/30/2014  
CSAC0T0.L03 Page 3

1162 Banning Outreach

Date	Transaction	Jnl Description	Ref 1	Ref 2	Ref 3	Posted Amount
1162 00 00 110 8 0 73 6 11		Travel-Mileage Reimbursement				
03/06/2014	13738T-0000004	PURCH Araceli Ruiz Mileage 2/3-3/3/1	18053	3/3/14		6.72
06/11/2014	14143T-0000004	PURCH Jenn DiCiano Mileage 4/8/14-5/	18521	6/5/14		39.20
1162 00 00 110 8 0 73 6 11		Travel-Mileage Reimbursement				45.92
1162 Banning Outreach						47,461.41



Run date: 11/19/2014 @ 13:04  
Bus date: 11/19/2014

WRCOG  
Project Detail Report By GLA

Reporting: 07/01/2013 to 06/30/2014  
CSACD.D.L03 Page 4

Date	Transaction	Jnl	Description	Ref 1	Ref 2	Ref 3	Posted Amount
** Report total **							47,461.41

**RESPONSIBILITIES TO BE PERFORM FOR THE  
CITY OF BANNING**

## **SCHEDULE OF COMPENSATION**

The total funding in the amount of \$50,000 per year is budgeted for fiscal year 2014-2015 and 2015-2016. Funding will be dispersed upon approval of the WRCOG Executive Director.

1. Attend monthly meetings with City staff and WMI staff to address any issues with the waste and recycling hauling services.
2. Attend and provide updates to the City Council on endeavors made to promote recycling and waste reduction.
3. Assist the City in any franchise agreement negotiations or rate analysis as needed.
4. Promote the City's Bulky Goods Day events via City utility bill insert two (2) times per year and work each event.
5. Promote the City's Household Hazardous Waste Events via PennySaver and/or Record Gazette two (2) times per year.
6. Update as required, and print comprehensive business brochure that outlines all the services available through the City's current waste hauler, listing of local recycling centers, and a listing of additional resources where businesses can take recyclable materials or have recyclable materials picked up.
7. Create and email a letter, post card or information source with the business brochure to all businesses that details the new outreach efforts of existing programs. WRCOG staff would then follow up with the businesses through phone calls and/or site visits.
8. Work with Multi-family complexes to educate them on AB 341, Mandatory Commercial Recycling Measure and assist the complexes with scheduling with their Waste Hauler to implement a recycling program, and/or conduct a workshop for businesses, including the MF complexes. This workshop will feature speakers from the waste haulers, local diversion centers, and other businesses with successful diversion programs. Surveys will be used to determine the best times, dates, and interest in the program from the business community.
9. Distribute a business tool kit that would go along with the business workshops and provide additional outreach materials for the businesses.
10. Attend Chamber of Commerce meetings and mixers to provide recycling information to the businesses.
11. Provide articles to the Chamber of Commerce to include in their monthly newsletters.
12. Work with the Chamber of Commerce to give presentations to the business community on business recycling.

13. Provide updates on City's website including but not limited to valuable links, upcoming events and dates; general information such as recycling guide, bin colors, list of recyclable items, etc.; outreach efforts, events pictures, etc.
14. Negotiate and Prepare Construction and Demolition Services/Regulations with Waste Management to be included in Franchise Agreement by June 2012 which is to include but not limited to the following: require a percentage of waste to be recycled, work with City staff to determine necessary guidelines, select a process to be monitored by Waste Management to alleviate City staff from monitoring responsibilities, develop necessary forms, documents, tracking system, etc.

**II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**

1. Minutes summarizing monthly meetings.
2. Council presentation materials providing Council updates on endeavors made to promote recycling and waste reduction.
3. Provide rate analysis sheets and documents related to negotiations with Waste Management.
4. City utility bill insert advertisements three (2) times per year promoting the Bulky Item events.
5. PennySaver or Record Gazette advertisements two (2) times per year promoting the Household Hazardous Waste (HHW) events.
6. Business brochures outlining available services.
7. Letter to businesses detailing new outreach efforts/existing programs.
8. Materials and presentation for Business Recycling Workshops.
9. Business tools kits
10. Monthly newsletters for the Chamber of Commerce.
11. Presentation materials for the business community.

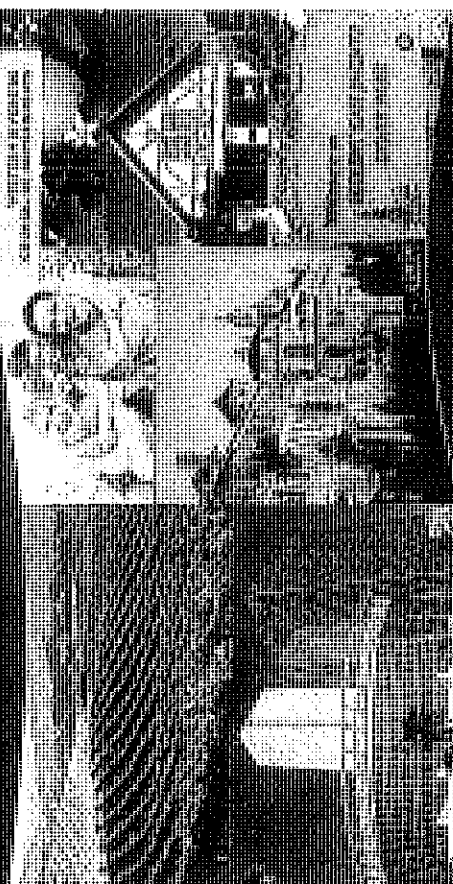
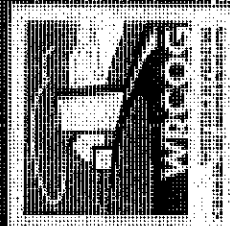
	<b>Activity</b>	<b>Budget</b>	<b>Performance Time</b>
1	Staffing for outreach events, promotional development, chamber events, commercial business visits, HHW and bulky goods events, business workshops, and franchise agreement assistance. (estimated cost, could be less and if so will use funds for other items listed below)	28,000.00	July, 1 2014 – June 30, 2015
2	Business kits and items to distribute to residents during community events that promote recycling, estimated cost, varies from year-to-yr.	\$13,858.05	November/December 2014
3	Chamber news articles and printing of brochures	\$1,131.95	Monthly
4	Mileage for events	\$300	July 1, 2014 – June 30, 2015
5	Advertisements for HHW, Bulky Goods Events, Business Expo, and Art Festival.	\$3,000	Dates provided by Riverside County
6	Filter Recycling Services- pick-up alkaline batteries collected from residents during the Bulky Goods Day events for proper disposal.	\$3,460.00	Upon request by the City
7	Insurance required under the WRCOG/Banning Agreement/Contract	\$250.00	Insurance is required under the Contract/Agreement
	<b>Total for Fiscal Year 2014-2015</b>	<b>\$50,000</b>	<b>July 1, 2014 – June 30, 2015</b>
	Tasks for 2015-2016 to be developed by June 30, 2015		



## **GENERAL INFORMATION**

4080 LEMON STREET, 3RD FLOOR, MS 1032 | RIVERSIDE, CA 92501 | PHONE: 951-955-7985  
FAX: 951-787-7991 | WWW.WRCOG.COG.CA.US

WESTERN RIVERSIDE  
COUNCIL OF GOVERNMENTS



- [illegible]

**RESPECT LOCAL CONTROL...  
PROVIDE REGIONAL PERSPECTIVE.**

4080 LEMON STREET, 3RD FLOOR, MS.1032 | RIVERSIDE, CA 92501 | PHONE: 951.955.7985  
FAX: 951.787.7991 | WWW.WRCOG.COG.CA.US

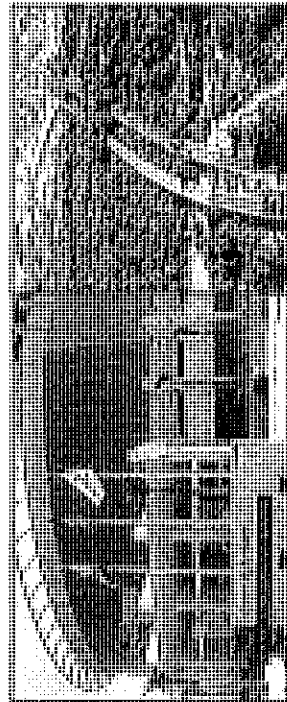


## ABOUT US

Western Riverside Council of Governments (WRCOG) serves one of the fastest-growing subregions in the State of California and the United States. Its 17 member cities and the County of Riverside are home to 1.7 million people, and some 700,000 will join us by the year 2035. With this significant growth coming our way, profound challenges and opportunities lie ahead that will require the kind of attention and consensus-building that the unique WRCOG forum provides.

Recognizing that many issues related to growth are not constrained by political boundaries, WRCOG focuses on a number of regional matters important to our future. By working together through its committee structure and utilizing existing resources, WRCOG is cost-effective by reducing duplication of effort and sharing information, enabling strong advocacy and strengthening Western Riverside County's standing in Southern California and the State.

Today, WRCOG's program areas are as varied and diverse as the subregion itself, including transportation, housing, environment, energy, economy and growth. Please take a few moments to peruse this booklet to learn more about WRCOG's many programs and efforts, all of which are designed to make Western Riverside County a better place to live, work, and play.



## RECOGNITION



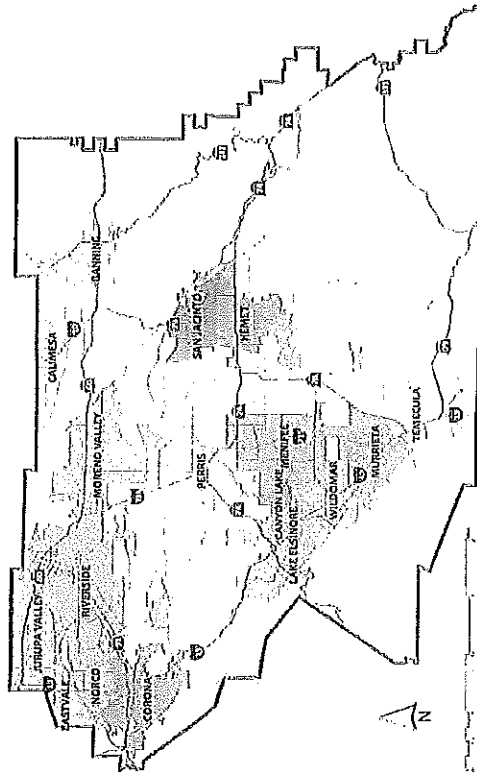
**Outstanding Regional Planning Agency**  
(American Planning Association - Inland Empire Section) 2007

**Creative Media — "Open for Invention"**  
(American Planning Association - Inland Empire Section) 2007

**Distinguished Regional Leadership**  
(Southern California Association of Governments) 2007

**Clean Air Award — Public Education**  
(South Coast Air Quality Management District) 2007

## OUR REGION



## RECOGNITION



**President's Award for Excellence — HERO Program**  
(Southern California Association of Governments) 2012

**Organizational Leadership — WRCOG Regional Energy and Environmental Programs**  
(Urban Land Institute - Orange County / Inland Empire Chapter) 2012

**Best Residential Partnership — HERO Program**  
(U.S. Green Building Council - California) 2012

**State Annual Award — Comprehensive Annual Financial Report**  
(California Society of Municipal Finance Officers) 2012

**Vision Award — 4-city Neighborhood Electric Vehicle Plan**  
(Urban Land Institute - Orange County / Inland Empire) 2011

**Outstanding Journalism — "e-communicator" electronic newsletter**  
(American Planning Association - Inland Empire Section) 2009

**Focused Issue Planning Excellence — WRCOG/SANDAG I-15 Interregional Partnership**  
(American Planning Association - Inland Empire Section) 2009

**Outstanding Education Project — 1st Annual Environmental Youth Conference**  
(American Planning Association - Inland Empire Section) 2008

**Outstanding Planning Project — Transit Oriented Development Study**  
(American Planning Association - Inland Empire Section) 2008

**Outstanding Journalism — TUMF Program Annual Report**  
(American Planning Association - Inland Empire Section) 2008

## TRANSPORTATION UNIFORM MITIGATION FEE



WRCOG's work has been catapulted into the national spotlight as the creator and administrator of the Transportation Uniform Mitigation Fee (TUMF) Program. Implemented in July 2003, after years of technical work by staff among WRCOG's jurisdictions, the TUMF

Program is the largest multi-jurisdictional fee program in the nation, not surprising news given that Western Riverside County will remain among the fastest growing areas in California for many years to come.

TUMF is an important way to ensure that growth does not create gridlock on regional highways. Fees paid by new development will, during the next 25 years, contribute to the construction of nearly \$4 billion in transportation improvements in Western Riverside County. Although TUMF is a long-term Program, significant progress is already evident. 46 TUMF-funded projects have been completed, 8 are under construction, 28 are in engineering or right-of-way acquisition, and 27 are in the planning and environmental stages.



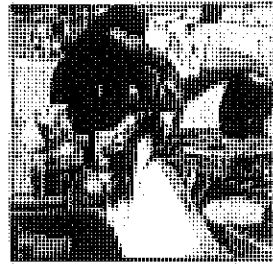
## USED OIL AND FILTER RECYCLING



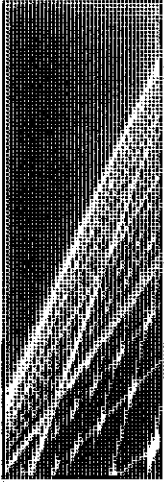
Every year Americans throw away enough used motor oil to fill 120 supertankers. Used oil from a single oil change can contaminate a million gallons of fresh water, the equivalent to one year's supply of water for 50 people.

WRCOG's award winning Regional Used Oil Program is leading the effort to protect groundwater and the environment from the hazards of improperly disposed motor oil. WRCOG's Program has certified more than 150 used oil and oil filter collection centers throughout Western Riverside County, including two airport centers and three collection centers along local inland waterways. The Program distributes used oil drain containers at local car shows and community events, and educates the "do-it-yourself" (DIY) oil changer about proper disposal of used oil and filters. At the popular "Oil Filter Exchange Event" Programs, WRCOG partners with local radio and Kragen/D'Reilly Auto Parts stores to provide the DIYer a free oil filter when they drop off their used one for recycling. Since the launch of the Program, there have been over 60 Oil Filter Exchange Events throughout Western Riverside County, and more than 3,400 new oil filters have been given away to DIYers. Funded entirely from the Department of Resources Recycling and Recovery (CalRecycle), the Program has recycled more than one million gallons of used oil and nearly 5 tons of oil filters.

WRCOG also provides a regional clean boater campaign which has supplied over 2,500 boat owners with tips and tools for clean boating practices. With more than 56,000 registered vessels in the Riverside County area, this Program is becoming increasingly important to keeping our waterways clean.



## CLIMATE ACTION PLAN



WRCOG has initiated a three-year program to prepare a Climate Action Plan (CAP) for Western Riverside County. Funded through a grant from

the California Strategic Growth Council, the Western Riverside County CAP will establish policies and priorities to enable member jurisdictions to implement strategies that successfully fulfill the requirements of AB 32 and SB 375. The CAP proposes to address greenhouse gas (GHG) emissions in Western Riverside County by preparing GHG inventories, identifying emission reduction targets, and developing and evaluating GHG reduction measures or strategies. The CAP strategies can be uniformly applied, or tailored as needed, for adoption by individual jurisdictions.

This Program will engage WRCOG's member jurisdictions, local and regional agencies, and the public in an iterative process to determine the best strategies for reducing GHG emissions and enhancing the subregion's sustainability. The CAP will closely coordinate with the Western Riverside Energy Leader Partnership (WRELP) to incorporate energy efficiency recommendations from the WRELP Program in order to provide a comprehensive plan.

## FOLLOW WRCOG

Follow WRCOG on Twitter and Facebook to stay up to date on our projects and news!



Facebook.com/wrcog



Twitter.com/wrcog

Visit us on the web at: [www.wrcog.ca.us](http://www.wrcog.ca.us)



## HIGHWAY 395 CORRIDOR



WRCOG received a grant from Caltrans to prepare a study for a shared 16-mile, north-south arterial which parallels Interstate 15 and runs through the four contiguous Cities of Lake Elsinore, Murrieta, Temecula and Wildomar in Southwest Riverside County. The purpose of the Study is to develop a comprehensive transportation and land use plan to bring consistency to the individual city planning efforts, stimulate greater dialogue, and identify land use and transportation opportunities that can create a corridor that will achieve maximum efficiencies to serve future residents and employers. Through a community-based planning process, the Study will evaluate existing conditions and anticipated growth patterns, and identify opportunities to increase mobility and economic development.

## SUSTAINABILITY FRAMEWORK



WRCOG received funding from the California Air Resources Board through the SCAG Compass Blueprint program to develop a framework document that will be utilized to refine the development of a subregional Sustainability Plan for Western Riverside County. The Plan will focus on developing strategies for addressing the region's significant projected

growth and its impact in six key areas identified by WRCOG's Executive Committee: transportation, energy generation and transmission including renewables, water and wastewater delivery capacity, economic development, health and education. The WRCOG Executive Committee recognized that these six areas are all inter-related and must be addressed collectively in Western Riverside County if the subregion is to prosper in the future. The Executive Committee convened subcommittees for each key area to further define the various components, goals and strategies that the subregion should consider in developing a regional approach to sustainability.

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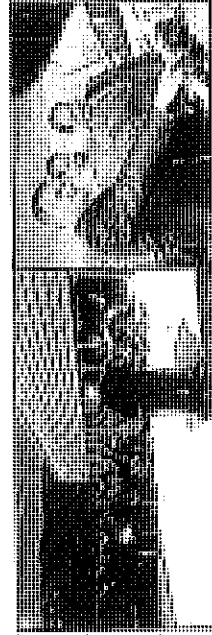
## CLEAN CITIES COALITION



WRCOG's Clean Cities Coalition is nationally recognized for its efforts to promote clean air by encouraging the use of alternative fuel vehicles and development of alternative fueling infrastructure and technologies. In 2012, WRCOG's Clean Cities Coalition was recognized by the U.S. Department of Energy as a "Top 7 Innovative Coalition."

In March 2012, the Coalition hosted its 5th Annual Environmental Youth Conference, held at the Diamond Valley Lake Visitor Center in Hemet. The Conference was attended by more than 200 middle school students and teachers from schools in the WRCOG subregion. The Conference allowed students to participate in educational tracks examining issues related to air quality, water, green cities, and conservation.

Also in March, the Coalition's 13th Annual "Advancing the Choice" Expo was held at the South Coast Winery & Resort in Temecula. The theme for the Expo, "Gear up for the Future - Choose the Right Alternative Fuel for You," encompassed regulatory fleet updates and presentations on the latest technologies in electric vehicles and emission reductions, state and local regulations, and alternative fuel technologies. The Expo featured a number of alternative fuel vehicles for both fleet and everyday driving applications.





## ENERGY AND WATER EFFICIENCY FINANCING



WRCOG's HERO program is a regional effort that provides low interest financing to property owners to install energy-efficient, renewable energy, and water conservation improvements

to homes and businesses in the subregion. With \$325 million in private investment, the Program is the largest of its kind in the U.S. Program participants simply complete an application, select a contractor, and make the improvements, being sure to secure all necessary local jurisdictional permits. Repayment occurs over a specified number of years through the owner's annual property tax bill. For conventional loans, the assessment stays with the property, to be assumed by the next owner upon sale of the property. The Program is a win-win at numerous levels. For property owners, energy and water conservation improvements will yield reduced utility bills and improve property values. For Western Riverside County, the Program will create energy savings for the fast-growing region, reduce greenhouse gas emissions associated with energy use, and bring and retain needed jobs for area contractors.

AB 811, chaptered in July 2008, authorizes local governments to establish these kinds of programs. To achieve economies of scale, WRCOG developed the HERO Program on behalf of its member jurisdictions. The Program's goal is to retrofit 10% of the subregion's older properties, which will save the region approximately 464 billion BTU's, or 45 million kWhs.



[www.beaRiversideHERO.com](http://www.beaRiversideHERO.com)

## ENERGY LEADER PARTNERSHIP

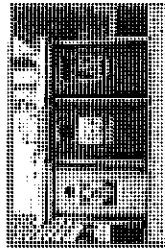


Since 2010, WRCOG's Western Riverside Energy Leader Partnership, consisting of WRCOG, Southern California Edison, and 11 member jurisdictions, has helped the subregion achieve nearly 1 million-kWh in energy savings,

decreasing greenhouse gases by 1,046 metric tons. This Program is designed to optimize opportunities for participating jurisdictions to achieve both short- and long-term sustainable energy savings, reduce utility bills, and enhance the level of comfort by retrofitting municipal buildings and facilities. A public outreach program encouraging residents in Western Riverside County to conserve energy is also part of the Partnership.



## MULTI-FAMILY RECYCLING



Recycling for residents of multi-family dwellings (MFD) poses a challenge for many communities. MFD residents can generate a large amount of a community's residential waste, yet these residents are frequently left out of community curbside recycling programs. Many MFD buildings were not designed with recycling in mind and typically have limited space in areas for the collection and storage of recyclables.

WRCOG received funding from the California Department of Conservation to partner with four local waste haulers to establish the first multi-family dwelling recycling program in California. The funding allowed WRCOG to implement recycling for more than 2,600 multi-family units.

The success of the Program also included the diversion of over 156 tons of recyclables from local landfills, and the establishment of 33 MFD recycling programs in Western Riverside County.



# WESTERN RIVERSIDE COUNTY

## Clean Cities Coalition

The members of the Western Riverside County Clean Cities Coalition work together to improve the quality of life in Western Riverside County, by promoting petroleum displacement strategies, advanced vehicle technologies, and other practices that lead to improved air quality and a healthier community. The Coalition is administered by the Western Riverside Council of Governments (WRCOG). California has pioneered aggressive policies concerning clean fuels,

### Membership Benefits:

- Access to tools and resources including:
  - Support from a network of public and Private alternative fuel industry stakeholders and experts
  - Assistance with grant writing
  - Funding opportunities
  - A Forum for the exchange of ideas and information through quarterly stakeholder meetings and periodic workshops
- Updates on the latest alternative fuel technologies, policies, and regulations
- Access to educational opportunities, including local workshops and discounts to regional and national events.
- Recognition as a member of the Clean Cities community

### Recent and Ongoing Activities

- In 2012-2013, the Coalition worked with the University of California, Los Angeles Luskin center and Southern California Association of Governments on the completion of the Western Riverside County Plug-In Electric Vehicle Deployment Plan.
- The Annual Advancing the Choice Expo (ATC): Provides an opportunity for local fleet managers, fuel providers, and vehicle manufacturers to network and share advancements and new technologies in alternative fuels and alternative fuel vehicles (AFVs).
- The Annual Environmental Youth Conference (EYC): Brings together hundreds of local middle school students to teach them about recycling, conservations, and how to live a more sustainable lifestyle.
- Middle School Program: Teaches middle school students in the classroom about air quality.
- In 2014, the Coalition hosted a Propane Landscape Equipment Workshop: presents the latest technology and benefits of using propane to fuel in landscaping equipment.
- Completed a number of Success Story publications highlighting the successful efforts of our stakeholders, one of which received recognition in 2011 for coordinator participation.
- Hosted a number of workshops from 2011 to 2014, highlighting the benefits of using alternative fuels, giving both fleets and the public the opportunity to experience alternative fuel vehicles first hand.
- Hosted successful National Odyssey Alternative Fuel Day and National Plug-In Day in 2012 and 2013
- Efforts to collaborate with other coalitions and regional agencies earned the coalition a 'Best Coalition Collaboration' award from the U.S. Department of Energy in 2012.
- During 2013, Coalition stakeholders achieved a 17% reduction in petroleum fuel usage and a 23% reduction in greenhouse gas emissions over 2012.

For more information about the Coalition please contact Jennifer DiCiano at (951) 955-8587 or [diciano@wrcog.cog.ca.us](mailto:diciano@wrcog.cog.ca.us).

**ATTACHMENT 2 - EXHIBIT "B"**

**Summarization of Services Provided by WM**



## WASTE MANAGEMENT SERVICES

LINE OF BUSINESS	COMMERCIAL	ROLL-OFF	RESIDENTIAL
Trash, Green Waste, Recyclables			WM provides service Monday - Friday
Commercial Service	WM provides service Monday - Saturday		
Roll-off Services		WM provides service Monday-Friday	
Bulky Pick-up (Including E-waste)			3 pick-ups per year up to 6 items
Bulky Drop-off Events			2 events per year



**ATTACHMENT 3 - EXHIBIT "C"**

**Comparison of Rates for Surrounding Areas**

	A	B	C	D	E	F	G	H	I	J	K
1	<b>RESIDENTIAL SERVICES</b> <b>WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS</b> <b>SOLID WASTERECYCLING SERVICE SURVEY - 2014</b>										
2											
3											
4											
5											
6											
7	Jurisdiction	2014 Estimated Population	Franchise Hauler	Land Fill	3-cart system Monthly Rate Excluding Franchise Fee	Franchise Fee	Other City Fees	Date the rates increased	Total Monthly Rate	San Bernardino County information	Curbside Large Item Services
8					2-cart system: 40 to 95 gallons in size for trash and a 60-gallon blue container for recycling. The blue recycling container is free.				Bi Monthly rate: 40 gal. trash- \$43.02, 60 gal. trash- \$45.56, 95 gal. trash \$50.56		
9	APPLE VALLEY	70,172	AVCO Disposal, Inc., a Burttec Company	Robert A Nelson Transfer Station,		21% of gross revenue	N/A				
10	BANNING	30,325	Waste Management (WM)	Lamb Canyon and El Sobrante	N/A		Billing Fee: 11%	Three new services were added - Set-Up Fees, "Commercial Recycle Bin Contamination Fee," and "Commercial Bin Overage Fee."	\$15.15		3 per year
11	CALIMESA	8,231	CR&R	Lamb Canyon		12.03% of gross revenue			30 gallon cart- \$20.54 60&90 gallon carts- \$23.22 \$19.98 increase July 1, 2014		
12	CORONA	159,132	WM	El Sobrante		11% of gross revenue		Jul-14			
13	EASTVALE	59,185	WM	Robert A Nelson Transfer Station, Badlands, and El Sobrante	\$23.57	8.5% of gross receipts	N/A	Jul-14	\$ 23.57		
14	FONTANA	188,000	Burttec	Mid Valley	\$20.76	10%	\$ 0.48		\$ 24.14 60 gal \$16.59, 90 gal \$19.72		2 free per year
15	HEMET	81,537	CR&R/WM	Lamb Canyon		N/A	N/A	Jul-14			
16	JURUPA VALLEY	97,774	WM	Robert Nelson	\$20.42 Also have a SRRE fee of \$ 0.50	8.5% of gross receipts		Jul-14	\$23.22		
17	LAKE ELSINORE	56,178	C&R/WM			8.5% of gross receipts		1-Jul-14	\$24.74		2 free per year
18	MENIFEE	83,716	WM	El sob ante			\$14.52 set up fee	1-Jul-14			
19	MORENO VALLEY	199,268	WM	El Sobrante and Badlands	\$21.32	12.13%					
20	MURRIETA	106,425	WM	El Sobrante	\$17.16, includes disposal fees	10% of gross revenue, less landfill fee	\$ -		\$18.49		2 free per year

	A	B	C	D	E	F	G	H	I	J	K
1	RESIDENTIAL SERVICES										
2	WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS										
3	SOLID WASTERECYCLING SERVICE SURVEY - 2014										
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7	Jurisdiction	2014 Estimated Population	Franchise Hauler	Land Fill	3-cart system Monthly Rate Excluding Franchise Fee	Franchise Fee	Other City Fees	Date the rates increased	Total Monthly Rate	San Bernardino County information	Curbside Large item Services
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21	NORCO	26,582	WM	El Sobrante	\$18.82	\$2,120	\$ 0.27	Jul-14	\$ 21.21 \$69 - \$10.71 64g: \$8.56 32g: \$6.43 Greenwaste: \$1.15		
22	PALM DESERT	50,417	Burtec	Lamb Canyon				1-Jul-14	\$26.11(100 gal), \$21.23 ( 60 gal)		Unlimited days up to 5 items per resident per week.
23	PERRIS	72,103	CR&R/WM	El Sobrante	\$26.11(100 gal), \$21.23 ( 60 gal)	18% on residential	\$1.00 per resident SRRE fee				
24	RIVERSIDE	314,034	Burtec/WM	Badlands, Blyth, Desert Center	n/a	n/a	N/A		\$ 22.60		2 free per year
25	SAN BERNADINO	295,233	Various	Various		10% None			With green waste \$22.84 and w/out greenwaste \$15.24 for Trash and Recycling 96 gal carts		
26	SAN JACINTO	45,563	CR&R	Lamb Canyon	n/a	16% n/a			\$21.48		
27	TEMECULA	106,289	CR&R/WM	El Sobrante, Badlands	n/a	8%		1-Jul-14	\$19.88		2 free per year
28	WILDOMAR	33,718	WM	County Standard Landfill	\$24.94	8% of gross receipts		1-Jul-14	\$ 24.94		
29	UPLAND	73,732	Burtec		n/a	n/a	n/a		\$ 15.15		
30	RIVERSIDE COUNTY UNINCORPORATED Area 1-	Entire Riverside County - 2,139,535	WM	County Standard Landfill	3-cart system Monthly Rate Excluding Franchise & Disposal \$16.11	8% of gross receipt minus the disposal cost			\$ 21.12 green waste - \$4.04		



	A	B	C	D	E	F	G	H	I	J	K
1	RESIDENTIAL SERVICES										
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7	Jurisdiction	2014 Estimated Population	Franchise Hauler	Land Fill	3-cart system Monthly Rate Excluding Franchise Fee	Franchise Fee	Other City Fees	Date the rates Increased	Total Monthly Rate	San Bernardino County Information	Curbside Large item Services
31	RIVERSIDE COUNTY UNINCORPORATED Area 1- B	Entire Riverside County - 2,139,535	WM	County Standard Landfill	3-cart system Monthly Rate Excluding Franchise & Disposal \$17.02	8% of gross receipt minus the disposal cost			\$22.04 g waste - \$2.42		
32	RIVERSIDE COUNTY UNINCORPORATED Area 1- C	Entire Riverside County - 2,139,535	WM	County Standard Landfill	3-cart system Monthly Rate Excluding Franchise & Disposal \$17.02	8% of gross receipt minus the disposal cost			\$22.04 g waste - \$2.75		
33	RIVERSIDE COUNTY UNINCORPORATED Area 2 A- Glen Ivy, Altherhill, good Hope, Temescal Canyon), B- (Highgrove, Reche Canyon), C-	Entire Riverside County - 2,139,535	Burtac	Robert A. Nelson Transfer Station	3-cart system Monthly Rate Excluding Franchise & Disposal \$15.02	8% of gross receipt minus the disposal cost			Non- Comprehensive (not mandatory) \$20.74 g waste \$4.11		
34	RIVERSIDE COUNTY UNINCORPORATED Area 3- A-South of Hwy 99-Home Gardens, Woodcrest, portions of Mead Valley	Entire Riverside County - 2,088,322	WM	County Standard Landfill	3-cart system Monthly Rate Excluding Franchise & Disposal \$14.68	8% of gross receipt minus the disposal cost			\$19.67 green waste \$4.06		
35	RIVERSIDE COUNTY UNINCORPORATED Area 4- B-North of Hwy 99-Mira Loma, Sky County	Entire Riverside County - 2,088,322		County Standard Landfill	3-cart system Monthly Rate Excluding Franchise & Disposal \$14.68	8% of gross receipt minus the disposal cost			\$19.67 g waste \$4.03		
36	RIVERSIDE COUNTY UNINCORPORATED Area 4- Temecula, lake Elsinore, Ortega Highway	Entire Riverside County - 2,088,322	WM		3-cart system Monthly Rate Excluding Franchise & Disposal \$14.68	8% of gross receipt minus the disposal cost			Non- Comprehensive (non- mandatory) \$19.88 trash \$4.03 g waste		
37	RIVERSIDE COUNTY UNINCORPORATED Area 5 Lakeview, Mystic Lake, San Jacinto	Entire Riverside County - 2,088,322	CR&R	County Standard Landfill	3-cart system Monthly Rate Excluding Franchise & Disposal \$18.04	8% of gross receipt minus the disposal cost			22.52 g waste \$2.94		
38	RIVERSIDE COUNTY UNINCORPORATED Area 6- Cherry Valley, San Timoteo, Canyon	Entire Riverside County - 2,139,535	CR&R	County Standard Landfill	3-cart system Monthly Rate Excluding Franchise & Disposal \$16.63	8% of gross receipt minus the disposal cost			Non- Comprehensive (Non- Mandatory) \$21.65 trash \$2.09 g waste		
39	RIVERSIDE COUNTY UNINCORPORATED Area 7- Cherry Valley, San Timoteo, Canyon	Entire Riverside County - 2,139,535	CR&R	County Standard Landfill	3-cart system Monthly Rate Excluding Franchise & Disposal \$18.25	8% of gross receipt minus the disposal cost			\$23.28 g waste \$4.38		

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RESIDENTIAL SERVICES WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS SOLID WASTE/RECYCLING SERVICE SURVEY - 2014										
Jurisdiction	2014 Estimated Population	Franchise Hauler	Land Fill	3-cart system Monthly Rate Excluding Franchise Fee	Franchise Fee	Other City Fees	Date the rates increased	Total Monthly Rate	San Bernardino County information	Curbside Large item Services
RIVERSIDE COUNTY UNINCORPORATED Area 8 - Idyllwild, Anza Pinyon	Entire Riverside County - 2,088,322	Waste Management	County Transfer Station		8% of gross receipt minus the disposal cost					
RIVERSIDE COUNTY UNINCORPORATED Area 9 - Cabazon, Whitewater	Entire Riverside County - 2,026,803	CR&R	County Standard Landfill	3-cart system Monthly Rate Excluding Franchise & Disposal \$15.50	8% of gross receipt minus the disposal cost			\$ 20.42		
RIVERSIDE COUNTY UNINCORPORATED Area 10 - Painted Hills, North Palm springs, Desert Haven	Entire Riverside County - 2,026,803	Desert Valley Disposal	Edom hill Transfer Station	3-cart system Monthly Rate Excluding Franchise & Disposal \$15.87	8% of gross receipt minus the disposal cost			21.23 g. waste \$3.40		
RIVERSIDE COUNTY UNINCORPORATED Area 12 - A Thousand Palms, Sky Valley, Indio Hills, Areas North of I-10, Mecca, Northshore,	Entire Riverside County - 2,026,803	WM	Edom hill Transfer Station	Thousand Palms - 3-cart system Monthly Rate Excluding Franchise & Disposal \$10.91	8% of gross receipt minus the disposal cost			Thousand Palms -\$16.2 g. waste \$3.93		
RIVERSIDE COUNTY UNINCORPORATED Area 12 - B - Bermuda Dunes, La Quinta	Entire Riverside County - 2,139,535	WM	Edom hill Transfer Station	Bermuda Dunes 3-cart system Monthly Rate Excluding Franchise & Disposal \$12.53	8% of gross receipt minus the disposal cost			\$17.7 g. waste \$3.93		
RIVERSIDE COUNTY UNINCORPORATED Area 13 - Desert Center	Entire Riverside County - 2,139,535	Palo Verde Disposal	County Standard Landfill	3-cart system Monthly Rate Excluding Franchise & Disposal the City of Blythe, Ripley and Mesa Verde Desert Center \$15.95	8% of gross receipt minus the disposal cost			Blyth Ripley, Mesa Verde \$32.66 Desert Center \$21.91		
SAN BERNARDINO COUNTY UNINCORPORATED CFA-1	Entire San Bernardino County - 2,073,149	Burtec	Mid Valley & West Valley MRF	\$16.69	\$1.85	8.83		\$27.37	THERE ARE 3 SUB AREAS HERE - INFO FROM 1A	YES 2/YR UP TO 5 ITEMS
SAN BERNARDINO COUNTY UNINCORPORATED CFA-2	Entire San Bernardino County - 2,073,149	Burtec	Mid Valley & West Valley MRF	\$16.69	\$1.85	8.83		\$27.37		YES 2/YR UP TO 5 ITEMS
SAN BERNARDINO COUNTY UNINCORPORATED CFA-3	Entire San Bernardino County - 2,073,149	Burtec	Mid Valley, Colton, San Timoteo	\$12.29	\$1.37	8.83		\$22.49		YES 2/YR UP TO 6 ITEMS



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49	SAN BERNARDINO COUNTY UNINCORPORATED CFA-5	Entire San Bernardino County - 2,073,149	Burtec	Mid Valley & West Valley MRF	\$16.99	\$1.89	8.83		\$27.71		YES 2YR UP TO 5 ITEMS
50	SAN BERNARDINO COUNTY UNINCORPORATED CFA-6	Entire San Bernardino County - 2,073,149	EDCO	Mid Valley	\$16.31	\$1.81	8.83		\$26.95	THIS AREA HAS 2 SUB AREAS - INFO FROM 6A	YES 2YR UP TO 5 ITEMS
51	SAN BERNARDINO COUNTY UNINCORPORATED CFA-8	Entire San Bernardino County - 2,073,149	Cal Disposal	San Timoteo, Mid Valley, Colton MRF	14.6	\$1.62	8.77		\$24.99	FOR 3-32GAL BARRELS TRASH ONLY /GREENWASTE EXTRA	YES 2YR UP TO 5 ITEMS
52	SAN BERNARDINO COUNTY UNINCORPORATED CFA-9	Entire San Bernardino County - 2,073,149	Burtec	Mid Valley & West Valley MRF	\$17.78	\$1.98	8.83		\$28.59		YES 2YR UP TO 5 ITEMS
53	SAN BERNARDINO COUNTY UNINCORPORATED CFA-10	Entire San Bernardino County - 2,073,149	Jacks Disposal	Mid Valley	18.24	\$2.03	8.83		\$29.10	BASED ON 60 GALLON CARTS TRASH AND RECYCLING	YES 2YR UP TO 5 ITEMS
54	SAN BERNARDINO COUNTY UNINCORPORATED CFA-11	Entire San Bernardino County - 2,073,149	Burtec	Mid Valley	\$14.12	\$1.57	8.83		\$24.52		YES 2YR UP TO 5 ITEMS
55	SAN BERNARDINO COUNTY UNINCORPORATED CFA-12	Entire San Bernardino County - 2,073,149	Burtec	San Timoteo	\$18.78	\$2.09	8.83		\$29.70	THIS AREA HAS 4 SUB AREAS. INFO FROM 12A	YES 2YR UP TO 5 ITEMS
56	SAN BERNARDINO COUNTY UNINCORPORATED CFA-15	Entire San Bernardino County - 2,073,149	CR&R	Phelan Transfer Station	\$23.17	\$2.57	N/A		\$25.74	BASED ON 2.64 GAL CARTS TRASH AND RECYCLING	YES 2YR UP TO 5 ITEMS
57	SAN BERNARDINO COUNTY UNINCORPORATED CFA-16	Entire San Bernardino County - 2,073,149	Mountain Disposal	Heap Peak	20.09	\$2.23	N/A		\$22.32	BASED ON 5-32 GAL TRASH BARRELS	YES 2YR UP TO 5 ITEMS
58	SAN BERNARDINO COUNTY UNINCORPORATED CFA-17	Entire San Bernardino County - 2,073,149	Big Bear Disposal	Big Bear Transfer Station	18.86	\$2.09	N/A		\$20.95	BASED ON 3-32 GAL TRASH BARRELS	YES 2YR UP TO 5 ITEMS
59	SAN BERNARDINO COUNTY UNINCORPORATED CFA-18	Entire San Bernardino County - 2,073,149	Advance Disposal	Advance Transfer Station	18.21	\$2.02	N/A		\$20.23		YES 2YR UP TO 5 ITEMS ON SCHEDULED DAY NOT DETERMINED BY CUSTOMER

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7	Jurisdiction	2014 Estimated Population	Franchise Hauler	Land Fill	3-cart system Monthly Rate Excluding Franchise Fee	Franchise Fee	Other City Fees	Date the rates increased	Total Monthly Rate	San Bernardino County information	Curbside Large item Services
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60	SAN BERNARDINO COUNTY UNINCORPORATED CFA-19	Entire San Bernardino County - 2,073,149	Burtec	Victorville	\$18.46	\$2.05	N/A		\$20.51	THIS AREA HAS 4 SUB AREAS - INFO FROM 19A	YES 2YR UP TO 5 ITEMS
61	SAN BERNARDINO COUNTY UNINCORPORATED CFA-20	Entire San Bernardino County - 2,073,149	CR&R	Phelan Transfer Station	\$23.17	\$2.57	N/A		\$25.74	BASED ON 2 64 GAL CARTS TRASH AND RECYCLING	YES 2YR UP TO 5 ITEMS
62	SAN BERNARDINO COUNTY UNINCORPORATED CFA-21	Entire San Bernardino County - 2,073,149	Benz Sanitation	Benz Transfer Station	\$18.61	\$2.07	N/A		\$20.68		YES CAN BE PROVIDED BUT DOES NOT OCCUR OFTEN
63	SAN BERNARDINO COUNTY UNINCORPORATED CFA-22	Entire San Bernardino County - 2,073,149	Burtec	Victorville	\$18.68	\$2.08	N/A		\$20.76		YES 2YR UP TO 5 ITEMS
64	SAN BERNARDINO COUNTY UNINCORPORATED CFA-23	Entire San Bernardino County - 2,073,149	Burtec	Barstow	\$19.05	\$2.12	N/A		\$21.17		YES 2YR UP TO 5 ITEMS
65	SAN BERNARDINO COUNTY UNINCORPORATED CFA-24	Entire San Bernardino County - 2,073,149	Burtec	Barstow	\$12.65	\$1.41	N/A		\$14.06	BASED ON 32 GAL BARRELS TRASH ONLY	YES 2YR UP TO 5 ITEMS
66	SAN BERNARDINO COUNTY UNINCORPORATED CFA-25	Entire San Bernardino County - 2,073,149	Burtec	Landers Landfill	\$19.77	\$2.20	N/A		\$21.97	BASED ON 64/95 GAL CARTS	YES 2YR UP TO 5 ITEMS
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**ATTACHMENT 4 - EXHIBIT "D"**

**Proposed Agreement with WRCOG dated August 1, 2014**

**CONTRACT SERVICES AGREEMENT**

**FOR SERVICES RELATED TO RESIDENTIAL AND  
COMMERCIAL DIVERSION**

**By and Between**

**THE CITY OF BANNING,  
A MUNICIPAL CORPORATION**

**and**

**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

**AGREEMENT FOR CONTRACT SERVICES FOR SERVICES RELATED TO  
RESIDENTIAL AND COMMERCIAL DIVERSION  
BETWEEN  
THE CITY OF BANNING, CALIFORNIA  
AND  
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

THIS AGREEMENT FOR CONTRACT SERVICES (herein“ Agreement”) is made and entered into this **1<sup>st</sup> day of August, 2014** by and between the **CITY OF BANNING**, a municipal corporation (“City”) and **WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**, (“Consultant” or “Contractor”). City and Consultant are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.” ”). (The term Consultant includes professionals performing in a consulting capacity.)

**RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Section 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Section 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning’s Municipal Code, City has authority to enter into this Agreement Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which services may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities



necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

#### 1.2 Consultant's Proposal.

The Scope of Service shall include the Consultant's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

#### 1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

#### 1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

#### 1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

#### 1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

#### 1.7 Warranty.

Consultant warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Consultant agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Consultant shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Consultant shall act sooner as requested by the City in response to an emergency. In addition, Consultant shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other Consultants) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Consultant's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Consultant shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Consultant. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Consultant for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Consultant agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Consultant fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Consultant's sole expense. Consultant shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

#### 1.8 Prevailing Wages.

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the

performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Agreement Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

## ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

### 2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, **shall not exceed FIFTY THOUSAND DOLLARS (\$50,000.00) per year** (the "Contract"), unless additional compensation is approved pursuant to Section 1.10.

### 2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

### 2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

### 2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission.

## 2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

## **ARTICLE 3. PERFORMANCE SCHEDULE**

### 3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

### 3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

### 3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

### 3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section X, pertaining to indemnification and insurance, respectively.



3.5 Term.

Unless earlier terminated in accordance with Article 8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

**ARTICLE 4. COORDINATION OF WORK**

4.1 Representatives and Personnel of Consultant.

The following principals of Consultant (Principals) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

<u>Jennifer DiCiano</u> (Name)	<u>Program Manager</u> (Title)
<u>Taylor York</u> (Name)	<u>Staff Analyst</u> (Title)
<u>TBD</u> (Name)	<u>Intern</u> (Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers,

employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

#### 4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent Consultant of City and shall remain at all times as to City a wholly independent Consultant with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

#### 4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the Agency to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the Agency. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Agency. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of Agency.

## ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

### 5.1 Insurance Coverages.

The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Consultant and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

### 5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days

prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

\_\_\_\_\_  
Agent Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3. .

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

### 5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnors"), or arising from Consultant's reckless or willful misconduct, or arising from Consultant's indemnors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.



#### 5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Consultant shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Consultant promptly and faithfully performs all terms and conditions of this Agreement.

#### 5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Consultant shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

### **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

#### 6.1 Records.

Consultant shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

#### 6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost

of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### 6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractor and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

### 6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other

discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

### **7.2 Disputes; Default.**

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### **7.3 Retention of Funds.**

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

#### 7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### 7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

#### 7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

#### 7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of \_\_\_\_\_ Not Applicable \_\_\_\_\_ (\$\_\_\_N/A\_\_\_) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

#### 7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such

as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

#### 7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

#### 7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### 8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the Agency shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

#### 8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times



avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the Agency shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

### 8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

### 8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

## **ARTICLE 9. MISCELLANEOUS PROVISIONS**

### 9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

### 9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

**CITY OF BANNING**, a municipal corporation

\_\_\_\_\_  
Homer Croy, Interim City Manager

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

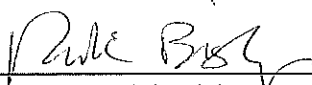
**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
David Aleshire, City Attorney

**CONSULTANT:**

**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

By:   
Name: Rick Bishop  
Title: WRCOG Executive Director

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 4080 LEMON STREET  
3rd Floor MS 1032  
Riverside CA 92501

Two signatures are required if a corporation.

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

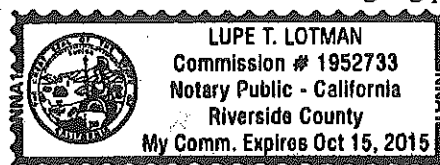
COUNTY OF RIVERSIDE

On August 4, 2014 before me Lupe T. Lotman, Notary Public, personally appeared Richard Bruce Bishop, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: Lupe T. Lotman



## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

### CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
- ☒ CORPORATE OFFICER  
EXECUTIVE DIRECTOR  
TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER \_\_\_\_\_

### DESCRIPTION OF ATTACHED DOCUMENT

Contract Service Agreement  
TITLE OR TYPE OF DOCUMENT

Twenty-nine (29)  
NUMBER OF PAGES

August 1, 2014  
DATE OF DOCUMENT

### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

Western Riverside Council of Governments

NONE

SIGNER(S) OTHER THAN NAMED ABOVE

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**I. Consultant will perform the following Services for a two year period beginning July 1, 2014 and ending June 30, 2016:**

- A. Attend monthly meetings with City staff and WMI staff to address any issues with the waste and recycling hauling services.
- B. Attend and provide updates to the City Council on endeavors made to promote recycling and waste reduction.
- C. Assist the City in any franchise agreement negotiations or rate analysis as needed.
- D. Promote the City's Bulky Goods Day events via Utility Billing inserts two (2) times per year and work each event.
- E. Promote the City's Household Hazardous Waste events via PennySaver and/or The Record Gazette two (2) times per year.
- F. Design, develop, and print a comprehensive business brochure that outlines all the services available through the City's current waste hauler including the following: listings of local recycling centers and additional resources where businesses can take recyclable materials or schedule to have items picked up.
- G. Create and mail a letter with brochure to all businesses that details the new outreach efforts of existing programs. WRCOG staff would then follow up with the businesses through phone calls and site visits.
- H. Conduct, at a minimum, two (2) workshops for businesses. These workshops will feature speakers from the waste haulers, local diversion centers and other businesses with successful diversion programs. Surveys will be used to determine the best times, dates, and interest in the program from the business community.
- I. Distribute a business tool kit to businesses that attend the workshops and provide additional outreach materials.
- J. Attend Chamber of Commerce meetings and mixers to provide recycling information to the businesses.
- K. Provide articles to the Chamber of Commerce to include in their monthly newsletters.
- L. Work with the Chamber of Commerce to give presentations to the business



community on business recycling.

M. Create a page on City's website including but not limited to the following: valuable links; upcoming events and dates; general information such as recycling guide, bin colors, list of recyclable items; outreach efforts; events pictures, etc.

N. Negotiate and Prepare Construction and Demolition Services/Regulations with Waste Management to be included in Franchise Agreement by June 2015 which is to include but not limited to the following: require a percentage of waste to be recycled, work with City staff to determine necessary guidelines, select a process to be monitored by Waste Management to alleviate City staff from monitoring responsibilities, develop necessary forms, documents, tracking system, etc.

**II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**

- A. Minutes summarizing monthly meetings.
- B. Council presentation materials providing Council updates on endeavors made to promote recycling and waste reduction.
- C. Provide rate analysis sheets and documents related to negotiations with Waste Management.
- D. City utility bill insert advertisements three (2) times per year promoting the Bulky Item events.
- E. PennySaver or Record Gazette advertisements two (2) times per year promoting the Household Hazardous Waste (HHW) events.
- F. Business brochures outlining available services.
- G. Letter to businesses detailing new outreach efforts/existing programs.
- H. Materials and presentation for Business Recycling Workshops.
- I. Business tools kits
- J. Monthly newsletters for the Chamber of Commerce.
- K. Presentation materials for the business community.

- III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City appraised of the status of performance by delivering the following status reports:**

Monthly summary reports to be submitted to the City recapping progress and efforts.

- IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**

- V. Consultant will utilize the following personnel to accomplish the Services:**

A. Jennifer Diciano, Program Manager

B. Taylor York, Staff Analyst

C. Araceli Ruiz, Secretary

D. TBD, Intern

**EXHIBIT "B"**  
**SPECIAL REQUIREMENTS**  
**(Superseding Contract Boilerplate)**

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**EXHIBIT "C"**  
**COMPENSATION**

**I. Consultant shall provide services at the following rates:**

The total funding in the amount of \$50,000 per year is budgeted for fiscal year 2014-2015 and 2015-2016. Funding will be dispersed at completion of each task and upon approval of the City of Banning, Director of Public Works. Tasks for 2015-2016 to be developed by June 30, 2015.

<b>Activity</b>	<b>Budget</b>	<b>Performance Time</b>
<b>A.</b> Staffing for outreach events, promotional development, chamber events, commercial business visits, HHW and bulky goods events, business workshops, and franchise agreement assistance. (estimated cost, could be less and if so will use funds for other items listed below)	\$44,065.00	July, 1 2014 – June 30, 2015
<b>B.</b> Business kits-estimated cost, (could be more)	\$2,000.00	November/December 2014
<b>C.</b> Chamber news articles and printing of brochures	\$1000.00	Monthly
<b>D.</b> Mileage for events	\$200.00	July 1, 2014 – June 30, 2015
<b>E.</b> Advertisements for HHW, Bulky Goods Events, Business Expo, and Art Festival.	\$2,735.00	Dates provided by Riverside County
<b>Total for Fiscal Year 2014-2015</b>	<b>\$50,000.00</b>	<b>July 1, 2014 – June 30, 2015</b>

**II. Payments will be made based upon the satisfactory completion of the task.**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.10.**

**VI. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**

- A.** Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B.** Line items for all materials and equipment properly charged to the Services.

- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.
- V. **The total compensation for the Services shall not exceed \$50,000.00 per year, as provided in Section 2.1 of this Agreement.**
- VI. **The Consultant's billing rates for all personnel are attached as Exhibit C-1.**



**EXHIBIT "C-1"**  
**Billable Rates for Fiscal Year 2014-2015**

A. Jennifer DiCiano, Program Manager	\$ 39.98/hour
B. Taylor York, Staff Analyst	\$ 20.46/hour
C. Araceli Ruiz, Secretary	\$ 23.33/hour
D. TBD, Intern	\$ 12.50/hour
E. TBD, Technician	\$ 14.95/hour

**EXHIBIT "D"**  
**SCHEDULE OF PERFORMANCE**

- I. Consultant shall perform all services timely in accordance with the following schedule:**

	<b><u>Deadline Date</u></b>
<b>A. Meeting Minutes</b>	7 days after meeting
<b>B. Council Presentation Materials</b>	Quarterly
<b>C. Rate Analysis/Negotiations docs</b>	As needed
<b>D. PennySaver Advertisements</b>	30 days prior to event
<b>E. Business Brochures</b>	As needed
<b>F. Business Letter</b>	As needed
<b>G. Business Tool Kits</b>	March 2015
<b>H. Chamber of Commerce Monthly Newsletter</b>	10 days prior to Chamber deadline

- II. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

## CITY COUNCIL MEETING

**DATE:** January 13, 2015

**TO:** City Council

**FROM:** Duane Burk, Public Works Director

**SUBJECT:** Resolution No. 2015-03, "Approving the Banning Municipal Airport's ACIP, Authorizing the Submittal of a 2015 AIP Grant Application and Approving a Master Agreement for Professional Services and Contract Amendment No. 1 with C&S Engineers, Inc."

**RECOMMENDATION:** Adopt Resolution No. 2015-03:

- I. Approving the submittal of the 2016–2020 Airport Capital Improvement Plan ("ACIP") to the Federal Aviation Administration ("FAA").
- II. Authorizing the Public Works Department staff to submit a grant application and related documentation to the FAA for 2015 Airport Improvement Program ("AIP") grant funding.
- III. Authorizing the Interim City Manager to execute documentation related to the 2015 AIP grant funding.
- IV. Awarding a Master Agreement for Professional Services to C&S Engineers, Inc. of San Diego, California, authorizing the Interim City Manager to execute the Master Agreement and the related Contract Amendment #1.

**JUSTIFICATION:**

The FAA requires sponsors, such as the City of Banning, to update and submit their five year ACIP. The ACIP is used to identify and prioritize airport capital improvement needs and to plan for the distribution of AIP funds. The City's ACIP must be submitted in order for the identified projects to be funded using AIP funds.

In addition to the submittal of the ACIP, an AIP Grant application must be prepared and submitted for those projects identified in the approved ACIP in order to receive AIP funding.

The approval of the Master Agreement with C&S Engineer's Inc. is essential in order to complete planning, engineering and environmental duties associated with projects listed in the City's ACIP in a timely and efficient manner.

**BACKGROUND:**

**ACIP**

Through the AIP, the FAA provides grants for the planning and development of airports important to the National Airspace System ("NAS") in the National Plan of Integrated Airport Systems

("NPIAS"). Eligible projects for AIP funding include improvements related to airport safety, capacity, security and environmental concerns.

Airports, such as the Banning Municipal Airport, that are included in the NPIAS, must develop and implement an Airport Master Plan, including an Airport Layout Plan ("ALP"). Airport Master Plans are defined by the FAA as a planner's ultimate development of a specific airport with the objective of setting guidelines for future development in order to satisfy aviation demand and be compatible with the environment and community development. The Banning Municipal Airport's Airport Master Plan was last updated and approved by FAA in May of 2007.

The Airport Master Plan contains the airport's ALP, which serves as a critical planning tool that depicts both existing facilities and planned development for the airport. The City of Banning, is obligated to develop, operate, and maintain the airport in accordance with the latest approved ALP and only those improvements and developments shown on the ALP are eligible for AIP funds. The current Banning Municipal Airport's ALP is attached as Exhibit "A".

The ALP is used during the development of the Banning Municipal Airport's ACIP. The ACIP serves as a tool for both the City and FAA in identifying and prioritizing critical airport development and associated capital needs. The FAA will issue AIP grants for only those developments and planning projects that are included in the FAA approved ACIP. The Public Works Department staff has worked with FAA staff to develop the 2016-2020 ACIP, attached as exhibit "B". The ACIP is due to the FAA by January 31, 2015.

The FAA is currently providing ninety percent (90%) of a project's funding by using entitlement and/or discretionary grant funding. Each federal fiscal year the FAA appropriates \$150,000.00 to the Banning Municipal Airport in entitlement grant funding to be used towards the cost of ACIP projects. Additionally, FAA discretionary grants may be received based on applications, federal priorities and availability of funding. Discretionary funds are requested by the City when entitlement funds do not cover ninety (90%) of the project costs. At this time the City utilizes airport revenue funds for its grant match. CALTRANS Division of Aeronautics also provides the Banning Municipal Airport with grant funding to be used towards the City's local match equal to five percent (5%) of the federal funded project cost (i.e. 5% of the 90%).

#### FY 2015 AIP Grant Application

As part of Resolution No. 2015-03 staff is requesting authorization to submit an application for AIP grant funding, attached as Exhibit "C", related to a safety improvement project identified in the FAA ACIP for years 2015 – 2019. The grant application is requesting AIP funds for the design and construction of obstruction removals and signage and marking improvements as well as an update to the ALP. The project will eliminate four (4) existing light poles that penetrate into the navigable airspace and replace them with four shorter lights to ensure airport security and operational safety for the both fueling apron and the terminal areas. Additionally, the project will include signage and marking improvements to eliminate existing signage and markings that currently do not meet FAA standards as well as markings to improve aircraft operations and end user functionality.

The project cost for design and construction is estimated at \$150,000.00. The FAA grant application will request AIP funding in the amount of \$135,000.00. The balance will be funded by the Airport Fund in the amount of \$8,250.00 and CALTRANS in the amount of \$6,750.00.

If authorization is given, staff plans to submit the grant application as soon as possible in order to meet the FAA submittal period commencing on December 31, 2014. Once the grant funding is in place, staff will assure the completion of the design of the project and then bid the project per the formal bidding process as described in the City's Purchasing Policy.

#### Master Agreement

Projects listed in the ACIP require the technical expertise of an aviation consultant to provide services such as engineering design, environmental assessments and construction management services. AIP funding is permitted to airport sponsors who choose to enter into either a Consulting Services Agreement or a Master Agreement with a consultant to perform these services for a period of up to five (5) years when the FAA Advisory Circular ("AC") 150/5100-14D, "Architectural, Engineering and Planning Consultant Services for Airport Grant Projects" is utilized and met. The FAA will accept the Master Agreement, attached as Exhibit "D" as an effective vehicle for sponsors to execute projects or services throughout multiple years without having to go through the consultant selection process for each ACIP project. Each project within the ACIP will require a City and FAA approved Scope of Work and Fee schedule from the selected consultant. Furthermore, an Authorization of Services/Contract Amendment to the Master Agreement will be brought forth to the City Council for approval for each project.

On August 1, 2013, a Request for Qualifications ("RFQ"), attached as Exhibit "E", was advertised in the Press Enterprise, attached as Exhibit "F", and on both the City website and the website of Southwest Chapter of the American Association of Airports Executives ("SWAAAE"), an industry airport organization. An Evaluation/Selection committee comprised of four Public Works Department staff was formed to score and rank the two proposals that were received. The committee ranked the consultants as follows:

1. C & S Engineers, Inc. of San Diego, CA
2. MTGL, Inc. of Riverside, CA

A Consultant Selection report, attached as Exhibit "G" was sent to the FAA and approved on November 26, 2013 and explained the consultant selection process and that C & S Engineers, Inc. overwhelmingly had the highest score amongst the four panel members. The firm has forty-five (45) years of experience with aviation projects, and in the Statement of Qualifications ("SOQ") clearly outlined their project understanding and approach for all the proposed projects in the five-year Scope of Work/ACIP. They have worked with Banning Municipal Airport and Public Works Department staff in the past, have received excellent references and have extensive knowledge of the FAA Advisory Circulars and requirements.

Staff feels it is prudent to select one consultant for a five-year term, with a thirty (30) day termination clause and subject to an annual review of the services provided, to provide professional airport planning, environmental, engineering and construction management services for Banning Municipal Airport. A Master Agreement with one firm will provide cost and time savings by having a consultant on board who is familiar with the airport. The FAA has reviewed the entire consultant selection process, the five-year Master Agreement and has approved the selection of C & S Engineers, Inc. The Master Agreement has also been reviewed and approved by the office of the City Attorney.



With the approval of the Master Agreement, staff also requests the approval of Authorization of Services/Contract Amendment No. 1 to complete the design related to the FY 2015 AIP Grant Application as previously mentioned. The Authorization of Services/Contract Amendment No. 1 along with the required Scope of Work and Fee Statement can be found attached as Exhibit "H".

### **STRATEGIC PLAN**

Approval of Resolution 2015-03 meets Strategic Plan Goal #1, Financial Stability, Action Step N-1, Submittal of Grant Applications and Goal #3, Infrastructure and City Facilities, Action Step P-3, Airport.

### **FISCAL DATA:**

Approval of the submittal of the five year ACIP does not have a fiscal impact, although it will allow the City to continue applying for and accepting grants from both the FAA and CALTRANS. The total required local matching funds for FY 2016 to FY 2020 projects are as follows:


FY 2016:	\$11,550.00
FY 2017:	\$ 9,625.00
FY 2018:	\$38,500.00
FY 2019:	\$41,250.00
FY 2020:	\$ 5,500.00

The matching funds will be funded by the Airport Fund.

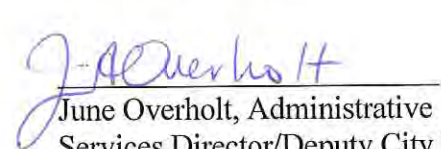
The total project cost (design and construction) related to the submittal of the 2015 AIP Grant application is \$150,000.00. FAA will fund \$135,000.00, CALTRANS will fund \$6,750.00 and the City's local match will be \$8,250.00, which will be funded by the Airport Fund.

The approval of Contract Amendment #1 to the Master Agreement with C&S Engineers, Inc. will allow for the design of the project related to the 2015 AIP Grant application. The total cost of the professional services is \$57,500.00. FAA will fund \$51,750.00, CALTRANS will fund \$2,587.50 and the City's local match will be \$3,162.50, which will be funded by the Airport Fund. These costs are included in the total cost of the project (\$150,000.00).


#### **RECOMMENDED BY:**

  
Duane Burk,  
Director of Public Works

#### **REVIEWED BY:**

  
June Overholt, Administrative  
Services Director/Deputy City Manager

#### **APPROVED BY:**

  
Interim City Manager

**RESOLUTION NO. 2015-03**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE BANNING MUNICIPAL AIRPORT'S ACIP, AUTHORIZING THE SUBMITTAL OF A 2015 AIP GRANT APPLICATION AND APPROVING A MASTER AGREEMENT FOR PROFESSIONAL SERVICES AND CONTRACT AMENDMENT NO. 1 WITH C&S ENGINEERS, INC.**

**WHEREAS**, the City of Banning is obligated to develop, operate, and maintain the airport in accordance with the latest approved Airport Layout Plan ("ALP"), attached as Exhibit "A", and only those improvements and developments shown on the ALP are eligible for Airport Improvement Project ("AIP") funds; and

**WHEREAS**, the Federal Aviation Administration ("FAA") requires airport sponsors, such as the City of Banning, to utilize the approved ALP to update and submit their five year Airport Capital Improvement Plan ("ACIP"), attached as Exhibit "B", which is used to identify and prioritize airport capital improvement needs and to plan for the distribution of AIP funds; and

**WHEREAS**, the five year ACIP must be submitted to the FAA in order to receive AIP funding; and

**WHEREAS**, staff is requesting authorization to submit an application for 2015 AIP grant funding, attached as Exhibit "C", related for the design and construction of improvements to remove and replace four (4) existing light poles that penetrate into the navigable airspace with four shorter lights to ensure airport security and operational safety and signage and marking improvements to eliminate existing signage and markings that currently do not meet FAA standards as well as markings to improve aircraft operations and end user functionality; and

**WHEREAS**, projects listed in the five year ACIP require the technical expertise of an aviation consultant to provide services such as engineering design, environmental assessments and construction management services; and

**WHEREAS**, FAA federal funding is permitted to airport sponsors who choose to enter into either a Consulting Services Agreement or a Master Agreement with a consultant to perform these services for a period of up to five (5) years when the FAA Advisory Circular (AC) 150/5100-14D, "Architectural, Engineering and Planning Consultant Services for Airport Grant Projects" is utilized and met; and

**WHEREAS**, staff recommends the award of a Master Agreement, attached as Exhibit "D", to C&S Engineers, Inc. of San Diego, California as they were rated the highest during a formal Request for Proposal ("RFP") as required by the City's Purchasing Policy; and

**WHEREAS**, each project within the ACIP will require a City and FAA approved Scope of Work and Fee schedule from C & S Engineers, Inc. and a subsequent Authorization of Services/ Contract Amendment to the Master Agreement will be made; and

**WHEREAS**, staff also request the approval of Authorization of Services/Contract Amendment #1, attached as Exhibit "H", to the Master Agreement in order to complete the design related to the FY 2015 AIP Grant Application as previously mentioned.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning as follows:

SECTION I. City Council adopts Resolution No. 2015-03, "Approving the Banning Municipal Airport's ACIP, Authorizing the Submittal of a 2015 AIP Grant Application and Approving a Master Agreement for Professional Services and Contract Amendment No. 1 with C&S Engineers, Inc."

SECTION II. The City Manager is authorized to execute documentation related to the 2015 AIP Grant funding and to execute the Master Agreement and Contract Amendment No. 1 with C&S Engineers, Inc. of San Diego, California.

**PASSED, APPROVED AND ADOPTED** this 13<sup>th</sup> day of January, 2015.

---

Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

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Marie A. Calderon, City Clerk  
City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

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David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-03 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 13<sup>th</sup> day of January, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon, City Clerk  
City of Banning, California

**EXHIBIT "A"**  
**BANNING MUNICIPAL AIRPORT**  
**AIRPORT LAYOUT PLAN (ALP)**





**EXHIBIT "B"**  
**2016 – 2020**  
**AIRPORT CAPITAL IMPROVEMENT PLAN (ACIP)**





# **BANNING MUNICIPAL AIRPORT 5 YR CAPITAL IMPROVEMENT PROGRAM**

US Department of Transportation Federal Aviation Administration

Airport: Banning Municipal Airport

DATE: 12/30/2014

State: California

NPIAS#: 06-0018

LOCID

BNG

Project Description & Year	Federal Eligible Grant Amount	State Eligible	Total		Environmental	Start Date	Comp. Date	FUNDING SOURCE	NPIAS Priority	On ALP?
			Local							
<b>2015</b>										
(1) Obstruction Removal & Signage & Marking Improvements & ALP Update (Design/Construct)	\$ 135,000	\$ 6,750	\$ 8,250	\$ 150,000	CATEX (APP-2-19-14)	4/1/2015	10/1/2015	Entitlements	93	Y
<b>2016</b>										
(1) Acquire Land to Remove Obstructions and Relocate Tenants	\$ 189,000	\$ 9,450	\$ 11,550	\$ 210,000	CATEX (APP-9-20-13)	1/1/2016	10/1/2016	Entitlements	93	Y
<b>2017</b>										
(1) Remove Obstruction (Building #10) (Design & Demolition)	\$ 90,000	\$ 4,500	\$ 5,500	\$ 100,000	CATEX (APP-9-20-13)	1/1/2017	10/1/2017	Entitlements	93	Y
(2) Construct Electrical Vault and Runway 8 & Runway 26 REILs (Design)	\$ 67,500	\$ 3,375	\$ 4,125	\$ 75,000	CATEX (10/2016)	7/1/2017	12/1/2017	Entitlements	79	Y
<b>2018</b>										
(1) Construct Electrical Vault and Runway 8 & Runway 26 REILs (Construct)	\$ 630,000	\$ 31,500	\$ 38,500	\$ 700,000	CATEX (10/2016)	7/1/2018	12/1/2018	Discretionary	79	Y
<b>2019</b>										
(1) Rehabilitate Runway 8-26 (Design/Construct)	\$ 675,000	\$ 33,750	\$ 41,250	\$ 750,000	CATEX (10/2018)	2/1/2019	10/1/2019	Discretionary	68	Y
<b>2020</b>										
(1) Rehabilitate Airport Perimeter Security Fence (Design)	\$ 90,000	\$ 4,500	\$ 5,500	\$ 100,000	CATEX (10/2019)	1/1/2020	12/1/2020	Entitlements	41	Y
<b>TOTALS:</b>	<b>\$ 1,741,500</b>	<b>\$ 87,075</b>	<b>\$ 106,425</b>	<b>\$ 1,935,000</b>						

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# CITY OF BANNING ACIP DATA SHEET

Airport Name		Banning Municipal Airport	Fiscal Year	2016		
Shown On ALP	Project Type*	Project Description	Federal Share	State Share	Local Share	Total
Y	D	(1) Acquire Land to Remove Obstructions and Relocate Tenants (Program Entitlements)	\$189,000	\$9,450	\$11,550	\$210,000
* D - Development; P - Planning; E - Environmental						
<b>PROVIDE THE FOLLOWING DETAILED INFORMATION FOR PROJECTS ANTICIPATED WITHIN 1-2 YEARS</b>						
Detail Project Description (Square/Lineal Footage or Length/Width)						
(1) Acquisition services and purchase of property (Ref# 8, approximately 1.2+/- acres), including Building #10 which penetrates the RW 8 approach surface. Includes acquisition of property (Ref# 7, approximately 1.7 +/- acres) and cost for relocation of existing tenants. Building #10 demolition and hangar development to be included in future projects.						
Project Schedule (Anticipated date for bids or negotiated prices, consultant selection for planning or environmental projects, length of construction or design, planning or environmental process)						
(1) Property Acquisition to be completed by October 2016.						
NEPA Environmental Status (Date of FONSI or submit CATEX Form for Approval)						
(1) CATEX approved 9-20-2013.						
Land Title Status & Date of Exhibit "A" Status			Date			
Exempted property, owned by the City of Banning			March 2007 Exhibit "A" in Master Plan			
Open AIP Funded Projects			Expected Close-out Date			
03-06-0018-013-2013			February 2015			
Certification: To the best of my knowledge and belief, all information shown in the ACIP Data Sheet is true and correct and had been duly authorized by the Sponsor.						
Duane Burk, Public Works Director			Art Vela, Senior Civil Engineer			
Name and Title of Authorized Representative (Print or Type)			Contact Name and Title (Print or Type)			
			(951) 922-3130			
Signature		Date	Contact Phone (Print or Type)			

# CITY OF BANNING ACIP DATA SHEET

Airport Name		Banning Municipal Airport	Fiscal Year	2017		
Shown On ALP	Project Type*	Project Description	Federal Share	State Share	Local Share	Total
Y	D	(1) Remove Obstruction (Building #10) (Design & Demolition) (Program Entitlements)	\$90,000	\$4,500	\$5,500	\$100,000
* D - Development; P - Planning; E - Environmental						
PROVIDE THE FOLLOWING DETAILED INFORMATION FOR PROJECTS ANTICIPATED WITHIN 1-2 YEARS						
Detail Project Description (Square/Lineal Footage or Length/Width)						
(1) Design for and demolition of existing building #10 which penetrates the RW 8 approach surface.						
Project Schedule (Anticipated date for bids or negotiated prices, consultant selection for planning or environmental projects, length of construction or design, planning or environmental process)						
(1) Design start January 2017 and completed by April 2017. Demolition completed by October 2017.						
NEPA Environmental Status (Date of FONSI or submit CATEX Form for Approval)						
(1) CATEX approved 9-20-2013.						
Land Title Status & Date of Exhibit "A" Status			Date			
Exempted property, owned by the City of Banning			March 2007 Exhibit "A" in Master Plan			
Open AIP Funded Projects			Expected Close-out Date			
03-06-0018-013-2013			February 2015			
Certification: To the best of my knowledge and belief, all information shown in the ACIP Data Sheet is true and correct and had been duly authorized by the Sponsor.						
Duane Burk, Public Works Director			Art Vela, Senior Civil Engineer			
Name and Title of Authorized Representative (Print or Type)			Contact Name and Title (Print or Type)			
			(951) 922-3130			
Signature		Date	Contact Phone (Print or Type)			



# CITY OF BANNING ACIP DATA SHEET

Airport Name		Banning Municipal Airport	Fiscal Year	2017		
Shown On ALP	Project Type*	Project Description	Federal Share	State Share	Local Share	Total
Y	D	(2) Construct Electrical Vault and Runway 8 and Runway 26 REILS (Design) (Program Entitlements)	\$67,500	\$3,375	\$4,125	\$75,000
* D - Development; P - Planning; E - Environmental						
PROVIDE THE FOLLOWING DETAILED INFORMATION FOR PROJECTS ANTICIPATED WITHIN 1-2 YEARS						
Detail Project Description (Square/Lineal Footage or Length/Width)						
(2) Design for construction of new electrical vault and equipment to replace existing building and equipment which has more than exceeded its useful life. Includes demolition of existing building. Also design for new Runway End Identifier Lights at both RW 8 and RW 26 ends. Includes new electrical circuit, cable and trench.						
Project Schedule (Anticipated date for bids or negotiated prices, consultant selection for planning or environmental projects, length of construction or design, planning or environmental process)						
(2) Design started by July 2017 and completed by December 2017.						
NEPA Environmental Status (Date of FONSI or submit CATEX Form for Approval)						
(2) CATEX to be submitted by October 2016.						
Land Title Status & Date of Exhibit "A" Status			Date			
Exempted property, owned by the City of Banning			March 2007 Exhibit "A" in Master Plan			
Open AIP Funded Projects			Expected Close-out Date			
03-06-0018-013-2013			February 2015			
Certification: To the best of my knowledge and belief, all information shown in the ACIP Data Sheet is true and correct and had been duly authorized by the Sponsor.						
Duane Burk, Public Works Director			Art Vela, Senior Civil Engineer			
Name and Title of Authorized Representative (Print or Type)			Contact Name and Title (Print or Type)			
			(951) 922-3130			
Signature		Date	Contact Phone (Print or Type)			

# CITY OF BANNING ACIP DATA SHEET

Airport Name		Banning Municipal Airport	Fiscal Year	2018		
Shown On ALP	Project Type*	Project Description	Federal Share	State Share	Local Share	Total
Y	D	(1) Construct Electrical Vault and Runway 8 and Runway 26 REILS (Construct) (Discretionary)	\$630,000	\$31,500	\$38,500	\$700,000
* D - Development; P - Planning; E - Environmental						
<b>PROVIDE THE FOLLOWING DETAILED INFORMATION FOR PROJECTS ANTICIPATED WITHIN 1-2 YEARS</b>						
Detail Project Description (Square/Lineal Footage or Length/Width)						
(1) Construction of new electrical vault and equipment to replace existing building and equipment which has more than exceeded its useful life. Includes demolition of existing building. Also construct new Runway End Identifier Lights at both RW 8 and RW 26 ends. Includes new electrical circuit, cable and trench.						
Project Schedule (Anticipated date for bids or negotiated prices, consultant selection for planning or environmental projects, length of construction or design, planning or environmental process)						
(1) Construction start July 2018. Construction completed December 2018.						
NEPA Environmental Status (Date of FONSI or submit CATEX Form for Approval)						
(1) CATEX to be submitted by October 2016.						
Land Title Status & Date of Exhibit "A" Status			Date			
Exempted property, owned by the City of Banning			March 2007 Exhibit "A" in Master Plan			
Open AIP Funded Projects			Expected Close-out Date			
03-06-0018-013-2013			February 2015			
<b>Certification: To the best of my knowledge and belief, all information shown in the ACIP Data Sheet is true and correct and had been duly authorized by the Sponsor.</b>						
Duane Burk, Public Works Director			Art Vela, Senior Civil Engineer			
Name and Title of Authorized Representative (Print or Type)			Contact Name and Title (Print or Type)			
			(951) 922-3130			
Signature		Date	Contact Phone (Print or Type)			

# CITY OF BANNING ACIP DATA SHEET

Airport Name		Banning Municipal Airport	Fiscal Year	2019		
Shown On ALP	Project Type*	Project Description	Federal Share	State Share	Local Share	Total
Y	D	(1) Rehabilitate Runway 8-26 (Design & Construct) (Discretionary)	\$ 675,000	\$ 33,750	\$ 41,250	\$ 750,000
* D - Development; P - Planning; E - Environmental						
<b>PROVIDE THE FOLLOWING DETAILED INFORMATION FOR PROJECTS ANTICIPATED WITHIN 1-2 YEARS</b>						
Detail Project Description (Square/Lineal Footage or Length/Width)						
(1) Rehabilitate existing pavement with crack repairs and surface treatment and/or overlay. Runway 8-26 pavement cracks were noted on the Caltrans 2014 inspection. Vegetative growth in cracks and other pavement failures are in need of repair to prevent FOD and increase operation safety.						
Project Schedule (Anticipated date for bids or negotiated prices, consultant selection for planning or environmental projects, length of construction or design, planning or environmental process)						
(1) Design start February 2019. Complete design April 2019. Construction July through October 2019.						
NEPA Environmental Status (Date of FONSI or submit CATEX Form for Approval)						
(1) CATEX to be submitted by October 2018.						
Land Title Status & Date of Exhibit "A" Status			Date			
Exempted property, owned by the City of Banning			March 2007 Exhibit "A" in Master Plan			
Open AIP Funded Projects			Expected Close-out Date			
03-06-0018-013-2013			February 2015			
Certification: To the best of my knowledge and belief, all information shown in the ACIP Data Sheet is true and correct and had been duly authorized by the Sponsor.						
Duane Burk, Public Works Director			Art Vela, Senior Civil Engineer			
Name and Title of Authorized Representative (Print or Type)			Contact Name and Title (Print or Type)			
			(951) 922-3130			
Signature		Date	Contact Phone (Print or Type)			

# CITY OF BANNING ACIP DATA SHEET

Airport Name		Banning Municipal Airport	Fiscal Year	2020		
Shown On ALP	Project Type*	Project Description	Federal Share	State Share	Local Share	Total
Y	D	(1) Rehabilitate Airport Perimeter Fence (Design) (Discretionary)	\$ 90,000	\$ 4,500	\$ 5,500	\$ 100,000
* D - Development; P - Planning; E - Environmental						
<b>PROVIDE THE FOLLOWING DETAILED INFORMATION FOR PROJECTS ANTICIPATED WITHIN 1-2 YEARS</b>						
Detail Project Description (Square/Lineal Footage or Length/Width)						
(1) Removal of existing fencing and replacement/upgrade of existing perimeter security fencing and gates surrounding Banning Municipal Airport to enhance security and control vehicle movement. New fencing minimum is eight feet tall with three-foot barbed wire on top. Approximate length of new fence to be 15,660 linear feet. Design only. Construction anticipated for 2 phases						
Project Schedule (Anticipated date for bids or negotiated prices, consultant selection for planning or environmental projects, length of construction or design, planning or environmental process)						
(1) Design start January 2020. Complete design December 2020.						
NEPA Environmental Status (Date of FONSI or submit CATEX Form for Approval)						
(1) CATEX to be submitted by October 2019.						
Land Title Status & Date of Exhibit "A" Status			Date			
Exempted property, owned by the City of Banning			March 2007 Exhibit "A" in Master Plan			
Open AIP Funded Projects			Expected Close-out Date			
03-06-0018-013-2013			February 2015			
Certification: To the best of my knowledge and belief, all information shown in the ACIP Data Sheet is true and correct and had been duly authorized by the Sponsor.						
Duane Burk, Public Works Director			Art Vela, Senior Civil Engineer			
Name and Title of Authorized Representative (Print or Type)			Contact Name and Title (Print or Type)			
			(951) 922-3130			
Signature		Date	Contact Phone (Print or Type)			

**EXHIBIT "C"**  
**2015 GRANT APPLICATION**



**FEDERAL AVIATION ADMINISTRATION  
AIRPORT IMPROVEMENT PROGRAM**

**APPLICATION**

**FOR**

**THE WORK**

**OF**

**DESIGN & CONSTRUCT OBSTRUCTION REMOVAL  
AND SIGNAGE & MARKING IMPROVEMENTS AND  
ALP UPDATE**

**AT**

**BANNING MUNICIPAL AIRPORT**

**CITY OF BANNING, CALIFORNIA**

**DECEMBER 2014**

# **Application for Federal Assistance SF-424**

<b>* 1. Type of Submission</b> <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application		<b>* 2. Type of Application</b> <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision		<b>* If Revision, select appropriate letter(s):</b> - Select One -  <b>* Other (Specify)</b>	
<b>* 3. Date Received:</b>		<b>4. Application Identifier:</b> BNG			
<b>5a. Federal Entity Identifier:</b> 3-06-0018			<b>* 5b. Federal Award Identifier:</b>		
<b>State Use Only:</b>					
<b>6. Date Received by State:</b>			<b>7. State Application Identifier:</b>		
<b>8. APPLICANT INFORMATION:</b>					
<b>* a. Legal Name:</b> City of Banning					
<b>* b. Employer/Taxpayer Identification Number (EIN/TIN):</b> 95-6000674			<b>*c. Organizational DUNS:</b> 099169823		
<b>d. Address:</b> <b>* Street1:</b> 99 E. Ramsey Street <b>Street 2:</b> <b>* City:</b> Banning <b>County:</b> Riverside <b>* State:</b> California <b>Province:</b> <b>Country:</b> United States					
<b>*Zip/ Postal Code:</b> 92220					
<b>e. Organizational Unit:</b>					
<b>Department Name:</b> Public Works			<b>Division Name:</b> Airport		
<b>f. Name and contact information of person to be contacted on matters involving this application:</b>					
<b>Prefix:</b> Mr. <b>Middle Name:</b>		<b>First Name:</b> Duane			
<b>* Last Name:</b> Burk <b>Suffix:</b>					
<b>Title:</b> Director of Public Works					
<b>Organizational Affiliation:</b>					
<b>* Telephone Number:</b> (951) 922-3140			<b>Fax Number:</b> (951) 922-3141		
<b>* Email:</b> dburk@ci.banning.ca.us					

**Application for Federal Assistance SF-424**

\*9. Type of Applicant 1: Select Applicant Type:

C. City or Township Government

Type of Applicant 2: Select Applicant Type:

- Select One -

Type of Applicant 3: Select Applicant Type:

- Select One -

\* Other (specify):

\* 10. Name of Federal Agency:

Federal Aviation Administration

11. Catalog of Federal Domestic Assistance Number:

20.106

CFDA Title:

Airport Improvement Program

\*12. Funding Opportunity Number:

Title:

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

City of Banning, Riverside County, CA

\* 15. Descriptive Title of Applicant's Project:

Design & Construct Obstruction Removal and Signage & Marking Improvements and ALP Update

**Attach supporting documents as specified in agency instructions.**

<b>Application for Federal Assistance SF-424</b>	
<b>16. Congressional Districts Of:</b>	
*a. Applicant: 41st	*b. Program/Project: 41st
Attach an additional list of Program/Project Congressional Districts if needed.	
<b>17. Proposed Project:</b>	
*a. Start Date: 04/01/2015	*b. End Date: 08/30/2015
<b>18. Estimated Funding (\$):</b>	
*a. Federal	135,000.00
*b. Applicant	8,250.00
*c. State	6,750.00
*d. Local	
*e. Other	
*f. Program Income	
*g. TOTAL	150,000.00
<b>*19. Is Application Subject to Review By State Under Executive Order 12372 Process?</b>	
<input checked="" type="checkbox"/> a. This application was made available to the State under the Executive Order 12372 Process for review on _____	
<input type="checkbox"/> b. Program is subject to E.O. 12372 but has not been selected by the State for review.	
<input type="checkbox"/> c. Program is not covered by E.O. 12372	
<b>*20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation on next page.)</b>	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)	
<input checked="" type="checkbox"/> ** I AGREE	
** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.	
<b>Authorized Representative:</b>	
Prefix: Mr. *First Name: Duane	
Middle Name:	
*Last Name: Burk	
Suffix:	
*Title: Director of Public Works	
*Telephone Number: (951) 922-3140	Fax Number: (951) 922-3141
* Email: dburk@ci.banning.ca.us	
*Signature of Authorized Representative:	*Date Signed:

## Application for Federal Assistance SF-424

### \*Applicant Federal Debt Delinquency Explanation

The following field should contain an explanation if the Applicant organization is delinquent on any Federal Debt. Maximum number of characters that can be entered is 4,000. Try and avoid extra spaces and carriage returns to maximize the availability of space.

N/A.



**PART II  
PROJECT APPROVAL INFORMATION  
SECTION A**

Item 1. Does this assistance request require State, local, regional, or other priority rating?	Name of Governing Body Priority
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Item 2. Does this assistance request require State, local advisory, educational or health clearances?	Name of Agency or Board (Attach Documentation)
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Item 3. Does this assistance request require clearinghouse review in accordance with OMB Circular A-95?	(Attach Comments)
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Item 4. Does this assistance request require State, local, regional, or other planning approval?	Name of Approving Agency Date / /
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Item 5. Is the proposed project covered by an approved comprehensive plan?	Check One: State <input type="checkbox"/> Local <input type="checkbox"/> Regional <input type="checkbox"/> Location of plan City of Banning
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Item 6. Will the assistance requested serve a Federal installation?	Name of Federal Installation Federal Population benefiting from Project
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Item 7. Will the assistance requested be on Federal land or installation?	Name of Federal Installation Location of Federal Land Percent of Project
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Item 8. Will the assistance requested have an impact or effect on the environment?	See instructions for additional information to be provided.
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Item 9. Will the assistance requested cause the displacement of individuals, families, businesses, or farms?	Number of: Individuals Families Businesses Farms
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Item 10. Is there other related Federal assistance on this project previous, pending, or anticipated?	See instructions for additional information to be provided.
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

**PART II – SECTION C**

The Sponsor hereby represents and certifies as follows:

1. Compatible Land Use. – The Sponsor has taken the following actions to assure compatible usage of land adjacent to or in the vicinity of the airport:

Present and future land use is compatible with the airport. There will be no significant impact on land use in the general vicinity of the airport.

2. Defaults. – The Sponsor is not in default on any obligation to the United States or any agency of the United States Government relative to the development, operation, or maintenance of any airport, except as stated herewith:

N/A.

3. Possible Disabilities. – There are no facts or circumstances (including the existence of effective or proposed leases, use agreements or other legal instruments affecting use of the Airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project or carry out the provisions of Part V of this Application, either by limiting its legal or financial ability or otherwise, except as follows:

N/A.

4. Consistency with Local Plans. – The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport. Yes.

5. Consideration of Local Interest. – It has given fair consideration to the interest of communities in or near where the project may be located. Yes.

6. Consultation with Users. In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed. Yes.

7. Public Hearings. – In projects involving the location of an airport, an airport runway or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project. N/A.

8. Air and Water Quality Standards. – In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary. N/A.

**PART II – SECTION C (CONTINUED)**

9. Exclusive Rights. – There is no grant of an exclusive right for the conduct of any aeronautical activity at any airport owned or controlled by the Sponsor except as follows:

N/A.

10. Land. – (a) The sponsor holds the following property interest in the following areas of land\* which are to be developed or used as part of or in connection with the Airport subject to the following exceptions, encumbrances, and adverse interests, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

Attached as Exhibit "A".

The Sponsor further certifies that the above is based on a title examination by a qualified attorney or title company and that such attorney or title company has determined that the Sponsor holds the above property interests.

(b) The Sponsor will acquire within a reasonable time, but in any event prior to the start of any construction work under the Project, the following property interest in the following areas of land\* on which such construction work is to be performed, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

N/A.

(c) The Sponsor will acquire within a reasonable time, and if feasible prior to the completion of all construction work under the Project, the following property interest in the following areas of land\* which are to be developed or used as part of or in connection with the Airport as it will be upon completion of the Project, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

N/A.

*\*State character of property interest in each area and list and identify for each all exceptions, encumbrances, and adverse interests of every kind and nature, including liens, easements, leases, etc. The separate areas of land need only be identified here by the area numbers shown on the property map.*



11. GRID BASED ON CALIFORNIA STATE PLANE COORDINATE SYSTEM CENTRAL ZONE

- |            | NORTH          | EAST             |
|------------|----------------|------------------|
| ARF        | N 33° 32' 1" E | W 118° 10' 31" E |
| ROW 08 END | N 33° 55' 1" E | W 118° 51' 23" E |
| ROW 09 END | N 33° 55' 1" E | W 118° 50' 34" E |
3. AREA = 153.85 ACRES (TITLE IN FILE)
- THIS MAP WAS PREPARED FROM CERTAIN DEEDS AND PLANS OF RECORD, IS NOT INTENDED TO INDICATE AN ACTUAL BOUNDARY SURVEY AND IS SUBJECT TO ANY FUTURE SURVEY. THERE IS NO WARRANTY OR ENDORSEMENT OF TITLE HEREIN.
- ACREAGES LISTED IN TABLES WERE DERIVED FROM DEEDS AND PLANS OF RECORD. THE TOTAL FIELD ACREAGE IS THE SUM OF THE ACRES IN THE FIELD. ACREAGE CALCULATED BY JOINING THE FIELD

RELEASED PROPERTY TABLE		
Reference Number	Tax Parcel Number	Date of Release
6	532-139-016	11/03/00
		Purpose of Release
		Non-Agricultural

[illegible]

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**PART III – BUDGET INFORMATION – CONSTRUCTION****SECTION A – GENERAL**

1. Federal Domestic Assistance Catalog No. 20.106
2. Functional or Other Breakout

**SECTION B - CALCULATION OF FEDERAL GRANT**

COST CLASSIFICATION	Use only for revisions		Total Amount Required
	Latest Approved amount	Adjustment + or (-)	
1. Administration expense	\$	\$	\$ 3,500.00
2. Preliminary expense			
3. Land, structures, right-of-way			
4. Architectural engineering basic fees			18,000.00
5. Other architectural engineering fees Planning			29,500.00
6. Project inspection fees			10,000.00
7. Land development			
8. Relocation expenses			
9. Relocation payments to individuals and businesses			
10. Demolition and removal			
11. Construction and project improvement			89,000.00
12. Equipment			
13. Miscellaneous			
14. Total (Lines 1 through 13)			150,000.00
15. Estimated Income (if applicable)			
16. Net Project Amount (Line 14 minus 15)			150,000.00
17. Less: Ineligible Exclusions			
18. Add: Contingencies			
19. Total Project Amt. (Excluding Rehabilitation Grants)			150,000.00
20. Federal Share requested of Line 19			135,000.00
21. Add Rehabilitation Grants Requested (100 percent)			
22. Total Federal grant requested (Lines 20 & 21)			135,000.00
23. Grantee share			8,250.00
24. Other shares			6,750.00
25. Total project (Lines 22, 23, & 24)	\$	\$	\$150,000.00

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**SECTION C - EXCLUSIONS**

26. Classification	Ineligible for Participation (1)	Excluded from Contingency Provision (2)
a.	\$	\$
b.		
c.		
d.		
e.		
f.		
g. Totals	\$	\$

**SECTION D - PROPOSED METHOD OF FINANCING NON-FEDERAL SHARE**

27. Grantee Share	\$ 8,250.00
a. Securities	
b. Mortgages	
c. Appropriations (By Applicant)	
d. Bonds	
e. Tax Levies	
f. Non Cash	
g. Other (Explain)	
h. Total - Grantee Share	8,250.00
28. Other Shares	
a. State	6,750.00
b. Other	
c. Total Other Shares	6,750.00
29. TOTAL	\$ 15,000.00

**SECTION E - REMARKS**

N/A

**PART IV - PROGRAM NARRATIVE** (ATTACH - SEE INSTRUCTIONS)

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## PART IV PROGRAM NARRATIVE

(Suggested Format)

DEPARTMENT OF TRANSPORTATION - FEDERAL AVIATION ADMINISTRATION

OMB NO. 2120-0569

<b>PROJECT:</b> Design & Construct Obstruction Removal and Signage & Marking Improvements and ALP Update
<b>AIRPORT:</b> Banning Municipal Airport
<b>1. Objective:</b> During the Masterplan Study it was confirmed that existing light poles penetrate the Part 77 surface. The consultant has verified that (4) light poles shall be removed and shorter lights shall be installed (in-kind) to still ensure airport security and operational safety for both the fueling Apron and Terminal areas. Additional wall packs may be required in order to maintain the minimum footcandles per building code. Some of the current markings on the airport have been verified to not meet the current FAA Standards. During the last ACIP meeting on 2-12-14, it was discussed to include signage and marking improvements. Marking improvements include, but are not limited to Taxiway stubs and Apron areas on both sides of Runway 8 and parking lot. Additional traffic and instructional signs will be installed at the Apron and parking lot that is necessary for improving aircraft operations and end user functionality. ALP update will incorporate recent & future projects.
<b>2. Benefits Anticipated:</b> Improve obstruction safety for the airport. Have clear markings for the airport that meet current design standards and eliminate any potential for incursions on the active areas. The ALP update will ensure the FAA possesses the current forecast for current and future planning and development projects at the airport.
<b>3. Approach:</b> (See approved Scope of Work in final Application) Our approach to completing this proposed project will be consistent with typical procedures for projects of this type. All surveys, plan preparation, commissioning and maintenance shall be performed in accordance with all applicable FAA Standards.
<b>4. Geographic Location:</b> The City of Banning is located in the inland empire off Interstate 10 roughly 35 miles from Ontario and 40 miles west of Palm Springs. Considered part of the Banning Pass, the City lies within San Bernardino County.
<b>5. If Applicable, Provide Additional Information:</b> N/A.
<b>6: Sponsor's Representative:</b> (incl. address & tel. no.) Mr. Duane Burk, Director of Public Works City of Banning 99 E. Ramsey Street Banning, CA 92220 951-922-3130

### CIP/PRE-APPLICATION DATA SHEET

AIRPORT: Banning Municipal Airport LOCAL PRIORITY: \_\_\_\_\_ UPDATED: \_\_\_\_\_

WORK ITEM: Design & Construct Obstruction Removal and Signage & Marking Improvements and ALP Update

SKETCH:

**SEE ATTACHED**

**JUSTIFICATION:** Improve obstruction safety for the airport. Have clear markings for the airport that meet current design standards and eliminate any potential for incursions on the active areas. The ALP update will ensure the FAA possesses the current forecast for current and future planning and development projects at the airport.

SPONSOR'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

COST ESTIMATE: \_\_\_\_\_ Item (Excavation, Paving, etc.) \_\_\_\_\_

ADMINISTRATION:	\$ 3,500	1: Construction	\$ 89,000	4:	\$
ENGINEERING:	\$ 18,000	2: Planning	\$ 29,500	5:	\$
INSPECTION:	\$ 10,000	3:	\$	TOTAL:	\$ 150,000

ADO USE:

PREAPP  
NO: \_\_\_\_\_

GRANT  
NO: \_\_\_\_\_

NPIAS  
CODE: \_\_\_\_\_

WORK  
CODE: \_\_\_\_\_

FAA  
PRIOR: \_\_\_\_\_

FED \$ \_\_\_\_\_

# BANNING MUNICIPAL AIRPORT

# DESIGN & CONSTRUCT OBSTRUCTION REMOVAL AND SIGNAGE & MARKING IMPROVEMENTS AND ALP UPDATE



SCALE: 1" = 250'

PREPARED: 12/2014 (FY 2015)

**EXHIBIT "D"**  
**MASTER AGREEMENT**



**CONTRACT SERVICES AGREEMENT**

**By and Between**

**THE CITY OF BANNING,**

**A MUNICIPAL CORPORATION**

**and**

**C & S ENGINEERS, INC.**

# **AGREEMENT FOR PROFESSIONAL SERVICES**

**BY AND BETWEEN**

**THE CITY OF BANNING, CALIFORNIA**

**AND**

**C & S ENGINEERS, INC.**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by and between the CITY OF BANNING, a municipal corporation ("City") and C & S ENGINEERS, INC., ("Consultant" or "Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties"). (The term Contractor includes professionals performing in a consulting capacity.)

## **RECITALS**

A. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

B. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement Services Agreement and the City Manager has authority to execute this Agreement.

C. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

## **OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

### **ARTICLE 1. SERVICES OF CONTRACTOR**

#### **1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough,

competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

#### 1.2 Contractor's Proposal.

The Scope of Service shall include the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

#### 1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

#### 1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

#### 1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.



#### 1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

#### 1.7 Warranty.

Contractor warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

#### 1.8 Prevailing Wages.

Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq.,



("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

#### 1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

#### 1.10 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum for the actual cost of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

#### 1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.



## ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

### 2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall be determined upon review and negotiations of each individual sub-project task order, which sub-project tasks shall be memorialized in a contract form substantially similar to this Agreement.

### 2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

### 2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

### 2.4 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.



## 2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

## **ARTICLE 3. PERFORMANCE SCHEDULE.**

### 3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

### 3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

### 3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

### 3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Article 5, pertaining to indemnification and insurance, respectively.



### 3.5 Term.

Unless earlier terminated in accordance with Article 8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding five (5) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

## ARTICLE 4. COORDINATION OF WORK

### 4.1 Representatives and Personnel of Contractor.

The following principals of Contractor (Principals) are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Cory Hazelwood	Department Manager
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

### 4.2 Status of Contractor.

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.



#### 4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

#### 4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

### **ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

#### 5.1 Insurance Coverages.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:



- (a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.
- (b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.
- (c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.
- (d) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.
- (e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

## 5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said



policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]      Agent Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3. .

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

### 5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnors"), or arising from Contractor's reckless or willful misconduct, or arising from Contractor's indemnors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

- (a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;
- (b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;
- (c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Contractor shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.



#### 5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Contractor shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

#### 5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

### **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

#### 6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest.

#### 6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer



shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### 6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

### 6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.



(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

### **7.2 Disputes; Default.**

In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### **7.3 Retention of Funds.**

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for



interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

#### 7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### 7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

#### 7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

#### 7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of Not Applicable (\$\_\_\_ N/A ) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

#### 7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60)



days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

#### 7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

#### 7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

### ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

#### 8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

#### 8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests



of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

### 8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, gender, sexual orientation, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

### 8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

## ARTICLE 9. MISCELLANEOUS PROVISIONS

### 9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.



## 9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

## 9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

## 9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

## 9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

## 9.6 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:  
CITY OF BANNING, a municipal corporation

\_\_\_\_\_  
XXXXXX, Interim City Manager

ATTEST:

\_\_\_\_\_  
Marie A. Calderon, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Lona N. Laymon,  
Assistant City Attorney  
ALESHIRE & WYNDER, LLP

CONTRACTOR:  
C & S ENGINEERS, INC.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Two signatures are required if a corporation.

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

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## EXHIBIT "A"

### SCOPE OF SERVICES

#### I. Consultant will perform the following Services:

- Airport Master Planning, comprehensive land use studies and updating the airport layout plans (ALP) to the current FAA electronic-ALP standard.
- Environmental studies, assessments and reports to include requirements of NEPA on the current and anticipated 5-year AIP projects and representing the City in discussions with regulatory agencies as listed:
  - 2015 – Signage & Stripe Terminal parking lot and Apron area of about .75 acres and replace light pole obstructions – (Design and Construction)
  - 2016 – Property Acquisition of about 1.2+/- acres along Northwest side of the Airport for future removal of obstructions associated with Building #10
  - 2017 – Remove obstructions associated with Building #10 (Design and Demolition)
  - 2017 – Construct Electrical Vault and Runway 8 and Runway 26 REILS (Design)
  - 2018 – Construct Electrical Vault and Runway 8 and Runway 26 REILS (Construction)
  - 2019 – Rehabilitate Runway 8 and Runway 26 (Design and Construction)
  - 2020 – Rehabilitate Airport Perimeter Security Fence (Design)
- Special services may include:
  - o Airport business and operational consulting
  - o Soils investigations, including core sampling, laboratory tests, quality assurance related analyses, and reports.
  - o Detailed mill, shop and/or laboratory inspections of materials and equipment.
  - o Land field surveys and topographic maps.
  - o Public information and community involvement surveys, meetings, studies, and activities.
  - o Assisting Banning Municipal Airport in the preparation of necessary applications for local, state and federal grants.
  - o Pen and ink changes to ALP.
  - o Due Diligence preparing reports, studies and applications.

- o Meetings with City staff, FAA, SWRCB, and other agencies.

II. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the City apprised of the status of performance by delivering the following status reports:

Monthly Status Reports

- IV. All work product is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.
- V. Contractor will utilize the following personnel to accomplish the Services: A. Cory Hazelwood, Department Manager
- VI. The following provisions of the Agreement are revised as shown below: None

## EXHIBIT "B"

### SPECIAL REQUIREMENTS

(Superseding Contract Boilerplate)

1. Section 1.10, Additional Work: The following language is added as a second paragraph:

"Additional requirements of accomplished work performance maybe required if project contains funding thru the FAA's Airport Improvement Program (AIP). Contractor shall not be entitled to any additional compensation for these services."

2. Section 5.3, Indemnification: The following language is added as a subdivision (d) to the section:

"Nothing herein shall require Contractor to indemnify the City for the City's own gross negligence or willful misconduct."

3. Section 5.3, Indemnification: The last paragraph of subdivision (c) of Section 5.3 is hereby removed and replaced with the following language:

"It shall be the responsibility of the Contractor, to assure through contractual agreement that any independent contractor, subcontractor, or subconsultant utilized by Contractor shall save and hold harmless the Contractor, City, and their respective representatives, officers, directors, officials, and employees who may be obligated to pay by reason of any liability imposed upon any of the above for damages arising out of, resulting from, or caused by, any negligent error, omission, or act of the independent contractor, subcontractor or subconsultant."

4. A new Section 6.5 is hereby added to read:

"6.5 Patent and Copyright Infringement. To the fullest extent permissible under law, and in lieu of any other warranty by City or Contractor against patent or copyright infringement, statutory or otherwise:

It is agreed that Contractor shall defend at its expense any claim or suit against City on account of any allegation that any item furnished under this Agreement, or the normal use or sale arising out of the performance of this Agreement, infringes upon any presently existing U.S. letters patent or copyright and Contractor shall pay all costs and damages finally awarded in any such suit or claim; provided that Contractor is promptly notified in writing of

the suit or claim and given authority, information and assistance at Contractor's expense for the defense of same, and provided such suit or claim arises out of, pertains to, or is related to the negligence, recklessness or willful misconduct of Contractor. However, Contractor will not indemnify City if the suit or claim results from: (1) City's alteration of a deliverable, such that City's alteration of such deliverable created the infringement upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by Contractor when it is such use in combination which infringes upon an existing U.S. letters patent or copyright.

Contractor shall have sole control of the defense of any such claim or suit and all negotiations for settlement in the event City fails to cooperate in the defense of any suit or claim, provided, however, that such defense shall be at Contractor's expense, Contractor shall not be obligated to indemnify City under any settlement that is made without Consultant's consent, which shall not be unreasonably withheld. If the use or sale of such item is enjoined as a result of the suit or claim, Contractor, at no expense to City, shall obtain for City the right to use and sell the item, or shall substitute an equivalent item acceptable to City and extend this patent and copyright indemnity thereto."

5. A second paragraph is hereby added to Section 6.1 to read as follows:

"In carrying out planning project§§s, Contractor shall make planning materials available to the public in accordance with the California Public Records Act, Government Code §§ 6250 *et. seq.*, and agrees that no materials prepared with Airport Improvement Program ('AIP') funds shall be subject to copyright in the United States."

6. It is mandatory that any contract agreement using Airport Improvement Program ("AIP") funding have all of the provisions that pertain to consultants within the contract, to which end the following provisions are incorporated into the Agreement by reference as superseding language:

## EXHIBIT "C"

### COMPENSATION

I. Contractor shall perform the following tasks:

Compensation shall be paid on a task-by-task basis to be determined upon review and negotiations of each individual sub-project task order, which sub-project tasks and compensation therefor shall each be memorialized in a contract form substantially similar to this Agreement.

Estimated compensation and the estimated schedule for such compensation to be paid as tasks are performed is shown in Exhibit "D" hereto.

II. Payments will be made based upon the satisfactory completion of the task.

III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.10.

VI. The City will compensate Contractor for the Services performed upon submission of a valid invoice. Each invoice is to include:

A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.

B. Line items for all materials and equipment properly charged to the Services.

C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.

D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

V. The total compensation for the Services shall be determined upon review and negotiations of each individual project task order as provided in Section 2.1 of this Agreement.

VI. The Contractor's billing rates for all personnel are attached as Exhibit C-1.



EXHIBIT "D"

ESTIMATED SCHEDULE OF TASK PERFORMANCE AND COMPENSATION

**EXHIBIT "E"**  
**REQUEST FOR QUALIFICATIONS**

Newspaper Ad:

NOTICE TO AIRPORT CONSULTANTS

The City of Banning, CA is soliciting Statements of Qualifications and experience from consulting firms to provide professional airport planning, environmental, engineering and airport construction management services for Banning Municipal Airport. The estimated construction costs are \$4.5 million.

A complete copy of the Request for Statements of Qualifications (RFQ) and experience may be obtained by contacting Ms. Veronica Parra, Office Specialist, by email at: [vparra@ci.banning.ca.us](mailto:vparra@ci.banning.ca.us), from the Public Works Department at the Banning Civic Center, Banning, California. Questions on this RFQ must be submitted by August 20<sup>th</sup>, 2013.

DBE firms are encouraged to apply. All proposals received will be evaluated based on FAA Advisory Circular 150/5100-14D and on compliance with the Request.

Fees for individual projects will be negotiated as funding is obtained. Projects funded through FAA grants will be subject to the provisions of Executive Order 11246 (Affirmative Action to Ensure Equal Employment Opportunity) and to the provisions of the Department of Transportation Regulations 49 CFR Part 26 (Disadvantaged Business Enterprise Participation) and to foreign trade restrictions.

The Consultant must supply all information required by the Request for Statements of Qualifications and experience. The City reserves the right to waive any informality and minor irregularities in the submittals and select the consultant deemed, in the opinion of the City, to be in the best interest of the City and the airport.

Interested consultants are to submit five (5) complete copies of their Statements of Qualifications and experience by 5:00 p.m. Pacific Standard Time on September 4<sup>th</sup>, 2013 to Mr. Arturo Vela, P.E., Senior Engineer, Public Works Department at the City of Banning.

**BY ORDER OF THE CITY CLERK** of the City of Banning, California.

/s/ Marie A. Calderon, City Clerk  
City of Banning, California

DATED: July 29, 2013  
PUBLISH: August 1, 2013

CITY OF BANNING  
BANNING MUNICIPAL AIRPORT  
PUBLIC NOTICE  
REQUEST FOR QUALIFICATIONS (RFQ)  
for

AIRPORT PLANNING, ENVIRONMENTAL, ENGINEERING AND CONSTRUCTION  
MANAGEMENT SERVICES

**Statements Due: September 4th, 2013**

The City of Banning, which owns and operates Banning Municipal Airport, is seeking a qualified aviation consultant to provide airport planning, environmental, engineering and construction management services for both AIP and potential non-federally funded projects. All work will be required to meet Federal Aviation Administration (FAA) Standards and California Department of Transportation Aeronautics Divisions Standards. The City anticipates entering into a contract for on-call services with the selected firm for a five-year period. Request for Qualifications packages are available by contacting Ms. Veronica Parra, Office Specialist at the City of Banning, Public Works Department, by email at: [vparra@ci.banning.ca.us](mailto:vparra@ci.banning.ca.us), or at the address below.

Statements of Qualifications must be received in a sealed envelope plainly marked "Statement of Qualifications for Airport Planning, Environmental, Engineering and Construction Management Services" at the following address no later than September 4th at 5:00 p.m.:

**City of Banning  
ATTN: Arturo Vela, P.E.  
Senior Engineer  
99 E. Ramsey Street  
P.O. Box 998  
Banning, CA 92220-0998**

### **SUBMITTING INSTRUCTIONS**

Five (5) bound copies of the Statements of Qualifications must be submitted. Submittals must be in the actual possession at the location indicated above on or prior to the exact time and date indicated above. Statements of Qualifications submitted after the time and date specified herein will not be accepted. The City of Banning reserves the right to accept or reject any or all Statements of Qualifications or to waive any irregularities or informalities therein. Any incomplete, false or misleading information provided by or through the Consultant shall be grounds for non-consideration. The City of Banning is an equal opportunity employer.

The consultant acknowledges that this solicitation is subject to federal laws and regulations, including Federal Aviation Administration (FAA) regulations, rules, policies and grant assurances, specifically but not exclusively, 49 CFR 18 as outlined in FAA *Advisory Circular (AC) 150/5100-14D*, all relating to procurement of planning, architectural/engineering and consultant services. The Consultant, with the submission of the statement of qualifications and experience, accepts the responsibility for knowledge of, and compliance with, the guidelines and procedures stated within this noted documentation.

The City of Banning reserves the right to make changes to this Request for Qualifications. Changes will be made by written Addendum, which will be issued to those firms that have requested this Request for Qualifications and experience, and firms shall acknowledge receipt of any Addenda that may be necessary.

Questions regarding this RFQ must be submitted in writing to Mr. Arturo Vela, P.E. via e-mail at: [avela@ci.banning.ca.us](mailto:avela@ci.banning.ca.us), no later than Tuesday, August 20<sup>th</sup>, 2013 at 4:00 p.m. Pacific Standard Time.

In order for all consultants to receive the same information, **no response shall be given to verbal questions submitted by telephone or in person**; answers to all relevant questions will be as an Addenda to the RFQ.

## CONSULTANT SCOPE OF SERVICES/ TASKS

The solicited Scope of Services includes, but is not limited to, the following tasks:

- Assist in preparation and development of the Airport Capital Improvement Plan (ACIP).
- Prepare necessary applications and documentation for Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant funding and CA State matching funds.
- Project planning, design and associated engineering for ACIP projects; airfield civil and electrical engineering for ACIP projects including terminal, runways, and taxiways and associated tasks.
- • Project planning and associated engineering for projects in addition to the ACIP, such as hangars, landside improvements, pavement improvements, and other airport projects as may be deemed appropriate.
- Providing engineering support during the construction of airport improvement projects, including assistance during bidding, resident engineer services during construction, inspection and materials testing, and preparing as-built plans.



- Airport master planning, comprehensive land use studies and updating airport layout plans (ALP) to the current FAA electronic-ALP standard may apply.
- Environmental studies, assessments and reports to include requirements of NEPA as listed on the Current and Anticipated 5 year AIP (see below) and representing the City in discussions with regulatory agencies.
- Special services may include:
  - Airport business and operational consulting.
  - Soils investigations, including core sampling, laboratory tests, quality assurance related analyses and reports.
  - Detailed mill, shop, and/or laboratory inspections of materials and equipment.
  - Land field surveys and topographic maps.
  - Public information and community involvement surveys, meetings, studies and activities.
  - Assisting Banning Municipal Airport in the preparation of necessary applications for local, state, and federal grants.
  - Pen and ink changes to ALP.
  - Due Diligence preparing reports, studies and applications.
  - Meetings with City staff, FAA, SWRCB, and other agencies.

#### **CURRENT AND ANTICIPATED 5 YR AIRPORT IMPROVEMENT PROJECTS:**

<b>2014</b>
Taxiway A Relocation including Lighting and Signage- Construction- CatEx issued on April 27, 2011.
Property Acquisition of about .83 acres along Northwest side of the Airport & Obstruction Removal/Demolition of Building #10 – Design- CatEx submitted, awaiting EDDA for proposed property acquisition.
REILS (Runway 8 & Runway 26), 2 inch overlay of 200,000 sq. ft., Design*
<b>2015</b>
REILS (Runway 8 & Runway 26), 2 inch overlay of 200,000 sq. ft., Construction
Signage & Stripe Terminal Parking Lot & Apron Area, area of about .75 acres & Relocate Light Pole Obstruction- Design and Construct*
<b>2016</b>
Remove & Replace Airport Perimeter Security Fence, about 15, 600 linear feet- Design and Construct*
Pavement Management Plan- Design
<b>2017</b>
New Electrical Vault, Runway Lighting & Signage, & PAPI for Runway 8 – Design*
<b>2018</b>
New Electrical Vault, Runway Lighting & Signage, & PAPI for Runway 8- Construction
Airport Layout Plan Update (see Pavement Management Plan in 2016)

**\*Each of the projects listed above with “\*” will require NEPA Extraordinary Circumstances Evaluation Information Submittal for Categorical Exclusion of Airport Projects.**

The City of Banning would like to establish a list of firms/firm that are/is prequalified to work on these projects. A statement of your firm's interest and qualifications regarding these projects is herein requested and solicited.

## **STATEMENT OF QUALIFICATIONS SUBMITTAL REQUIREMENTS and SELECTION PROCESS**

Proposals shall include the following:

- Proposal submittals shall be brief and concise, containing no more than thirty-five (35) pages of material (excluding front and rear cover). Submittals in excess of 35 pages shall be considered to be non-responsive.
- Proposals shall include the following in sequence:
  1. Cover Letter: One-page cover letter that includes the mailing and e-mail addresses and telephone and fax number of the person(s) to be used for contact and who is authorized to represent the firm or group.
  2. Table of Contents: An index of material included in the proposal.
  3. Project Understanding and Approach: Discuss the firm's understanding of the upcoming projects at the airport listed above in the "Consultant Scope of Services" and how the firm will approach providing services to the City of Banning for airport planning, environmental, engineering, and construction management services. **Each of the Scope of Services/Tasks listed above and in the "Current and Anticipated 5 Year AIP" section shall be addressed in the proposal.**
  4. Statement of Qualifications: A statement of the firm's or group's qualifications to perform the projects listed in the "Consultant Scope of Services" section above. Provide examples of recent and relevant experience or list of similar projects for airport planning, environmental, engineering and construction management services during the last five (5) years. Provide at least three (3) airport sponsors/client references, including names and phone numbers, for each project who can attest to the firm's performance.
  5. Management and Key Staff: Provide an organizational chart and describe the staffing proposed for this contract, including necessary support staff, and any sub consultants aligned with the anticipated projects. Include their recent experience in projects comparable to the proposed services. The proposed staff's qualifications and job classifications shall be included. Resumes of the



management team are required for the Consultant and each sub consultant. For sub consultants, indicate the type of work each is to perform and the percentage of total work of the proposal. It is highly desirable that the working location of key project manager and staff be no more than 600 miles away from the Banning Airport. This will result in a higher score for the location criteria.

6. Consultant location and Accessibility: Current workload and ability to perform this project in a timely manner, if selected. List how many other/ongoing projects the Consultant has within the Western Pacific Region. Provide a list of projects including their start date, percentage of completion and anticipated completion date. Demonstrate the firm's ability to meet short notice demands and ability to attend meetings with the City on short notice.
7. Proof of Insurance: **Submit proof of the ability to maintain insurance in the amount required of all CITY OF BANNING CONSULTANT Agreements.** This includes: Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit. Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement. Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence and property damage liability limits of \$150,000 per occurrence or (ii) combined single limit liability of \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

## SELECTION PROCESS AND EVALUATION CRITERIA

Proposals received prior to the deadline will be screened and evaluated through the following process:

1. A Selection Committee composed of City staff will screen the proposals to determine whether they are responsive to the RFQ. If an interview is warranted, one will be scheduled with each shortlisted (top three) Consultant.
2. Selection criteria contained in FAA Advisory Circular 150/5100-14, as amended, will be considered in the following order of importance:

- Understanding of the project(s) and approach.
  - Recent experience with similar projects.
  - Experience with the FAA Western Pacific Region and AIP Grant procedures.
  - Responsiveness to the RFQ.
  - Consultant team's overall experience and qualifications and proximity to the Airport. Key project management staff's proximity to the Airport.
  - References.
  - Qualifications of the project manager, sub consultants and consultant staff assigned to the project.
  - Familiarity with Banning Airport, location and conditions.
  - Current workload and demonstrated ability to meet deadlines and keep work within the allocated budget.
3. The selection committee will evaluate all pertinent information and will establish a shortlist (top three scoring) from those firms submitting Statements. Firms may be contacted for additional information. If warranted, detailed interviews will be conducted, or selection based on writing submission will be considered.
  4. Selected firms may be asked to submit a copy of their most current General Services Agreement, which may be dependent on the scope of work.
  5. The City reserves the right to reject any and/or all proposals, and to waive or decline to waive irregularities in any submittal.
  6. Any costs incurred by the respondents in the preparation of any information or material submitted in response to the RFQ shall be borne solely by the respondents.

## **TENTATIVE SCHEDULE**

It is anticipated that the Consultant will be selected and asked to enter into a Master Agreement with the CITY OF BANNING in the late Fall of 2013. The selected Consultant will be asked to provide a Scope of Services for each project, known as Contract Amendments/Authorization of Services.

**EXHIBIT "F"**  
**PRESS ENTERPRISE ADVERTISEMENT**  
**FOR**  
**MASTER AGREEMENT SERVICES RFP**



Printed at: 11:19 am

on: Tuesday, Jul 30, 2013

Ad #: 0001099788

Order Taker: Maria Tinajero



Classified Advertising  
Proof

3450 Fourteenth St.  
Riverside, CA 92501-3878  
(800) 514-7253  
(951) 684-1200  
(951) 368-9006 Fax

#### Account Information

Phone #: 9519223102  
Name: BANNING CITY CLERK  
Address: 99 E RAMSEY ST  
BANNING, CA 92220  
USA

Account #: 100142835  
Client: BANNING CITY CLERK  
Placed By: Marie Calderon  
Fax #:

#### Ad Information

Classification: EN CLS Legals  
Publication: EN Press Enterprise, EN PE.com

Start Date: 08/01/2013  
Stop Date: 08/01/2013  
Insertions: 1 print / 1 online

Rate code: EN LGL PE City Legal  
Ad type: EN CLS 10 Liner

Size: 2 X 61.00 Li  
Bill Size:

Amount Due: 134.20

#### Ad Copy:

##### PUBLIC NOTICE

##### NOTICE TO AIRPORT CONSULTANTS

The City of Banning, CA is soliciting Statements of Qualifications and experience from consulting firms to provide professional airport planning, environmental, engineering and airport construction management services for Banning Municipal Airport. The estimated construction costs are \$4.5 million.

A complete copy of the Request for Statements of Qualifications (RFQ) and experience may be obtained by contacting Ms. Veronica Parra, Office Specialist, by email at: [vparra@cl.banning.ca.us](mailto:vparra@cl.banning.ca.us), from the Public Works Department of the Banning Civic Center, Banning, California. Questions on this RFQ must be submitted by August 20th, 2013.

DBE firms are encouraged to apply. All proposals received will be evaluated based on FAA Advisory Circular 150/5100-14D and on compliance with the Request. Fees for individual projects will be negotiated as funding is obtained. Projects funded through FAA grants will be subject to the provisions of Executive Order 11246 (Affirmative Action to Ensure Equal Employment Opportunity) and to the provisions of the Department of Transportation Regulations 49 CFR Part 26 (Disadvantaged Business Enterprise Participation) and to foreign trade restrictions.

The Consultant must supply all information required by the Request for Statements of Qualifications and experience. The City reserves the right to waive any informality and minor irregularities in the submittals and select the consultant deemed, in the opinion of the City, to be in the best interest of the City and the airport.

Interested consultants are to submit five (5) complete copies of their Statements of Qualifications and experience by 5:00 p.m. Pacific Standard Time on September 4th, 2013 to Mr. Arturo Vela, P.E., Senior Engineer, Public Works Department at the City of Banning.

**BY ORDER OF THE CITY CLERK** of the City of Banning, California.

/s/ Marie A. Calderon, City Clerk  
City of Banning, California

DATED: July 29, 2013  
PUBLISH: August 1, 2013

8/1

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**EXHIBIT "G"**  
**CONSULTANT SELECTION REPORT**



## City of Banning Public Works Department

November 26, 2013

Federal Aviation Administration  
Western Pacific Region, Los Angeles District Office  
Attn.: Ms. Margie Drilling, Aviation Planner  
15000 Aviation Blvd.  
Lawndale, CA 90261

### **Consultant Selection Report**

Professional Consultant Selection for Banning Municipal Airport

Dear Ms. Drilling,

The City of Banning Public Works Department prepared a Request for Qualifications (RFQ) for professional airport planning, environmental, engineering, and airport construction management services for Banning Municipal Airport. It was advertised on our city website, in the August 1, 2013 edition of the Press Enterprise and on SW AAAE (Southwest American Association of Airport Executives) website. The RFQ included: a detailed Consultant Scope of Services/Tasks and the Airport's anticipated FAA funded 5 year Airport Improvement Projects for the consultants to include in their proposals, submittal requirements, and a description of the evaluation criteria and selection process for the RFQ.

The following selection panel comprised of Public Works Department staff was chosen in September of 2013:

- Kahono Oei, P.E., City Engineer
- Arturo Vela, P.E., Senior Civil Engineer
- Carl Szoyka, Public Works Superintendent
- Ann Marie Loconte, P.E., Associate Civil Engineer and selection board coordinator

The following firms responded with submittals by the required deadline:

- C and S Companies, of San Diego, CA
- MTGL, Inc., of Riverside, CA

The consultant selection process was conducted using guidelines provided in FAA Advisory Circular 150/5100-14D, Architectural, Engineering and Planning Consultant services for Airport Grant Projects.

The evaluation criteria/ score sheet, RFQ and Statement of Qualifications (SOQs, provided by each of the two firms) were given to each panel member to individually and independently

evaluate and score each submittal. Each member provided their score sheets to the selection panel coordinator, who totaled the scores for each firm, averaged them and compiled a final spreadsheet that is attached to this report.

The results of the evaluations are listed below:

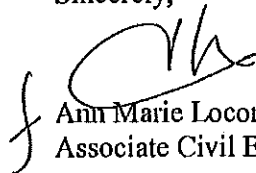
<u>Firm Name</u>	<u>Score</u>	<u>Rank</u>
C and S Companies	91.75	1
MTGL, Inc.	71.25	2

Both firms submitted SOQs that met the minimum requirements of the RFQ.

C and S Companies had the highest score overwhelmingly amongst the four panel members. The firm has 45 years of experience with aviation projects, and in the SOQ clearly outlined their project understanding and approach for all the proposed projects in the Scope of Work. They have worked with Banning Municipal Airport and Public Works Department staff for about 10 years and have received excellent references from four (4) client agencies. Projects with the City have been completed on time and on budget. They showed that their workload can handle new City of Banning projects and that they have completed assigned projects in a timely manner. They explained why each project is needed and appear to have extensive knowledge of the FAA Advisory Circulars and requirements.

MTGL, Inc. has extensive knowledge of geotechnical engineering and materials testing and construction management and is less strong on airport planning/design projects. References received for the firm were positive. The firm had less experience with Airport projects, about 20 years but not very closely related to the projects in our RFQ. They did not demonstrate they could complete work in a timely manner or could attend meetings on short notice. The selection panel recommends that C and S Companies be awarded a professional services contract to provide professional airport planning, environmental, engineering and airport construction management services for Banning Municipal Airport, for the next five years for the FAA funded projects at Banning Municipal Airport.

Sincerely,



Ann Marie Loconte, P.E.  
Associate Civil Engineer

Encl.

Copy: Duane Burk, Public Works Director  
Kahono Oei, City Engineer  
Art Vela, Senior Civil Engineer  
File

**EXHIBIT "H"**  
**CONTRACT AMENDMENT NO. 1**  
**AND**  
**FEE STATEMENT**



**PROFESSIONAL SERVICES AGREEMENT**

**By and Between**

**CITY OF BANNING**

**and**

**C & S ENGINEERS, INC.**

**For**

**The Design and Construct Obstruction Removal; Signage and Marking Improvements;  
Airport Layout Plan Update**

**AMENDMENT NO. 1**

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF BANNING AND C & S ENGINEERS, INC. FOR THE  
DESIGN AND CONSTRUCT OBSTRUCTION REMOVAL; SIGNAGE AND MARKING  
IMPROVEMENTS; AIRPORT LAYOUT PLAN UPDATE**

**AMENDMENT NO. 1**

THIS AGREEMENT FOR CONTRACT SERVICES (herein“ Agreement”) is made and entered into this 14<sup>th</sup> day of January, 2015 by and between the City of Banning, a municipal corporation (“City”) and C & S Engineers, Inc., a California (“Consultant”). City and Consultant are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties”.

**RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning’s Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which services may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it

shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant's Proposal.

This Agreement shall include the Request for Proposal or Invitation for Bids ("Contract Documents") and the Scope of Service shall include the Consultant's scope of work or in Consultant's accepted bid proposal ("Accepted Bid") shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the Contract Documents, Accepted Bid, and/or this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be

responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

#### 1.7 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

#### 1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual cost of the extra services, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

#### 1.9 Facilities and Equipment.

Except as otherwise provided, Consultant shall, at its own cost and expense, provide all facilities and equipment necessary to perform the services required by this Agreement. City shall make available to Consultant only physical facilities such as desks, filing cabinets, and conference space ("City Facilities"), as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of City. The location, quality, and time of furnishing City Facilities shall be in the sole discretion of City. In no event shall City be required to furnish any facilities that may involve incurring any direct expense, including but not limited to computer, long distance telephone, network data, internet or other communication charges, vehicles and reproduction facilities.

#### 1.10 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

## ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

### 2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed Fifty Seven Five Hundred Dollars (\$57,500.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

### 2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services less contract retention; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

### 2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

### 2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City may independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to



Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

**ARTICLE 3. PERFORMANCE SCHEDULE**

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer shall extend the time for performance in accordance with the procedures set forth in Section 1.10. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

## ARTICLE 4. COORDINATION OF WORK

### 4.1 Representatives and Personnel of Consultant.

The following principals of Consultant ("Principals") are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

<u>Cory Hazlewood</u>	<u>Department Manager</u>
(Name)	(Title)

<u>Brian Saull</u>	<u>Project Engineer</u>
(Name)	(Title)

<u>Maritza Navarra</u>	<u>Program Coordinator</u>
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing Principals were a substantial inducement for City to enter into this Agreement. Therefore, the Principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance. In the event that City, in its sole discretion, at any time during the term of this Agreement, desire to reassign any staff or subcontractor of Consultant, Consultant shall, immediately upon reassign notice from City of such desire of City, reassign such persons or persons.

### 4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

#### 4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

#### 4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

### **ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

#### 5.1 Insurance Coverages.

The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Workers Compensation Insurance. A policy of workers compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Consultant and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

(f) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

## 5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under

this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

\_\_\_\_\_  
Agent's Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3.

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.



### 5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnors"), or arising from Consultant's reckless or willful misconduct, or arising from Consultant's or indemnors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

In addition, Consultant agrees to indemnify, defend and hold harmless the Indemnified Parties from, any and all claims and liabilities for any infringement of patent rights, copyrights or trademark on any person or persons in consequence of the use by the Indemnified Parties of

articles to be supplied by Consultant under this Agreement, and of which the Consultant is not the patentee or assignee or has not the lawful right to sell the same.

#### 5.4 Sufficiency of Insurer or Surety.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager.

### **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

#### 6.1 Records.

Consultant shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

#### 6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### 6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein.

All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

### 6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

### 7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

### 7.2 Disputes; Default.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall proceed with payment on the invoices only when the default is cured. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### 7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

### 7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any

right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant must file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et. seq., in order to pursue a legal action under this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of Not Applicable (\$N/A) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to



this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

**ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any

State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, or other protected class.

8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

**ARTICLE 9. MISCELLANEOUS PROVISIONS**

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA, 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF BANNING, a municipal corporation

\_\_\_\_\_,  
Deborah Franklin, Mayor

ATTEST:

\_\_\_\_\_  
Marie Calderon, City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
David Aleshire, City Attorney

**CONSULTANT:**

C & S ENGINEERS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Two signatures are required if a corporation.

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2014 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

☐  
☐

INDIVIDUAL  
CORPORATE OFFICER

\_\_\_\_\_  
TITLE(S)

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

☐  
☐  
☐  
☐  
☐

PARTNER(S) ☐ LIMITED  
GENERAL

ATTORNEY-IN-FACT

TRUSTEE(S)

GUARDIAN/CONSERVATOR

OTHER \_\_\_\_\_

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE



## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2014 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

#### CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER

\_\_\_\_\_  
TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL

- ☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

## EXHIBIT "A"

### SCOPE OF SERVICES

I. Consultant shall provide required services to design the Apron and Parking Lot Markings, Signage, and Obstruction Removal project (the "Project"). The Project will be performed and constructed by the CITY with grant assistance from the Federal Aviation Administration (FAA) Airport Improvement Program (AIP) and the State of California Department of Transportation (CALTRANS).

This project will include the design of new apron markings in accordance with FAA AC 150/5340-1L as well as markings and signage at the terminal parking lot. Existing overhead lighting will be removed and replaced with shorter area lighting. The new lighting is anticipated to utilize the existing circuit. Foot candle analysis is not included in this work, nor is any additional electrical design for the terminal panel. Design will include calculations to ensure the new light poles fall under the imaginary transitional surface; however, an airspace analysis will not be performed.

Services to be provided by the Consultant shall include civil, electrical, and surveying, as applicable, required to accomplish the following items ("Basic Services"):

**A. Administrative Phase:** The Consultant shall aid the City by acting as its liaison and Project coordinator with the CALTRANS and the FAA during the Project's design. In addition, the Consultant shall assist the City in the preparation of paperwork required to secure funds for the Project. The specific services to be provided or furnished for this Phase of the Project are the following:

1. Preparation of grant application packages; coordination of their execution by the City; and submission to the funding agencies.
2. Preparation of reimbursement request packages; coordination of their execution by the City; and submission to the funding agencies.
3. During the Design Phase, to aid the City by acting as its liaison and Project coordinator with the funding agencies.
4. Prepare a CATEX for the project and process to approval with the FAA.
5. The construction budget for the Project is approximately **\$90,000**. The Consultant shall evaluate the feasibility of this budget, based upon the Consultant's experience as a design professional, and keep the City apprised during each phase of the Project of the results of such evaluation. The Consultant shall advise the City as to options available for reducing construction costs to stay within the budget, if it appears likely that contractor bid prices will exceed this budget.

**B. Preliminary Design (70%):** The services to be performed during this Phase consist generally of services required to furnish the City with a set of Preliminary Plans, Specifications, and Engineer's Report. The specific services to be provided or furnished for this Phase of the Project are the following:

1. Perform site visit to verify site requirements.
2. Finalize site layouts.
3. Develop preliminary lighting layouts and perform preliminary design verification of existing electrical power distribution.
4. Prepare preliminary Contract Drawings (approximately 70% complete) providing sufficient detail for review of design concepts by the City, the FAA, and the CALTRANS.

*Anticipated Drawings Include:*

- a. G-001 – Title Sheet
  - b. G-002 – Legend, Notes, Quantities, Etc
  - c. G-101 – General Plan
  - d. G-102 – Construction Safety and Phasing Plan
  - e. CG-101 – Site Plan
  - f. CG-501 – Site Details
  - g. E-001 – Electrical Notes, Details, and One-lines
5. Prepare general specifications and preliminarily develop technical specifications expected to be required for the proposed work.
  6. Finalize construction phasing and operations plan. Submit CSPP and 7460 to FAA via OE/AAA website.
  7. Prepare signage details and language.
  8. Develop apron marking layouts in accordance with FAA standards.
  9. Update opinion of probable construction cost to reflect the outcomes of preliminary Project design.
  10. Prepare written draft design report documenting items such as design concepts, assumptions, and alternative designs. Identify conflicts with or deviations from FAA standards for design items, and request a waiver from the FAA if necessary.
  11. Submit sufficient copies of preliminary design documents to the City, the FAA, and the CALTRANS for their review and comment.
  12. Schedule and conduct a preliminary design review meeting to discuss and resolve City comments.

**C. Final Design Phase:** The services included under this Phase shall generally consist of services required to furnish the City with a complete set of Contract Documents for the Project, including Final Plans, Specifications, Engineer's Design Report, and opinion of probable construction costs. Services to be performed or furnished during this Phase may include revising the preliminary submittal information to comply with City comments and then completion of the final design. Plans and Specifications, suitable for unit price bidding, will be completed; final design will be coordinated with the City; and a complete set of bid documents will be furnished to the City. A final opinion of probable construction cost and the final Design Report will also be prepared and submitted. A final Construction Phasing and Operations Plan will be included as part of the specifications. The specific services to be provided or furnished for this Phase of the Project are the following:

1. Finalize lighting layouts, electrical power distribution and system designs, and detail installations.
2. Finalize signage details and installations
3. Finalize marking layouts and details.
4. Prepare final Contract Drawings.
5. Perform a detailed quantity takeoff of all bid items to be included on the Contract Drawings and in the General Specifications of the Contract Documents.
6. Finalize General Specifications and prepare written Technical Specifications for all construction materials and installations. Finalize construction phasing and operations plan and include in Specifications.
7. Prepare final opinion of probable construction costs based upon the actual bid items and quantity takeoffs.
8. Finalize design report to be consistent with the final design.
9. Submit draft final documents to the City, the FAA, and the CALTRANS for final review and comment. Schedule and conduct draft final review meeting with the City to discuss and resolve final comments.
10. Reproduce and submit sufficient copies of bid documents to City for bidding purposes. Bid documents shall consist of the Contract Drawings and Specifications. Cross-sections and soils investigation data shall also be provided to bidders for informational purposes.

**D. Bid Phase:** The Bid Phase is that time frame between completion of the design process and beginning of actual construction when the City publicly advertises and receives bids, awards contracts to the lowest responsible bidder, and executes a construction contract to perform the work with the successful contractor(s). The Consultant shall assist the City during this Phase as required.

1. Assist the City in the advertisement of the Project and issuance of bid documents.
2. Receive and respond as required to questions from potential bidders regarding the Contract Documents.
3. Pre-bid conference is not included in this design proposal.
4. Upon receipt of bids, perform bid reviews. The bid review shall include items such as a check of the contractor's bid extensions, bid security, execution of bid, non-collusive bidding certificate, EEO certification, statement of surety's intent, addenda receipt, "Buy American" certificate, subcontractors and suppliers list, Disadvantaged Business Enterprise (DBE) certification, eligibility certification, corporate bidder's certification, non-discrimination statement and nonsegregated facilities certificate. Request evidence of competency and evidence of financial responsibility from the contractor. Review contractor's list of personnel, list of equipment, and financial statement. Formal contact of the contractor's references shall be made upon City's request or if the contractor has no past working relationship with the CONSULTANT, the City, the FAA, or CALTRANS.
5. Prepare a final bid tabulation, recommendation/rejection of award to the City, and a sample award letter. Request concurrence of award from the FAA and CALTRANS.
6. Coordinate Notice to Proceed (NTP) for construction. Contact FAA for permission to issue NTP. Prepare a sample NTP letter for the City to send to the contractor.

**E. Construction Contract Administration Phase:** The Construction Contract Administration Phase shall consist of observation of the construction to become generally familiar with the progress and quality of the Contractor's work to determine if the work is proceeding in general conformity with the Contract Documents. In addition, the Consultant shall aid the City by acting as its liaison and Project coordinator with the CALTRANS and the FAA during the construction of the Project. Construction Contract Administration includes the following services:

1. Provide consultation and advice to the City during construction, including the holding of a pre-construction conference and bi-

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weekly construction coordination meetings, and other meetings required during the course of construction. Prepare and distribute minutes of all meetings.

2. Review, approve, or take other appropriate action on all Contractor-required submittals, such as construction schedules and phasing programs, shop drawings, product data, catalog cuts, and samples.
3. Review alternative construction methods proposed by the Contractor and advise the City of the impact of these methods on the schedule and quality of the Project.
4. Prepare supplemental drawings and change orders necessary to execute the work properly within the intended scope. Assist the City in resolving contractor claims and disputes.
5. Provide interpretation of the Contract Document requirements and advise the Contractor of these on behalf of the City when necessary.
6. Furnish the City one reproducible set of the record drawings for the completed Project taken from the annotated record drawings prepared by the resident inspector based upon Contractor-provided information.
7. Prepare reimbursement request packages; coordinate their execution by the City; and submit to the funding agencies.
8. Conduct pre-final and final inspections of the completed Project with the City's airport personnel, the FAA, and the Contractor.
9. Issue certificates of construction completion to the City, the FAA, and CALTRANS.
10. Perform an orderly closeout of the Project as required by the City, the FAA, and CALTRANS.

**F. Construction Observation Phase:** The construction observation phase shall consist of limited construction observation by a **part-time** resident engineer or inspector and supporting staff who will also:

1. Maintain Project records per the City and FAA guidelines.
2. Review documents and submissions by Contractor(s) pertaining to scheduling and advise the City as to their acceptability.

3. Observe the Work to determine general conformity with the Contract Documents and to ascertain the need for correction or rejection of the Work. Neither the activities of the resident engineer or inspector and/or supporting staff nor the presence of any of them at a construction/Project site shall relieve Contractor nor make Consultant responsible for, Contractor's obligations, duties, and responsibilities, including, but not limited to, construction means, methods, sequences, techniques, or procedures necessary for performing, superintending, or coordinating the Work in accordance with the Contract Documents and any health or safety precautions or measures required by regulatory agencies.
4. Attend and conduct pre-construction and pre-installation conferences; bi-weekly progress meetings; and final inspection of the completed Project.
5. Observe testing and inspection. Arrange for, conduct, or witness field, laboratory, or shop tests of construction materials as required by the plans and specifications for the Project; interpret the contract plans and specifications and check the construction activities for general compliance with the design intent; measure, compute, or check quantities of Work performed and quantities of materials in-place for partial and final payments to the Contractor.
6. Prepare and submit inspection reports of construction activity and problems encountered as required by the City and the FAA.
7. Prepare, review, and approve monthly and final payments to Contractor(s).

The Consultant agrees to perform the services in the Construction Observation Phase of this Project during the construction contract period of 20 Working Days (approximately 4 weeks), estimated to be as follows:

Pre-Construction: Inspector Engineer, 1 day

Inspection: Inspector, 4 days @ 8 hrs/day  
(one day/week for 4 weeks)

Post-Construction: Inspector Engineer, 1 day

**G. Airport Layout Plan (ALP) Update Phase:** The Consultant shall provide professional services to prepare an Airport Layout Plan (ALP) Update. This scope of services is based upon Federal Aviation Administration (FAA) Advisory Circular (AC) 150/5070-6B, *Airport Master Plans*, which provides general guidelines for the preparation of an ALP update. Services will generally include only the related updates to provide an ALP that reflects current conditions and planning, using data collected during the latest ALP. Additional studies, analysis, surveys or other data collection not specifically included below is not part of this scope of services. The ALP Update will be conducted in logically organized phases that will include the following:

I. Administration Phase

- a) Preparation of reimbursement request packages, coordination of their execution by the City, and submission to the funding agencies.
- b) Aid the City by acting as liaison and project coordinator with the funding agencies.

II. Airport Requirements

- a) Airfield Inventory and review of current FAA requirements
- b) Existing airside and landside facilities at the Airport will be documented and will be compared to FAA design standards. Available mapping material, CADD drawings and aerial photographs will be evaluated against the on-site visits to the airport in order to determine existing on-airport facilities.
- c) Airside facilities refer to all aeronautical surfaces whereupon aircraft operations are carried out: runways, taxiways, and aprons. This includes an inventory of the airport instrumentation, lighting and markings.
- d) Landside facilities refer to those civilian parts of the airport designed to serve passengers, tenants, airport workers, and airport administration: vehicle access roads, vehicle parking, fuel facilities, airport utilities, aircraft maintenance areas and buildings.
- e) All recent construction or construction scheduled to be completed within the study period will be noted as such and included in the Inventory section of the ALP Update.

III. Review of Existing Planning Data

- a) The current and future facility, operational and management challenges that the Airport currently faces will be documented in this section. The ALP Update will evaluate and make recommendations for how to best handle these challenges. Attention will be given to the following items:
  - 1) Airfield Layout
  - 2) Terminal Area
  - 3) Compliance with FAA design standards

#### IV. Airport Layout Drawings to be updated

- a) Existing Airport Layout
- b) Proposed Airport Layout
- c) Terminal Area Plan
- d) Land Use and Ground Access Plan
- e) Airport Property Map

#### V. Narrative Report

**Note:** In accordance with *Airport Master Plans*, the Consultant shall provide a Narrative Report and an ALP drawing set only. This scope of work is NOT intended to undertake an Airport Master Plan study.

#### **Expectations:**

The ALP update will be based in part on information from the currently ALP, dated 2007. It is assumed that consultant services will NOT include the following:

- Environmental clearance for the proposed development project.
- Development and evaluation of a range of specific alternatives for airport development.
- FAA Airports Geographic Information System (AGIS) and associated aeronautical survey in accordance with FAA AC 150/5300-16,17 &18 as amended.
- Airspace and obstruction updates
- Public participation and outreach

CONSULTANT will schedule the following meetings with the City:

- Kick-off meeting – via conference call: ALP update process orientation
- One site visit - existing airport inventory
- One site meeting to review proposed airport development plan.
- One meeting via conference web and image call to review final ALP update.
- Monthly project status updates via conference call

**II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**

As determined per Section I of this exhibit.

**III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City appraised of the status of performance by delivering the following status reports:**

Monthly status reports unless otherwise agreed upon by the City and Consultant.

**IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**

**V. Consultant will utilize the following personnel to accomplish the Services:**

- A. Cory Hazlewood, Department Manager
- B. Brian Saull, Project Engineer
- C. Maritza Navarra, Program Coordinator



**EXHIBIT "B"**

**SPECIAL REQUIREMENTS  
(Superseding Contract Boilerplate)**

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**EXHIBIT "C"**

**SCHEDULE OF COMPENSATION**

**I. Consultant shall perform the following tasks at the following rates:**

	<b>DESCRIPTION</b>	<b>RATE</b>
A.	Project Management	\$3,942.00
B.	Preliminary Design	\$10,005.00
C.	Final Design	\$3,662.00
D.	Bid Phase	\$520.00
E.	Construction Phase	\$10,866.00
F.	Airport Layout Plan Update	\$27,105.00
G.	Directs	\$1,400.00
	<b>TOTAL</b>	<b>\$57,500.00</b>

**II. Payments will be made upon satisfactory completion of the tasks.**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.**

**IV. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B. Line items for all materials and equipment properly charged to the Services.
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

- V. The total compensation for the Services shall not exceed \$57,500.00 as provided in Section 2.1 of this Agreement.**

**EXHIBIT "D"**

**SCHEDULE OF PERFORMANCE**

- I. Consultant shall perform all Services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer and the City Attorney's office.**

	<b>DESCRIPTION</b>	<b>DUE DATE</b>
<b>A.</b>	Design NTP	3/1/15
<b>B.</b>	Preliminary Design	4/15/15
<b>C.</b>	Final Design	5/1/15
<b>D.</b>	Bid Phase	7/1/15
<b>E.</b>	Construction Phase	10/1/15
<b>F.</b>	Airport Layout Plan Update	12/1/15

- II. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**