

In-person participation by the public will be permitted. In addition, remote public participation is available in the following ways:

- 1. Livestream online at www.atwater.org (Please be advised that there is a broadcasting delay. If you would like to participate in public comment, please use the option below).*
- 2. Submit a written public comment prior to the meeting: Public comments submitted to cityclerk@atwater.org by 4:00 p.m. on the day of the meeting will be distributed to the City Council, and made part of the official minutes but will not be read out loud during the meeting.*

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons requesting accommodation should contact the City in advance of the meeting, and as soon as possible, at (209) 357-6241.

CITY OF ATWATER

City Council

AGENDA

Council Chambers
750 Bellevue Road
Atwater, California

March 27, 2023

CALL TO ORDER:

5:30 PM

ROLL CALL: (City Council)

Ambriz _____, Button _____, Cale _____, Raymond _____, Nelson _____

CLOSED SESSION

Adjourn to Conference Room A

- Conference with Legal Counsel - WORKERS' COMPENSATION LIABILITY CLAIM (Gov. Code 59465.95): Claimant: John Smothers; Agency claimed against: City of Atwater**

CALL TO ORDER:

6:00 PM

REGULAR SESSION: (Council Chambers)

INVOCATION

Invocation by Bill Lawrence

PLEDGE OF ALLEGIANCE TO THE FLAG

ROLL CALL:

Ambriz ____, **Button ____**, **Cale ____**, **Raymond ____**, **Nelson ____**

MAYOR OR CITY ATTORNEY REPORT OUT FROM CLOSED SESSION

SUBSEQUENT NEED ITEMS: (The City Clerk shall announce any requests for items requiring immediate action subsequent to the posting of the agenda. Subsequent need items require a two-thirds vote of the members of the City Council present at the meeting.)

APPROVAL OF AGENDA AS POSTED OR AS AMENDED: (This is the time for the City Council to remove items from the agenda or to change the order of the agenda.)

Staff's Recommendation: Motion to approve agenda as posted or as amended.

PRESENTATIONS

- **Monthly report by Merced County District 3 Supervisor McDaniel**

CONSENT CALENDAR

NOTICE TO THE PUBLIC

Background information has been provided on all matters listed under the Consent Calendar, and these items are considered to be routine. All items under the Consent Calendar are normally approved by one motion. If discussion is requested on any item, that item will be removed from the Consent Calendar for separate action.

TREASURER'S REPORT

1. **February 28, 2023**

Staff's Recommendation: Approval of report as listed.

WARRANTS

2. **March 27, 2023**

Staff's Recommendation: Approval of warrants as listed.

MINUTES: (City Council)

3. **March 13, 2023**

Staff's Recommendation: Approval of minutes as listed.

RESOLUTIONS:

4. **Approving and authorizing the annual Local Transportation Fund (LTF) Claim to be filed with Merced County Association of Governments (MCAG) for CRRSAA Swap Fiscal Year 2022/23** (Community Development Director Thompson)

Staff's Recommendation: Adopts Resolution No. 3384-23, approving and authorizing the annual Local Transportation Fund (LTF) Claim in the amount of \$147,135 to be filed with the Merced County Association of Governments (MCAG) for CRRSAA Swap Fiscal Year 2022-23; Authorizes and directs the City Manager to execute the Claim form on behalf of the City; and Adopts Resolution No. 3385-23, approving Budget Amendment No. 16 regarding FY 2022-23 Local Transportation Fund.

AGREEMENTS:

5. **Awarding a Purchase Agreement (Purchase Order) to Data Path, Inc. for the purchase of new switches throughout the city** (Public Works Director Vinson)

Staff's Recommendation: Awards a Cooperative Purchase, Purchase Agreement (Purchase Order), to Data Path, Inc. of Modesto, California, for the purchase of new switches throughout the city, in the combined amount not to exceed \$110,916.32; and authorizes and directs the City Manager to execute the Agreement (Purchase Order) on behalf of the City.

6. **Authorizing Fee Credit Agreement with Sukhdeep Khatra for 1960 Green Sands Avenue Project** (Community Development Director Thompson)

Staff's Recommendation: Approves a Fee Credit Agreement, in a form approved by City Attorney, with Sukhdeep Khatra for 1960 Green Sands Avenue Project; and authorizes and directs the City Manager, or her designee, to execute the agreement on behalf of the City.

ORDINANCES (WAIVING SECOND READING AND ADOPTION):

7. **Adoption of an Ordinance approving Zoning Text Amendment of the City Council amending Title 17, "Zoning," of the Atwater Municipal Code for Site Plan and Architectural Review** (Community Development Director Thompson)

Staff's Recommendation: Adopts an Ordinance approving Zoning Text Amendment of the City Council amending Title 17, "Zoning," of the Atwater Municipal Code for Site Plan and Architectural Review.

*****END OF CONSENT CALENDAR*****

PUBLIC HEARINGS

8. **Waiving the first reading, by title only and introducing a Zoning Ordinance Text Amendment of the City Council amending certain sections of Chapter 17.69 “Sign Regulations,” of the Atwater Municipal Code** (Community Development Director Thompson)

Staff's Recommendation: Open the public hearing and take any testimony given;

Close the public hearing; and,

Motion to waive the first reading, by title only, and introduce Ordinance No. CS 1057 amending certain sections of Chapter 17.69 “Sign Regulations,” of the Atwater Municipal Code.

Motion to approve staff's recommendation as presented.

9. **Waiving the first reading, by title only and introducing an Ordinance Approving a Site Plan, Architectural Review and Zone Change No. 22-24-0400 to develop four vacant parcels located along the south side of Commerce Avenue and adopt an Initial Study and Mitigated Negative Declaration** (Senior Planner Rashe)

Staff's Recommendation: Open the public hearing and take any testimony given;

Close the public hearing; and,

Motion to waive the first reading, by title only, and introduce Ordinance No. CS 1060 approving a Site Plan No. 22-24-0100, Architectural Review No. 22-24-0300 and Zone Change No. 22-24-0400 to develop four vacant parcels located along the south side of Commerce Avenue and adopt an Initial Study and Mitigated Negative Declaration; (APNs: 056-241-012, 056-241-013, 056-241-014).

Motion to approve staff's recommendation as presented.

REPORTS AND PRESENTATIONS FROM STAFF:

10. **Adopting a Resolution Awarding a Collection Services Agreement and Franchise to Mid Valley Disposal of Kerman, California for Residential and Commercial Garbage, Recyclable Material, and Organic Waste Collection Services** (Public Works Director Vinson)

Staff's Recommendation: Motion to adopt Resolution No.3382-23 to award a Collection Services Agreement and Franchise to Mid Valley Disposal of Kerman, California for the provision of Residential and Commercial Garbage, Recyclable Material, and Organic Waste Collection Services; and authorizes the Mayor of City of Atwater to execute said agreement; or

Motion to approve staff's recommendation as presented.

CITY MANAGER REPORTS/UPDATES:

11. City Manager Updates

COMMENTS FROM THE PUBLIC

NOTICE TO THE PUBLIC

At this time any person may comment on any item which is not on the agenda. You may state your name and address for the record; however, it is not required. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on a future agenda. Please limit comments to a maximum of three (3) minutes.

CITY COUNCIL REPORTS/UPDATES

12. Letter supporting Assembly Bill 1708 increasing accountability for repeat theft offenders and offering pathways for pre-plea diversion programming.

Recommendation: Motion to authorize and direct Mayor Nelson to execute the letter of support, on behalf of the City of Atwater, regarding Assembly Bill 1708 increasing accountability for repeat theft offenders and offering pathways for pre-plea diversion programming.

- **City Council Member Cale, District 1**
- **City Council Member Button, District 2**
- **City Council Member Ambriz, District 3**
- **Mayor Pro Tem Raymond, District 4**
- **Mayor Nelson**

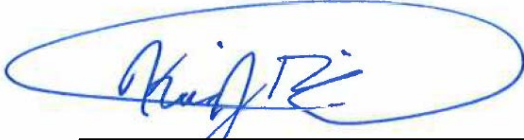
CLOSED SESSION

Continuation of Closed Session if necessary

ADJOURNMENT

CERTIFICATION:

I, Kory J. Billings, City Clerk of the City of Atwater, do hereby certify that a copy of the foregoing agenda was posted at City Hall a minimum of 72 hours prior to the meeting.



KORY J. BILLINGS
CITY CLERK

In accordance with California Government Code Section 54957.5, any writing or document that is a public record, relates to an open session agenda item and is distributed less than 72 hours prior to a regular meeting will be made available for public inspection in the office of the City Clerk at City Hall during normal business hours at 750 Bellevue Road.

If, however, the document or writing is not distributed until the regular meeting to which it relates, then the document or writing will be made available to the public at the location of the meeting, as listed on this agenda at 750 Bellevue Road.



In compliance with the federal Americans with Disabilities Act of 1990, upon request, the agenda can be provided in an alternative format to accommodate special needs. If you require special accommodations to participate in a City Council, Commission or Committee meeting due to a disability, please contact the City Clerk's Office a minimum of three (3) business days in advance of the meeting at (209) 357-6241. You may also send the request by email to cityclerk@atwater.org.

Unless otherwise noted, City Council actions include a determination that they are not a "Project" within the meaning of the California Environmental Quality Act (CEQA), and therefore, that CEQA does not apply to such actions.

~ March 2023 ~						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 GPTAC - 6:00 PM	2	3	4
			5	6	7 Citizens' Oversight Committee Meeting - 5:30 PM	8
12 Daylight Saving Time Begins	13 City Council Meeting - 6:00 PM	14	15 Planning Commission Meeting - 6:00 PM	16	17	18 City of Atwater Spring Clean up 7:00 AM - Noon 3500 Apron Drive Atwater, CA
19	20	21	22	23 Merced County District 3 Supervisor McDaniel Office Hours - 1:30 PM - 3:30 PM	24	25
26	27 Audit & Finance Committee Meeting - 4:30 PM City Council Meeting - 6:00 PM	28	29	30	31	

~ April 2023 ~						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5 GPTAC - 6:00 PM	6	7	8
9	10 City Council Meeting - 6:00 PM	11	12	13	14	15
16	17	18	19 Planning Commission Meeting - 6:00 PM	20	21	22
23	24 Audit & Finance Committee Meeting - 4:30 PM	25	26	27 Merced County District 3 Supervisor McDaniel Office Hours - 1:30 PM - 3:30 PM	28	29
30	City Council Meeting - 6:00 PM					

STATEMENT OF CHANGES IN CASH BALANCE, UNAUDITED
BY FUND
AS OF 02/28/2023

FUND	BEG. BALANCE	CASH DEBITS	CASH CREDITS	ENDING BAL.
0001 General Fund	14,900,706.02	993,680.44	867,852.77	15,026,533.69
0003 General Fund Capital	(362,905.81)	0.00	5,434.15	(368,339.96)
0004 Public Safety Trans & Use Tax	1,118,747.18	273,614.74	767,833.90	624,528.02
0005 Ferrari Ranch Project Fund	2,290.81	0.00	0.00	2,290.81
0007 Measure V Fund	3,759,284.60	62,370.44	0.00	3,821,655.04
0008 Measure V 20% Alternative Modes	631,443.12	15,592.61	704.05	646,331.68
0009 Abandoned Veh Abatement Fund	(2,891.73)	0.00	1,507.60	(4,399.33)
0010 Measure V Regional Fund	(19,497.16)	0.00	0.00	(19,497.16)
1005 Police Grants Fund	70,274.01	0.00	0.00	70,274.01
1010 ARPA-American Rescue Plan Act	5,081,813.44	0.00	13,096.00	5,068,717.44
1011 Gas Tax/Street Improvement	41,510.05	600.00	72,291.32	(30,181.27)
1013 Local Transportation Fund	600,032.10	0.00	0.00	600,032.10
1015 Traffic Circulation Fund	1,483,471.83	0.00	0.00	1,483,471.83
1016 Applegate Interchange	773,065.96	0.00	0.00	773,065.96
1017 RSTP-Regional Surface Transp Prog	2,592,174.34	0.00	0.00	2,592,174.34
1018 SB1-Road Maint & Rehab RMRA	1,937,748.45	58,141.51	3,751.75	1,992,138.21
1019 LPP-Local Partnership Prg Fund	0.00	0.00	0.00	0.00
1020 Parks and Recreation Fund	2,330,849.77	0.00	0.00	2,330,849.77
1040 General Plan Update-Housing Element	(50,000.00)	0.00	0.00	(50,000.00)
1041 General Plan Update Fund	2,140,085.25	0.00	0.00	2,140,085.25
1055 Neighborhood Stabilization	221,389.38	0.00	0.00	221,389.38
1059-80 Housing Grant Funds	770,836.83	500.00	0.00	771,336.83
1091 Police Facility Impact Fee	261,970.19	0.00	0.00	261,970.19
1093 Fire Facility Impact Fee	254,401.41	0.00	0.00	254,401.41
1095 Government Building Facility	273,805.36	0.00	0.00	273,805.36
3064-67 Redevelopment/Successor Agency Funds	2,646,052.90	873.39	3,781.02	2,643,145.27
4020 Performance Bond Trust	220,086.82	0.00	0.00	220,086.82
4030 Narcotics Program Trust	2,078.68	0.00	0.00	2,078.68
4060 Section 125 Medical	1,092.50	210.00	0.00	1,302.50
4070 Section 125 Dependent Care	0.00	0.00	0.00	0.00

STATEMENT OF CHANGES IN CASH BALANCE, UNAUDITED
BY FUND
AS OF 02/28/2023

FUND	BEG. BALANCE	CASH DEBITS	CASH CREDITS	ENDING BAL.
4080 Pension Rate Stblztn 115 Trust	260,744.15	0.00	6,670.77	254,073.38
4090 CFD No. 1 Trust	131,271.37	0.00	0.00	131,271.37
5001-55 All Maintenance Districts	1,395,313.22	0.00	31,295.37	1,364,017.85
5050 CFD Districts	72,176.91	0.00	119,986.21	(47,809.30)
6000 Water Enterprise Fund	9,525,523.98	539,765.21	146,993.85	9,918,295.34
6001 Water Fund Capital Replacement	2,279,926.87	0.00	78,972.31	2,200,954.56
6002 DBCP Settlement	20,616.52	0.00	0.00	20,616.52
6004 Water Well- Buhach Colony	184,249.77	0.00	0.00	184,249.77
6005 Water Capital Impact Fees	2,606,336.13	0.00	0.00	2,606,336.13
6006 Water Operating Reserve Fund	180,663.95	0.00	0.00	180,663.95
6007 1,2,3-TCP Fund	16,203,166.41	0.00	237,035.33	15,966,131.08
6010 Sewer Enterprise Fund	15,735,170.74	778,022.97	798,820.42	15,714,373.29
6011 Sewer Fund Capital Replacement	3,684,646.10	0.00	0.00	3,684,646.10
6020 Sanitation Enterprise	2,913,842.60	342,425.56	286,263.87	2,970,004.29
7000 Internal Service Fund	435,419.91	606.79	160,555.30	275,471.40
7001 ISF Equipment/Bldg Replacement	100,368.95	0.00	0.00	100,368.95
7010 Employee Benefits Fund	788,138.46	7,149.52	73,332.28	721,955.70
7020 Risk Management	502,552.99	0.00	11,571.00	490,981.99
7030 Information Technology	453,350.57	0.00	54,413.24	398,937.33
9090 Accrued Interest Fund	290,830.58	1,453.00	0.00	292,283.58
TOTAL	99,444,226.48	3,075,006.18	3,742,162.51	98,777,070.15

Prepared by: P. Tejada
Patty Tejada, Finance Operations Manager

Approved by: [Signature]
Mark Borba, City Treasurer

**Statement of Changes in Cash Balance
by Bank
As of 02/28/2023**

	Beg. Period Balance	Cash Debits	Cash Credits	End Period Balance
City - LAIF	55,688,028.56			55,688,028.56
City - RMA Long-Term Investment Fund	1,160,048.00	1,453.00		1,161,501.00
City Checking & Investment Accounts	15,267,660.64	2,092,614.90	3,145,362.01	14,214,913.53
Wastewater Checking	5,102,685.60		371,371.36	4,731,314.24
RA Obligation Retirement Fund	3.18	980,938.28		980,941.46
US Bank/Chandler Asset Mgt.	21,965,056.35		218,758.37	21,746,297.98
PARS Post-Employment Benefits Trust	260,744.15		6,670.77	254,073.38
Totals	99,444,226.48	3,075,006.18	3,742,162.51	98,777,070.15

Prepared by: P. Tejada
Patty Tejada, Finance Operations Manager

Approved by: [Signature]
Mark Borba, City Treasurer

(The following statements are required by California Govt. Code Section 53646 (b) (2,3))
Investments are made pursuant to the City Council approved Investment Policy and Guidelines.
The City of Atwater has the ability to meet its pooled expenditure requirements for the next six months.

Bank Account Detail			
City LAIF	55,688,028.56	Chase General Checking	15,155,843.30
Chandler Asset Mgt.	1,161,501.00	Chase Wastewater Checking	4,731,314.24
US Bank/Chandler Asset Mgt.	21,746,297.98	Chase Redevelopment Checking	980,941.46
PARS Post-Employment Benefits Trust	254,073.38	Chase Savings Account	0.00

WARRANTS SUMMARY FOR MARCH 27 2023

TOTAL OF WARRANTS (FROM WARRANT REPORT)
PREWRITTENS INCLUDED IN THIS WARRANT RUN

\$	1,394,592.30
\$	70,852.72

ADDITIONAL WARRANTS (THESE AMOUNTS ARE **NOT** INCLUDED IN TOTAL WARRANTS)

DATE	DESCRIPTION	AMOUNT
3/9/2023	PNC Bank	\$ 4,033.00
3/9/2023	APOA Union Dues	\$ 2,342.60
3/9/2023	AFSCME District Council 57	\$ 930.49
3/9/2023	State Disbursement - Child Support	\$ 473.98
3/9/2023	PERS Retirement EFT 2/16/23 - 3/1/23	\$ 52,091.39

TOTAL ADDITIONAL WARRANTS \$ 59,871.46

\$ 59,871.46

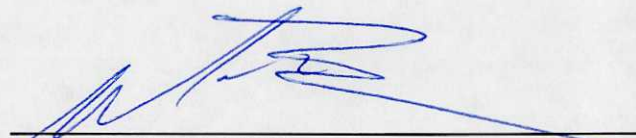
GRAND TOTAL OF WARRANTS PAID =====

\$ 1,525,316.48

INFORMATIONAL ONLY (INCLUDED IN THE TOTAL WARRANTS TOTAL)

DATE	DESCRIPTION	AMOUNT
3/9/2023	Net Payroll	\$ 199,265.42 \$ 269,022.22
3/9/2023	Federal Taxes	\$ 62,655.51
3/9/2023	State Taxes	\$ 7,101.29
3/9/2023	Payroll Deductions	\$ 210.00

TOTAL INFORMATIONAL WARRANTS \$ 269,232.22


 CITY TREASURER

Accounts Payable

Checks for Approval

User: vnanranjo
 Printed: 3/23/2023 - 12:29 PM

Pre-Written



City of
Atwater
Community Pride City Wide
 750 Bellevue Road, Atwater CA 95301

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
22006	03/09/2023	General Fund	Garnishments	FRANCHISE TAX BOARD		210.00
					Check Total:	210.00
22007	03/09/2023	Sewer Enterprise Fund	Utilities	PG&E CFM/PPC DEPARTMENT		6,000.00
					Check Total:	6,000.00
22008	03/14/2023	Sewer Enterprise Fund	Project Retention	PHASE I CONSTRUCTION		50,854.24
22008	03/14/2023	1,2,3-TCP Fund	Project Retention	PHASE I CONSTRUCTION		1,153.95
22008	03/14/2023	SB1-Road Maint & Rehab RMRA	Project Retention	PHASE I CONSTRUCTION		12,514.53
					Check Total:	64,522.72
22009	03/21/2023	General Fund	Memberships & Subscriptions	OLD TOWN ATWATER		120.00
					Check Total:	120.00
					Report Total:	70,852.72

Accounts Payable

Checks for Approval

User: vnanranjo
 Printed: 3/23/2023 - 2:13 PM



City of
Atwater
Community Pride City Wide

750 Bellevue Road, Atwater CA 95301

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
0	03/27/2023	General Fund	Special Departmental Expense	CHASE		18.45
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		290.00
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		157.07
0	03/27/2023	General Fund	Special Departmental Expense	CHASE		22.41
0	03/27/2023	General Fund	Special Departmental Expense	CHASE		337.36
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		625.00
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		30.00
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		625.00
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		25.00
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		56.00
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		258.25
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		625.00
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		17.28
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		886.22
0	03/27/2023	General Fund	Training	CHASE		18.39
0	03/27/2023	General Fund	Training	CHASE		75.00
0	03/27/2023	General Fund	Training	CHASE		250.00
0	03/27/2023	General Fund	Miscellaneous	CHASE		52.79
0	03/27/2023	General Fund	Training	CHASE		18.39
0	03/27/2023	General Fund	Office Supplies	CHASE		81.75
0	03/27/2023	General Fund	Office Supplies	CHASE		119.26
0	03/27/2023	General Fund	Uniform & Clothing Expense	CHASE		1,129.32
0	03/27/2023	General Fund	Professional Services	CHASE		14.99
0	03/27/2023	General Fund	Professional Services	CHASE		144.70
0	03/27/2023	General Fund	Professional Services	CHASE		40.85
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		85.00
0	03/27/2023	General Fund	Uniform & Clothing Expense	CHASE		48.89
0	03/27/2023	General Fund	Training	CHASE		322.62
0	03/27/2023	General Fund	Training	CHASE		226.00
0	03/27/2023	General Fund	Special Departmental Expense	CHASE		145.54
0	03/27/2023	General Fund	Special Departmental Expense	CHASE		371.30
0	03/27/2023	General Fund	Professional Services	CHASE		52.50
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		15.99
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		157.07

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		157.07
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		801.60
0	03/27/2023	General Fund	Training	CHASE		660.00
0	03/27/2023	General Fund	Training	CHASE		250.00
0	03/27/2023	General Fund	Training	CHASE		675.00
0	03/27/2023	General Fund	Training	CHASE		750.00
0	03/27/2023	General Fund	Training	CHASE		675.00
0	03/27/2023	General Fund	Training	CHASE		675.00
0	03/27/2023	General Fund	Training	CHASE		75.00
0	03/27/2023	General Fund	Special Departmental Expense	CHASE		119.99
0	03/27/2023	General Fund	Travel/Conferences/Meetings	CHASE		263.50
0	03/27/2023	General Fund	Special Departmental Expense	CHASE		6.62
0	03/27/2023	Water Enterprise Fund	Professional Services	CHASE		89.08
0	03/27/2023	Internal Service Fund	Special Departmental Expense	CHASE		18.37
0	03/27/2023	Internal Service Fund	Special Departmental Expense	CHASE		25.35
0	03/27/2023	Information Technology Fund	Special Departmental Expense	CHASE		324.87
0	03/27/2023	Information Technology Fund	Special Departmental Expense	CHASE		140.00
0	03/27/2023	Public Safety Trans & Use Tax	Rents & Leases	U.S. BANK EQUIPMENT FINANCE		1,674.65
0	03/27/2023	General Fund	Rents & Leases	U.S. BANK EQUIPMENT FINANCE		156.94
0	03/27/2023	Internal Service Fund	Operations & Maintenance	CHEVRON USA INC.		73.51
0	03/27/2023	Risk Management Fund	Worker's Compensation	CENTRAL SAN JOAQUIN VALLEY RMA		123,133.00
0	03/27/2023	Risk Management Fund	Liability & Property Ins	CENTRAL SAN JOAQUIN VALLEY RMA		88,714.00
Check Total:						226,801.94
22010	03/27/2023	General Fund	Office Supplies	AAA BUSINESS SUPPLIES & INTERIORS		54.25
22010	03/27/2023	General Fund	Office Supplies	AAA BUSINESS SUPPLIES & INTERIORS		162.76
22010	03/27/2023	General Fund	Office Supplies	AAA BUSINESS SUPPLIES & INTERIORS		54.25
22010	03/27/2023	General Fund	Office Supplies	AAA BUSINESS SUPPLIES & INTERIORS		56.67
22010	03/27/2023	General Fund	Office Supplies	AAA BUSINESS SUPPLIES & INTERIORS		27.58
Check Total:						355.51
22011	03/27/2023	Internal Service Fund	Special Departmental Expense	ADVANCED HEATING & AIR		573.73
22011	03/27/2023	Internal Service Fund	Professional Services	ADVANCED HEATING & AIR		142.50
Check Total:						716.23
22012	03/27/2023	Internal Service Fund	Special Departmental Expense	AIR EXCHANGE, INC.		437.68
Check Total:						437.68
22013	03/27/2023	General Fund	Special Departmental Expense	AIRGAS USA, LLC		98.78
Check Total:						98.78
22014	03/27/2023	Sanitation Enterprise Fund	Solid Waste Collectn/Disposal	ALLIED WASTE SERVICES #917		259,472.16

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	259,472.16
22015	03/27/2023	General Fund	Professional Services	ALLWAYS TOWING, L.L.C.		260.00
					Check Total:	260.00
22016	03/27/2023	Water Fund Capital Replacement	Installation-New Water Meters	AQUA METRIC		11,292.20
					Check Total:	11,292.20
22017	03/27/2023	General Fund	Community Center Deposits	JORGE ARMENTA		210.00
22017	03/27/2023	General Fund	Community Center Deposits	JORGE ARMENTA		350.00
22017	03/27/2023	General Fund	Community Center Rental	JORGE ARMENTA		105.00
					Check Total:	665.00
22018	03/27/2023	SB1-Road Maint & Rehab RMRA	Fruitland Ave Rd Improvements	ASSOCIATED RIGHT OF WAY SERVICES, INC.		5,202.50
					Check Total:	5,202.50
22019	03/27/2023	General Fund	Communications	AT & T MOBILITY		252.12
22019	03/27/2023	General Fund	Communications	AT & T MOBILITY		40.24
22019	03/27/2023	General Fund	Communications	AT & T MOBILITY		651.29
22019	03/27/2023	General Fund	Communications	AT & T MOBILITY		283.55
22019	03/27/2023	General Fund	Communications	AT & T MOBILITY		309.92
22019	03/27/2023	General Fund	Communications	AT & T MOBILITY		145.15
22019	03/27/2023	General Fund	Communications	AT & T MOBILITY		316.68
22019	03/27/2023	General Fund	Communications	AT & T MOBILITY		326.41
22019	03/27/2023	Gas Tax/Street Improvement	Communications	AT & T MOBILITY		119.54
22019	03/27/2023	Water Enterprise Fund	Communications	AT & T MOBILITY		321.60
22019	03/27/2023	Internal Service Fund	Communications	AT & T MOBILITY		120.88
					Check Total:	2,887.38
22020	03/27/2023	General Fund	Communications	AT and T - CALNET3		308.03
22020	03/27/2023	General Fund	Communications	AT and T - CALNET3		135.12
22020	03/27/2023	Northwood Village LD	Communications	AT and T - CALNET3		24.49
22020	03/27/2023	Meadow View LD	Communications	AT and T - CALNET3		24.49
22020	03/27/2023	Water Enterprise Fund	Communications	AT and T - CALNET3		267.71
22020	03/27/2023	Sewer Enterprise Fund	Communications	AT and T - CALNET3		366.87
22020	03/27/2023	Internal Service Fund	Communications	AT and T - CALNET3		555.06
					Check Total:	1,681.77
22021	03/27/2023	General Fund	Communications	AT&T		219.35
					Check Total:	219.35
22022	03/27/2023	Internal Service Fund	Professional Services	ATWATER TINT		260.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	260.00
22023	03/27/2023	Public Safety Trans & Use Tax	Rents & Leases	AXON ENTERPRISE, INC.		14,970.00
22023	03/27/2023	Public Safety Trans & Use Tax	Rents & Leases	AXON ENTERPRISE, INC.		828.36
					Check Total:	15,798.36
22024	03/27/2023	Internal Service Fund	Operations & Maintenance	BAUER COMPRESSORS		254.94
					Check Total:	254.94
22025	03/27/2023	Employee Benefits Fund	Dental Insurance	BENEFIT COORDINATORS CORPORATION (BC		1,353.38
22025	03/27/2023	Employee Benefits Fund	Dental Insurance	BENEFIT COORDINATORS CORPORATION (BC		2,233.23
					Check Total:	3,586.61
22026	03/27/2023	General Fund	Professional Services	BEST BEST & KRIEGER		20,069.97
22026	03/27/2023	General Fund	Professional Services	BEST BEST & KRIEGER		3,912.00
22026	03/27/2023	Water Enterprise Fund	Professional Services	BEST BEST & KRIEGER		142.50
22026	03/27/2023	Sewer Enterprise Fund	Professional Services	BEST BEST & KRIEGER		142.50
22026	03/27/2023	Sanitation Enterprise Fund	Professional Services	BEST BEST & KRIEGER		1,110.00
22026	03/27/2023	Risk Management Fund	Professional Services	BEST BEST & KRIEGER		2,263.50
					Check Total:	27,640.47
22027	03/27/2023	Gas Tax/Street Improvement	Special Departmental Expense	BIG CREEK LUMBER COMPANY		-15.20
22027	03/27/2023	Gas Tax/Street Improvement	Special Departmental Expense	BIG CREEK LUMBER COMPANY		12.94
22027	03/27/2023	General Fund	Special Departmental Expense	BIG CREEK LUMBER COMPANY		13.47
22027	03/27/2023	Gas Tax/Street Improvement	Special Departmental Expense	BIG CREEK LUMBER COMPANY		13.33
22027	03/27/2023	Gas Tax/Street Improvement	Special Departmental Expense	BIG CREEK LUMBER COMPANY		7.81
22027	03/27/2023	Gas Tax/Street Improvement	Special Departmental Expense	BIG CREEK LUMBER COMPANY		13.47
22027	03/27/2023	Internal Service Fund	Special Departmental Expense	BIG CREEK LUMBER COMPANY		5.61
22027	03/27/2023	Gas Tax/Street Improvement	Special Departmental Expense	BIG CREEK LUMBER COMPANY		12.03
22027	03/27/2023	Internal Service Fund	Special Departmental Expense	BIG CREEK LUMBER COMPANY		70.34
22027	03/27/2023	General Fund	Training	BIG CREEK LUMBER COMPANY		-42.89
					Check Total:	90.91
22028	03/27/2023	General Fund	Aged Outstanding Warrants	BOOT BARN		546.37
22028	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	BOOT BARN		189.43
22028	03/27/2023	Water Enterprise Fund	Uniform & Clothing Expense	BOOT BARN		400.00
22028	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	BOOT BARN		200.00
22028	03/27/2023	Gas Tax/Street Improvement	Uniform & Clothing Expense	BOOT BARN		200.00
22028	03/27/2023	Gas Tax/Street Improvement	Uniform & Clothing Expense	BOOT BARN		200.00
22028	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	BOOT BARN		156.95
22028	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	BOOT BARN		135.30
22028	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	BOOT BARN		189.43

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
22028	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	BOOT BARN		200.00
22028	03/27/2023	Water Enterprise Fund	Uniform & Clothing Expense	BOOT BARN		200.00
22028	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	BOOT BARN		200.00
22028	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	BOOT BARN		140.71
22028	03/27/2023	General Fund	Uniform & Clothing Expense	BOOT BARN		200.00
22028	03/27/2023	Gas Tax/Street Improvement	Uniform & Clothing Expense	BOOT BARN		200.00
22028	03/27/2023	Gas Tax/Street Improvement	Uniform & Clothing Expense	BOOT BARN		156.95
22028	03/27/2023	Gas Tax/Street Improvement	Uniform & Clothing Expense	BOOT BARN		200.00
22028	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	BOOT BARN		200.00
22028	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	BOOT BARN		200.00
22028	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	BOOT BARN		189.43
22028	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	BOOT BARN		200.00
					Check Total:	4,504.57
22029	03/27/2023	General Fund	Travel/Conferences/Meetings	DONALD BORGWARDT		207.00
					Check Total:	207.00
22030	03/27/2023	Internal Service Fund	Special Departmental Expense	BRADY INDUSTRIES		1,355.79
22030	03/27/2023	Internal Service Fund	Special Departmental Expense	BRADY INDUSTRIES		58.90
					Check Total:	1,414.69
22031	03/27/2023	Water Enterprise Fund	Professional Services	BSK ASSOCIATES		204.00
22031	03/27/2023	1,2,3-TCP Fund	Professional Services	BSK ASSOCIATES		952.50
22031	03/27/2023	1,2,3-TCP Fund	Professional Services	BSK ASSOCIATES		952.50
22031	03/27/2023	Water Enterprise Fund	Professional Services	BSK ASSOCIATES		204.00
					Check Total:	2,313.00
22032	03/27/2023	General Fund	Special Departmental Expense	CAL FARM SERVICES		25.38
					Check Total:	25.38
22033	03/27/2023	General Fund	Training	CALBO		445.00
					Check Total:	445.00
22034	03/27/2023	Internal Service Fund	Professional Services	CAR WASH PARTNERS, INC.		216.00
					Check Total:	216.00
22035	03/27/2023	Internal Service Fund	Special Departmental Expense	CINTAS		26.41
22035	03/27/2023	Internal Service Fund	Uniform & Clothing Expense	CINTAS		12.65
22035	03/27/2023	Internal Service Fund	Uniform & Clothing Expense	CINTAS		15.02
22035	03/27/2023	Gas Tax/Street Improvement	Uniform & Clothing Expense	CINTAS		6.49
22035	03/27/2023	General Fund	Uniform & Clothing Expense	CINTAS		21.34
22035	03/27/2023	Gas Tax/Street Improvement	Uniform & Clothing Expense	CINTAS		35.81

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
22035	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	CINTAS		70.58
22035	03/27/2023	Water Enterprise Fund	Uniform & Clothing Expense	CINTAS		57.32
22035	03/27/2023	Internal Service Fund	Special Departmental Expense	CINTAS		26.41
22035	03/27/2023	Gas Tax/Street Improvement	Uniform & Clothing Expense	CINTAS		6.49
22035	03/27/2023	Gas Tax/Street Improvement	Uniform & Clothing Expense	CINTAS		35.81
22035	03/27/2023	Internal Service Fund	Uniform & Clothing Expense	CINTAS		15.02
22035	03/27/2023	Internal Service Fund	Uniform & Clothing Expense	CINTAS		12.65
22035	03/27/2023	General Fund	Uniform & Clothing Expense	CINTAS		21.34
22035	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	CINTAS		70.58
22035	03/27/2023	Water Enterprise Fund	Uniform & Clothing Expense	CINTAS		57.32
Check Total:						491.24
22036	03/27/2023	Internal Service Fund	Utilities	COMCAST CABLE		21.60
22036	03/27/2023	Internal Service Fund	Communications	COMCAST CABLE		162.29
22036	03/27/2023	Internal Service Fund	Communications	COMCAST CABLE		425.01
Check Total:						608.90
22037	03/27/2023	General Fund	Special Departmental Expense	COOK'S COMMUNICATIONS		229.00
Check Total:						229.00
22038	03/27/2023	General Fund	Plan Check Fees	CSG CONSULTANTS, INC.		375.00
22038	03/27/2023	General Fund	Plan Check Fees	CSG CONSULTANTS, INC.		1,800.00
22038	03/27/2023	General Fund	Plan Check Fees	CSG CONSULTANTS, INC.		225.00
22038	03/27/2023	General Fund	Inspection Fees	CSG CONSULTANTS, INC.		3,384.00
22038	03/27/2023	General Fund	Inspection Fees	CSG CONSULTANTS, INC.		4,104.00
22038	03/27/2023	General Fund	Inspection Fees	CSG CONSULTANTS, INC.		4,392.00
22038	03/27/2023	General Fund	Inspection Fees	CSG CONSULTANTS, INC.		3,636.00
22038	03/27/2023	General Fund	Plan Check Fees	CSG CONSULTANTS, INC.		13,730.25
22038	03/27/2023	General Fund	Plan Check Fees	CSG CONSULTANTS, INC.		1,309.12
22038	03/27/2023	General Fund	Plan Check Fees	CSG CONSULTANTS, INC.		5,440.31
22038	03/27/2023	General Fund	Plan Check Fees	CSG CONSULTANTS, INC.		829.31
22038	03/27/2023	General Fund	Plan Check Fees	CSG CONSULTANTS, INC.		196.00
Check Total:						39,420.99
22039	03/27/2023	General Fund	Operations & Maintenance	DEAN D'ALELIO D'ALELIO		650.93
Check Total:						650.93
22040	03/27/2023	Information Technology Fund	Special Departmental Expense	DATA PATH, INC.		262.48
Check Total:						262.48
22041	03/27/2023	General Fund	Travel/Conferences/Meetings	RONALD DAUGHERTY		207.00
22041	03/27/2023	General Fund	Training	RONALD DAUGHERTY		406.76

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	613.76
22042	03/27/2023	Water Enterprise Fund	Accounts Payable	DANIEL DEL TORO		35.32
					Check Total:	35.32
22043	03/27/2023	Internal Service Fund	Operations & Maintenance	DELRAY TIRE		1,433.28
22043	03/27/2023	Internal Service Fund	Operations & Maintenance	DELRAY TIRE		427.43
					Check Total:	1,860.71
22044	03/27/2023	General Fund	Professional Services	DEPT. OF JUSTICE		32.00
					Check Total:	32.00
22045	03/27/2023	Public Safety Trans & Use Tax	Rents & Leases	ENTERPRISE FM TRUST		7,208.15
					Check Total:	7,208.15
22046	03/27/2023	General Fund	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		2,472.50
22046	03/27/2023	Price Annexation LMA	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		107.50
22046	03/27/2023	Pajaro Dunes LD	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		53.75
22046	03/27/2023	Cottage Gardens LD	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		53.75
22046	03/27/2023	Cottage Gardens ST & LMA	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		53.75
22046	03/27/2023	Bell Crossing LD	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		107.50
22046	03/27/2023	Meadow View LD	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		53.75
					Check Total:	2,902.50
22047	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	FASTENAL COMPANY		12.21
22047	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	FASTENAL COMPANY		42.89
22047	03/27/2023	Internal Service Fund	Special Departmental Expense	FASTENAL COMPANY		37.49
22047	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	FASTENAL COMPANY		48.66
					Check Total:	141.25
22048	03/27/2023	General Fund	Office Supplies	FEDERAL EXPRESS		43.65
					Check Total:	43.65
22049	03/27/2023	Internal Service Fund	Special Departmental Expense	FERGUSON ENTERPRISES INC. #690		4.32
22049	03/27/2023	Internal Service Fund	Special Departmental Expense	FERGUSON ENTERPRISES INC. #690		30.80
					Check Total:	35.12
22050	03/27/2023	General Fund	Castle Park Deposits	IVETTE HERNANDEZ		200.00
					Check Total:	200.00
22051	03/27/2023	Water Enterprise Fund	Professional Services	HOLT OF CALIFORNIA		11,388.60

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	11,388.60
22052	03/27/2023	ARPA-American Rescue Plan Act	Professional Services	JANI TEK CLEANING SOLUTIONS		9,305.65
22052	03/27/2023	ARPA-American Rescue Plan Act	Professional Services	JANI TEK CLEANING SOLUTIONS		9,305.65
					Check Total:	18,611.30
22053	03/27/2023	Measure V Regional Fund	Bellevue Road Realignment	JLB TRAFFIC ENGINEERING, INC		91.65
					Check Total:	91.65
22054	03/27/2023	General Fund	Professional Services	JOE'S PORTABLES		100.00
					Check Total:	100.00
22055	03/27/2023	Internal Service Fund	Professional Services	JORGENSEN COMPANY		65.00
22055	03/27/2023	Internal Service Fund	Professional Services	JORGENSEN COMPANY		359.30
					Check Total:	424.30
22056	03/27/2023	Sewer Enterprise Fund	Special Departmental Expense	KELLOGG'S SUPPLY		232.73
22056	03/27/2023	Sewer Enterprise Fund	Uniform & Clothing Expense	KELLOGG'S SUPPLY		270.60
					Check Total:	503.33
22057	03/27/2023	RSTP-Regional Surf Transp Prog	Ace Train Platform	KRAZAN & ASSOCIATES, INC.		3,560.00
					Check Total:	3,560.00
22058	03/27/2023	Sewer Enterprise Fund	Special Departmental Expense	LATTA'S AUTO SUPPLY		53.58
					Check Total:	53.58
22059	03/27/2023	General Fund	Memberships & Subscriptions	LEAGUE OF CALIFORNIA CITIES		316.52
					Check Total:	316.52
22060	03/27/2023	General Fund	Miscellaneous	LOOMIS DEPT. 0757		2,070.85
					Check Total:	2,070.85
22061	03/27/2023	General Fund	Professional Services	LOPES SEPTIC & PUMPING		150.00
					Check Total:	150.00
22062	03/27/2023	General Fund	Community Center Deposits	LEANNE LOPEZ		210.00
22062	03/27/2023	General Fund	Community Center Deposits	LEANNE LOPEZ		350.00
					Check Total:	560.00
22063	03/27/2023	Water Enterprise Fund	Accounts Payable	MARIA MARGARTIA TENORIO		40.20
22063	03/27/2023	Sewer Enterprise Fund	Accounts Payable	MARIA MARGARTIA TENORIO		42.24

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
22063	03/27/2023	Sanitation Enterprise Fund	Accounts Payable	MARIA MARGARTIA TENORIO		13.14
22063	03/27/2023	Sanitation Enterprise Fund	Accounts Payable	MARIA MARGARTIA TENORIO		4.68
				Check Total:		100.26
22064	03/27/2023	General Fund	Castle Park Rental	MARINES: CENTRAL CA VETERANS		50.00
				Check Total:		50.00
22065	03/27/2023	Measure V Regional Fund	Bellevue Road Realignment	MARK THOMAS & COMPANY, INC		22,856.66
				Check Total:		22,856.66
22066	03/27/2023	Internal Service Fund	Operations & Maintenance	MCAULEY MOTORS		135.10
22066	03/27/2023	Internal Service Fund	Operations & Maintenance	MCAULEY MOTORS		32.09
				Check Total:		167.19
22067	03/27/2023	General Fund	Printing & Advertising	MCCLATCHY COMPANY LLC		123.78
22067	03/27/2023	General Fund	Printing & Advertising	MCCLATCHY COMPANY LLC		123.78
22067	03/27/2023	General Fund	Printing & Advertising	MCCLATCHY COMPANY LLC		123.78
22067	03/27/2023	General Fund	Printing & Advertising	MCCLATCHY COMPANY LLC		125.59
22067	03/27/2023	General Fund	Printing & Advertising	MCCLATCHY COMPANY LLC		141.88
				Check Total:		638.81
22068	03/27/2023	Water Enterprise Fund	Accounts Payable	ESPERANZA MENERA		39.31
22068	03/27/2023	Sewer Enterprise Fund	Accounts Payable	ESPERANZA MENERA		47.16
22068	03/27/2023	Sanitation Enterprise Fund	Accounts Payable	ESPERANZA MENERA		16.80
22068	03/27/2023	Sanitation Enterprise Fund	Accounts Payable	ESPERANZA MENERA		5.24
				Check Total:		108.51
22069	03/27/2023	General Fund	Coed Volleyball	MERCED AREA SPORTS OFFICIALS, INC		150.00
22069	03/27/2023	General Fund	Youth Basketball	MERCED AREA SPORTS OFFICIALS, INC		580.00
22069	03/27/2023	General Fund	Youth Basketball	MERCED AREA SPORTS OFFICIALS, INC		540.00
22069	03/27/2023	General Fund	Coed Volleyball	MERCED AREA SPORTS OFFICIALS, INC		150.00
				Check Total:		1,420.00
22070	03/27/2023	Internal Service Fund	Operations & Maintenance	MERCED CHEVROLET		89.29
				Check Total:		89.29
22071	03/27/2023	General Fund	Fire Marshal Supplies	MERCED COUNTY ASSESSOR		75.00
				Check Total:		75.00
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		37.88
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		19.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		219.56
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		253.13
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		274.23
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		254.86
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		28.84
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		31.08
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		104.18
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		101.60
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		138.62
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		277.20
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		90.00
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		32.29
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		90.00
22072	03/27/2023	Sanitation Enterprise Fund	Professional Services	MERCED COUNTY REGIONAL (1004)		306.00
Check Total:						2,258.47
22073	03/27/2023	General Fund	Professional Services	MERCED COUNTY REGISTRAR		37,670.94
Check Total:						37,670.94
22074	03/27/2023	General Fund	Utilities	MERCED IRRIGATION DISTRICT		532.64
22074	03/27/2023	Gas Tax/Street Improvement	Utilities	MERCED IRRIGATION DISTRICT		661.87
22074	03/27/2023	Price Annexation LD	Utilities	MERCED IRRIGATION DISTRICT		204.61
22074	03/27/2023	Price Annexation LMA	Utilities	MERCED IRRIGATION DISTRICT		116.40
22074	03/27/2023	Mello Ranch LD	Utilities	MERCED IRRIGATION DISTRICT		512.88
22074	03/27/2023	Mello Ranch LNDSCP	Utilities	MERCED IRRIGATION DISTRICT		57.50
22074	03/27/2023	Camellia Estates LD	Utilities	MERCED IRRIGATION DISTRICT		68.21
22074	03/27/2023	Juniper Meadows LD	Utilities	MERCED IRRIGATION DISTRICT		34.08
22074	03/27/2023	Camellia Meadows LD	Utilities	MERCED IRRIGATION DISTRICT		68.21
22074	03/27/2023	Stone Creek LD	Utilities	MERCED IRRIGATION DISTRICT		316.35
22074	03/27/2023	Stone Creek LNDSCP	Utilities	MERCED IRRIGATION DISTRICT		19.17
22074	03/27/2023	America West LD	Utilities	MERCED IRRIGATION DISTRICT		151.18
22074	03/27/2023	Bell Crossing LD	Utilities	MERCED IRRIGATION DISTRICT		335.26
22074	03/27/2023	Bell Crossing LNDSCP	Utilities	MERCED IRRIGATION DISTRICT		19.17
22074	03/27/2023	Atwater South LD	Utilities	MERCED IRRIGATION DISTRICT		420.32
22074	03/27/2023	Mello Ranch 2 LD	Utilities	MERCED IRRIGATION DISTRICT		645.26
22074	03/27/2023	Meadow View LD	Utilities	MERCED IRRIGATION DISTRICT		797.47
22074	03/27/2023	Aspenwood LD	Utilities	MERCED IRRIGATION DISTRICT		681.50
22074	03/27/2023	Applegate Ranch LD	Utilities	MERCED IRRIGATION DISTRICT		351.92
22074	03/27/2023	Applegate Ranch Lndscp	Utilities	MERCED IRRIGATION DISTRICT		19.17
22074	03/27/2023	Water Enterprise Fund	Utilities	MERCED IRRIGATION DISTRICT		425.28
22074	03/27/2023	Sewer Enterprise Fund	Utilities	MERCED IRRIGATION DISTRICT		610.85
22074	03/27/2023	Sewer Enterprise Fund	Utilities	MERCED IRRIGATION DISTRICT		4,518.56

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	11,567.86
22075	03/27/2023	General Fund	Youth Basketball	JORGE MOLINA		80.00
					Check Total:	80.00
22076	03/27/2023	Internal Service Fund	Operations & Maintenance	MSC SOLUTIONS, INC.		41.75
					Check Total:	41.75
22077	03/27/2023	Internal Service Fund	Professional Services	MUNICIPAL MAINTENANCE EQUIP.		83.09
					Check Total:	83.09
22078	03/27/2023	Water Enterprise Fund	Accounts Payable	STEPHANIE MUNOZ		166.23
					Check Total:	166.23
22079	03/27/2023	Risk Management Fund	Professional Services	NATION INVESTIGATIONS		900.00
					Check Total:	900.00
22080	03/27/2023	Water Enterprise Fund	Special Departmental Expense	O'REILLY AUTO PARTS		20.56
22080	03/27/2023	General Fund	Special Departmental Expense	O'REILLY AUTO PARTS		7.13
22080	03/27/2023	Internal Service Fund	Special Departmental Expense	O'REILLY AUTO PARTS		1,250.11
22080	03/27/2023	Gas Tax/Street Improvement	Special Departmental Expense	O'REILLY AUTO PARTS		12.44
22080	03/27/2023	Internal Service Fund	Special Departmental Expense	O'REILLY AUTO PARTS		139.51
22080	03/27/2023	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		6.00
22080	03/27/2023	Gas Tax/Street Improvement	Special Departmental Expense	O'REILLY AUTO PARTS		66.62
22080	03/27/2023	Gas Tax/Street Improvement	Special Departmental Expense	O'REILLY AUTO PARTS		4.09
					Check Total:	1,506.46
22081	03/27/2023	Sewer Enterprise Fund	Special Departmental Expense	PAC MACHINE CO.		3,262.57
					Check Total:	3,262.57
22082	03/27/2023	General Fund Capital	Project Retention	PACIFIC EXCAVATION INC		26,398.76
22082	03/27/2023	RSTP-Regional Surf Transp Prog	Project Retention	PACIFIC EXCAVATION INC		3,647.63
					Check Total:	30,046.39
22083	03/27/2023	General Fund	Utilities	PACIFIC GAS & ELECTRIC		39.09
22083	03/27/2023	Gas Tax/Street Improvement	Utilities	PACIFIC GAS & ELECTRIC		85.19
22083	03/27/2023	Sewer Enterprise Fund	Utilities	PACIFIC GAS & ELECTRIC		49,879.30
					Check Total:	50,003.58
22084	03/27/2023	Water Enterprise Fund	Accounts Payable	PREMIER LENDING SERVICES INC.		49.05
22084	03/27/2023	Sewer Enterprise Fund	Accounts Payable	PREMIER LENDING SERVICES INC.		58.20

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
22084	03/27/2023	Sanitation Enterprise Fund	Accounts Payable	PREMIER LENDING SERVICES INC.		20.75
22084	03/27/2023	Sanitation Enterprise Fund	Accounts Payable	PREMIER LENDING SERVICES INC.		6.48
				Check Total:		134.48
22085	03/27/2023	Internal Service Fund	Special Departmental Expense	PRESTON'S LOCK & KEY		43.30
22085	03/27/2023	Internal Service Fund	Special Departmental Expense	PRESTON'S LOCK & KEY		37.88
				Check Total:		81.18
22086	03/27/2023	Water Fund Capital Replacement	Well #20A Rehab	PROVOST & PRITCHARD CONSULTING GROU		2,328.59
				Check Total:		2,328.59
22087	03/27/2023	Sewer Enterprise Fund	Castle Sewer Interceptor	QUAD KNOPF		8,720.90
				Check Total:		8,720.90
22088	03/27/2023	General Fund	Travel/Conferences/Meetings	SAMUEL RASHE		17.14
22088	03/27/2023	General Fund	Training	SAMUEL RASHE		119.48
22088	03/27/2023	General Fund	Training	SAMUEL RASHE		207.00
				Check Total:		343.62
22089	03/27/2023	General Fund	Special Departmental Expense	RAY MORGAN COMPANY		105.26
22089	03/27/2023	General Fund	Special Departmental Expense	RAY MORGAN COMPANY		120.24
				Check Total:		225.50
22090	03/27/2023	Internal Service Fund	Operations & Maintenance	RAZZARI FORD\MAZDA		640.84
22090	03/27/2023	Internal Service Fund	Operations & Maintenance	RAZZARI FORD\MAZDA		53.26
				Check Total:		694.10
22091	03/27/2023	General Fund	Special Departmental Expense	RDO EQUIPMENT CO		2,555.17
22091	03/27/2023	General Fund	Professional Services	RDO EQUIPMENT CO		1,506.75
				Check Total:		4,061.92
22092	03/27/2023	General Fund	Professional Services	ROSENOW SPEVACEK GROUP INC.		2,302.50
				Check Total:		2,302.50
22093	03/27/2023	Internal Service Fund	Operations & Maintenance	ROSS' LADDER SERVICE		1,108.25
				Check Total:		1,108.25
22094	03/27/2023	Internal Service Fund	Professional Services	ROTO ROOTER PLUMBERS		7,967.14
				Check Total:		7,967.14
22095	03/27/2023	Sewer Enterprise Fund	Special Departmental Expense	SAFE-T-LITE		422.18

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
22095	03/27/2023	Gas Tax/Street Improvement	Special Departmental Expense	SAFE-T-LITE		86.71
22095	03/27/2023	Sewer Enterprise Fund	Special Departmental Expense	SAFE-T-LITE		759.92
Check Total:						1,268.81
22096	03/27/2023	Water Enterprise Fund	Professional Services	SAN JOAQUIN VALLEY AIR		577.00
22096	03/27/2023	Water Enterprise Fund	Professional Services	SAN JOAQUIN VALLEY AIR		577.00
22096	03/27/2023	Water Enterprise Fund	Professional Services	SAN JOAQUIN VALLEY AIR		290.00
22096	03/27/2023	Water Enterprise Fund	Professional Services	SAN JOAQUIN VALLEY AIR		577.00
22096	03/27/2023	Internal Service Fund	Professional Services	SAN JOAQUIN VALLEY AIR		143.00
22096	03/27/2023	Water Enterprise Fund	Professional Services	SAN JOAQUIN VALLEY AIR		290.00
22096	03/27/2023	Water Enterprise Fund	Professional Services	SAN JOAQUIN VALLEY AIR		290.00
22096	03/27/2023	Sewer Enterprise Fund	Professional Services	SAN JOAQUIN VALLEY AIR		900.00
Check Total:						3,644.00
22097	03/27/2023	General Fund	Travel/Conferences/Meetings	ILESHA SANDERS		207.00
22097	03/27/2023	General Fund	Training	ILESHA SANDERS		406.76
Check Total:						613.76
22098	03/27/2023	Water Enterprise Fund	Accounts Payable	CARLOS SANDOVAL		50.85
Check Total:						50.85
22099	03/27/2023	General Fund	Training	DAVE SARGINSON		22.00
22099	03/27/2023	General Fund	Training	DAVE SARGINSON		64.90
22099	03/27/2023	General Fund	Training	DAVE SARGINSON		34.49
22099	03/27/2023	General Fund	Training	DAVE SARGINSON		23.88
Check Total:						145.27
22100	03/27/2023	Sewer Enterprise Fund	Utilities	SIEMENS FINANCIAL SERVICES, INC.		16,195.34
Check Total:						16,195.34
22101	03/27/2023	Sewer Enterprise Fund	Special Departmental Expense	SMITH & LOVELESS INC.		266.12
Check Total:						266.12
22102	03/27/2023	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		112.30
22102	03/27/2023	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		153.69
22102	03/27/2023	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		44.00
22102	03/27/2023	General Fund	Office Supplies	STAPLES BUSINESS ADVANTAGE		52.14
22102	03/27/2023	General Fund	Small Tools	STAPLES BUSINESS ADVANTAGE		20.45
22102	03/27/2023	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		55.63
22102	03/27/2023	General Fund	Office Supplies	STAPLES BUSINESS ADVANTAGE		101.04
Check Total:						539.25

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
22103	03/27/2023	Internal Service Fund	Professional Services	STATE PRO BUILDERS INC.		4,080.00
				Check Total:		4,080.00
22104	03/27/2023	Water Enterprise Fund	Accounts Payable	STATE WATER RESOURCES CONTROL BOARD		238.02
22104	03/27/2023	Sewer Enterprise Fund	Accounts Payable	STATE WATER RESOURCES CONTROL BOARD		175.11
				Check Total:		413.13
22105	03/27/2023	General Fund	Professional Services	STERICYCLE, INC.		35.96
				Check Total:		35.96
22106	03/27/2023	General Fund	Professional Services	SUN VALLEY PORTABLE RESTROOMS INC.		1,385.00
				Check Total:		1,385.00
22107	03/27/2023	Water Enterprise Fund	Utilities	TERRAFORM PHOENIX II ARCADIA HOLDING		3,311.08
22107	03/27/2023	Water Enterprise Fund	Utilities	TERRAFORM PHOENIX II ARCADIA HOLDING		7,982.85
22107	03/27/2023	Internal Service Fund	Utilities	TERRAFORM PHOENIX II ARCADIA HOLDING		3,150.87
22107	03/27/2023	Internal Service Fund	Utilities	TERRAFORM PHOENIX II ARCADIA HOLDING		1,494.77
				Check Total:		15,939.57
22108	03/27/2023	General Fund	Cannabis Deposits	THREE HABITAT CONSULTING LLC		11,302.80
				Check Total:		11,302.80
22109	03/27/2023	General Fund	Community Center Deposits	BONNIE TOEWS		350.00
				Check Total:		350.00
22110	03/27/2023	Internal Service Fund	Professional Services	TRANE U.S. INC.		2,622.00
				Check Total:		2,622.00
22111	03/27/2023	Internal Service Fund	Utilities	TRIPP SECURITY SYSTEMS		33.00
				Check Total:		33.00
22112	03/27/2023	Internal Service Fund	Operations & Maintenance	TURF STAR, INC.		466.07
				Check Total:		466.07
22113	03/27/2023	Employee Benefits Fund	Life Insurance	UNUM LIFE INSURANCE		1,358.40
22113	03/27/2023	Employee Benefits Fund	Disability Insurance	UNUM LIFE INSURANCE		2,639.55
22113	03/27/2023	Employee Benefits Fund	Disability Insurance	UNUM LIFE INSURANCE		415.41
				Check Total:		4,413.36
22114	03/27/2023	Internal Service Fund	Operations & Maintenance	VAN DE POL		13,311.37
22114	03/27/2023	Internal Service Fund	Operations & Maintenance	VAN DE POL		255.42

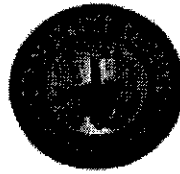
Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	13,566.79
22115	03/27/2023	Sewer Enterprise Fund	Professional Services	VEOLIA WATER NORTH AMERICA OPERATING		169,293.23
					Check Total:	169,293.23
22116	03/27/2023	General Fund	Communications	VERIZON WIRELESS		342.09
22116	03/27/2023	General Fund	Communications	VERIZON WIRELESS		760.20
22116	03/27/2023	General Fund	Communications	VERIZON WIRELESS		50.58
22116	03/27/2023	General Fund	Communications	VERIZON WIRELESS		101.16
22116	03/27/2023	Gas Tax/Street Improvement	Communications	VERIZON WIRELESS		232.62
22116	03/27/2023	Water Enterprise Fund	Communications	VERIZON WIRELESS		449.86
22116	03/27/2023	Sewer Enterprise Fund	Special Departmental Expense	VERIZON WIRELESS		38.01
22116	03/27/2023	Sewer Enterprise Fund	Communications	VERIZON WIRELESS		489.16
22116	03/27/2023	Sewer Enterprise Fund	Utilities	VERIZON WIRELESS		40.05
22116	03/27/2023	Internal Service Fund	Special Departmental Expense	VERIZON WIRELESS		40.01
22116	03/27/2023	Internal Service Fund	Utilities	VERIZON WIRELESS		80.04
22116	03/27/2023	Internal Service Fund	Communications	VERIZON WIRELESS		101.16
					Check Total:	2,724.94
22117	03/27/2023	Employee Benefits Fund	Vision Insurance	VISION SERVICE PLAN (CA)		383.01
					Check Total:	383.01
22118	03/27/2023	General Fund Capital	Phase 2 Ped Imp Proj Downtown	VVH CONSULTING SERVICES		1,049.92
22118	03/27/2023	Measure V 20% AlternativeModes	Phase 2 Ped Imp Proj Downtown	VVH CONSULTING SERVICES		136.03
22118	03/27/2023	General Fund	Professional Services	VVH CONSULTING SERVICES		3,442.50
22118	03/27/2023	Water Enterprise Fund	Professional Services	VVH CONSULTING SERVICES		13,770.00
22118	03/27/2023	General Fund	Professional Services	VVH CONSULTING SERVICES		225.00
22118	03/27/2023	General Fund	Professional Services	VVH CONSULTING SERVICES		17,415.00
22118	03/27/2023	ARPA-American Rescue Plan Act	Osborn Park Renovation	VVH CONSULTING SERVICES		7,740.00
					Check Total:	43,778.45
22119	03/27/2023	Water Fund Capital Replacement	Project Retention	W.M. LYLES COMPANY		-10,171.00
22119	03/27/2023	Water Fund Capital Replacement	Well #20A Rehab	W.M. LYLES COMPANY		203,420.00
22119	03/27/2023	Water Fund Capital Replacement	Project Retention	W.M. LYLES COMPANY		-2,931.50
22119	03/27/2023	Water Fund Capital Replacement	Well #20A Rehab	W.M. LYLES COMPANY		58,630.00
					Check Total:	248,947.50
22120	03/27/2023	Internal Service Fund	Special Departmental Expense	WARD ENTERPRISES		3.09
22120	03/27/2023	Internal Service Fund	Special Departmental Expense	WARD ENTERPRISES		54.02
22120	03/27/2023	Internal Service Fund	Special Departmental Expense	WARD ENTERPRISES		22.25
22120	03/27/2023	Internal Service Fund	Special Departmental Expense	WARD ENTERPRISES		60.57

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	139.93
22121	03/27/2023	General Fund	Professional Services	WEED MAN		1,151.00
					Check Total:	1,151.00
22122	03/27/2023	Sewer Enterprise Fund	Special Departmental Expense	WINTON HARDWARE		87.25
22122	03/27/2023	Sewer Enterprise Fund	Special Departmental Expense	WINTON HARDWARE		10.96
22122	03/27/2023	Internal Service Fund	Special Departmental Expense	WINTON HARDWARE		16.15
					Check Total:	114.36
22123	03/27/2023	General Fund	Special Departmental Expense	WORK WELLNESS		254.00
					Check Total:	254.00
					Report Total:	1,394,592.30

Accounts Payable

Checks by Date - Detail by Check Date

User: vnanranjo
 Printed: 3/23/2023 2:22 PM



City of
Atwater
 Community Pride City Wide

750 Bellevue Road, Atwater CA 95301

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Check Amount
ACH	CHA999	CHASE	03/27/2023	
	3032023	San Joaquin Council of Governments		290.00
	3032023	Great Wolf Lodge		157.07
	3032023	Zoom		324.87
	3032023	Fresno Yosemite Airport		56.00
	3032023	EB San Joaquin Valley		660.00
	3032023	Alaska Airlines		30.00
	3032023	Walgreens		18.39
	3032023	League of California Cities		675.00
	3032023	Lowe's		25.35
	3032023	San Joaquin Valley Air Pollution		89.08
	3032023	Westin Hotels & Resorts		886.22
	3032023	Shell		17.28
	3032023	League of California Cities		675.00
	3032023	Great Wolf Lodge		157.07
	3032023	Walgreens		18.39
	3032023	4imprint		337.36
	3032023	Alask Air		263.50
	3032023	The California Peace Officer's Association		226.00
	3032023	Noble Motorsports		145.54
	3032023	LexisNexis		40.85
	3032023	Brooks Ranch Restaurant		85.00
	3032023	The Murieta Inn and Spa		322.62
	3032023	City Clerks Association of California		250.00
	3032023	Adobe Inc		14.99
	3032023	League of California Cities		625.00
	3032023	Hyatt Regency		15.99
	3032023	Galls		1,129.32
	3032023	USPS		144.70
	3032023	Best Best & Krieger		75.00
	3032023	UC San Diego Extended Studios		750.00
	3032023	Rubber Stamp Warehouse		81.75
	3032023	Walmart		18.45
	3032023	Best Best & Krieger		75.00
	3032023	City Clerks Association of California		250.00
	3032023	Lowe's		6.62
	3032023	League of California Cities		675.00
	3032023	Hyatt Regency		801.60
	3032023	Walmart		18.37
	3032023	Merced County Recorder		52.50
	3032023	League of California Cities		625.00
	3032023	Budget Rent A Car		258.25
	3032023	OfficeDepot		119.26
	3032023	The UPS Store		52.79
	3032023	Great Wolf Lodge		157.07
	3032023	Etsy		22.41
	3032023	Alaska Airlines		25.00
	3032023	Canva		119.99
	3032023	League of California Cities		625.00

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Check Amount
	3032023	International Code Council		371.30
	3032023	Clovis Cleaners		48.89
	3032023	JAMF Software LLC		140.00
Total for this ACH Check for Vendor CHA999:				13,049.84
Total for 3/27/2023:				13,049.84
Report Total (1 checks):				13,049.84



CITY OF ATWATER

CITY COUNCIL

ACTION MINUTES

March 13, 2023

OPEN SESSION: (Council Chambers)

The City Council of the City of Atwater and the Governing Board met in Open Session this date at 5:31 PM in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California; Mayor Nelson presiding.

ROLL CALL:

Present: City Council Members Ambriz, Button, Mayor Pro Tem Raymond, Mayor Nelson
Absent: City Council Member Cale
Staff Present: City Manager Waterman, City Attorney Splendorio, Community Development Director Thompson, Public Works Director Vinson, Administrative Assistant/Deputy City Clerk Peralta

CLOSED SESSION: (Conference Room A)

Mayor Nelson invited public comment on Closed Session items.

No one came forward to speak.

Mayor Nelson Adjourned the meeting Conference Room A for Closed Session at 5:32 PM. Closed Session was called to order at 5:38 PM.

Conference with Legal Counsel - Anticipated Litigation - Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: Number of cases (1)

Closed Session adjourned at 5:58 PM.

REGULAR SESSION: (Council Chambers)

The City Council of the City of Atwater met in Regular Session this date at 6:02 PM in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California; Mayor Nelson presiding.

INVOCATION:

The Invocation was led by Daniel Perez.

PLEDGE OF ALLEGIANCE TO THE FLAG:

The pledge of allegiance to the flag was led by Mayor Pro Tem Raymond.

ROLL CALL: (City Council)

Present: City Council Members Ambriz, Button, Mayor Pro Tem Raymond, Mayor Nelson

Absent: City Council Member Cale

Staff Present: City Manager Waterman, City Attorney Splendorio, Police Chief Salvador, Battalion Chief Ayuso, Community Development Director Thompson, Public Works Director Vinson, Finance Director Youmara, City Clerk Billings, Administrative Assistant/Deputy City Clerk Peralta

MAYOR OR CITY ATTORNEY REPORT OUT FROM CLOSED SESSION:

City Attorney Splendorio reported that the City Council discussed the item of one existing litigation, provided direction, and there was no reportable action.

SUBSEQUENT NEED ITEMS: ***None***

APPROVAL OF AGENDA AS POSTED OR AS AMENDED:

MOTION: Mayor Pro Tem Raymond moved to approve the agenda as posted. The motion was seconded by City Council Member Button and the vote was: Ayes: Ambriz, Raymond, Button, Nelson; Noes: None; Absent: Cale. The motion passed.

CONSENT CALENDAR:

Mayor Pro Tem Raymond abstained from the Consent Calendar due to conflict of interest with Agenda item #9.

Mayor Nelson opened the public comment.

No one came forward to speak.

Mayor Nelson closed the public comment.

MOTION: City Council Member Button moved to approve the Consent Calendar as posted. The motion was seconded by City Council Member Ambriz and the vote was: Ayes: Ambriz, Button, Nelson; Noes: None; Abstain: Raymond; Absent: Cale. The motion passed.

WARRANTS:

1. March 13, 2023

ACTION: Approval of warrants as listed.

MINUTES: (City Council)

2. a) February 13, 2023 – Regular meeting
b) February 27, 2023 – Regular meeting

ACTION: Approval of minutes as listed.

MINUTES: (Citizens' Oversight Committee)

3. December 6, 2022 – Regular Meeting

ACTION: Approval of minutes as listed.

RESOLUTIONS:

4. Approving and authorizing the annual Local Transportation Fund (LTF) Claim to be filed with Merced County Association of Governments (MCAG) for Fiscal Year 2022-23 and approving Budget Amendment No. 15 regarding Fiscal Year 2022-23 Local Transportation Fund (Community Development Director Thompson)

ACTION: Adoption of Resolution No. 3379-23, approving the annual Local Transportation Fund (LTF) Claim to be filed with the Merced County Association of Governments (MCAG) for Fiscal Year 2022-23; and authorizes and directs the City Manager to execute the Claim form on behalf of the City; and Adopts Resolution No. 3380-23, approving Budget Amendment No. 15 regarding FY 2022-23 Local Transportation Fund.

AGREEMENTS:

5. Approving a Purchase Order (Purchase Agreement) with Aqueous Vets for GAC Exchange at Well 19 (Public Works Director Vinson)

ACTION: Approves a Purchase Agreement (Purchase Order), in a form approved by the City Attorney, to Aqueous Vets of Danville, California for GAC Exchange at Well 19, in an amount not to exceed \$44,825; and authorizes and directs the City Manager to execute the Agreement (Purchase Order) on behalf of the City.

6. Approving Assistance By Hire (ABH) Agreement (CAL Fire Battalion Chief Ayuso)

ACTION: Approves the Assistance By Hire Agreement (ABH), in a form approved by the City Attorney, with CAL FIRE Madera-Mariposa-Merced Unit; and authorizes and directs the City Manager, or their designee, to execute any and all documents related to the Assistance By Hire Agreement.

7. Approving Third Amendment to the Professional Services Agreement to MuniServices, LLC of Centreville, Virginia for Consultant Services for Sales and Use Tax Audit & Report Services. (Finance Director Youmara)

ACTION: Approves Third Amendment to Professional Services Agreement, in a form approved by the City Attorney, to MuniServices, LLC of Centreville, Virginia to comply with state of California Department of Tax and Fee Administration requirements authorizing MuniServices, LLC to examine transactions tax, sales tax and use tax records of the City of Atwater, including but not limited to the transactions and use tax that becomes effective on or about April 1, 2023 known as the Measure B Transactions and Use Tax; and directs the City Manager, or her designee, to execute the Third Amendment on behalf of the City.

8. Approving First Amendment to the Professional Services Agreement to HdL Companies of Brea, California for Consultant Services for Cannabis Monitoring and Compliance Services (Finance Director Youmara)

ACTION: Approves the First Amendment to the Professional Services Agreement, in a form approved by the City Attorney, to HdL Companies of Brea, California for Consultant Services to extend the term and increase the compensation for Cannabis Monitoring and Compliance Services; and authorize and direct the City Manager, or her designee, to execute the First Amendment on behalf of the City.

9. Approving plans and specifications and authorizing advertising and calling for bids for Palm Avenue Improvements Project (Public Works Director Vinson)

ACTION: Approves the plans and specifications and authorizes advertising and calling for bids for the Palm Avenue Improvements on Palm Avenue and Bellevue Road Project, Project Number 22-06, Bid Call Number 719-22.

PUBLIC HEARINGS:

Waiving the first reading, by title only, and introducing a Zoning Ordinance Text Amendment of the City Council amending Title 17, "Zoning," of the Atwater Municipal Code for Site Plan and Architectural Review (Community Development Director Thompson)

Community Development Director Thompson provided background information on this item.

Mayor Nelson opened the public hearing.

No one came forward.

Mayor Nelson closed the public hearing.

MOTION: Mayor Pro Tem Raymond moved to waive the first reading and introduce a Zoning Ordinance Text Amendment of the City Council amending Title 17, "Zoning," of the Atwater Municipal Code for Site Plan and Architectural Review. The motion was seconded by City Council Member Button and the vote was: Ayes: Ambriz, Button, Raymond, Nelson; Noes: None; Absent: Cale. The motion passed.

Adopting resolution amending the Fiscal Year 2022-2023 Miscellaneous Fee Schedule (Finance Director Youmara)

Finance Director Youmara provided background information on this item.

Mayor Pro Tem Raymond asked for clarification.

Finance Director Youmara provided clarification.

MOTION: Mayor Pro Tem Raymond moved to adopt Resolution No. 3378-23 amending the City of Atwater's Miscellaneous Fee Schedule for Fiscal Year 2022-2023. The motion was seconded by City Council Member Ambriz and the vote was: Ayes: Button, Ambriz, Raymond, Nelson; Noes: None; Absent: Cale. The motion passed.

REPORTS AND PRESENTATIONS FROM STAFF:

Approving plans and specifications and authorizing advertising and calling for bids for installation of Osborn Park Bathroom Project (Public Works Director Vinson)

Public Works Director Vinson provided background information on this item.

City Council Member Ambriz asked about the portable restrooms and the completion of this project.

Public Works Director Vinson provided clarification.

City Council Member Button asked about possible traffic.

Public Works Director Vinson provided clarification.

Mayor Nelson asked if any members of the public would like to speak on this item.

No one came forward regarding this item.

MOTION: City Council Member Ambriz moved to approve the plans and specifications and authorize advertising and calling for bids for the installation of Osborn Park Renovation Project, Project Number 22-05, Bid Call Number 717-22. The motion was seconded by Mayor Pro Tem Raymond and the vote was: Ayes: Button, Ambriz, Raymond, Nelson; Noes: None; Absent: Cale. The motion passed.

Code Enforcement Update 2022 (Code Enforcement Manager Garcia)

Code Enforcement Manager Garcia stepped out before the presentation.

Mayor Nelson announced they would be returning to this item later.

CITY MANAGER REPORTS/UPDATES:

City Manager Waterman had nothing to report.

COMMENTS FROM THE PUBLIC:

Notice to the public was read.

Mayor Nelson clarified that under the Brown Act, members of the public are entitled to directly address the City Council and not entitled to address their comments to other members of the public or to staff.

Mayor opened the public comment.

Eula Toca shared concerns regarding the difficulty of finding the Community Center at night.

Field Representative for Assemblywoman Esmeralda Soria, Alejandro Carrillo, invited everyone to a community coffee event at Hope Coffee on Saturday, March 18th at 9:30 A.M.

No one else came forward to speak.

Mayor Nelson closed the public comment.

Code Enforcement Manager Garcia gave an update with a PowerPoint presentation and spoke about updating processes to log and track cases more efficiently.

City Council Member Button expressed his appreciation towards Code Enforcement Manager Garcia.

Mayor Pro Tem Raymond asked Code Enforcement Manager Garcia to be safe when working out in the field.

Mayor Nelson asked for more information about AVA.

Code Enforcement Manager Garcia provided clarification.

Mayor Nelson asked what tools Code Enforcement Manager Garcia needs.

Code Enforcement Manager Garcia stated that having an officer with the unhoused issues would assist greatly.

Mayor Nelson asked if any members of the public would like to speak on the presentation.

Pastor Rich Miller asked about the process for animal control and expressed concerns about an abandoned property the City is looking to purchase where vendors are constantly selling food.

Mayor Nelson asked Code Enforcement Manager Garcia to clarify on these concerns.

Code Enforcement Manager Garcia provided clarification regarding the food vendors and the process of animal control.

Police Chief Salvador elaborated on the animal control process and the County of Merced animal control activities, which the City of Atwater is in contract with.

No one else came forward.

CITY COUNCIL REPORTS/UPDATES:

Letters supporting Assembly Bill 293 allowing immediate family members of a Gold Star Family to obtain lifetime fishing and hunting licenses and Assembly Bill 308 allowing immediate family members of a Gold Star Family to obtain free entry into California State Parks

Mayor Pro Tem Raymond spoke in favor of this item.

MOTION: City Council Member Button moved to authorize and direct Mayor Nelson to execute the letters of support, on behalf of the City of Atwater, regarding Assembly Bill 293 allowing immediate family members of a Gold Star Family to obtain lifetime fishing and hunting licenses and Assembly Bill 308 allowing immediate family members of a Gold Star Family to obtain free entry into California State Parks. The motion was seconded by Mayor Pro Tem Raymond and the vote was: Ayes: Ambriz, Button, Raymond, Nelson; Noes: None; Absent: Cale. The motion passed.

Letter supporting Senate Bill 37 - The Older Adults and Adults with Disabilities Housing Stability Act of 2023

Mayor Pro Tem Raymond asked whether this item would affect rent control or if it was simply a subsidy and asked for more clarification.

City Council Member Button expressed concerns over the criteria.

City Manager Waterman provided some clarification about the item being a grantee program.

Mayor Pro Tem Raymond asked for further information.

Mayor Nelson postponed the item to the next meeting.

City Council comments

City Council Member Button had nothing to report.

City Council Member Ambriz had nothing to report.

Mayor Pro Tem Raymond thanked the community for coming together to raise funds for Barney Reyes' funeral service.

Mayor Nelson spoke about working closer with the District Attorney's office to assist with issues regarding the homeless.

ADJOURNMENT:

Mayor Nelson adjourned the meeting at 6:47 PM.

GI SELA PERALTA
DEPUTY CITY CLERK



CITY COUNCIL AGENDA REPORT

CITY COUNCIL

Mike Nelson, Mayor
Danny Ambriz Tyler Button
John Cale Brian Raymond

MEETING DATE: March 27, 2023
TO: Mayor and City Council
FROM: Greg Thompson, Community Development Director
PREPARED BY: Christina Thurman, Executive Assistant
SUBJECT: **Approving and authorizing the annual Local Transportation Fund (LTF) Claim to be filed with Merced County Association of Governments (MCAG) for CRRSAA Swap Fiscal Year 2022/23**
(Community Development Director Thompson)

RECOMMENDED COUNCIL ACTION

Adopts Resolution No. 3384-23, approving and authorizing the annual Local Transportation Fund (LTF) Claim in the amount of \$147,135 to be filed with the Merced County Association of Governments (MCAG) for CRRSAA Swap Fiscal Year 2022-23; Authorizes and directs the City Manager to execute the Claim form on behalf of the City; and Adopts Resolution No. 3385-23, approving Budget Amendment No. 16 regarding FY 2022-23 Local Transportation Fund.

I. BACKGROUND/ANALYSIS:

The City is eligible to submit an annual claim for disbursement of Local Transportation Funds (LTF) for CRRSAA Swap. The Merced County Association of Governments (MCAG) is the administering agency for the allocation of these disbursements. Disbursements are made after eligible jurisdictions submit an authorizing resolution and claim form to MCAG.

LTF funds are disbursed to eligible jurisdictions for non-transit uses such as maintenance of streets and roads in local communities. The MCAG Governing Board approved the Apportionment Schedule (EXHIBIT "A") at its regular meeting of December 9, 2022. The apportionment schedule is calculated by population and percentage of transit level of service. Based upon this apportionment schedule, the City is eligible to receive \$147,135 in LTF CRRSA Swap funding for Fiscal year 2022-2023.

Staff prepared the annual LTF CRRSAA Swap Claim (attached as Exhibit A to Resolution 3384-23) and identified a priority project to reconstruct and improve Fruitland

Avenue as an alternative trade route for the City of Atwater. This will be Phase 3 of the Fruitland reconstruction project. Work includes the repavement and installation of sidewalk, curb, and gutters along Fruitland Avenue.

II. FISCAL IMPACTS:

By adopting this resolution and filing the claim form, the City will receive \$147,135 in LTF funding for Fiscal Year 2022-2023. The revenue is appropriated in the Local Transportation Fund, Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA) revenue account number 1013-0000-3148. Upon approval of Budget Amendment No. 16, sufficient funding will be available in the FY 2022-23 Budget, Local Transportation (LTF), Capital Project, Account No.1013-1080-M007, Fruitland Ave Road Improvements to fund the project as identified above.

This item has been reviewed by the Finance Department.

III. LEGAL REVIEW:

This item has been reviewed by the City Attorney's office.

IV. EXISTING POLICY:

This item is consistent with goal number one (1) of the City's Strategic Plan: to ensure the City's continued financial stability.

V. ALTERNATIVES:

Not required for all staff reports but should be included in most reports where the Council should be considering options, or discussion of options already investigated.

If there are Policy options for consideration, the discussion should be specific and detailed.

VI. INTERDEPARTMENTAL COORDINATION:

N/A

VII. PUBLIC PARTICIPATION:

The public will have an opportunity to provide comments on this item prior to City Council action.

VIII. ENVIRONMENTAL REVIEW:

This item is considered an exempt activity under provision of the California Environmental Quality Act (CEQA) under Section 15301 "existing facilities" therefore not subject to further analysis. Further, any other necessary or required environmental review will occur prior to any specific project approval.

IX. STEPS FOLLOWING APPROVAL:

Upon adoption of Resolution 3384-23, the City Manager shall execute and file the LTF Claim form for Fiscal Year 2022/2023.

Submitted by:



Greg Thompson, Public Works/Community Development Director

Approved by:



Lori Waterman, City Manager

Attachments:

1. Resolution No. 3384-23 Approving CRRSAA Swap LTF Claim Submittal for FY 22-23
2. LTF Claim Form (002)
3. Governing Board - Action to approve formula for distribution of CRRSAA Swap funds
4. Resolution No. 3385-23 BA No. 16 LTF 3-27-23



**CITY COUNCIL
OF THE
CITY OF ATWATER**

RESOLUTION NO. 3384-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ATWATER APPROVING AND AUTHORIZING THE ANNUAL LOCAL TRANSPORTATION FUND (LTF) CLAIM TO BE FILED WITH THE MERCED COUNTY ASSOCIATION OF GOVERNMENTS (MCAG) FOR CRRSAA SWAP FISCAL YEAR 2022-23

WHEREAS, under the Transportation Development Act (TDA) of 1971, Local Transportation Fund (LTF) monies are available to cities for public transportation, construction and maintenance of local streets and roads, and for pedestrian or bicycle facilities under certain circumstances; and

WHEREAS, the City of Atwater ("City") meets all requirements to qualify for said apportionment allocated through the Merced County Association of Governments (MCAG), as the designated local transportation and planning agency; and

WHEREAS, the annual allocations of LTF monies to each jurisdiction have been calculated by population; and

WHEREAS, the City has LTF monies available to claim in the amount of **\$147,135** for Fiscal Year 2022-2023; and

WHEREAS, the City's proposed expenditures of LTF monies are in conformity with the Regional Transportation Plan as prepared by MCAG; and

WHEREAS, the City has submitted a certified fiscal audit within 180 days after the end of the fiscal year, except where an extension (90-day maximum) was granted by MCAG.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Atwater does hereby approve and authorize the filing of the annual LTF claim for CRRSAA Swap, and to submit said claim to MCAG for processing attached hereto as **EXHIBIT A**, and incorporated herein for Fiscal Year **2022-2023** in the amount of **\$147,135**.

The foregoing resolution is hereby adopted this 27th day of March 2023.

AYES:

NOES:

ABSENT:

APPROVED:

MIKE NELSON, MAYOR

ATTEST:

KORY J. BILLINGS
CITY CLERK

**LOCAL TRANSPORTATION FUND CLAIM
CRRSAA SWAP**

Claimant:

Type of Claim:	Amount of Claim:
<input checked="" type="checkbox"/> STREETS & ROADS	\$ <u>147,135</u>
<input type="checkbox"/> PEDESTRIAN & BICYCLE FACILITIES	\$ _____
<input type="checkbox"/> OTHER (indicate purpose & TDA Section number _____)	\$ _____
<input type="checkbox"/> TOTAL	\$ _____

It is understood by this claimant that payment of the claim is subject to approval by MCAG, to such monies being on hand and available for distribution, and to the provision that such monies (and the interest earned on such monies subsequent to allocation) will be used only for those purposes for which the claim is approved and in accordance with the terms of the allocation instructions.

Further, the Chief Financial Officer of the claimant certifies that the financial information contained herein, is reasonable and accurate to the best of my knowledge.

Authorized Representative:

Signature

Print or type name

Title

Date

Signature of Chief Financial Officer

LTF STREETS & ROADS CLAIM

Claimant:

Project Title, Location and Description (may use additional paper)

Project Name: Fruitland Avenue Reconstruction Project.

Description/Location: Reconstruct and improve Fruitland Avenue as an alternative trade route for the City of Atwater. This will be Phase 3 of the Fruitland reconstruction project. Work includes the repavement and installation of sidewalk, curb, and gutters along Fruitland Avenue.

Project Cost by Funding Source

LTF	147,135
General Fund	\$ _____
Other	\$ _____
<u>TOTAL</u>	<u>\$6,488,303</u>

1. For entities with a population of more than 5,000, is the claim for streets and roads (exclusive of capital requirements for major new facilities) less than 50% of the total streets and roads expenditures?

Yes No

2. Is the project in conformity with the MCAG Regional Transportation Plan?

Yes No

Prepared by: _____
Signature

Type or print name

LTF PEDESTRIAN & BICYCLE FACILITIES CLAIM

Claimant:

Type of PEDESTRIAN & BICYCLE FACILITIES Claim:

- Facilities provided for the exclusive use of pedestrians and bicycles
- Projects which are provided for use by pedestrians and bicycles

Project Title, Location and Description (may use additional paper)

Project Cost by Funding Source

LTF	\$ _____
General Fund	\$ _____
Other	\$ _____
<u>TOTAL</u>	\$ _____

1. For entities with a population of more than 5,000, is the claim for pedestrian and bicycle facilities (exclusive of capital requirements for major new facilities) less than 50% of the total pedestrian and bicycle facilities expenditures?

- Yes No

2. Is the project in conformity with the MCAG Regional Transportation Plan?

- Yes No

Prepared by:

Signature

Type or Print Name

LTF OTHER CLAIM

Claimant:

Type of LTF "Other" Claim:

- Passenger rail service operations and capital improvements
- Transportation services using vehicles for the EXCLUSIVE use of elderly or disabled persons
- To finance the construction and maintenance of multi modal transportation terminals

Project Title, Location and Description (may use additional paper)

Project Cost by Funding Source

LTF	\$	
General Fund	\$	
Other	\$	
<u>TOTAL</u>	\$	

1. Is the project in conformity with the MCAG Regional Transportation Plan?

- Yes No

Prepared by: _____
Signature

Type or Print Name

ITEM 11d

DATE: December 9, 2022

TO: Governing Board

FROM: Elizabeth Forte, Director of Planning and Programming

RE: Action – Approve a preferred formula for the distribution of \$1,234,325 in Local Transportation Funds

SUMMARY

Staff is seeking direction on how to distribute \$1,234,325 in Local Transportation Funds (LTF) to local agencies. These LTF funds are the result of an exchange with TJPA for Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA) funds that were allocated to TJPA by the MCAG Governing Board in September. At that time, staff proposed that the distribution follow a population-based formula but during board discussion, a request was made to consider alternate distribution scenarios including a formula with a base allocation to each agency before the remaining funds are distributed by population. The Governing Board approved the exchange of funds in September and asked staff to bring distribution options for the LTF back to the board for further discussion and action. This item provides several distribution options with base amounts ranging from 5-25%.

REQUESTED ACTION

Approve a preferred formula for the distribution of \$1,234,325 in Local Transportation Funds (LTF):

- a) Distribute funds based solely on population; or
- b) Distribute funds with a base amount of 5%, 10%, 15% or 25% of the total, and the remaining amount by population.

BACKGROUND

The CRRSAA apportioned \$911.8 million in federal funding to California, and this funding is under the authority of the California Transportation Commission (CTC). Under the Act, \$182.4 million is in the form of Regional Surface Transportation Program (RSTP) funding. The Merced Region’s CRRSAA RSTP share is \$1,234,325. No matching funds are required for CRRSAA RSTP.

The Governing Board allocated the CRRSAA funds to TJPA for the purchase of buses, and staff proposed that TJPA exchange the same amount of LTF from their capital fund to the local agencies. This swap concentrated the more onerous application process to one project managed by TJPA and allowed the \$1,234,325 in more flexible LTF to be distributed to the jurisdictions.

The past practice for formula funds that have been disturbed to the jurisdiction has varied. The RSTP and LTF allocation has been disbursed by population. Measure V has been allocated by base (1% of

total Measure V) plus road miles plus population.

PAST ACTION TAKEN

September 15, 2022: The Governing Board approved programming the CRRSAA funds to the TJPA capital project and requested that staff bring back options for how the exchanged LTF funds will be allocated.

November 17, 2022: The Governing Board voted to table the item and bring it back to the next meeting.

DISCUSSION

At the September 2022 board meeting, staff proposed the distribution of funds based solely on population as shown in the table below:

Distribution Based Solely on Population

Jurisdiction	Population	% of Population	Total Allocation
City of Atwater	31,652	11%	\$137,403
City of Dos Palos	5,715	2%	\$24,809
City of Gustine	5,981	2%	\$25,964
City of Livingston	14,410	5%	\$62,555
City of Los Banos	46,639	16%	\$202,462
City of Merced	89,058	31%	\$386,605
County of Merced	90,883	32%	\$394,527
Total	284,338	100%	\$1,234,325

The Governing Board requested alternative options to consider that would take into account a base allocation prior to a population-based distribution. Below is an example of how a “base plus population” formula could work. In the example below, 10% of the funding total is allocated equally to each jurisdiction and the remaining 90% of the funding is allocated by population. The base/population split can vary widely. Staff has provided examples of a 5% base/95% population to 25% base/75% population in the attachment.

Distribution Based on 10% Base, 90% by Population

Jurisdiction	Base (10%)	Jurisdiction Population	% of Total County Population	Population Share (90%)	Total Allocation
City of Atwater	\$17,633	31,652	11%	\$123,662	\$141,295
City of Dos Palos	\$17,633	5,715	2%	\$22,328	\$39,961
City of Gustine	\$17,633	5,981	2%	\$23,367	\$41,000
City of Livingston	\$17,633	14,410	5%	\$56,299	\$73,932
City of Los Banos	\$17,633	46,639	16%	\$182,215	\$199,849
City of Merced	\$17,633	89,058	31%	\$347,944	\$365,577
County of Merced	\$17,633	90,883	32%	\$355,074	\$372,707
Total	\$ 123,432	284,338	100%	\$1,110,892	1,234,325

FISCAL IMPACT

No financial impact to MCAG.

COMMITTEE ACTIONS

Committee Name	Committee Action
Citizens Advisory Committee	NA
Technical Review Board	No formal action was taken on the staff recommendation presented in November, although direction was given to staff to continue discussions on the preferred formula for distribution and revisit at a future meeting for approval.

REQUESTED ACTION

Approve a preferred formula for the distribution of \$1,234,325 in Local Transportation Funds (LTF):

- a) Distribute funds based solely on population; or
- b) Distribute funds with a base amount of 5%, 10%, 15% or 25% of the total, and the remaining amount by population

STAFF CONTACT

Elizabeth Forte, Director of Planning and Programming, elizabeth.forte@mcagov.org or 209-769-0055

ATTACHMENTS

Base plus Population allocation options

LTF DISTRIBUTION OPTIONS

OPTION A: 5% BASE		TOTAL ALLOCATION:		TOTAL BASE @ 5%		TOTAL BY POP (95%):	
		\$	1,234,325.00	\$	61,716.25	\$	1,172,608.75
Jurisdiction	Base 5%	Jurisdiction Population	% of The County Population	Population (Share @ 95%)	Total Allocation		
Atwater	\$ 8,817	31,652	11.13%	\$ 130,533	\$ 139,349		
Dos Palos	\$ 8,817	5,715	2.01%	\$ 23,569	\$ 32,385		
Gustine	\$ 8,817	5,981	2.10%	\$ 24,666	\$ 33,482		
Livingston	\$ 8,817	14,410	5.07%	\$ 59,427	\$ 68,243		
Los Banos	\$ 8,817	46,639	16.40%	\$ 192,339	\$ 201,156		
City Of Merced	\$ 8,817	89,058	31.32%	\$ 367,275	\$ 376,091		
County Merced	\$ 8,817	90,883	31.96%	\$ 374,801	\$ 383,618		
Total	\$ 61,716	284,338	100.00%	\$ 1,172,609	\$ 1,234,325		

OPTION B: 10% BASE		TOTAL ALLOCATION:		TOTAL BASE @ 10%		TOTAL BY POP (90%):	
		\$	1,234,325.00	\$	123,432.50	\$	1,110,892.50
Jurisdiction	Base 10%	Jurisdiction Population	% of The County Population	Population (Share @ 90%)	Total Allocation		
Atwater	\$ 17,633	31,652	11.13%	\$ 123,663	\$ 141,296		
Dos Palos	\$ 17,633	5,715	2.01%	\$ 22,328	\$ 39,961		
Gustine	\$ 17,633	5,981	2.10%	\$ 23,367	\$ 41,001		
Livingston	\$ 17,633	14,410	5.07%	\$ 56,299	\$ 73,932		
Los Banos	\$ 17,633	46,639	16.40%	\$ 182,216	\$ 199,849		
City Of Merced	\$ 17,633	89,058	31.32%	\$ 347,945	\$ 365,578		
County Merced	\$ 17,633	90,883	31.96%	\$ 355,075	\$ 372,708		
Total	\$ 123,433	284,338	100.00%	\$ 1,110,893	\$ 1,234,325		

OPTION C: 15% BASE		TOTAL ALLOCATION:		TOTAL BASE @ 15%		TOTAL BY POP (85%):	
		\$	1,234,325.00	\$	185,148.75	\$	1,049,176.25
Jurisdiction	Base 15%	Jurisdiction Population	% of The County Population	Population (Share @ 85%)	Total Allocation		
Atwater	\$ 26,450	31,652	11.13%	\$ 116,792	\$ 143,242		
Dos Palos	\$ 26,450	5,715	2.01%	\$ 21,088	\$ 47,538		
Gustine	\$ 26,450	5,981	2.10%	\$ 22,069	\$ 48,519		
Livingston	\$ 26,450	14,410	5.07%	\$ 53,171	\$ 79,621		
Los Banos	\$ 26,450	46,639	16.40%	\$ 172,093	\$ 198,543		
City Of Merced	\$ 26,450	89,058	31.32%	\$ 328,614	\$ 355,064		
County Merced	\$ 26,450	90,883	31.96%	\$ 335,348	\$ 361,798		
Total	\$ 185,149	284,338	100.00%	\$ 1,049,176	\$ 1,234,325		

OPTION D: 25% BASE		TOTAL ALLOCATION:		TOTAL BASE @ 25%		TOTAL BY POP (75%):	
		\$	1,234,325.00	\$	308,581.25	\$	925,743.75
Jurisdiction	Base 25%	Jurisdiction Population	% of The County Population	Population (Share @ 75%)	Total Allocation		
Atwater	\$ 44,083	31,652	11.13%	\$ 103,052	\$ 147,135		
Dos Palos	\$ 44,083	5,715	2.01%	\$ 18,607	\$ 62,690		
Gustine	\$ 44,083	5,981	2.10%	\$ 19,473	\$ 63,556		
Livingston	\$ 44,083	14,410	5.07%	\$ 46,916	\$ 90,999		
Los Banos	\$ 44,083	46,639	16.40%	\$ 151,847	\$ 195,930		
City Of Merced	\$ 44,083	89,058	31.32%	\$ 289,954	\$ 334,037		
County Merced	\$ 44,083	90,883	31.96%	\$ 295,896	\$ 339,979		
Total	\$ 308,581	284,338	100.00%	\$ 925,744	\$ 1,234,325		



**CITY COUNCIL
OF THE
CITY OF ATWATER**

RESOLUTION NO. 3385-23

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF ATWATER APPROVING BUDGET
AMENDMENT NO. 16 AMENDING 2022-23
FISCAL YEAR BUDGET REGARDING FY 2022-
2023 LOCAL TRANSPORTATION FUND**

WHEREAS, the City Council of the City of Atwater adopted Resolution No. 3375-23 adopting the 2022-23 Fiscal Year Budget on June 27, 2022; and

WHEREAS, from time to time, and in order to operate effectively, it is necessary to amend said budget.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Atwater does hereby approve Budget Amendment No. 16 to the 2022-2023 Fiscal Year Budget as follows:

SECTION 1: Increasing budget in Local Transportation Fund (CRRSAA Swap) for Fiscal Year 2022-2023.

Increase Budget (Expense)	1013.1080.M007	Fruitland Avenue Road Improvements	\$147,135
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BE IT FURTHER RESOLVED that a copy of this resolution appends to the original budget document that is available in the Finance Department and the City Clerk/Board Clerk's office.

The foregoing resolution is hereby adopted this 27th day of March 2023.

**AYES:
NOES:
ABSENT:**

APPROVED:

MIKE NELSON, MAYOR

ATTEST:

**KORY J. BILLINGS
CITY CLERK**



CITY COUNCIL AGENDA REPORT

CITY COUNCIL

Mike Nelson, Mayor
Danny Ambriz Tyler Button
John Cale Brian Raymond

MEETING DATE: March 27, 2023
TO: Mayor and City Council
FROM: Justin Vinson
PREPARED BY: Justin Vinson
SUBJECT: **Awarding a Purchase Agreement (Purchase Order) to Data Path, Inc. for the purchase of new switches throughout the city (Public Works Director Vinson)**

RECOMMENDED COUNCIL ACTION

Awards a Cooperative Purchase, Purchase Agreement (Purchase Order), to Data Path, Inc. of Modesto, California, for the purchase of new switches throughout the city, in the combined amount not to exceed \$110,916.32; and authorizes and directs the City Manager to execute the Agreement (Purchase Order) on behalf of the City.

I. BACKGROUND/ANALYSIS:

The City of Atwater has made it a priority to address its infrastructure in regards to the city's information technology (IT) needs. After an investigation of the city inventory, staff started putting together a needs assessment and revenue to replace a lot of the city's outdated software and hardware. Starting in Fiscal Year 2021/2022, the city started the Internal Services Equipment and Building Replacement Fund to replace the equipment used for the city's IT needs.

One of the biggest issues the city currently faces is the out of date switching throughout the city's buildings. There are currently sixteen (16) switches that need to be replaced due to no longer being supported and having exhausted their lifespan. These switches vary in port sizes and also vary by manufacturer. Staff is looking to purchase new switches and match them with the newer switches installed at the City Administration Building in order to make all the city switches uniform and easier for staff to troubleshoot issues. These new switches would be installed at City Hall, Community Center, Corporation Yard, Fire Station 41, Fire Station 42, and the Wastewater Treatment Plant.

In accordance with the City of Atwater Purchasing System Manual, Section 9, Procurement Methods, "Cooperative Purchases," the City may join in purchases and contracts established by other jurisdictions, provided the cooperative agreement is established following a competitive bid process consistent with the City's competitive process. NASPO ValuePoint, is a cooperative purchasing program facilitating public

procurement solicitations and agreements using a lead state agency model, released a Request for Proposals ("RFP") for Data Communications Products and Services (Exhibit B). Extreme Networks, Inc. is an authorized vendor by Participating Addendum Contract Number 7-20-70-47-03 (Exhibit C) and Data Path is an authorized reseller under this same Addendum.

II. FISCAL IMPACTS:

Sufficient funding is available in the 2022-23 Fiscal Year Budget: Internal Services Fund, Equipment and Building Replacement, Machinery and Equipment expense Account No. 7001.1050.6021.

This item has been reviewed by the Finance Department.

III. LEGAL REVIEW:

This item has been reviewed by the City Attorney's Office.

IV. EXISTING POLICY:

This item is consistent with goal numbers one (1) and two (2) of the City's Strategic Plan: to ensure the City's continued financial stability and to improve public safety, respectively.

V. ALTERNATIVES:

VI. INTERDEPARTMENTAL COORDINATION:

VII. PUBLIC PARTICIPATION:

The public will have an opportunity to provide comments on this item prior to City Council action.

VIII. ENVIRONMENTAL REVIEW:

This item is not a "project" under the California Environmental Quality Act (CEQA) as this activity does not cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to Public Resources Code section 210

IX. STEPS FOLLOWING APPROVAL:

Staff will prepare a Purchase Agreement (Purchase Order) for the purchase of the new switches.

Submitted by:



Justin Vinson, Public Works Director

Approved by:



Lori Waterman, City Manager

Attachments:

1. Data Path Quote
2. NASPO Value Point RFP for Data Communication Products and Services
3. Addendum 7-20-70-47-03

QUOTE FOR

Network Refresh - Extreme Switching

Prepared by:
Datapath
 Jay Harvey
 209-380-5544
 jharvey@mydatapath.com

Prepared for:
City of Atwater
 750 Bellevue Rd
 Atwater, CA 95301
 Justin Vinson
 (209) 777-0273
 jvinson@atwater.org

Quote Information:
Quote #: 021031
 Version: 2
 Delivery Date: 03/16/2023
 Expiration Date: 03/30/2023

Products

	Price	Qty	Ext. Price
5420F 24PT POE+ SWCH	\$3,056.94	3	\$9,170.82
5420F 48PT POE+ SWCH	\$4,700.18	4	\$18,800.72
5420F 16PT 802.3BT 90W & 32 POE+	\$4,926.62	8	\$39,412.96
5520 24PT FIBER SWCH UNIV LLW	\$7,363.74	1	\$7,363.74
5520-VIM 4X10GE SFP+ UNIV LLW	\$709.51	1	\$709.51
PREMIER LIC FOR 5000 SERIES SWCH	\$1,107.78	1	\$1,107.78
350W AC PSU FB	\$441.78	2	\$883.56
PWR CORD 13A USA NEMA 5-15 IEC320-C15	\$13.32	17	\$226.44
1M CBL 10G SFP+ CU TWX COP	\$80.81	13	\$1,050.53
20G PASSIVE DAC SFPDD TO SFPDD 1M	\$217.56	1	\$217.56
10GBSR SFP+ 850NM LC 300M MMF	\$729.05	1	\$729.05
10GBLR SFP+ 1310NM LC 10KM SMF	\$1,216.12	1	\$1,216.12
10G PASSIVE DAC SFP+ 0.5M	\$80.81	3	\$242.43
EW TAC OS 5520-24X	\$1,663.20	1	\$1,663.20
EW TAC OS 5520-VIM-4X	\$161.04	1	\$161.04
EW TAC & OS 5420F-16W-32P-4XE	\$1,269.84	8	\$10,158.72
EW TAC & OS 5420F-24P-4XE	\$696.96	3	\$2,090.88

Products

	Price	Qty	Ext. Price
EW TAC & OS 5420F-48P-4XE	\$1,087.68	4	\$4,350.72
TAC OS 5000-PRMR-LIC	\$396.00	1	\$396.00
XIQ PILOT SAAS EW SAAS SUP DELAY	\$185.63	16	\$2,970.08
Extreme Networks 10302 Compatible 10GBASE-LR SFP+ 1310nm 10km DOM Duplex LC SMF Optical Transceiver Module	\$32.40	16	\$518.40
Extreme Networks 10301 Compatible 10GBASE-SR SFP+ 850nm 300m DOM Duplex LC MMF Optical Transceiver Module	\$24.00	32	\$768.00
Purchase is being made through Extreme Networks NASPO Participating Addendum - Contract Number 7-20-70-47-03.			
Subtotal:			\$104,208.26

Quote Summary

	Amount
Products	\$104,208.26
Subtotal:	\$104,208.26
Estimated Tax:	\$6,708.06
Total:	\$110,916.32

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors.

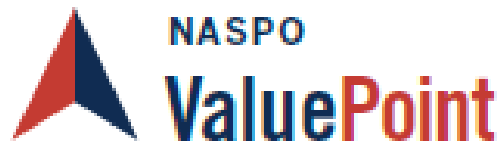
By accepting this quote Customer is agreeing to the Datapath Terms of Service and Payment Terms:

- [Terms of Service](#)
- [Payment Terms](#)



The State of Utah
Division of Purchasing & General Services

In conjunction with



Request for Proposals

State of Utah Solicitation Number SK18001

**NASPO ValuePoint Master Agreement for
Data Communications Products &
Services**

July 13, 2018

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RFP Administrative Information

RFP Title:	Data Communications Products & Services
RFP Project Description:	The State of Utah in conjunction with NASPO ValuePoint, is seeking Contractor(s) to provide data communications products and services as described within this RFP.
RFP Lead:	Solomon Kingston, State Contract Analyst State of Utah, Division of Purchasing skingston@utah.gov (801) 538-3228
Electronic Submission:	Proposals must be submitted electronically via Jaggaer (the Utah Public Procurement Place) here: http://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfUtah Hard copy submissions will not be accepted. From the Jaggaer link type "SK18001" into the search bar, and click the search icon. The "Data Communications Products & Services" posting will appear.
Deadline To Receive Questions:	August 17, 2018 at 1pm MDT/MST
Question & Answers:	All questions, including those about Terms and Conditions, must be submitted through Jaggaer. Question must be submitted by the question deadline date
RFP Closing Date & Time:	September 11, 2018 at 1pm MDT/MST
Initial Term of Contract and Renewals:	The initial term of the Contract will be five (5) years with the option, upon mutual written agreement, for two (2) additional renewal periods of one (1) year each. Upon mutual agreement, the contract may be extended or amended.
TAKE NOTE OF THE 0.25% NASPO VALUEPOINT ADMINISTRATIVE FEE DETAILED IN SECTION 6 OF THE NASPO VALUEPOINT STANDARD TERMS AND CONDITIONS, WHICH MUST BE INCORPORATED INTO YOUR BASE PRICE. OTHER STATES MAY NEGOTIATE ADDITIONAL ADMINISTRATIVE FEES IN THEIR PARTICIPATING ADDENDA FOLLOWING AWARD OF A MASTER AGREEMENT.	

REQUEST FOR PROPOSALS

NASPO ValuePoint Data Communications Products & Services

Solicitation # SK18001

This Request for Proposals (“RFP”), having been determined to be the appropriate procurement method to provide the best value to the Lead State, is designed to provide interested Offerors with sufficient basic information to submit proposals. It is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability. This RFP is issued in accordance with State of Utah Procurement Code, Utah Code Annotated (UCA) Chapter 63G-6a, and applicable Rules found in the Utah Administrative Code (UAC). If any provision of this RFP conflicts with the UCA or UAC, the UCA or UAC will take precedence.

SECTION 1: GENERAL INFORMATION

1.1 PURPOSE OF REQUEST FOR PROPOSAL (RFP)

The State of Utah, Division of Purchasing & General Services (Lead State) is requesting proposals for data communications products and services including all customer service, installation, and design services in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The purpose of this Request for Proposals (RFP) is to establish Master Agreements with qualified original equipment manufacturers (OEM's) to provide data communications products and related services for all Participating Entities. This solicitation does not allow for multiple firms represented by a distributor to respond. This solicitation does not allow for sister companies to team and submit offers. The objective of this RFP is to obtain best value, and in some cases achieve more favorable pricing, than is obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities. The Master Agreement(s) resulting from this procurement may be used by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the individual state procurement director and compliance with local statutory and regulatory provisions.

The State of Utah Division of Purchasing does not guarantee any purchase amount under an awarded contract. Estimated quantities are for solicitation purposes only and are not to be construed as a guarantee.

Each Participating Entity may select the Fulfillment Partner(s) they choose to do business with during the Participating Addendum process. A Participating Entity may require the Fulfillment Partner(s) to submit additional information regarding their firm as part of the selection process during the execution of a Participating Addendum. This information could include, but is not limited to; business references, number of years in business, technical capabilities, information on past projects, and the experience of both their sales and installation personnel.

Each Participating Entity has the option to select one or more product categories or services from the resulting Master Agreement(s) during the execution of the Participating Addendum process.

Each Participating Entity has the option to negotiate an expanded product line within the product category offering and within the scope of this RFP during the Participating Addendum process.

The Awarded Vendor will be the sole point of contract responsibility. The Lead State Contract Administrator and Participating Entities will look solely to the awarded vendor for the performance of all contractual obligations, and the awarded vendor shall not be relieved for the non-performance of any Fulfillment Partner and/or all Subcontractors. Contract requirements such as websites, reporting, etc. are the responsibility of the Awarded Vendor. Awarded Vendors must provide education and guidance on use of the Master Agreement and Participating Addendums.

Lease Option (Optional): Participating Entities reserve the right to determine whether it will utilize leasing options, if available from a selected OEM, during the Participating Addendum process. In addition to providing the proposed categories for Data Communications and related services, Offerors are encouraged to propose rental/financing options, including, but not limited to: lump sum payment, installment sale, rental and the option to lease any Data Communications hardware, supplies, and materials. The selected OEM will identify its rental/lease partner(s). Any State that Issues a Participating Addendum may choose to work with a selected OEM lease partner or obtain other financing or work with other leasing entities of the State's choice. Lease options are optional and are not factored into the evaluation process.

The resulting Master Agreement will be awarded with the understanding and agreement that it is for the sole convenience of the Participating Entities. The Participating Entities reserve the right to obtain like goods or services from other sources when necessary.

This RFP is designed to provide interested offerors with sufficient basic information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Proposals must be concise and as short as possible to allow for efficient evaluation. Blanket marketing material and unnecessary elaborate brochures or representations beyond what is sufficient to present a complete and effective proposals are not acceptable.

Offerors may respond to all or any of the award categories. The product, award categories are outlined in Attachment B – Scope of Work.

1.2 NASPO VALUEPOINT BACKGROUND INFORMATION

NASPO ValuePoint (formerly known as WSCA-NASPO) is a cooperative purchasing program of all 50 states, the District of Columbia and the territories of the United States. The Program is facilitated by the NASPO Cooperative Purchasing Organization LLC, a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO), doing business as NASPO ValuePoint. NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO ValuePoint facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. For more information consult the following websites www.naspovaluepoint.org and www.naspo.org.

1.3 PARTICIPATING STATES

In addition to the Lead State conducting this solicitation, the other Participating States that have requested to be named in this RFP as potential users of the resulting Master Agreement are listed

below. Other entities may become Participating Entities after award of the Master Agreement. Some States may have included special or unique Terms and Conditions for their state that will govern their state Participating Addendum in Attachment I. These Terms and Conditions are being provided as a courtesy to proposers to indicate which additional Terms and Conditions may be incorporated into that state Participating Addendum after award of the Master Agreement. Each State reserves the right to negotiate additional Terms and Conditions in its Participating Addendums.

The Lead State will not address questions or concerns or negotiate other States' terms and conditions. The Participating States must negotiate these Terms and Conditions directly with the supplier.

State	Est. Volume
CALIFORNIA	\$62,000,000.00
COLORADO	\$1,477,664
FLORIDA	\$36,000,000
HAWAII	\$10,000,000
ILLINOIS	N/A
LOUISIANA	\$15,000,000
MARYLAND	\$20,000,000
MICHIGAN	\$16,500,000
MONTANA	\$13,000,000
MINNESOTA	\$32,000,000
NEW JERSEY	\$15,000,000
OREGON	\$22,861,935
SOUTH DAKOTA	\$1,500,000.00
UTAH	\$91,642,561.61
WASHINGTON	\$45,929,528.78
Total Est. Volume	\$382,911,689.24

The information regarding estimated annual usage above has been provided by the individual States and a minimum or maximum level of sales volume is not guaranteed or implied. This is informational data only.

1.4 HISTORIC USAGE

The following information represents historic usage from the current master agreements. No minimum or maximum level of sales volume are guaranteed or implied. This is informational data only.

NASPO ValuePoint Contract Usage Summary

	2014	2015	2016	2017	2018
Total Aggregated Spend Across all States	\$272,426,398	\$365,617,238	\$426,497,493	\$449,156,585	

1.5. Lead State, Solicitation Number and Lead State Contract Administrator

The State of Utah, Division of Purchasing and General Services is the Lead State and issuing office for this document and all subsequent addenda relating to it. The reference number for the transaction is Solicitation # SK18001. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

The Lead State Contract Administrator identified below is the Single Point of Contact during this procurement process. Offerors and interested persons shall direct to the Lead State Contract Administrator all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, requests for brand approval, changes, clarifications, and protests, the award process, and any other questions that may arise related to this solicitation and the resulting Master Agreement. The Lead State Contract Administrator designated by the State of Utah, Division of Purchasing and General Services is:

Solomon Kingston, State Contract Analyst
State of Utah, Division of Purchasing and General Services
3150 State Office Building
Capitol Hill Complex
450 North State Street
Salt Lake City, UT 84114
skingston@utah.gov
801-538-3228

1.6 QUESTION AND ANSWER PERIOD

All questions MUST be submitted through JAGGAER (SciQuest) (<http://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfUtah>) during the designated time for questions (“Q&A period”) listed on Jaggaer. Questions submitted through any other channel will not be answered. Questions may be answered in the order that they are submitted or may be compiled into one document and answered via an addendum. Answers disseminated by the State through the Jaggaer system shall serve as the official and binding position of the State and will constitute an addendum to this RFP.

Questions, exceptions, or notification to the State of any ambiguity, inconsistency, excessively restrictive requirement, or error in this RFP, MUST be submitted as a question through Jaggaer during the Q&A period.

An answered question or addenda may modify the specification or requirements of this RFP. Answered questions and addendums will be posted on Jaggaer. Offerors should periodically check Jaggaer for answered questions and addendums before the closing date. It is the responsibility of the Offerors to submit their proposal as required by this RFP, including any requirements contained in an answered question and/or addendum(s).

Exceptions to scope/content of the RFP within an Offeror’s proposal that have not been previously addressed within the Q&A period of the procurement are not allowed and may result in the Offeror’s proposal being considered non-responsive.

1.7 RESERVED

1.8 ADDENDUMS

Offerors are encouraged to periodically check Jaggaer for posted questions, answers and addendums. Offerors will not be notified by the Lead State or Jaggaer for each addendum issued under the RFP.

Any modification to this procurement will be made by addendum issued by the Lead State. Addendums to the RFP may be made for the purpose of making changes to: the scope of work, the schedule, the qualification requirements, the criteria, the weighting, or other requirements of the RFP.

After the due date and time for submitting a proposal to the RFP, at the discretion of the Lead State, addenda to the RFP may be limited to the Offerors that have submitted proposals, provided the addenda does not make a substantial change to the RFP that likely would have impacted the number of Offerors responding to the original publication of the RFP, in the opinion of the Lead State.

Authorized and properly issued addenda shall constitute the official and binding position of the State.

Any response to the RFP which has as its basis any communications or information received from sources other than the RFP or related addenda may be considered non-responsive and be rejected at the sole discretion of the State.

1.9 RESTRICTIONS ON COMMUNICATIONS

From the issue date of the RFP until the contract award(s), Offerors are prohibited from communications regarding the RFP with other Participating Entities EXCEPT the Lead State. Failure to comply with this requirement may result in disqualification.

1.10 E-RATE - UNIVERSAL SERVICE FUND DISCOUNT

To the extent the services offered are subject to the E-rate discount program, all award Contract Vendors must commit to participation in the Federal Communication Commission's E-rate discount program established under authority of the Federal Telecommunications Commission Act of 1996. Participation in, and implementation of, this program must be provided without the addition of any service or administration fee by the Contract Vendor.

In order to participate in E-Rate Offerors must appear on the USAC website as those who have a Service Provider Identification Number or "SPIN."

E-rate applicants must deduct the value of ineligible components bundled with eligible services unless those ineligible components qualify as "ancillary" to the eligible services under FCC rules. This process is called "cost allocation". Offeror must separate and illustrate the cost allocation for each component and service in a bundled offering provided to E-rate eligible State entities enabling each entity to properly apply for E-rate coverage of allowable services.

The Offeror shall not currently be subject to the Red Light Rule by the FCC, and will notify the applicant if they are later placed on Red Light Status with the FCC.

The Offeror must be able to honor the applicant's request for Service Provider Invoicing. Service

Provider Invoicing is a billing arrangement where the Offeror invoices the applicant for the discounted portion of the products and services the applicant requests. The Offeror would invoice USAC for the non-discounted portion of the applicant's products and services as a reimbursement.

1.11 DIVERSE BUSINESS PARTICIPATION

By submitting a proposal to this RFP, the Offeror acknowledges and agrees to provide diverse business participation as outlined in this section and as requested by individual Participating Entities. For information purposes to Participating Entities, please propose to document SK18001 Attachment D-Fulfillment Partner List spreadsheet, which state(s) your business intends to provide local inclusion for these diverse business programs which may then be incorporated in a resulting state's Participating Addendum.

Diverse business participation means direct performance of commercially useful work. Examples of this include, but are not limited to:

- Fulfillment Partner performing services directly to agency customers through a fulfillment partner, distributor, installer type relationship.
- Subcontractors performing a portion of the work that is trackable, payment to the subcontractor can be validated, and the vendor can report usage back to the agency and scope of work performed.

Example of small and diverse businesses are defined as follows:

- Small Business: US Small Business Administration small business.
- Diverse Business (Minority, women, or veteran businesses): federal 8(a)/SDB, federal WBE, federal veteran-owned, nationally certified under a corporate certification program (National Supplier Development Council, Women's Business Enterprise National Council, or other diverse business certification your business recognizes), or certification recognized by one of the participating states.

Many Participating Entities have their own state specific diverse business programs and definitions.

The information provided in response to this section 1.11 will not be factored into an Offeror's qualifications or eligibility for a master agreement.

SECTION 2: SOLICITATION REQUIREMENTS, INFORMATION AND INSTRUCTIONS TO OFFERORS

2.1 SUBMITTING YOUR PROPOSAL

By submitting a proposal to this RFP, the Offeror acknowledges and agrees that the requirements, scope of work, and the evaluation process outlined in this RFP are understood, fair, equitable, and are not unduly restrictive. Any exceptions to the content of this RFP must be addressed within the Q&A period. The Offeror further acknowledges that it has read this RFP. More information regarding submittal requirements are provided within the RFP documents.

All costs incurred by an Offeror in the preparation and submission of a proposal, including any costs incurred during interviews, oral presentations, and/or product demonstrations are the responsibility of the Offeror and will not be reimbursed.

The cost proposal will be evaluated independently from the technical proposal, pursuant to Utah Code Annotated (UCA) § 63G-6a Part 7, and as such, **must** be submitted separate from the technical proposal. Separate, for the purposes of this solicitation, means that a separate document is submitted with the labeling instructions provided in this RFP document. Failure to submit cost or pricing data separately may result in your proposal being judged as non-responsive and ineligible for contract award. For electronic submissions, submitting the cost schedule as a separate document is considered separate.

Proposals must be received by the posted due date and time posted on Jaggaer (“deadline”). Proposals received after the deadline will be late and ineligible for consideration.

Proposals shall be submitted electronically through Jaggaer. We will not accept proposals submitted through any other means. For ease in distributing proposals for evaluation we must have electronic copies received through Jaggaer only.

Electronic submission instructions: When submitting a proposal electronically through Jaggaer, please allow sufficient time to complete the online forms and to upload proposal documents. The RFP will end at the deadline. If an Offeror is in the middle of uploading a proposal when the deadline arrives, the system will stop the upload process and the proposal will not be accepted by Jaggaer, and the attempted submission will be considered late and ineligible for consideration.

Electronic proposals may require uploading of electronic attachments. Jaggaer will accept a wide variety of document types as attachments. However, the State is unable to view certain documents. All documents must be uploaded in Jaggaer as separate files.

2.2 PROPOSAL FORMAT

Proposals should be concise, straightforward and prepared simply and economically. Expensive displays, bindings, or promotional materials are neither desired nor required. However, there is no intent in these instructions to limit a proposal’s content or exclude any relevant / essential data.

All Proposals must be submitted in the format outlined below. Offerors must title each document utilizing the names listed below. Proposals must be submitted as separate, individual documents pursuant to the titles listed below. The Jaggaer portal will outline where certain documents are to be submitted within the portal. All other documents may be submitted within the Supplier Attachments section of the Jaggaer portal.

If an Offeror submits a redacted version of a document it should clearly label the document as redacted. Detailed information on submitting each of these documents is provided below.

A. Document: Mandatory Minimum Requirements

This document should constitute the Offeror’s point-by-point response to each item described in section 4.1 the RFP.

Title this document upload – **[Vendor Name] Mandatory Minimums Response**

B. Document: OEM Evaluated Qualifications

This document should constitute the Offeror’s response Attachment B.1 An Offeror’s response must be a specific point-by-point response, in the order listed, to each requirement within Attachment B.1. This document should demonstrate

the Offeror's understanding of the desired overall performance expectations, deliverables, if any, and outcomes. In any case wherein the Offeror cannot comply with an evaluation criterion outlined in section 4.2, such inability must be stated in response to the applicable requirement.

Title this document upload – **[Vendor Name] Attachment B.1 Response**

C. Document: Category Qualification Evaluation

These documents should constitute the Offeror's response Attachment B.2 for each category Offeror is seeking an award. An Offeror's response must be a specific point-by-point response, in the order listed, to each requirement within Attachment B.2. A separate Attachment B.2 is required for each category Offeror is seeking an award.

Title these document uploads – **[Vendor Name] [Category #] Attachment B.2 Response**

D. Document: Confidential, Protected or Proprietary Information & Redacted Copy.

As provided in section 2.6, this document is to constitute Offeror's redacted proposal along with Attachment G.

If there is no protected / redacted information, provide a document with "None" in the body.

Failure to comply with this Section and Section 2.6 of the RFP releases the Lead State, NASPO ValuePoint, and Participating Entities from any obligation or liability arising from the inadvertent release of Offeror information.

Title this document – **[Vendor Name] Redacted Proposal**

E. Document: Exceptions and/or Additions to the Standard Terms and Conditions.

Proposed exceptions and/or additions to the Master Agreement Terms and Conditions, including the exhibits, must be submitted in this section. Offeror must provide all proposed exceptions and/or additions, including an Offeror's terms and conditions, license agreements, or service level agreements in Microsoft Word format for redline editing. Offeror must also provide the name, contact information, and access to the person(s) that will be directly involved in terms and conditions negotiations.

If there are no exceptions or additions to the Master Agreement Terms and Conditions, provide a document with "None" in the body.

Title this document – **[Vendor Name] Exceptions Additions to T&Cs**

F. Document: Cost Proposal.

The cost proposal (Attachment E) will be evaluated independently from the technical proposal, pursuant to Utah Code Annotated (UCA) § 63G-6-707(5), and as such, must be submitted separate from the technical proposal. Failure to submit cost or pricing data separately may result in your proposal being judged as non-

responsive and ineligible for contract award. Offeror's cost proposal must include the items provided in section 5.3 of the RFP.

Cost will be evaluated independently from the Mandatory Minimum Requirements, and the Technical responses. Inclusion of any cost or pricing data within the Detailed Technical Proposal will result in the proposal being judged as non-responsive for violation of UCA § 63G-6a-707(5).

Title this document – **[Vendor Name] Attachment E Cost Proposal**

G. Document: Fulfillment Partner List.

This document should constitute Offeror's response to the Attachment D Partner List as described in section 1.1.

Title this document – **[vendor name] Attachment D Fulfillment Partner List**

H. Document: Optional Lease Option Information

Offerors may submit, at their option, information pertaining to Lease Options. If a participating entity is interested in lease options, then they may negotiate terms of a lease option with a contractor or its fulfillment partner during the Participating Addendum process.

If there are no lease options provide a document with "None" in the body.

Title this document – **[Vendor Name] Lease Option Information**

2.3 CONTRACT AWARD INTENT

It is anticipated that the RFP will result in multiple contract awards established by the following multiple award methodology: all offerors that meet/exceed all solicitation minimum requirements and the required evaluation score to be selected for award subject to successful terms and conditions negotiations.

Participating entities may consider execution of Participating Addenda through informal competitions, and Participating entities may base their "best value" selection of the offeror whose qualifications best meet their needs after reviewing qualifications outlined in the offeror's proposal and considering other information in the solicitation process relevant to their determination of best value (such as the proposals and evaluations).

The awarded Master Agreement(s) may be modified by the Lead State as a result of technological upgrades for the procurement item(s). Any modification for upgraded technology must be substantially within the scope of the original procurement or contract, and if both parties agree to the modification, then the contract may be modified, but it may not be extended beyond the term of the original awarded contract unless otherwise permitted by law.

2.4 LENGTH OF CONTRACT

The contracts resulting from this RFP will be for a period of five (5) years, with a an option for two (2) additional renewal periods of one (1) year each. The State reserves the right to review the contract resulting from this RFP on a regular basis regarding performance and cost and may negotiate price/discount % off during the contract's term.

Offeror may offer maintenance / support agreements that extend beyond the resulting Master Agreement term pursuant to Attachment A section 27.

2.4.A DISCUSSIONS

Discussions may be conducted with the Offerors who submit proposals determined to be reasonably susceptible of being selected for award, followed by an opportunity to make best and final offers pursuant to UCA § 63G-6a Part 7, but proposals may be accepted without discussions.

2.5 STANDARD CONTRACT TERMS AND CONDITIONS, EXCEPTIONS, AND NEGOTIATIONS

Any contract resulting from this RFP will include the NASPO ValuePoint Master Agreement Terms and Conditions (Master Agreement Terms and Conditions), Attachment A, including Exhibits to Attachment A.

Exceptions and/or additions to the Master Agreement Terms and Conditions and other requirements of this RFP are strongly discouraged. Any exception and/or addition regarding the **Master Agreement Terms and Conditions** must be made in the Offeror's proposal. **The Lead State will not consider proposed modifications and/or additions to the Master Agreement Terms and Conditions after the deadline for proposals.** Exceptions and/or additions regarding the Master Agreement Terms and Conditions or other RFP provisions must contain the following:

1. The rationale for the specific requirement being unacceptable to the Offeror submitting the exception and/or addition;
2. Recommended verbiage for the Lead State's consideration that is consistent in content, context, and form with the Master Agreement Terms and Conditions;
3. Explanation of how the Lead State's acceptance of the recommended verbiage is fair and equitable to both the Lead State, the Participating Entities, and to the Offeror submitting the modification and/or exception.

Offerors may not submit requests for exceptions and/or additions by reference to an Offeror's website or URL. URLs provided with a proposal may result in that proposal being rejected as non-responsive. Offerors may submit questions during the Q&A period regarding the Master Agreement Terms and Conditions.

The Lead State may refuse to negotiate exceptions and/or additions that are determined to be excessive; that are inconsistent with similar contracts; and to warranties, insurance, or indemnification provisions that are necessary to protect the procurement unit after consultation with the Attorney General's Office or other applicable legal counsel.

For the RFP, the Lead State reserves the right to negotiate exceptions and/or additions to terms and conditions in a manner resulting in expeditious resolutions. This process may include beginning negotiations with the qualified Offeror having the least amount of exceptions and/or additions and concluding with the Offeror submitting the greatest number of exceptions and/or additions. Contracts may be executed and become effective as negotiations are completed; however, all of the resulting Master Agreement(s) will terminate on the same date.

If negotiations are required, Offeror must provide all documents **in Microsoft Word format** for redline editing. Offeror must also provide the name, contact information, and access to the person(s) that will be directly involved in legal negotiations.

An award resulting from the RFP is subject to successful contract terms and conditions negotiation (if required). The Lead State, at its sole discretion, will determine when contract terms and conditions negotiations become unproductive and will result in termination of award to that Offeror.

2.6 PROTECTED INFORMATION

The Government Records Access and Management Act (GRAMA), UCA § 63G-2-305, provides in part that:

the following records are protected if properly classified by a government entity:

(1) trade secrets as defined in Section 13-24-2, the Utah Uniform Trade Secrets Act, if the person submitting the trade secret has provided the governmental entity with the information specified in UCA § 63G-2-309 (Business Confidentiality Claims);

(2) commercial information or non-individual financial information obtained from a person

if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in UCA § 63G-2-309;

** * * * **

(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties, ...

Pricing may not be classified as confidential or protected and will be considered public information after award of the contract.

Process for Requesting Non-Disclosure: Any Offeror requesting that a record be protected shall include with the proposal a Claim of Business Confidentiality. To protect information under a Claim of Business Confidentiality, the Offeror must complete the Claim of Business Confidentiality form with the following information:

1. Provide a written Claim of Business Confidentiality at the time the information (proposal) is provided to the state, and
2. Include a concise statement of reasons supporting the claim of business confidentiality (UCA § 63G-2-309(1)).
3. Submit an electronic “redacted” (excluding protected information) copy of the record. The redacted copy must clearly be marked “Redacted Version.”

The Claim of Business Confidentiality Form is provided as Attachment G.

An entire proposal cannot be identified as “PROTECTED”, “CONFIDENTIAL” or “PROPRIETARY”, and if so identified, shall be considered non-responsive unless the Offeror removes the designation.

Redacted Copy: If an Offeror submits a proposal that contains information claimed to be

business confidential or protected information, the Offeror must submit two separate proposals: one redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and one non-redacted version for evaluation purposes, clearly marked as "Protected Business Confidential."

The Lead State and NASPO ValuePoint are not liable or responsible for the disclosure of any confidential or proprietary information if the Offeror fails to follow the instructions of this section.

2.7 INTERVIEWS AND PRESENTATIONS

The evaluation committee does not intend to conduct interviews or presentations but we reserve the right to do so if it is determined to be in the best interest of the Lead State. Interviews and presentations may be held at the option of the Lead State. The Lead State shall establish a date and time for the interviews or presentations and shall notify eligible Offerors of the procedures. Offerors invited to interviews or presentations shall be limited to those Offerors meeting the mandatory minimum requirements and mandatory minimum technical score threshold specified in the RFP. Representations made by an Offeror during interviews or presentations shall become an addendum to the Offeror's proposal and shall be documented. Representations must be consistent with Offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in Offeror's proposal. Interviews and presentations will be at Offeror's expense.

2.8 RIGHT TO PUBLISH

Throughout the duration of this procurement and Master Agreement term, Offerors, OEM's and their Fulfillment Partners must secure from the Lead State prior approval for the release of any information that pertains to the potential work or activities covered by this procurement or the Master Agreement. The OEM must not make any representations of Utah's or the ValuePoint cooperative's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Master Agreement without prior written consent of the Lead State. Failure to adhere to this requirement may result in disqualification of the Offerors proposal or termination of the Master Agreement for cause.

2.9 CHANGES IN REPRESENTATION

The Contracted Manufacturer must notify the Lead State of changes in the Contracted Manufacturer's Contract Administrator or Contract Usage Report Administrator, in advance and in writing and upon approval by the Lead State. The Lead State reserves the right to require a change in Contracted Supplier(s) representatives if the assigned representative(s) is not, in the opinion of the Lead State, meeting the Terms and Conditions of the contract.

2.10 STATE SEAL USE

The Utah Great Seal Rule states, in section R622-2-3.Custody and Use, that "no facsimile or reproduction of the Great Seal may be manufactured, used, displayed, or otherwise employed by anyone without the written approval of the Lieutenant Governor."

Other Participating Entities have similar rules that must be adhered to by offerors or interested parties.

2.11 USAGE REPORTING AND ADMINISTRATIVE FEE REQUIREMENT

Refer to Terms and Conditions for NASPO ValuePoint usage reporting and administrative fee requirements. Some States may require additional usage reporting and administrative fee be paid directly to the State only on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments

will be incorporated into the Participating Addendum that is made part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the State.

2.12 GLOSSARY

Authorized Representative: An individual with the authority to legally bind the Offeror to the Terms and Conditions of the Master Agreement (s) established as a result of this RFP. This individual must have the authority and ability to accurately reflect the ability of the Offeror to meet the requirements detailed in this RFP.

Contract Administrator: A dedicated person with the authority and ability to manage compliance with the scope and Terms and Conditions for this contract.

Contracted Supplier or Contractor or Contracted OEM Supplier: An Original Equipment Manufacturer (OEM) of the offered Data Communications products that has been awarded a Master Agreement as a result of this procurement.

Lead State: The State issuing the Request for Proposal, in this case, Utah.

Mandatory Minimum Requirements: Requirements that must be met in order to be considered for further evaluation. Mandatory minimum requirements are non-negotiable. An offer that does not meet the mandatory minimum requirements will be disqualified from further consideration.

Master Agreement: The underlying agreement executed by and between the Lead State, acting on behalf of NASPO ValuePoint and the Contractor, as now or hereafter amended.

NASPO ValuePoint: Unified, nationally focused cooperative allegiance aggregating the demand of all 50 states, the District of Columbia and the organized US territories, their political subdivisions and other eligible entities, spurring best innovation and competition in the marketplace. See <http://www.naspovaluepoint.com/> for more information.

OEM: Original Equipment Manufacturer of the data communications products and services.

Participating Addendum: A Participating Addendum must be executed by any State that decides to adopt a NASPO ValuePoint Master Agreement. A Participating Addendum must be executed for each Contractor by the individual State desiring to use their contract. Additional States may be added with the consent of the Contractor and the Lead State (on behalf of NASPO ValuePoint) through execution of Participating Addendums. A Participating Addendum allows for each Participating State to add Terms and Conditions that may be unique to their State.

The Participating State and the Contractor must negotiate and agree upon any additional Terms and Conditions prior to the signing and execution of the Participating Addendum. States are not mandated to sign a Participating Addendum with all awarded vendors.

Participating Entity: A state, or other legal entity, properly authorized to enter into a Participating Addendum. See Attachment A.

Price Guarantee Period: One (1) Year.

Published Commercial Price List: Manufacturer's Price list, also known as the list price.

Purchasing Entity: A state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

Qualified Entity: An entity that is eligible to use the Master Agreement(s).

Usage Report Administrator: A person responsible for the quarterly sales reporting and payments described in this RFP.

SECTION 3: EVALUATION AND AWARD

3.1 PROPOSAL EVALUATION

All proposals in response to this RFP will be evaluated in a manner consistent with the Utah Procurement Code, Administrative Rules, policies and the evaluation criteria in this RFP. Offerors bear sole responsibility for the items included or not included within the submitted proposal. Each area of the evaluation criteria must be addressed in detail in the proposal. Each product category will be awarded separately. Offeror's may respond to one or any of the product categories.

The Lead State reserves the right to verify that Offeror's proposal meets the required mandatory minimums and technical requirements.

3.2 PROPOSAL EVALUATION PROCESS

Stage 1: Initial Review

In the initial phase of the evaluation process, the Lead State will review all proposals timely received. The mandatory minimum requirements are provided in Section 4.1, and will be scored on a pass/fail basis. A "Fail" on any one criteria will result in a proposal being deemed non-responsive. Failure to provide a response to each Mandatory requirement will result in disqualification. These requirements are summarized below.

<u>Mandatory Minimum Requirements</u>	<u>RFP Section</u>	<u>Pass/Fail</u>
RFP Development	4.1.1	Pass/Fail
Evaluation of Proposals	4.1.2	Pass/Fail
Proposed Categories	4.1.3	Pass/Fail
Delivery	4.1.4	Pass/Fail
Credit Rating	4.1.5	Pass/Fail
OEMs Only	4.1.6	Pass/Fail

Non-responsive proposals not conforming to the RFP requirements or unable to meet the mandatory minimum requirements will be eliminated from further consideration. Offerors that meet all minimum requirements will move on to the Stage 2 evaluation.

Stage 2: OEM Evaluated Qualifications

Responsive proposals will be evaluated by an evaluation committee appointed by the Lead State against the criteria described in Section 4.2 OEM Evaluated Qualifications.

The listed criteria in Section 4.2 are weighted as follows:

<u>Evaluation Criteria</u>	<u>RFP Section</u>	<u>Points Possible</u>
Company Profile and References	4.2.1	50.0
Ability to Supply NASPO ValuePoint Member States	4.2.2	50.0
Ability to Provide Technical Support to End Users	4.2.3	50.0
Qualifications and Technical Ability	4.2.4	25.0
Security	4.2.5	50.0
Environmental	4.2.6	25.0
<i>Total Stage 2 Points</i>		<i>250.0 points</i>

The evaluation committee will tally the final scores for the OEM Evaluated Qualifications criteria to arrive at a consensus score by averaging the individual scores. Offerors that achieve the **minimum score threshold of 162.5 points within the Stage 2** evaluation will proceed to the

Stage 3 Category Qualification Evaluation. Offeror's who do not achieve the required minimum score threshold will be disqualified and eliminated from further consideration.

Stage 3: Category Qualification Evaluation

Responsive proposals that meet the minimum score threshold from Stage 2 will then be evaluated for responsiveness in each Category that Offeror is seeking an award in.

The listed criteria in Section 4.3 are weighted as follows:

<u>Evaluation Criteria</u>	<u>RFP Section</u>	<u>Points Possible</u>
Ability to meet Requirements of Selected Category	4.3.1	100.0
Consumption Models	4.3.2	25.0
Category Specific Security	4.3.3	50.0
Open Standards and Interoperability	4.3.4	50.0
Value Added Services	4.3.5	25.0
<i>Total Stage 3 Points Per Category</i>		<i>250.0 points</i>

The total possible points and the minimum score threshold that must be achieved for each Category that Offeror is seeking an award in are as follows:

Award Categories	Total Points Possible	Stage 3: Minimum Threshold
Unified Communications	250.0	175.0
Networking	250.0	175.0
Routers, Switches, Security, and Storage Networking	250.0	175.0
Wireless	250.0	175.0
Facility Management, Monitoring, and Control	250.0	175.0

The evaluation committee will tally the final scores for in each Category to arrive at a consensus score by averaging the individual evaluator scores.

Proposals that achieve the minimum score threshold listed above for a given Award Category will proceed to the Final Stage: Cost Proposal Evaluation. Offerors with a score of less than the minimum required technical points (Minimum Threshold) will be deemed non-responsive and ineligible for further consideration.

The evaluation score sheet has been attached to this RFP (Attachment F) for reference. This provided scoresheet states the relative weight for each evaluation criteria.

Final Stage: Cost Proposal Evaluation

Offerors successful in the Stage 3 Product Qualification Evaluation will advance to the Final Stage: Cost Proposal Evaluation. At this stage, the Lead State will then separate all responsive proposals into the following groups:

- Group 1: those Offerors whose proposal qualifies for all Award Categories.
- Group 2: those Offerors whose proposal qualifies one or more Award Categories, but not all Award Categories.

The Minimum Discount % off within Group 1 proposals will be compared against the Group 1 proposals. The Minimum Discount % off within Group 2 proposals will be compared against the

Group 2 proposals.

Group 1 – Within Group 1, the Offeror with the highest proposed Average Minimum Discount % off List for all Award Categories (See Attachment E) will receive 166.7 cost points. All other Offerors within Group 1 will receive a percentage of the cost points possible based on the percentage by which their proposed discount % is lower than the highest discount % in the given category. The formula to compute cost points is: **(Proposed Average Discount % / Highest Average Minimum Discount %) * Total Cost Points Available.**

Group 2 – Within Group 2, the Offeror with the highest proposed Minimum Discount % off List for the given Award Category 166.7 cost points. All other Offerors within Group 2 will receive a percentage of the cost points possible based on the percentage by which their proposed discount % is lower than the highest discount % in the given category. The formula to compute cost points is: **(Proposed Minimum Discount % / Highest Minimum Discount %) * Total Cost Points Available.**

Refer to Section 5 below and Attachment E for additional information pertaining to the cost evaluation.

3.3 AWARD OF MASTER AGREEMENT(S)

In order to be eligible for a contract award under this RFP a proposal must have a combined total score, of OEM, technical points, and cost points meeting the minimum threshold for award for the given Category as provided below:

Product Category	Total Possible Technical Points*	Total Possible Cost Points	Grand Total Possible Points	Minimum Threshold for Award
Unified Communications	500.0	166.7	666.7	466.69
Networking	500.0	166.7	666.7	466.69
Routers, Switches, Security, and Storage Networking	500.0	166.7	666.7	466.69
Wireless	500.0	166.7	666.7	466.69
Facility Management, Monitoring, and Control	500.0	166.7	666.7	466.69

**Technical Points is a combination of Stage 2 and Stage 3 Technical Points.*

All Offerors whose proposals meet or exceed this minimum threshold for award in a given Category are determined to provide the best value. After final selections are made, the Lead State will issue an intent-to-award announcement by letter to all responsive Offerors.

3.4 PROTEST PROCESS

Offerors are directed to Utah Code Part 16 and Utah Administrative Code Rule R16 available at <http://le.utah.gov/xcode/Title63G/Chapter6a/63G-6a-S1601.html> and <http://www.rules.utah.gov/publicat/code/r033/r033-016.htm> for available protest processes.

3.5 PUBLICIZING AWARD(S)

The Lead State shall, on the next business day after the award of a contract(s) is announced,

make available to each Offeror and to the public a written justification statement that includes:

- (a) the name of the offeror to which the contract is awarded and the total score awarded by the evaluation committee to that offeror;
- (b) the justification statement under UCA § 63G-6a-708, including any required cost-benefit analysis; and
- (c) the total score awarded by the evaluation committee to each offeror to which the contract is not awarded, without identifying which offeror received which score.

SECTION 4: ADMINISTRATIVE AND TECHNICAL RESPONSE REQUIREMENTS

4.1 Mandatory Minimum Requirements

This section contains mandatory minimum requirements that must be met in order for an offer to be considered responsive.

Failure to meet any one of the mandatory requirements/qualifications will result in the proposal being rejected pursuant to UCA § 63G-6a-704 and the proposal will not move forward in the evaluation process. All of the items described in this section are non-negotiable. A rejection of a proposal due to a proposal not meeting mandatory minimum requirements can occur at any time that the non-compliance is discovered.

4.1.1 RFP Development. Did your company, an employee, agent, or representative of your company, or any affiliated entity participate in developing any component of this solicitation? For purposes of this question, business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly: (1) either one controls or has power to control the other or (2) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities or equipment, and common use of employees. A response of other than “no” is subject to disqualification.

4.1.2 Evaluation of Proposals. Will your company, or an employee, agent, or representative of your company, participate in the evaluation of the proposals received in response to this RFP? A response of other than “no” is subject to disqualification.

4.1.3 Proposed Categories. Identify all categories your firm is seeking an award in from the following:

1. Unified Communications
2. Networking
3. Routers, Switches, Security, and Storage Networking
4. Wireless
5. Facility Management, Monitoring, and Control

4.1.4 Delivery. The extended prices are the delivered price to any Purchasing Entity. The extended price must reflect the minimum discount % off list price, as well as the price to deliver the item/services to the Purchasing Entity. See Attachment A section 14 for the required shipping and delivery. Offeror shall affirm its' acknowledgement of this requirement.

4.1.5 Credit Rating. Vendor must meet a minimum Dun and Bradstreet (D&B) credit rating of 3A2 or better, or a recognized equivalent rating. Please provide the Respondent's D&B Number and the composite credit rating. The State reserves the right to verify this information. If a branch or wholly owned subsidiary is bidding on this RFP, please provide the D&B Number and score for the parent company that will be financially responsible for performance of the agreement.

4.1.6 OEMs Only. Master Agreements will only be established with qualified Original Equipment Manufacturers (OEM's) resulting from this Data Communication's Products and Services RFP. Offeror must affirm its acknowledgement of this requirement, and that it is the OEM of all proposed solutions, hardware, services, etc. within its proposal.

4.2 OEM EVALUATED QUALIFICATIONS

Offeror's who meet all mandatory minimum requirements outlined above will then be evaluated on the qualifications detailed in Attachment B.1.

- 4.2.1 Company Profile and References
- 4.2.2 Ability to Supply NASPO ValuePoint Member States
- 4.2.3 Ability to Provide Technical Support to End Users
- 4.2.4 Qualifications and Technical Ability
- 4.2.5 Security
- 4.2.6 Environmental

All Offerors are required to complete and submit a point by point response to the items detailed in Attachment B.1, in the format provided in Attachment B.1.

4.3 CATEGORY QUALIFICATIONS

Offerors who meet all mandatory minimum requirements from section 4.1, and the required score thresholds for the criteria outlined in section 4.2, will then be evaluated on the following items for EACH category Offeror is seeking an award. Non-responsive proposals not conforming to RFP or unable to meet the Stage 2 required thresholds will be disqualified and eliminated from further consideration. All Offerors are required to complete and submit a point by point response to the following items detailed in Attachment B.2 **for each category Offeror is seeking an award (i.e., if Offeror is seeking qualification in Categories 1.1 and 1.2, then Offeror must complete Attachment B.2 twice, once for each category Offeror is seeking an award):**

- 4.3.1 Ability to meet Scope/Service Requirements of Selected Category
- 4.3.2 Consumption Models
- 4.3.3 Category Specific Security
- 4.3.4 Open Standards and Interoperability
- 4.3.5 Value Added Services

SECTION 5: COST INFORMATION AND COST PROPOSAL

5.1 PRICE GUARANTEE PERIOD

All pricing must be guaranteed as provided within Attachment A section 11. Price increases or decreases during the contract term will be resolved pursuant to Attachment A section 11.

5.2 PRODUCT LINE ADDITIONS AND FULFILLMENT PARTNER UPDATES

During the term of the contract, Data Communications Providers may submit a request to update the awarded items (within the scope listed in Attachment B) as new technology is introduced, updated or removed from the market. The Master Agreement Administrator will evaluate requests and update the contract offering as appropriate. The Data Communications Service Provider shall update the dedicated website, price lists, and catalogs to reflect approved changes. Pricing must utilize the same pricing structure as was used for services falling into the same service category.

The process for adding or removing a fulfillment partner at the State level may be negotiated and described in the Participating Addendum. Each participating State may determine, negotiate with the contractor, and describe the process in the Participating Addendum. Contractors shall follow the process described in the Participating Addendum for each State when adding or removing a fulfillment partner per State.

5.3 COST PROPOSAL

Given that technology products generally depreciate over time and go through typical product lifecycles, it is more favorable for Purchasing Entities to have the Master Agreement be based on minimum discounts off the Offeror's' commercially published pricelists versus fixed pricing. (Orders, however, will be fixed-price or fixed-rate and not cost reimbursable contracts.) In addition, Offerors will have the ability to update and refresh their respective price catalog, as long as the agreed-upon discounts are fixed, subject to prior approval by the Lead State.

Offeror must identify its offered Minimum Discount % off List within Attachment E.

The Minimum Discount % off List shall be firm fixed for the duration of the contract. However, the list prices may fluctuate through the life of the contract, as provided herein this Section 5. Offeror may offer increased discounts upon achievement of contract volume milestones. Minimum guaranteed contract discounts do not preclude an Offeror and/or its authorized resellers from providing deeper or additional, incremental discounts at their sole discretion. Purchasing entities shall benefit from any promotional pricing offered by the Contractor to similar customers. Promotional pricing shall not be cause for a permanent price change.

An Offeror's price catalog should be clear and readable. All firms awarded a particular Category will be awarded their entire product line within the scope of the product category. Participating Entities, in reviewing an Offeror's Master Agreement, will take into account the discount offered by the Offeror along with the transparent, publicly available, up-to-date pricing and tools that will allow customers to evaluate their pricing.

Individual Participating Addendums may use a vendor's proposed minimum discount percentage off (Attachment E), and offered catalog, as a base and may elect to negotiate an adjusted (i.e., greater) minimum discount percentage off.

Value Added Services. Some Participating Entities may desire to use an Offeror for other related application modifications to optimize or deploy hardware and service applications. Responses to the RFP must include hourly rates by job specialty for use by Participating Entities for these types

of database/application administration, systems engineering & configuration services and consulting throughout the contract period. The hourly rates should be a fully burdened rate that includes labor, overhead, and any other costs related to the service. The specific rate (within a range) charged for each proposed contracted service would be the lowest rate shown unless justified in writing and approved by the Lead State. Any of these valued-added services must be included in your cost proposal, e.g., by an hourly rate.



Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

a. Any Order placed under this Master Agreement shall consist of the following documents:

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Purchase Order issued against the Master Agreement, including a Service Level Agreement;
- (4) The Solicitation; and
- (5) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

2. Definitions - Unless otherwise provided in this Master Agreement, capitalized terms will have the meanings given to those terms in this Section.

Acceptance is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.

Contractor means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

Data means all information, whether in oral or written (including electronic) form, created by or in any way originating with a Participating Entity or Purchasing Entity, and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with a Participating Entity or Purchasing Entity, in the course of using and configuring the Services provided under this Agreement.

Data Breach means any actual or reasonably suspected non-authorized access to or acquisition of computerized Non-Public Data or Personal Data that compromises the security, confidentiality, or integrity of the Non-Public Data or Personal Data, or the

ability of Purchasing Entity to access the Non-Public Data or Personal Data.

Disabling Code means computer instructions or programs, subroutines, code, instructions, data or functions, (including but not limited to viruses, worms, date bombs or time bombs), including but not limited to other programs, data storage, computer libraries and programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function, that alter, destroy, inhibit, damage, interrupt, interfere with or hinder the operation of the Purchasing Entity's software, applications and/or its end users processing environment, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating.

Embedded Software means one or more software applications which permanently reside on a computing device.

Fulfillment Partner means a third-party contractor qualified and authorized by Contractor, and approved by the Participating State under a Participating Addendum, who may, to the extent authorized by Contractor, fulfill any of the requirements of this Master Agreement including but not limited to providing Services under this Master Agreement and billing Customers directly for such Services. Contractor may, upon written notice to the Participating State, add or delete authorized Fulfillment Partners as necessary at any time during the contract term. Fulfillment Partner has no authority to amend this Master Agreement or to bind Contractor to any additional terms and conditions.

Intellectual Property means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

Lead State means the State centrally administering any resulting Master Agreement(s).

Master Agreement means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.

NASPO ValuePoint is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and

receiving reports as well as other contract administration functions as assigned by the Lead State.

Order or Purchase Order means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

Participating Entity means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

Participating State means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposal is not required to participate through execution of a Participating Addendum.

Personal Data means data alone or in combination that includes information relating to an individual that identifies the individual by name, identifying number, mark or description can be readily associated with a particular individual and which is not a public record. Personal Information may include the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information, including account number, credit or debit card numbers; or Protected Health Information (PHI) relating to a person.

Product means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

Services mean any of the specifications described in the Scope of Services that are supplied or created by the Contractor pursuant to this Master Agreement.

Security Incident means the possible or actual unauthorized access to a Purchasing Entity's Non-Public Data and Personal Data the Contractor believes could reasonably result in the use, disclosure or theft of a Purchasing Entity's Non-Public Data within the possession or control of the Contractor. A Security Incident also includes a major

security breach to the Contractor's system, regardless if Contractor is aware of unauthorized access to a Purchasing Entity's Non-Public Data. A Security Incident may or may not turn into a Data Breach.

Service Level Agreement (SLA) means a written agreement between both the Purchasing Entity and the Contractor that is subject to the terms and conditions in this Master Agreement and relevant Participating Addendum unless otherwise expressly agreed in writing between the Purchasing Entity and the Contractor. SLAs should include: (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) remedies, such as credits, and (5) an explanation of how remedies or credits are calculated and issued.

Solicitation means the documents used by the State of Utah, as the Lead State, to obtain Contractor's Proposal.

Statement of Work means a written statement in a solicitation document or contract that describes the Purchasing Entity's service needs and expectations.

NASPO ValuePoint Program Provisions

3. Term of the Master Agreement

a. The initial term of this Master Agreement is for five (5) years. This Master Agreement may be extended beyond the original contract period for two (2) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. The Master Agreement may be extended for a reasonable period of time, not to exceed six months, if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

4. Amendments

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

5. Participants and Scope

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or

amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

g. **Resale.** “Resale” means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor’s proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity’s laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. Administrative Fees

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

7. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to

NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in shown in Attachment H.

c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, **social security numbers or any other numerical identifier**, may be submitted with any report.

d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

8. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

- a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.
- b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.
- c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.
- d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.
- e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, terminate the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Termination based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to terminate the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.
- g. Contractor agrees, within 30 days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-part contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in,

or Orders from this master agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

9. NASPO ValuePoint eMarket Center

a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing business as JAGGAER) whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

b. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractors website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.

c. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

d. If the solicitation requires either a catalog hosted on or integration of a punchout site with eMarket Center, or either solution is proposed by a Contractor and accepted by the Lead State, the provisions of the eMarket Center Appendix to these NASPO ValuePoint Master Agreement Terms and Conditions apply.

10. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

11. Price and Rate Guarantee Period

All pricing must be guaranteed for the first year of the Master Agreement.

Following the guarantee period, any request for price increases must be for an equal guarantee period (1 year), and must be submitted to the Lead State at least thirty (30) calendar days prior to the effective date. The Lead State will review a documented request for an MSRP price list increase only after the Price Guarantee Period.

Requests for price increases must include sufficient documentation supporting the request and demonstrating a reasonableness of the adjustment when comparing the current price list to the proposed price list. Documentation may include: the manufacturers national price increase announcement letter, a complete and detailed description of what products are increasing and by what percentage, a complete and detailed description of what raw materials and/or other costs have increased and provide proof of increase, index data and other information to support and justify the increase. The price increase must not produce a higher profit margin than the original contract, and must be accompanied by sufficient documentation and nationwide notice of price adjustment to the published commercial price list.

No retroactive price increases will be allowed.

Price Reductions. In the event of a price decrease in any category of product at any time during the contract in an OEM's published commercial price list, including renewal options, the Lead State shall be notified immediately. All published commercial price list price reductions shall be effective upon the notification provided to the Lead State.

12. Individual Customers

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

Administration of Orders

13. Ordering

a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

b. Purchasing Entities may define entity or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

f. All Orders pursuant to this Master Agreement, at a minimum, shall include:

- (1) The services or supplies being delivered;
- (2) The place and requested time of delivery;
- (3) A billing address;
- (4) The name, phone number, and address of the Purchasing Entity representative;
- (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
- (6) A ceiling amount of the order for services being ordered; and
- (7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Maintenance agreements may have terms as prescribed in section 27. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

14. Shipping and Delivery

a. The prices are the delivered price to any Purchasing Entity. All deliveries shall be

F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount, if any, will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.

b. All deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.

c. All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

15. Laws and Regulations

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

16. Inspection and Acceptance

a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

b. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.

d. The warranty period shall begin upon Acceptance.

e.

17. Payment

Payment after Acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

18. Warranty

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

19. Title of Product

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional

cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

20. License of Pre-Existing Intellectual Property

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce for Purchasing Entity's own use, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

21. No Guarantee of Service Volumes: The Contractor acknowledges and agrees that the Lead State and NASPO ValuePoint makes no representation, warranty or condition as to the nature, timing, quality, quantity or volume of business for the Services or any other products and services that the Contractor may realize from this Master Agreement, or the compensation that may be earned by the Contractor by offering the Services. The Contractor acknowledges and agrees that it has conducted its own due diligence prior to entering into this Master Agreement as to all the foregoing matters.

22. Purchasing Entity Data: Purchasing Entity retains full right and title to Data provided by it and any Data derived therefrom, including metadata. Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding Purchasing Entity's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. The obligation shall extend beyond the term of this Master Agreement in perpetuity.

Contractor shall not use any information collected in connection with this Master Agreement, including Purchasing Entity Data, for any purpose other than fulfilling its obligations under this Master Agreement.

23. System Failure or Damage: In the event of system failure or damage caused by Contractor or its Services, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

24. Title to Product: If access to the Product requires an application program interface (API), Contractor shall convey to Purchasing Entity an irrevocable and perpetual license to use the API.

25. Data Privacy: The Contractor must comply with all applicable laws related to data privacy and security, including IRS Pub 1075. Prior to entering into a SLA with a Purchasing Entity, the Contractor and Purchasing Entity must cooperate and hold a meeting to determine the Data Categorization to determine what data the Contractor will hold, store, or process. The Contractor must document the Data Categorization in the SLA or Statement of Work.

26. Transition Assistance:

- a. The Contractor shall reasonably cooperate with other parties in connection with all Services to be delivered under this Master Agreement, including without limitation any successor service provider to whom a Purchasing Entity's Data is transferred in connection with the termination or expiration of this Master Agreement. The Contractor shall assist a Purchasing Entity in exporting and extracting a Purchasing Entity's Data, in a format usable without the use of the Services and as agreed by a Purchasing Entity, at no additional cost to the Purchasing Entity. Any transition services requested by a Purchasing Entity involving additional knowledge transfer and support may be subject to a separate transition Statement of Work.
- b. A Purchasing Entity and the Contractor shall, when reasonable, create a Transition Plan Document identifying the transition services to be provided and including a Statement of Work if applicable.
- c. The Contractor must maintain the confidentiality and security of a Purchasing Entity's Data during the transition services and thereafter as required by the Purchasing Entity.

27. Performance and Payment Time Frames that Exceed Contract Duration: All maintenance or other agreements for services entered into during the duration of an SLA and whose performance and payment time frames extend beyond the duration of this Master Agreement shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No new leases, maintenance or other agreements for services may be executed after the Master Agreement has expired. For the purposes of this section, renewals of maintenance, subscriptions, and other service agreements, shall not be considered as "new."

General Provisions

28. Insurance

- a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$3 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

29. Records Administration and Audit

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master

Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of Administrative Fees found as a result of the examination of the Contractor's records.

c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

30. Confidentiality, Non-Disclosure, and Injunctive Relief

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing

any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to section 29. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

31. Public Information

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

32. Assignment/Subcontracts

a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint and other third parties.

32. Changes in Contractor Representation

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

33. Independent Contractor

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

34. Termination

Unless otherwise stated, this Master Agreement may be terminated by either Lead State or Contractor upon 60 days written notice prior to the effective date of the termination. Further, any Participating Entity may terminate its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Termination may be in whole or in part. Any termination under this provision shall not affect the rights and obligations attending orders outstanding at the time of termination, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Termination of the Master Agreement due to Contractor default may be immediate.

35. Force Majeure

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

36. Defaults and Remedies

a. The occurrence of any of the following events by Contractor shall be an event of default under this Master Agreement:

- (1) Nonperformance of contractual requirements; or

- (2) A material breach of any term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- (5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

37. Waiver of Breach

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

38. Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

39. Indemnification

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.

(1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

- (a) provided by the Contractor or the Contractor's subsidiaries or affiliates;
- (b) specified by the Contractor to work with the Product; or

(c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

(d) It would be reasonably expected to use the Product in combination with such product, system or method.

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

40. No Waiver of Sovereign Immunity

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

41. Governing Law and Venue

a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement

after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

42. Assignment of Antitrust Rights

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

43. Contract Provisions for Orders Utilizing Federal Funds

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

44. Leasing or Alternative Financing Methods

The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

45. Entire Agreement: This Master Agreement, along with any attachment, contains the entire understanding of the parties hereto with respect to the Master Agreement unless a term is modified in a Participating Addendum with a Participating Entity. No click-through, or other end user terms and conditions or agreements required by the Contractor (“Additional Terms”) provided with any Services hereunder shall be binding on Participating Entities or Purchasing Entities, even if use of such Services requires an affirmative “acceptance” of those Additional Terms before access is permitted.

eMarket Center Appendix

a. This Appendix applies whenever a catalog hosted by or integration of a punchout site with eMarket Center is required by the solicitation or either solution is proposed by a Contractor and accepted by the Lead State.

b. Supplier's Interface with the eMarket Center. There is no cost charged by JAGGAER to the Contractor for loading a hosted catalog or integrating a punchout site.

c. At a minimum, the Contractor agrees to the following:

(1) Implementation Timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin enablement process. The Contractor shall have fifteen (15) days from receipt of written request to work with NASPO ValuePoint and JAGGAER to set up an enablement schedule, at which time JAGGAER's technical documentation shall be provided to the Contractor. The schedule will include future calls and milestone dates related to test and go live dates. The contractor shall have a total of Ninety (90) days to deliver either a (1) hosted catalog or (2) punch-out catalog, from date of receipt of written request.

(2) NASPO ValuePoint and JAGGAER will work with the Contractor, to decide which of the catalog structures (either hosted or punch-out as further described below) shall be provided by the Contractor. **Whether hosted or punch-out, the catalog must be strictly limited to the Contractor's awarded contract offering (e.g. products and/or services not authorized through the resulting cooperative contract should not be viewable by NASPO ValuePoint Participating Entity users).**

(a) Hosted Catalog. By providing a hosted catalog, the Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to JAGGAER, such as Tab Delimited Text files. In this scenario, the Contractor must submit updated electronic data no more than once per 30 days to the eMarket Center for the Lead State's approval to maintain the most up-to-date version of its product/service offering under the cooperative contract in the eMarket Center.

(b) Punch-Out Catalog. By providing a punch-out catalog, the Contractor is providing its own online catalog, which must be capable of being integrated with the eMarket Center as a. Standard punch-in via Commerce eXtensible Markup Language (cXML). In this scenario, the Contractor shall validate that its online catalog is up-to-date by providing a written update no more than once per 30 days to the Lead State stating they have audited the offered products/services and pricing listed on its online catalog. The site must also return detailed UNSPSC codes (as outlined in line 3) for each line item. Contractor also agrees to provide e-Quote functionality to facilitate volume discounts.

d. Revising Pricing and Product Offerings: Any revisions to product/service offerings (new products, altered SKUs, new pricing etc.) must be pre-approved by the Lead State and shall be subject to any other applicable restrictions with respect to the frequency or

amount of such revisions. However, no cooperative contract enabled in the eMarket Center may include price changes on a more frequent basis than once per year (see required Price Guarantee Period section 11). The following conditions apply with respect to hosted catalogs:

(1) Updated pricing files are required each calendar month of the month and shall go into effect in the eMarket Center on as approved by the Lead State contract administrator.

(2) Lead State-approved price changes are not effective until implemented within the eMarket Center. Errors in the Contractor's submitted pricing files will delay the implementation of the price changes in eMarket Center.

e. Supplier Network Requirements: Contractor shall join the JAGGAER Supplier Network (SQSN) and shall use JAGGAER's Supplier Portal to import the Contractor's catalog and pricing, into the JAGGAER system, and view reports on catalog spend and product/pricing freshness. The Contractor can receive orders through electronic delivery (cXML) or through low-tech options such as fax. More information about the SQSN can be found at: www.sciquest.com or call the JAGGAER Supplier Network Services team at 800-233-1121.

f. Minimum Requirements: Whether the Contractor is providing a hosted catalog or a punch-out catalog, the Contractor agrees to meet the following requirements:

(1) Catalog must contain the most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the cooperative contract; and

(2) The accuracy of the catalog must be maintained by Contractor throughout the duration of the cooperative contract; and

(3) The Catalog must include a Lead State contract identification number; and

(4) The Catalog must include detailed product line item descriptions; and

(5) The Catalog must include pictures when possible; and

(6) The Catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple contracts applicable to different NASPO ValuePoint Participating Entities. For example, a supplier may have different pricing for state government agencies and Board of Regents institutions. Suppliers have the ability and responsibility to submit separate contract pricing for the same catalog if applicable. The system will deliver the appropriate contract pricing to the user viewing the catalog.

g. Order Acceptance Requirements: Contractor must be able to accept Purchase Orders via fax or cXML. The Contractor shall provide positive confirmation via phone or email within 24 hours of the Contractor's receipt of the Purchase Order. If the Purchasing Order is received after 3pm EST on the day before a weekend or holiday, the Contractor must provide positive confirmation via phone or email on the next business day.

h. UNSPSC Requirements: Contractor shall support use of the United Nations Standard Product and Services Code (UNSPSC). UNSPSC versions that must be adhered to are driven by JAGGAER for the suppliers and are upgraded every year. NASPO ValuePoint reserves the right to migrate to future versions of the UNSPSC and the Contractor shall be required to support the migration effort. All line items, goods or services provided under the resulting statewide contract must be associated to a UNSPSC code. All line items must be identified at the most detailed UNSPSC level indicated by segment, family, class and commodity.

i. Applicability: Contractor agrees that NASPO ValuePoint controls which contracts appear in the eMarket Center and that NASPO ValuePoint may elect at any time to remove any supplier's offering from the eMarket Center.

j. The Lead State reserves the right to approve the pricing on the eMarket Center. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices (and approved fees) required by the Master Agreement.

k. Several NASPO ValuePoint Participating Entities currently maintain separate JAGGAER eMarketplaces, these Participating Entities do enable certain NASPO ValuePoint Cooperative Contracts. In the event one of these entities elects to use this NASPO ValuePoint Cooperative Contract (available through the eMarket Center) but publish to their own eMarketplace, the Contractor agrees to work in good faith with the entity and NASPO ValuePoint to implement the catalog. NASPO ValuePoint does not anticipate that this will require substantial additional efforts by the Contractor; however, the supplier agrees to take commercially reasonable efforts to enable such separate JAGGAER catalogs.

(December 2017)

Attachment B – Scope of Work

I. Data Communications Award Categories

The scope for this RFP and resulting contract is as provided below. A vendor may offer products (i.e. white box, artificial intelligence, etc.) under multiple categories so long as the vendor has received an award for the applicable category it is offering the provided equipment / service. Each category also allows for Internet of Things (IoT) products. These products must be an IoT product that can be deployed within, upon, or integrated into a government agency's physical asset to address government line of business needs. Proposals are expected to include IoT products designed to support common government lines of business in specific subcategories i.e. routers, switches, end points, etc. IoT products can only be provided in categories that the vendor is awarded in and can include endpoints that support items in that category.

Category 1.1: UNIFIED COMMUNICATIONS (UC).

A set of products that provides a consistent unified user interface and user experience across multiple devices and modes of communications. Unified Communications that is able to provide services such as session management, voice, video, messaging, mobility, and meeting solutions (i.e., web, audio, IM&P, file sharing, white boarding, guest support, etc.). It can provide the foundation for advanced unified communications capabilities of IM and presence-based services and extends telephony features and capabilities to packet telephony network devices such as IP phones, media processing devices, Voice over IP (VoIP) gateways, and multimedia applications. Additional services, such as unified messaging, multimedia conferencing, collaborative contact centers, and interactive multimedia response systems, are made possible through open telephony APIs. General UC solution capabilities should include:

- High Availability for Call Processing
- Hardware Platform High Availability
- Network Connectivity High Availability
- PSTN Access resiliency
- Call Processing Redundancy
- Optional Branch Office Survivability Services

1.1.1 IP Telephony — Solutions utilized to provide the delivery of the telephony application (for example, call setup and teardown, and telephony features) over IP, instead of using circuit-switched or other modalities. Capabilities should include:

- Support for analog, digital, and IP endpoints
- Centralized Management
- Enterprise Telephony Features (CFx, Transfer, CID, Shared line appearance, One Number Service, etc.)
- Provide basic hunt group and call queuing capabilities
- Flexibility to configure queue depth and hold time, play unique announcements and Music on Hold (MoH), log in and log out users from a queue and basic queue statistics (from the phone)
- E911 Support
 - National E911 Routing Services (proper PSAP routing when PSTN access is centralized)
 - 911 Device Tracking Services
 - 911 On-Site Notification Services

1.1.2 Instant messaging/ Presence — Solutions that allow communication over the Internet Protocol, within the enterprise, and remotely, as well as with guest users that offers quick transmission of text-based messages from sender to receiver. In push mode between two or more people using personal computers, Desktop (Windows/Mac/VDI/Linux), Mobile/Smartphone, Tablet, along with shared clients, instant messaging basically offers real-time direct written language-based online chat. Instant messaging may also provide video calling, file sharing, PC-to-PC voice calling and PC-to-regular-phone calling.

- IM Persistency / Workstream Collab
- File Sharing Services, Desktop Sharing Services

1.1.3 Unified messaging — Integration of different electronic messaging and communications media (e-mail, SMS, Fax, voicemail, video messaging, etc.) technologies into a single interface, accessible from a variety of different devices.

- Ability to access and manage voice messages in a variety of ways, using email inbox, Web browser, desktop client, VoIP phone, or mobile phone
- Visual Voicemail Support (Optional)
- ASR / Transcription Services for recorded messages

1.1.4 Contact Center — A computer-based system that provides call and contact routing for high-volume telephony transactions, with specialist answering “agent” stations and a sophisticated real-time contact management system. The definition includes all contact center systems that provide inbound contact handling capabilities, outbound call/contact center and automatic contact distribution, combined with a high degree of sophistication in terms of dynamic contact traffic routing management.

1.1.5 Communications End Points and Applications

- Attendant Consoles (Telephone Station)
- IP Phones (desktop devices and accessories)
- Room Based Conferencing Endpoints (Conf Phones, SparkBoard, JamBoard, Surface Hub)

1.1.6 UC Network Monitoring — Provides end-to-end service management for Unified Communications. Capabilities include testing, performance monitoring, configuration management, accounting/billing, analytics (capacity planning), contact center specialized reports (utilization, queue KIs, call abandonment ratios, etc.), and business intelligence reporting.

1.1.7 Collaboration — Voice, video, workstream collaboration, and web conferencing; messaging; mobile applications; and enterprise social software. Doesn't include the audio visual software or hardware.

1.1.8 Collaborative Video — A set of immersive video technologies that enable people to feel or appear as if they were present in a location that they are not physically in. Immersive video consists of a multiple codec video system, where each meeting attendee uses an immersive video room to “dial in” and can see/talk to every other member on a screen (or screens) as if they were in the same room and provides call control that enables intelligent video bandwidth management.

1.1.9 Content Delivery Systems (CDS) — A large distributed system of servers deployed in multiple data centers connected by the Internet. The purpose of the content delivery system is to serve content to a

very large number of end-users (i.e., quarterly all hands meetings/webinar) with high availability and high performance. CDSs serve content over the Internet, including web objects (text, graphics, URLs, and scripts), downloadable objects (media files, software, documents), applications (e-commerce, portals), live streaming media, on-demand streaming media, and social networks.

Category 1.2: NETWORKING

1.2.1 Network Application Services.

Application networking solutions and technologies that enable the successful and secure delivery of applications to local, remote, and branch-office users using technology to accelerate, secure, and increase availability of both application traffic and computing resources.

1.2.1.1 Virtualized Load Balancers — Virtual devices that act like a reverse proxy to distribute network and/or application traffic across multiple servers to improve the concurrent user capacity and overall reliability of applications. Capabilities should include:

- SSL (Secure Sockets Layer) Off-loading
- Caching capabilities
- Layer 4 Load Balancing
- Layer 7 Load Balancing
- Detailed Reporting
- Supports multiple load balancers in the same system for multiple groups
- Supports TLS1.2

1.2.1.2 WAN Optimization — An appliance utilizing a collection of techniques for increasing data-transfer efficiencies across wide-area networks (WAN). Capabilities should include:

- CIFS (Common Internet File System) acceleration
- Data Compression
- SSL encryption/decryption for acceleration (Optional)
- Layer 4-7 visibility
- Application Specific optimization
- Network analysis tools (solutions utilized to collect, classify, analyze, and securely store log messages).

1.2.2 Networking Software.

Software that runs on a server, or within the Cloud, and enables the server to manage data, users, groups, security, applications, and other networking functions. The network operating system is designed to allow transfer of data among multiple computers in a network, typically a local area network (LAN), a private network or to other networks. Networking software capabilities should include:

- Restartable Process
- High availability options
- Targeted operating systems, i.e. DC, campus, core, wan, etc.
- Operating System Efficiencies

- Network analysis tools (solutions utilized to collect, classify, analyze, and securely store log messages).

1.2.2.1 Network Management and Automation — Software products and solutions for network automation, cloud computing, and IT systems management.

1.2.2.2 Data Center Management and Automation — Software products and solutions that capture and automate manual tasks across servers, network, applications, and virtualized infrastructure.

1.2.2.3 Cloud Portal and Automation — Software products and solutions for cloud management with policy-based controls for provisioning virtual and physical resources.

1.2.2.4 Branch Office Management and Automation — Software products and solutions for management of branch offices. Capabilities include remote troubleshooting, device management, and WAN performance monitoring.

1.2.3 Network Optimization and Acceleration.

Devices and tools for increasing data-transfer efficiencies across wide-area networks.

1.2.3.1 Data Analytics — Appliance for improving network management by more effectively factoring in issues related to congestion, such as utilization, service consumption and routing. Provides real-time insights into network traffic to determine the value of different portions of that traffic.

1.2.3.2 Dynamic Load Balancing (Network Traffic Management) — An appliance that performs a series of checks and calculations to determine which server can best service each client request in order to select the server that can successfully fulfill the client request and do so in the shortest amount of time without overloading either the server or the server farm as a whole.

1.2.3.3 WAN Acceleration — Appliance that optimizes bandwidth to improve the end user's experience on a wide area network (WAN). Capabilities should include:

- CIFS acceleration
- Data Compression
- SSL encryption/decryption for acceleration (Optional)
- Layer 4-7 visibility
- Application Specific optimization

1.2.3.4 High Availability and Redundancy — Limits any disruption to network uptime should an appliance face unforeseen performance issues. Transparently redistributes workloads to surviving cluster appliances without impacting communication throughout the cluster.

1.2.4 Optical Networking.

High capacity networks based on optical technology and components that provide routing, grooming, and restoration at the wavelength level as well as wavelength based services.

1.2.4.1 Core DWDM (Dense Wavelength Division Multiplexing) Switches — Switches used in systems designed for long haul and ultra long-haul optical networking applications.

1.2.4.2 Edge Optical Switches — Provide entry points into the enterprise or service provider core networks.

1.2.4.3 Optical Network Management — Provides capabilities to manage the optical network and allows operators to execute end-to-end circuit creation.

1.2.4.4 IP over DWDM (IPoDWDM) — A device utilized to integrate IP Routers and Switches in the OTN (Optical Transport Network).

Category 1.3: ROUTERS, SWITCHES, SECURITY, AND NETWORKING STORAGE

1.3.1 Routers.

A device that forwards data packets along networks. A router is connected to at least two networks, commonly two LANs or WANs or a LAN and its ISP's network. Routers are located at gateways, the places where two or more networks connect, and are the critical device that keeps data flowing between networks and keep the networks connected to the Internet.

1.3.1.1 Branch Routers — A multiservice router typically used in branch offices or locations with limited numbers of users and supports flexible configurations/feature. For example: security, VoIP, wan acceleration, etc.

1.3.1.2 Network Edge Routers — A specialized router residing at the edge or boundary of a network. This router ensures the connectivity of its network with external networks, a wide area network or the Internet. An edge router uses an External Border Gateway Protocol, which is used extensively over the Internet to provide connectivity with remote networks.

1.3.1.3 Core Routers - High performance, high speed, low latency routers that enable Enterprises to deliver a suite of data, voice, and video services to enable next-generation applications such as IPTV and Video on Demand (VoD), and Software as a Service (SaaS).

1.3.1.4 Service Aggregation Routers — Provides multiservice adaptation, aggregation and routing for Ethernet and IP/MPLS networks to enable service providers and enterprise edge networks simultaneously host resource-intensive integrated data, voice and video business and consumer services.

1.3.1.5 Carrier Ethernet Routers — High performance routers that enable service providers to deliver a suite of data, voice, and video services to enable next-generation applications such as IPTV, Video on Demand (VoD), and Software as a Service (SaaS).

1.3.2 Security.

1.3.2.1 Data Center and Virtualization Security Products and Appliances — Products designed to protect high-value data and data center resources with threat defense and policy control.

1.3.2.2 Intrusion Detection/Protection and Firewall Appliances — Provide comprehensive inline network firewall security from worms, Trojans, spyware, key loggers, and other malware. This includes Next-Generation Firewalls (NGFW), which offer a wire-speed integrated network platform that performs deep inspection of traffic and blocking of attacks. Intrusion Detection/Protection and Firewall Appliances should provide:

- Non-disruptive in-line bump-in-the-wire configuration
- Standard first-generation firewall capabilities, e.g., network-address translation (NAT), stateful protocol inspection (SPI) and virtual private networking (VPN), etc.
- Application awareness, full stack visibility and granular control
- Capability to incorporate information from outside the firewall, e.g., directory-based policy, blacklists, white lists, etc.
- Upgrade path to include future information feeds and security threats
- SSL decryption to enable identifying undesirable encrypted applications (Optional)

1.3.2.3 Logging Appliances and Analysis Tools — Solutions utilized to collect, classify, analyze, and securely store log messages.

1.3.2.4 Secure Edge and Branch Integrated Security Products — Network security, VPN, and intrusion prevention for branches and the network edge. Products typically consist of appliances or routers.

1.3.2.5 Secure Mobility Products — Delivers secure, scalable access to corporate applications across multiple mobile devices.

1.3.2.6 Encryption Appliances — A network security device that applies crypto services at the network transfer layer - above the data link level, but below the application level.

1.3.2.7 On-premise and Cloud-based services for Network Communications Integrity — Solutions that provide threat protection, data loss prevention, message level encryption, acceptable use and application control capabilities to secure web and email communications. This could include cloud access security brokers (CASBs) and DNS security.

1.3.2.8 Secure Access — Products that provide secure access to the network for any device, including personally owned mobile devices (laptops, tablets, and smart phones). Capabilities should include:

- Management visibility for device access
- Self-service on-boarding
- Centralized policy enforcement
- Differentiated access and services
- Device Management

1.3.3 Storage Networking.

High-speed network of shared storage devices connecting different types of storage devices with data servers.

1.3.3.1 Director Class SAN (Storage Area Network) Switches and Modules — A scalable, high-performance, and protocol-independent designed primarily to fulfill the role of core switch in a core-edge Fibre Channel (FC), FCOE or similar SAN topology. A Fibre Channel director is, by current convention, a switch with at least 128 ports. It does not differ from a switch in core FC protocol functionality. Fibre Channel directors provide the most reliable, scalable, high-performance foundation for private cloud storage and highly virtualized environments.

1.3.3.2 Fabric and Blade Server Switches — A Fibre Channel switch is a network switch compatible with the Fibre Channel (FC) protocol. It allows the creation of a Fibre Channel fabric, which is currently the core

component of most SANs. The fabric is a network of Fibre Channel devices, which allows many-to-many communication, device name lookup, security, and redundancy. FC switches implement zoning; a mechanism that disables unwanted traffic between certain fabric nodes.

1.3.3.3 Enterprise and Data Center SAN and VSAN (Virtual Storage Area Network) Management — Management tools to provisions, monitors, troubleshoot, and administers SANs and VSANs.

1.3.3.4 SAN Optimization — Tools to help optimize and secure SAN performance (ie. Encryption of data-at-rest, data migration, capacity optimization, data reduction, etc.

1.3.4: Switches.

Layer 2/3 devices that are used to connect segments of a LAN (local area network) or multiple LANs and to filter and forward packets among them.

1.3.4.1 Campus LAN – Access Switches — Provides initial connectivity for devices to the network and controls user and workgroup access to internetwork resources. The following are some of the features a campus LAN access switch should support:

1. Security
 - a. SSHv2 (Secure Shell Version 2)
 - b. 802.1X (Port Based Network Access Control)
 - c. Port Security
 - d. DHCP (Dynamic Host Configuration Protocol) Snooping
2. VLANs
3. Fast Ethernet/Gigabit Ethernet
4. PoE (Power over Ethernet)
5. link aggregation
6. 10 Gb support
7. Port mirroring
8. Span Taps
9. Support of IPv6 and IPv4
10. Standards-based rapid spanning tree
11. Netflow Support (Optional).

1.3.4.2 Campus LAN – Core Switches — Campus core switches are generally used for the campus backbone and are responsible for transporting large amounts of traffic both reliably and quickly. Core switches should provide:

- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- Security
 - SSHv2
 - MacSec encryption
 - Role-Based Access Control Lists (ACL)
- Support of IPv6 and IPv4
- 1/10/40/100 Gbps support

- IGP (Interior Gateway Protocol) routing
- EGP (Exterior Gateway Protocol) routing
- VPLS (Virtual Private LAN Service) Support
- VRRP (Virtual Router Redundancy Protocol) Support
- Netflow Support.

1.3.4.3 Campus Distribution Switches — Collect the data from all the access layer switches and forward it to the core layer switches. Traffic that is generated at Layer 2 on a switched network needs to be managed, or segmented into Virtual Local Area Networks (VLANs), Distribution layer switches provides the inter-VLAN routing functions so that one VLAN can communicate with another on the network. Distribution layer switches provides advanced security policies that can be applied to network traffic using Access Control Lists (ACLs).

- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- Security (SSHv2 and/or 802.1X)
- Support of IPv6 and IPv4
- Jumbo Frames Support
- Dynamic Trunking Protocol (DTP)
- Per-VLAN Rapid Spanning Tree (PVRST+)
- Switch-port auto recovery
- NetFlow Support or equivalent

1.3.4.4 Data Center Switches — Data center switches, or Layer 2/3 switches, switch all packets in the data center by switching or routing good ones to their final destinations, and discard unwanted traffic using Access Control Lists (ACLs) a minimum of 10 Gigabit speeds. High availability and modularity differentiates a typical Layer 2/3 switch from a data center switch. Capabilities should include:

- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- Ultra-low latency through wire-speed ports with nanosecond port-to-port latency and hardware-based Inter-Switch Link (ISL) trunking
- Load Balancing across Trunk group able to use packet based load balancing scheme
- Bridging of Fibre Channel SANs and Ethernet fabrics
- Jumbo Frame Support
- Plug and Play Fabric formation that allows a new switch that joins the fabric to automatically become a member
- Ability to remotely disable and enable individual ports
- Support NetFlow or equivalent

1.3.4.5 Software Defined Networks (SDN) — An application in SDN that manages flow control to enable intelligent networking.

1.3.4.6 Software Defined Networks (SDN) - Virtualized Switches and Routers — Technology utilized to support software manipulation of hardware for specific use cases.

1.3.4.7 Software Defined Networks (SDN) — Controllers - is an application in software-defined networking (SDN) that manages flow control to enable intelligent networking. SDN controllers are based on protocols, such as OpenFlow, that allow servers to tell switches where to send packets. The SDN controller lies between network devices at one end and applications at the other end. Any communications between applications and devices have to go through the controller. The controller uses multiple routing protocols including OpenFlow to configure network devices and choose the optimal network path for application traffic.

1.3.4.8 Carrier Aggregation Switches — Carrier aggregation switches route traffic in addition to bridging (transmitted) Layer 2/Ethernet traffic. Carrier aggregation switches' major characteristics are:

- Designed for Metro Ethernet networks
- Designed for video and other high bandwidth applications
- Supports a variety of interface types, especially those commonly used by Service Providers

Capabilities should include:

- Redundant Processors
- Redundant Power
- IPv4 and IPv6 unicast and multicast
- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- MPLS (Multiprotocol Label Switching)
- BGP (Border Gateway Protocol)
- Software router virtualization and/or multiple routing tables
- Policy based routing
- Layer 2 functionality
 - Per VLAN Spanning Tree
 - Rapid Spanning Tree
 - VLAN IDs up to 4096
 - Layer 2 Class of Service (IEEE 802.1p)
 - Link Aggregation Control Protocol (LACP)
 - QinQ (IEEE 802.1ad)

1.3.4.9 Carrier Ethernet Access Switches — A carrier Ethernet access switch can connect directly to the customer or be utilized as a network interface on the service side to provide layer 2 services.

- Hot-swappable and field-replaceable integrated power supply and fan tray
- AC or DC power supply with minimum DC input ranging from 18V to 32 VDC and 36V to 72 VDC
- Ethernet and console port for manageability
- SD flash card slot for additional external storage
- Stratum 3 network clock
- Line-rate performance with a minimum of 62-million packets per second (MPPS) forwarding rate

- Support for dying gasp on loss of power
- Support for a variety of small form factor pluggable transceiver (SFP and SFP+) with support for Device Object Model (DOM)
- Timing services for a converged access network to support mobile solutions, including Radio Access Network (RAN) applications
- Support for Synchronous Ethernet (SyncE) services
- Supports Hierarchical Quality of Service (H-QoS) to provide granular traffic-shaping policies
- Supports Resilient Ethernet Protocol REP/G.8032 for rapid layer-two convergence

Category 1.4: WIRELESS.

Provides connectivity to wireless devices within a limited geographic area. System capabilities should include:

- Redundancy and automatic failover
- IPv6 compatibility
- NTP Support

1.4.1 Access Points — A wireless Access Point (AP) is a device that allows wireless devices to connect to a wired network using Wi-Fi, or related standards. Capabilities should include:

- 802.11a/b/g/n
- 802.11n
- 802.11ac
- Capable of controller discovery method via DHCP (onsite controller or offsite through Cloud Architecture)
- UL2043 plenum rated for safe mounting in a variety of indoor environments
- Support AES-CCMP (128-bit)
- Provides real-time wireless intrusion monitoring and detection

1.4.2 Outdoor Wireless Access Points — Outdoor APs are rugged, with a metal cover and a DIN rail or other type of mount. During operations they can tolerate a wide temperature range, high humidity and exposure to water, dust, and oil. Capabilities should include:

- Flexible Deployment Options
- Provides real-time wireless intrusion monitoring and detection
- Capable of controller discovery method via DHCP (onsite controller or offsite through Cloud Architecture)

1.4.3 Wireless LAN Controllers — An onsite or offsite solution utilized to manage Light-weight access points in large quantities by the network administrator or network operations center. The WLAN controller automatically handles the configuration of wireless access-points. Capabilities should include:

- Ability to monitor and mitigate RF interference/self-heal
- Support seamless roaming from AP to AP without requiring re-authentication
- Support configurable access control lists to filter traffic and denying wireless peer to peer traffic

- System encrypts all management layer traffic and passes it through a secure tunnel
- Policy management of users and devices provides ability to de-authorize or deny devices without denying the credentials of the user, nor disrupting other AP traffic
- Support configurable access control lists to filter traffic and denying wireless peer to peer traffic

1.4.4 Wireless LAN Network Services and Management — Enables network administrators to quickly plan, configure and deploy a wireless network, as well as provide additional WLAN services. Some examples include wireless security, asset tracking, and location services. Capabilities should include:

- Provide for redundancy and automatic failover
- Historical trend and real time performance reporting is supported
- Management access to wireless network components is secured
- SNMPv3 enabled
- RFC 1213 compliant
- Automatically discover wireless network components
- Capability to alert for outages and utilization threshold exceptions
- Capability to support Apple’s Bonjour Protocol / mDNS
- QoS / Application identification capability

1.4.5 Cloud-based services for Access Points — Cloud-based management of campus-wide WiFi deployments and distributed multi-site networks. Capabilities include:

- Zero-touch access point provisioning
- Network-wide visibility and control
- RF optimization,
- Firmware updates

1.4.6 Mobile Device Management (MDM) — MDM technology utilized to allow employees to bring personally owned mobile devices (laptops, tablets, and smart phones) to their workplace, and use those devices to access privileged government information and applications in a secure manner. Capabilities should include:

- Ability to apply corporate policy to new devices accessing the network resources, whether wired or wireless
- Provide user and devices authentication to the network
- Provide secure remote access capability
- Support 802.1x
- Network optimization for performance, scalability, and user experience

Category 1.5: FACILITY MANAGEMENT, MONITORING, AND CONTROL.

Technology utilized in the management, monitoring and control of facilities. Technologies include:

- a. Access control systems
- b. Detection/Identification systems, such as surveillance systems, closed circuit television cameras, or IP camera networks and the associated monitoring systems.

- c. Response systems such as alert systems, desktop monitoring systems, radios, and digital signage.
- d. Building and energy controls

II. Value Added Services

For each Award Category above, the following valued services should also be available for procurement at the time of product purchase or anytime afterwards. This provided list of value added services is not intended to be exhaustive, and may be updated pursuant to the terms of the resulting Master Agreement (see main RFP document section 5.2).

2.1 Maintenance Services — Capability to provide technical support, software maintenance, flexible hardware coverage, and smart, proactive device diagnostics for hardware.

2.2 Professional Services

a. Deployment Services

- i. Survey/ Design Services — Includes, but not limited to, discovery, design, architecture review/validation, and readiness assessment.
- ii. Implementation Services — Includes, but not limited to, basic installation and configuration or end-to-end integration and deployment.
- iii. Optimization — Includes, but not limited to, assessing operational environment readiness, identify ways to increase efficiencies throughout the network, and optimize Customer's infrastructure, applications and service management.

b. Remote Management Services — Includes, but not limited to, continuous monitoring, incident management, problem management, change management, and utilization and performance reporting that may be on a subscription basis.

c. Consulting/Advisory Services — Includes, but not limited to, assessing the availability, reliability, security and performance of Customer's existing solutions.

d. Data Communications Architectural Design Services — Developing architectural strategies and roadmaps for transforming Customer's existing network architecture and operations management.

e. Statement of Work (SOW) Services — Customer-specific tasks to be accomplished and/or services to be delivered based on Customer's business and technical requirements.

f. Testing Services — Includes, but not limited to, testing the availability, reliability, security and performance of Customer's existing solutions

2.3 Partner Services — Provided by Contractor's Authorized Partners/Resellers.

a. Subject to Contractor's approval and the certifications held by its Partners/Resellers, many Partners/Resellers can also offer and provide some or all of the Services as listed above at competitive pricing, along with local presence and support. As the primary Contractor (OEM), Contractor is ultimately responsible for the service and performance of its Partners/ Resellers. Customers may have the option to purchase the Services to be directly delivered by Contractor (OEM) or its certified Partners/Resellers.

2.4 Training — Learning offerings for IT professionals on networking technologies, including but not limited to designing, implementing, operating, configuring, and troubleshooting network systems pertaining to items provided under the master agreement.

ATTACHMENT B.1 OEM EVALUATED QUALIFICATIONS

Per RFP Section 4.2, OEM Evaluated Qualifications, Offeror's **must** complete this Attachment and submit it with their response.

Offeror's who meet all mandatory minimum requirements outlined above will then be evaluated on the following items. All Offerors are required to submit a point by point response to the following items.

Provide the information requested below detailing how your organization has the ability to provide the following criteria. Do not submit a full catalog herein this section or generic literature. Submit information specific to the characteristics listed below.

Vendor Name: [vendor input]

Information Sought	Vendor Response
4.2.1. Company Profile and References	
4.2.1.1 <u>Years</u> . Number of years in business and number of employees.	
4.2.1.2 <u>Organizational Structure</u> . Has there been a recent change in organizational structure (e.g., management team) or control (e.g., merger or acquisition) of your company? If the answer is yes: (a) explain why the change occurred and (b) how this change has affected your company.	
4.2.1.3 <u>Company History</u> . Discuss your company's history. Has growth been organic, through mergers and acquisitions, or both?	
4.2.1.4 <u>Debarment</u> . Has bidder ever been debarred, suspended, or disqualified from bidding or contracting with any public entity? If yes, provide the date, the entity, and details about the situation.	
4.2.1.5 <u>Litigation</u> . Provide details of all past or pending litigation or government action filed or claims that could affect Respondent's performance under a resulting master agreement. Please provide the date of initial filing, case name and court number, and jurisdiction.	
4.2.1.6 <u>Default</u> . Within the last 5 years, has your company or any of its related business entities defaulted on a contract or had a contract terminated for cause? If yes, provide the date, contracting entity, type of contract, and details about the termination or default.	
4.2.1.7 <u>Annual Sales</u> . State your gross annual sales for the last 5 years. If receiving a contract under this RFP will increase your gross revenue by more than 25% from last year's sales, explain how the company will scale-up to manage this increase.	

<p>4.2.1.8 Financial Statements. Provide audited financial statements to the State and should meet a minimum Dun and Bradstreet (D&B) credit rating of 3A2 or better, or a recognized equivalent rating. Please provide the Respondent's D&B Number and the composite credit rating. The State reserves the right to verify this information. If a branch or wholly owned subsidiary is bidding on this RFP, please provide the D&B Number and score for the parent company that will be financially responsible for performance of the agreement. Prime contractors working on behalf of Respondents must submit financial statements that demonstrate financial stability, and adequate working capital, but do not need to meet 3A2 credit rating requirements.</p>	<p>[Vendor upload file named – Vendor Name 4.2.1.8 Financial Statements]</p>
<p>4.2.1.9 Experience & References. Describe at least 3 relevant experiences (below) from the last 5 years supporting your ability to successfully manage a contract of similar size and scope for the work described in this RFP.</p>	
<p>1st Experience & Reference</p>	
<p>Company name Contact name Contact role at time of project Contact phone Contact email City State Zip</p>	
<p>1. Project name and description of the scope of the project 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?</p>	
<p>Dollar value</p>	
<p>Start and end date (mm/yy – mm/yy)</p>	
<p>Status (completed, live, other – specify phase)</p>	
<p>Results obtained</p>	
<p>2nd Experience & Reference</p>	
<p>Company name Contact name Contact role at time of project Contact phone Contact email City State Zip</p>	
<p>1. Project name and description of the scope of the project 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?</p>	
<p>Dollar value</p>	
<p>Start and end date (mm/yy – mm/yy)</p>	
<p>Status (completed, live, other – specify phase)</p>	
<p>Results obtained</p>	
<p>3rd Experience & Reference</p>	

Company name Contact name Contact role at time of project Contact phone Contact email City State Zip	
1. Project name and description of the scope of the project 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Dollar value	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Results obtained	
4.2.1.10 Marketing Plan. Describe your how you intend to market your equipment and services to NASPO ValuePoint and Participating Entities.	
4.2.2. Ability to Supply NASPO ValuePoint Member States	
4.2.2.1 Strategic Relationships. Describe partnerships and strategic relationships you think will bring significant value to the resulting Master Agreement.	
4.2.2.2 Reseller Program. Demonstrate how you will provide an Effective Reseller Program managed by the OEM (Contract holder) in NASPO ValuePoint States.	
4.2.2.3 Onboarding. Describe your process to qualifying and onboarding partners and sales personnel to represent the product.	
4.2.2.4 Partner Training. Any training for partners and sales staff to ensure they understand the terms and conditions of the Master Agreement and individual Participating Addenda. Does your company provide follow-up refresher training on a semi-annual or annual basis for partners and sales staff.	
4.2.2.5 Partner Restrictions. Describe any restrictions you place on your partners / resellers from selling other OEM solutions.	
4.2.2.6 Proposed Partner List. Provide your proposed list of partners in the structure outlined in Attachment D and which Award Categories they will service for all States.	[Vendor upload file named – Vendor Name 4.2.2.6 Proposed Partner List]
4.2.3. Ability to Provide Technical Support to End Users	
4.2.3.1 SLA. Provide your proposed Service Level Agreement (SLA) that includes, but is not limited to: help desk support, response times, resolution, downtime credits, etc.	
4.2.3.2 Escalation. Describe your escalation procedures.	
4.2.3.3 End User Training. Describe your offered training program to end users.	

4.2.3.4 <u>Maintenance Program</u> . Describe your offered maintenance program.	
4.2.4. Qualifications and Technical Ability	
4.2.4.1 <u>Resume</u> . Provide a resume, in the format of Attachment C, for the Contract Manager who will be assigned to this contract, including, but not limited to the following qualifications: <ul style="list-style-type: none"> -- Minimum 2 years' experience in contract management with public sector clients, -- Minimum 2 years' experience in leadership roles overall, and -- Minimum 2 years' experience in the Data Communications Products and Services industry. 	[Vendor upload file named – Vendor Name 4.2.4.1 Resume]
4.2.4.2 <u>Key Personnel</u> . Describe the key personnel titles and descriptions your firm will assign to service this contract. Outline such personnel qualifications.	
4.2.4.3 <u>R&D Initiatives</u> . Describe your firm's research & development (R&D) initiatives.	
4.2.5. Security	
4.2.5.1 <u>Security</u> . Describe how your firm ensures the security of your equipment and services are maintained against industry standards.	
4.2.5.2 <u>Industry Security</u> . Describe your firms approach in complying with industry standards for: patching, vulnerability testing, etc.	
4.2.5.3 <u>Vulnerabilities</u> . Identify any known circumstances where a vulnerability in any of your products has resulted in a data breach for an end user.	
4.2.6. Environmental	
4.2.6.1 <u>Environmental</u> . Describe your use of environmentally preferable goods and services, including post-consumer waste and recycled content.	
4.2.6.2 <u>Product Lifecycle</u> . Describe your product life recycling and trade-in program.	

**ATTACHMENT B.2
CATEGORY QUALIFICATIONS
(as amended August 23, 2018)**

Per RFP Section 4.3, Category Qualifications, Offeror's **must** complete this Attachment for each Product Category it is seeking an award in.

Provide the information requested below detailing how your organization has the ability to service the given Product Category. Do not submit a full catalog here in this section or generic literature. Submit information specific to the characteristics listed below. Offerors are required to submit a point by point response to the following items, for EACH Product Category Offeror is seeking an award.

Vendor Name: vendor input

Award Category Seeking Qualification: vendor input

Information Sought	Vendor Response
4.3.1 Ability to meet Scope/Service Requirements of Selected Category	
4.3.1.1 <u>Scope/Service Requirements</u> . Demonstrate your ability to meet Scope/Service requirements for this category.	
4.3.1.2 <u>Scope Offered</u> . Describe the scope and variety of products offered.	
4.3.1.3 <u>Experience</u> . Describe your experience and technical ability as an OEM to service this category.	
4.3.1.4 <u>Warranty Program</u> . Describe your offered Service and Warranty Program.	
4.3.1.5 <u>Product Life Cycle</u> . Describe your product life cycle management.	
4.3.1.6 <u>Solution Models</u> . Describe the models proposed for delivering the solution (Software Defined Networks (SDN), white boxes, etc.)	
4.3.1.7 <u>Innovation</u> . Describe any differentiating or highly innovative features of the products and services.	
4.3.2 Consumption Models	
4.3.2.1 <u>Consumption Models</u> . Describe your offered consumption models (i.e., purchase / CAPX model, communication infrastructure as-a-service, etc.	
4.3.3 Category Specific Security	
4.3.3.1 <u>Security Standards</u> . Describe the security standards your firm's equipment and services comply with in the industry.	
4.3.3.2 <u>3rd Party Security Assessments</u> . Describe any 3 rd party security assessments or certifications provided on your offerings.	
4.3.4 Open Standards and Interoperability	

4.3.4.1 <u>Open Standards</u> . Describe any open standards of your equipment.	
4.3.4.2 <u>Cloud Security Assessments</u> . If Offeror is proposing a Cloud hosted solution, Offeror is to complete, provide, and maintain a completed CSA STAR Registry Self-Assessment ¹ . Offeror is to submit a completed Consensus Assessments Initiative Questionnaire (CAIQ), Exhibit 1 to Attachment B.2 . Offeror must also represent and warrant the accuracy and currency of the information on the completed attachments.	[Vendor upload file named – Vendor Name 4.3.4.2 Cloud Security Assessments]
4.3.4.3 <u>Cloud Security Alliance</u> . If Offeror is proposing a Cloud hosted solution, describe and provide your level of disclosure with CSA Star Registry for each Category seeking qualification.	
4.3.4.4 <u>Interoperability</u> . Describe the interoperability of your equipment and services to other OEMs.	
4.3.5 Value Added Services	
4.3.5.1 <u>Value Added Services</u> . Describe any additional value added services you offer under this Award Category.	
4.3.5.2 <u>IoT Solutions</u> . Describe any IoT products that you offer under this Award Category.	
4.3.5.3 <u>Acceptance Testing / Procedures</u> . Please provide your acceptance and testing procedures available to Purchasing Entities for this Category. Provide your standard of performance for this Category.	

¹ CSA STAR Self-Assessment documents the security controls provided by an Offeror’s offerings, thereby helping Purchasing Entities assess the security of an Offeror, if awarded a Master Agreement, they currently use or are considering using.

**ATTACHMENT C
CONTRACT MANAGER RESUME TEMPLATE**

Vendor Name:	
Proposed Resource Name:	
Proposed Classification:	Contract Manager
If Contract Manager is associated with a subcontractor provide name of company:	
Percentage of time Contract Manager will be allocated to resulting master agreement:	

Instructions: Provide the skills, experience, education, etc. that qualify the individual for the duties and responsibilities outlined in this RFP for a contract manager.

EXPERIENCE & QUALIFICATIONS

The experience requirements detailed in the RFP are restated as follows:

Required Skills	Bidder's Response
<i>Minimum 2 years' experience in contract management with public sector clients.</i>	<p>Does Contract Manager have this required skill: Yes <input type="checkbox"/> or No <input type="checkbox"/></p> <p>Describe your skills and experience:</p> <p>Name of project(s) and year(s) experience was obtained:</p>
<i>Minimum 2 years' experience in leadership roles overall, and</i>	<p>Does Contract Manager have this required skill: Yes <input type="checkbox"/> or No <input type="checkbox"/></p> <p>Description of skills and experience:</p> <p>Name of project(s) and year(s) experience was obtained:</p>
<i>Minimum 2 years' experience in the Data Communications Products and Services industry.</i>	<p>Does Contract Manager have this required skill: Yes <input type="checkbox"/> or No <input type="checkbox"/></p> <p>Description of skills and experience:</p> <p>Name of project(s) and year(s) experience was obtained:</p>

ADDITIONAL SKILLS

Describe any other relevant experiences that qualify your contract manager to perform the responsibilities under this contract:

**ATTACHMENT C
CONTRACT MANAGER RESUME TEMPLATE**

List client references for work performed to meet the requirements stated above, and all projects the proposed Contract Manager has worked on in the last three (3) years. A minimum of three (3) references are required. By submission of this information, the bidder and identified key person authorize the State of Utah to contact references and previous employers provided to verify the accuracy of the information. Provide the identified information for each:

Start Date: <i>date started on project</i>	End Date: <i>date rolled off project</i>
Client/Project: <i>Client, with contact information (i.e.: address, phone #s , and email address), and project name</i>	
Employer: <i>identify employer at the time of experience</i>	
Title/Percentage of time: <i>title of role on project and percentage of time spent on project</i>	
Description: <i>brief description of responsibilities for the project. Include software version</i>	

Start Date:	End Date:
Client/Project:	
Employer:	
Title/Percentage of time:	
Description:	

Start Date:	End Date:
Client/Project:	
Employer:	
Title/Percentage of time:	
Description:	

EDUCATION

Education		
Degree (i.e. PhD, Master's, Bachelors)	<i>Example: Master in Engineering</i>	Year Completed: 1998
Program	<i>Major(s) area of study: Computer Science</i>	
University		

Additional Education		
Degree (i.e. PhD, Master's, Bachelors)	<i>Example: Bachelors' in Business Administration</i>	Year Completed: 1994
Program	<i>Major(s) area of study: Example: Management</i>	<i>Minor area of study: Example: Economics</i>
University		

CERTIFICATIONS / AFFILIATIONS – Provide any relevant certifications or affiliations the Contract Manager may have.

Certifications/Affiliations	
Name	
Topic/Description	
Date completed	

The Bidder must submit a letter of commitment for Key Personnel, signed by the identified resource, stating their commitment to work for the bidder/subcontractor on this project contingent on award of the bid.

Attachment E Cost Proposal Form (amended 8.9.2018)
Solicitation # SK18001

Vendor Name

Section 1: Instructions

1. Offeror shall provide a Minimum Discount % within Section 2 for each Category it is seeking an award in. A vendor will be deemed non-responsive for any Category that it does not provide a Minimum Discount % of at least greater than 0%.
2. If you are not seeking an award in a given Category, simply provide NA in the Minimum Discount % field.
3. The offered Minimum Discount % off must be guaranteed for the full duration of the Contract term.
4. The Minimum Discount % provided herein shall apply to all offerings in a given category.

5. In a separate document, provide a detailed product offering for each Category Offeror is seeking an award in. Title this document - Solicitation # Vendor Name - Detailed Product Offering. Offeror's proposed Minimum Discount % for a given Category must be reflected on all offerings within this offered catalog.
6. Within Section 3, provide the rates for those Value Added Services Offeror is seeking to offer under the resulting contract. Within the Job Description field, provide the role this position fills, and what is included within the proposed rate.

Section 2: Minimum Discount % off List	
Category 1.1 Unified Communications (UC)	0.00%
Hardware and Software (on premise)	
Cloud Services	
Service Packages (i.e., Maintenance, etc.)	
Category 1.2 Networking	0.00%
Hardware and Software (on premise)	
Cloud Services	
Service Packages (i.e., Maintenance, etc.)	
Category 1.3 Routers, Switches, Security, and Networking Storage	0.00%
Hardware and Software (on premise)	
Cloud Services	
Service Packages (i.e., Maintenance, etc.)	
Category 1.4 Wireless	0.00%
Hardware and Software (on premise)	
Cloud Services	
Service Packages (i.e., Maintenance, etc.)	
Category 1.5 Facility Management, Monitoring, and Control	0.00%
Hardware and Software (on premise)	
Cloud Services	
Service Packages (i.e., Maintenance, etc.)	

Section 3: Value Added Services

Provide the title, job description for each title, and associated hourly rate. Add additional rows as necessary.

Title	Job Description	Hourly Rates					
		Weekday		Weekend		State Holiday	
		Onsite	Remote	Onsite	Remote	Onsite	Remote
Maintenance Services							
Professional Services							
Deployment Services							
Consulting Advisory Services							
Architectural Design Services							
Statement of Work Services							
Partner Services							
Training Deployment Services							
[add any additional Value Added Services]							
[add any additional Value Added Services]							
[add any additional Value Added Services]							
[add any additional Value Added Services]							

**Attachment F - Interactive Scorecard
Data Communications Products and Services
SOLICITATION # SK18001
RFP EVALUATION SCORESHEET**

DRAFT: This document is intended to be a draft and should not be returned to the Division of Purchasing. Please return this document to the evaluation committee chairperson. This document is not subject to GRAMA pursuant to Utah Administrative Code R33-7-702(2).

Score will be assigned as follows:

Firm Name: _____

Evaluator: _____

Date: _____

- 1 = Fail, the proposal fails to address some or all of the requirements; fails to accurately address some or all of the requirements, or fails to demonstrate they can perform.
- 2 = Unsatisfactory, the proposal addresses the requirements or criteria in the RFP unsatisfactorily.
- 3 = Satisfactory, the proposal addresses all requirements or criteria in the RFP satisfactorily.
- 4 = Good, the proposal addresses all requirements or criteria in the RFP and may exceed some.
- 5 = Excellent, the proposal addresses all requirements in the RFP and exceeds them.

Stage 1: Minimum Mandatory Requirements		RFP Section	Evaluation (Pass/Fail)
1	Acknowledgement of Amendments	SciQuest: Questions > Acknowledgements	
2	RFP Development	4.1.1	
3	Evaluation of Proposals	4.1.2	
4	Proposed Categories	4.1.3	
5	Delivery	4.1.4	
6	Credit Rating	4.1.5	
7	OEMs Only	4.1.6	

Stage 2: OEM Evaluated Qualifications		RFP Section	Evaluator Score (1-5)	Criteria Weight	% of Tech Criteria	Points Possible	Points Earned	Minimum Required
1	Company Profile and References	4.2.1		10	20.0%	50.0	0.0	
2	Ability to Supply NASPO ValuePoint Member States	4.2.2		10	20.0%	50.0	0.0	
3	Ability to Provide Technical Support to End Users	4.2.3		10	20.0%	50.0	0.0	
4	Qualifications and Technical Ability	4.2.4		5	10.0%	25.0	0.0	
5	Security	4.2.5		10	20.0%	50.0	0.0	
6	Environmental	4.2.6		5	10.0%	25.0	0.0	
					100.0%	250.0	0.0	0.0

Stage 2: Required Technical Point Threshold	RFP Section	Min Percent	Min Points Required	Points Earned	Percent Earned	Evaluation
		65%	162.5	0.0	0.0%	

Stage 3: Category Evaluation (Per Category)		RFP Section	Evaluator Score (1-5)	Criteria Weight	% of Tech Criteria	Points Possible	Points Earned	Minimum Required
1	Ability to meet Scope/Service Requirements of Selected Category	4.3.1		20	40.0%	100.0	0.0	
2	Consumption Models	4.3.2		5	10.0%	25.0	0.0	
3	Category Specific Security	4.3.3		10	20.0%	50.0	0.0	
4	Open Standards and Interoperability	4.3.4		10	20.0%	50.0	0.0	
5	Value Added Services	4.3.5		5	10.0%	25.0	0.0	
					100.0%	250.0	0.0	0.0

Stage 3: Required Technical Point Threshold	RFP Section	Min Percent	Min Points Required	Points Earned	Percent Earned	Evaluation
		70%	175.0	0.0	0.0%	

Stage 4: Cost Proposal Evaluation	RFP Section	Low Cost Option	Offered Cost	Percent of Total	Points Possible	Points Earned
				25%	166.7	0.0

* Purchasing will use the following cost formula: The points assigned to each offerors cost proposal will be as outlined in section 3.2 "Final Stage: Cost Proposal Evaluation".

Total Evaluation Points	Percent of Total	Points Possible	Points Earned
Stage 2: OEM Evaluated Qualifications	38%	250.0	0.0
Stage 3: Category Evaluation	38%	250.0	0.0
Stage 4: Cost Evaluation Points	25%	166.7	0.0
Total Evaluation Points	100%	666.7	0.0

CLAIM OF BUSINESS CONFIDENTIALITY

Pursuant to Utah Code Annotated, Subsections 63G-2-305(1) and (2), and in accordance with Section 63G-2-309, _____ (company name) asserts a claim of business confidentiality to protect the following information submitted as part of this solicitation. Pricing/Cost Proposals may not be classified as confidential or protected and will be considered public information. **An entire proposal cannot be identified as “PROTECTED”, “CONFIDENTIAL” or “PROPRIETARY”.**

- Non-public financial statements
- Specific employee name and contact information
- Specific customer information, client lists, or subscription lists
- Other (specify): _____

This claim is asserted because this information requires protection as it includes:

trade secrets as defined in Utah Code Annotated Section 13-24-2 ("Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy).

commercial information or non-individual financial information obtained from a person if: (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future; [and] (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

This statement of reasons supporting the claim of business confidentiality applies to the following information in this proposal:

Page	Paragraph	Reason

Please use additional sheets if needed.

You will be notified if a record claimed to be protected herein under Utah Code Annotated § 63G-2-305(1) or (2) is classified public or if the governmental entity determines that the record should be released after weighing interests under Utah Code Annotated § 63G-2-201(5)(b) or Utah Code Annotated § 63G-2-401(6). See Utah Code Annotated § 63G-2-309.

Signed: _____
 On behalf of (company): _____
 Date: _____

(Revision 6/4/2015)

Attachment H: NASPO ValuePoint Cooperative Contract Detailed Sales Report

Contractor:

Quarter:

 No Quarterly Sales

Vendor Name	Vendor Contract Number	State	Customer Type	Bill to Name	Address	Bill to City	Zipcode	Ship to Name	Address	Ship to City	Zipcode	Order Number	Customer PO Number	Customer Number	Order Type	PO Date	Ship Date	Invoice Date	Invoice Number	Awarded Category #	Product Number	Product Description	UNSPSC Commodity	List Price/MSRP	NASPO ValuePoint Price	Quantity	Total Price	Admin Fee	VAR/Reseller/Partner/Distributor NAME	Energy Star Compliant Yes-1 No-2 NA-0
-------------	------------------------	-------	---------------	--------------	---------	--------------	---------	--------------	---------	--------------	---------	--------------	--------------------	-----------------	------------	---------	-----------	--------------	----------------	--------------------	----------------	---------------------	------------------	-----------------	------------------------	----------	-------------	-----------	---------------------------------------	---------------------------------------

Attachment I: Intent to Participate

States with an Intent to Participate. The States listed below have submitted and signed the Intent to Participate form to the State of Utah under this Data Communications Products and Services RFP (solicitation # SK18001). Some of these States have attached additional information, including state specific terms and conditions that need to be posted as part of this RFP. The below listed States reserve the right to modify the terms and conditions of any awarded Master Agreement in a Participating Addendum.

California	Colorado
Florida	Hawaii
Illinois	Louisiana
Michigan	Montana
New Jersey	South Dakota
Utah	Washington
Amended into RFP After Release	
Minnesota	Maryland
Oregon	



**NASPO ValuePoint
INTENT TO PARTICPATE
Cooperative Contract(s) for**

Data Communications Products & Services (2019-2024)

I. PURPOSE

The purpose of this Agreement is to provide interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for the **Data Communications Products & Services**.

II. SCOPE OF THE CONTRACT(S)

The State of Utah is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for **Data Communications Products & Services**.

The resulting contracts will be permissive contracts.

Administrative Fee

There will be a 0.25% NASPO ValuePoint administrative fee associated with these contracts. It is anticipated that the individual states will be able to add an administrative fee when the state executes its Participating Addendum.

III. TERM OF THE CONTRACT

The initial term of the contract will be established for five (5) years from the date of award with options to extend the contract for (2) two additional years.

IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION

The solicitation and contract development shall be accomplished in compliance with the NASPO ValuePoint Process Guide and the NASPO Memorandum of Agreement for the NASPO cooperative purchasing program, incorporated herein by reference.

Solicitation Publication Period

Bidders/Offerors will be given at least 40 days after publication to submit proposals.

Solicitation Type and Evaluation Criteria

This RFP will be issued and evaluated in concert with the procurement laws and rules of the State of Utah by a sourcing team comprised of members from several states.

Award(s)

The solicitation will permit multiple awards.

Additional Requested Information

State Specific Terms and Conditions: If the participating state wishes to include any State specific terms and conditions with the release of this RFP, please attach those with this Intent to Participate.

Annual Estimated Volume: If your State has an existing contract for this commodity or service, please indicate your annual volume of spend (including any potential political subdivision usage if available).

Annual State Spend	Not Available
Annual Political Subdivision Spend	Not Available
Total Spend	Approximately \$62 million

State of California

Angela Shell
Director Name

<u>(916) 375-4417</u>	<u>Angela.Shell@dgs.ca.gov</u>
Director Phone	Director Email

Director has approved ITP to be submitted? Yes No
(Click appropriate box)

State Specific T&Cs to be included in RFP? Yes No
(Click appropriate box)

Julie Matthews, Contract Administrator
State Point of Contact Name and Title

<u>(916) 375-4612</u>	<u>julie.matthews@dgs.ca.gov</u>
Phone	Email

Please email completed “Intent to Participate” document by **Tuesday, July 10, 2018** to:

Shannon Berry
Cooperative Development Coordinator
NASPO ValuePoint
sberry@naspovaluepoint.org

Terms and conditions listed below will be incorporated and made a part of California Participating Addenda. The State of California reserves the right to add additional terms and conditions to individual Participating Addenda.

A. Terms

1. Information Technology (IT) General Provisions – GSPD401IT, effective 09/05/14.
Document can be viewed at:
http://www.documents.dgs.ca.gov/pd/poliproc/GSPD401IT14_0905.pdf.
2. Cloud Computing Special Provisions for Software as a Service (SaaS), effective 03/15/18.
Document can be viewed at:
http://www.documents.dgs.ca.gov/pd/poliproc/CLOUDCOMPUTINGSERVICESPECIALPROVISIONS_18_0301.docx

B. Administrative Fee

Contractor shall submit a check, payable to the State of California, remitted to the Cooperative Agreement Unit for the calculated amount equal to one percent (0.01) of the sales for the quarterly period.

Contractor must include the Participating Addendum Number on the check. Those checks submitted to the State without the Participating Addendum Number will be returned to Contractor for additional identifying information.

Administrative fee checks shall be submitted to:

State of California
Department of General Services, Procurement Division
Attention: Cooperative Agreement Payment Processing
707 3rd Street, 2nd Floor, MS 2-202
West Sacramento, CA 95605

The administrative fee shall not be included as an adjustment to Contractor’s NASPO ValuePoint Master Agreement pricing.

The administrative fee shall not be invoiced or charged to the ordering agency.

Payment of the administrative fee is due irrespective of payment status on orders or service contracts from a purchasing entity.

Administrative fee checks are due for each quarter as follows:

Reporting Period			Due Date
JAN 1	to	MAR 31	APR 30
APR 1	to	JUN 30	JUL 31
JUL 1	to	SEP 30	OCT 31
OCT 1	to	DEC 31	JAN 31

Failure to meet administrative fee requirements and submit fees on a timely basis shall constitute grounds for suspension of the Participating Addendum.

PARTICIPATING ADDENDUM

(hereinafter "Addendum")

For

NASPO VALUEPOINT Add description of goods & services

MASTER AGREEMENT NO. Add contract no.

(hereinafter "Master Agreement")

Between

Insert Contractor Name

(hereinafter "Contractor")

and

State of Hawaii

(hereinafter "Participating State")

State of Hawaii, State Procurement Office (SPO) Price List Contact No. add PL No.

This Addendum will add the State of Hawaii as a Participating State to purchase from the NASPO ValuePoint Master Agreement Number **insert contract number** with **insert contractor name**.

1. Scope:

This addendum covers NASPO ValuePoint **describe services** lead by **insert lead State** for use by state agencies and other entities located in the Participating State authorized by the state's statutes to utilize state contracts.

2. Participation:

All jurisdictions located within the State of Hawaii, which have obtained prior written approval by its Chief Procurement Officer, will be allowed to purchase from the Master Agreement. Private nonprofit health or human services organizations with current purchase of service contracts governed by Hawaii Revised Statutes (HRS) chapter 103F are eligible to participate in the SPO price/vendor list contracts upon mutual agreement between the Contractor and the non-profit. (Each such participating jurisdiction and participating nonprofit is hereinafter referred to as a "Participating Entity"). Issues of interpretation and eligibility for participation are solely within the authority of the Administrator, State Procurement Office.

3. Changes: **Replace with specific changes or statements that no changes are required**

A. Usage Reports. Contractor shall submit a quarterly gross sales report (including zero dollar sales) in EXCEL to the contact person listed in the Participating Addendum, Paragraph 6 (or as amended) in accordance with the following schedule (or as requested):

<u>Quarter Ending</u>	<u>Report Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The report shall identify each transaction and include the following information:

Department/Agency Name
Date of Purchase
Product/Service Description
Quantity
Unit of Measure
Item No. Part Number (if applicable)
MSRP List Price
NASPO ValuePoint Contract Price

The quarterly report shall also include any adjustment from prior periods (i.e. exchanges and/or return).

- B. The validity of this Addendum, any of its terms or provisions, as well as the right and duties of the parties in this Addendum, shall be governed by the laws of the State of Hawaii. A copy of the Attorney General's General Conditions, which is made a part of this Addendum, can be found at <http://spo.hawaii.gov/wp-content/uploads/2014/02/103D-General-Conditions.pdf>. Any action at law or in equity to enforce or interpret the provisions of this Addendum shall be brought in a court of competent jurisdiction in Honolulu, Hawaii.
- C. Inspection of Facilities. Pursuant to HRS § 103D-316, the Participating State, at reasonable times, may inspect the part of the plant or place of business of the Contractor or any subcontractor that is related to the performance of a Master Agreement and this Addendum.
- D. Campaign Contributions. The Contractor is notified of the applicability of HRS § 11-355, which prohibits campaign contributions from Contractor during the term of the Addendum if the contractor is paid with funds appropriated by the Hawaii State Legislature.
- E. Purchases by State of Hawaii government entities under this Master Agreement is not mandatory. This Addendum is secondary and non-exclusive.
- F. The State of Hawaii's purchasing card (pCard) is required to be used by the State's executive departments/agencies (excluding the Department of Education, the Hawaii Health System Corporation, the Office of Hawaiian Affairs, and the University of Hawaii) for all orders totaling less than \$2,500. For purchases of \$2,500 or more, agencies may use the pCard, subject to its credit limit or issue a purchase order.

Contractor(s) shall forward original invoice(s), directly to the ordering agency. General excise tax shall not be applied to the delivery charge.

Pursuant to HRS § 103-10, Participating State and any agency of the Participating State or any county, shall have thirty (30) calendar days after receipt of invoice or satisfactory delivery of goods to make payment. Any interest for delinquent payment shall be as allowed by HRS § 103-10.

- G. Pursuant to HRS §103D-310(c), if Contractor is doing business in the Participating State, Contractor is required to comply with all laws governing entities doing business in the Participating State, including the following HRS chapters.
1. Chapter 237, General Excise Tax Law;
 2. Chapter 383, Hawaii Employment Security Law;
 3. Chapter 386, Workers' Compensation;
 4. Chapter 392, Temporary Disability Insurance;
 5. Chapter 393, Prepaid Health Care Act; and

A Certificate of Good Standing is required for entities doing business in the State.

The Hawaii Compliance Express (HCE) is utilized for verification of compliance. The SPO will conduct periodic checks to confirm Contractor's compliance on HCE throughout the term of the Addendum.

Alternatively, Contractors not utilizing HCE to demonstrate compliance shall provide paper certificates to the SPO as instructed below. All certificates must be valid on the date it is received by the SPO. All applications for applicable clearances are the responsibility of the Contractor.

HRS Chapter 237 tax clearance requirement. Pursuant to Section 103D-328, HRS, Contractor shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate.

The Tax Clearance Application, Form A-6, and its completion and filing instructions, are available on the DOTAX website: <http://tax.hawaii.gov/forms/>.

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements. Pursuant to Section 103D-310(c) Contractor shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable to the SPO.

The DLIR Form LIR#27 Application for Certificate of Compliance with Section 3-122-112, HAR, and its filing instructions are available on the DLIR website: <http://labor.hawaii.gov/forms/>.

Compliance with Section 103D-310(c), HRS, for an entity doing business in the State. Contractor shall be required to submit a Certificate of Good Standing (COGS) issued by the State of Hawaii Department of Commerce and Consumer Affairs (DCCA) – Business Registration Division (BREG). The Certificate is valid for six (6) months from date of issue. A photocopy of the certificate is acceptable to the SPO.

To obtain the Certificate, the Offeror must be registered with the BREG. A sole proprietorship is not required to register with the BREG and is therefore not required to submit the certificate.

For more information regarding online business registration and the COGS is available at <http://cca.hawaii.gov/breg/>.

H. Effective Date and Contract Period. This Addendum is effective upon the date of execution by the Participating State and shall continue for the term set forth in the Master Agreement.

4. Licensing

Offerors(Bidders) and Contractors must be properly licensed and capable of performing the Work as described in the RFP(IFB), at the time of submission of the Proposal(Bid), in accordance with the Professional and Vocational licensing laws of the state. Contractors under Participating Addendums must maintain any and all required licenses through the duration of the contract and Participating Addendum.

5. Lease Agreements:

Leasing is not authorized by this Addendum

6. Primary Contact:

The primary contact individuals for this Addendum are as follows (or their named successors:

Participating State

Name: Name of purchasing specialist
Address: State Procurement Office
1151 Punchbowl Street, Room 416
Honolulu, HI 96813
Telephone: phone number
Fax: (808) 586-0570
E-Mail: specialist e-mail address

Contractor

Name:
Address:
Telephone:
Fax:
E-Mail:

7. Subcontractors:

Subcontractors are (or are not) allowed under this Addendum.

8. Freight Charges (unless otherwise stated in the master contract):

Prices proposed will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of a full order originally shipped without transportation charges (that failed to ship with the original order, thereby becoming back-ordered) will also be shipped without transportation charges.

9. Purchase Order and Payment Instructions:

All purchase orders issued by Participating Entities under this Addendum shall include the Participating State contract number: SPO Price List Contract No. 16-07 and the NASPO ValuePoint Master Agreement Number 06913.

- Purchase Orders and Payments shall be made to **add contractor name** or authorized subcontractors, if any.

10. Participating Entity as Individual Customer:

Each Participating Entity shall be treated as an individual customer. Except to the extent modified by this Addendum, each Participating Entity will be responsible to follow the terms and conditions of the Master Agreement; and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each Participating Entity will be responsible for its own charges, fees, and liabilities. Each Participating Entity will have the same rights to any indemnity or to recover any costs allowed in the Master Agreement for their purchases. The Contractor will apply the charges to each Participating Entity individually.

11. Entire Contract:

This Addendum, the Master Agreement, and the Attorney General's General Conditions, set forth the entire agreement, and all the conditions, understandings, promises, warranties and representations among the parties with respect to this Addendum and the Master Agreement, and supersedes any prior communications, representations or agreements whether, oral or written, with respect to the subject matter hereof.

Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum, the Master Agreement, and the Attorney General's General Conditions that are included in any purchase order or other document shall be void. The terms and conditions of this Addendum, the Master Agreement, and the Attorney General's General Conditions, shall govern in the case of any such inconsistent, contrary, or additional terms.

IN VIEW OF THE ABOVE, the parties execute this Addendum by their signatures, on the dates below.

Participating State: STATE OF HAWAII	Contractor:
Signature:	Signature:
Name: SARAH ALLEN	Name:
Title: Administrator, SPO	Title:
Date:	Date:

APPROVED AS TO FORM:

Deputy Attorney General

1. Participating Addendum executed by the State of Illinois will be designated as available to governmental units in Illinois. "Governmental unit" means State of Illinois, any State agency as defined in Section 1-15.100 of the Illinois Procurement Code (30 ILCS 500/), officers of the State of Illinois, any public authority which has the power to tax, or any other public entity created by statute. 30ILCS 525/.
2. In no event will the total term of any Participating Addendum, including the initial term and any extensions or amendments, exceed ten (10) years.
3. This contract and all related public records maintained by, provided to, or required to be provided to the State are subject to the Illinois Freedom of Information Act notwithstanding any provision to the contrary that may be found in this contract. 5 ILCS 140.
4. Any Participating Addendum executed by the State of Illinois is contingent upon and subject to the availability of funds. The State of Illinois, at its sole option, may terminate or suspend any Participating Addendum, in whole or in part, without penalty or further payment being required, if (1) the Illinois General Assembly or the Federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason (30 ILCS 500/20-60), (2) the Governor of Illinois decreases the Agency's funding by reserving some or all of the Agency's appropriation(s) pursuant to power delegated to the Governor by the Illinois General Assembly, that a reduction is necessary or advisable based upon actual or projected budgetary considerations. Vendor will be notified in writing of the failure of appropriation or of a reduction or decrease.
5. Any claim against any State of Illinois, any State of Illinois agency as defined in Section 1-15.100 of the Illinois Procurement Code (30 ILCS 500/), or officers of the State of Illinois arising out of any Participating Addendum must be filed exclusively with the Illinois Court of Claims. 705 ILCS 505/1. Payments, including late payment charges, will be paid in accordance with the State Prompt Payment Act and rules when applicable. 30 ILCS 540; 74 Ill. Adm. Code 900. This shall be Vendor's sole remedy for late payments by the State of Illinois. Payment terms contained in Vendor's invoices shall have no force or effect. The State of Illinois shall not enter into binding arbitration to resolve any dispute arising out of any Participating Addendum. The State of Illinois does not waive sovereign immunity.
6. Illinois may further evaluate the lead state's awarded contracts to make best value determinations.
7. Registration in the Illinois Procurement Gateway is required before a Participating Addendum with the State of Illinois may be executed. For information on registration, please visit www.ipg.vendorreg.com.
8. Registration in BidBuy is required before a contract with the State of Illinois can be executed. For information on registration, please see the BidBuy [Vendor Registration Manual](#).



**NASPO ValuePoint
INTENT TO PARTICPATE
Cooperative Contract(s) for**

Data Communications Products & Services (2019-2024)

I. PURPOSE

The purpose of this Agreement is to provide interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for the **Data Communications Products & Services**.

II. SCOPE OF THE CONTRACT(S)

The State of Utah is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for **Data Communications Products & Services**.

The resulting contracts will be permissive contracts.

Administrative Fee

There will be a 0.25% NASPO ValuePoint administrative fee associated with these contracts. It is anticipated that the individual states will be able to add an administrative fee when the state executes its Participating Addendum.

III. TERM OF THE CONTRACT

The initial term of the contract will be established for five (5) years from the date of award with options to extend the contract for (2) two additional years.

IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION

The solicitation and contract development shall be accomplished in compliance with the NASPO ValuePoint Process Guide and the NASPO Memorandum of Agreement for the NASPO cooperative purchasing program, incorporated herein by reference.

Solicitation Publication Period

Bidders/Offerors will be given at least 40 days after publication to submit proposals.

Solicitation Type and Evaluation Criteria

This RFP will be issued and evaluated in concert with the procurement laws and rules of the State of Utah by a sourcing team comprised of members from several states.

Award(s)

The solicitation will permit multiple awards.

Additional Requested Information

State Specific Terms and Conditions: If the participating state wishes to include any State specific terms and conditions with the release of this RFP, please attach those with this Intent to Participate.

Annual Estimated Volume: If your State has an existing contract for this commodity or service, please indicate your annual volume of spend (including any potential political subdivision usage if available).

Annual State Spend \$13,000,000

Annual Political Subdivision Spend included

Total Spend included

State of Montana

Meghan Holmlund

Director Name

406-444-1459

Director Phone

mholmlund@mt.gov

Director Email

Director has approved ITP to be submitted? Yes No
(Click appropriate box)

State Specific T&Cs to be included in RFP? Yes No
(Click appropriate box)

Tia Snyder

State Point of Contact Name and Title

406-444-3315

Phone

tsnyder@mt.gov

Email

Please email completed "Intent to Participate" document by **Tuesday, July 10, 2018** to:

Shannon Berry

Cooperative Development Coordinator

NASPO ValuePoint

sberry@naspovaluepoint.org

State Terms and Conditions

ACCESS AND RETENTION OF RECORDS: Contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of eight years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA.)

COMPLIANCE WITH LAWS: Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.I. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

HOLD HARMLESS/INDEMNIFICATION: Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

REDUCTION OF FUNDING: State must by law terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

VENUE: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)

TAX EXEMPTION: State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.I. 111-148, 124 Stat. 119].

STATE OF MONTANA ADMINISTRATIVE FEE: The State of Montana assesses an Administrative Fee of one and one-half percent (1.50%) for all net sales (sales less credits and returns) made under this PA. The prices

paid to Contractor must include the 1.5% Administrative Fee. The Contractor shall remit this Administrative Fee concurrent with the Required Usage Reporting described below. The Administrative Fee must be submitted by ACH along with email notification to the State of Montana Contracts Officer. This Administrative Fee is effective upon execution of this Participating Addendum.

REQUIRED REPORTING: Contractor shall submit quarterly reports to the Contracts Officer (CO) assigned by the State to manage this contract. Contractor shall provide CO with an electronic usage report (Excel), which must list the following information at the minimum: purchasing entity; description of items purchased; date of purchase; contract price; and the extended price for each transaction. These reports are due no more than 30 days after the end of the quarter.

First Quarter:	July 1 through September 30
Second Quarter:	October 1 through December 31
Third Quarter:	January 1 through March 31
Fourth Quarter:	April 1 through June 30

Federal Terms and Conditions (Non-Construction)

1. NONDISCRIMINATION

The Contractor agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor's performance under this contract, on the ground of race, religion, color, national origin, sex or handicap. Accordingly, and to the extent applicable, the Contractor agrees to comply with the following:

- a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by DoD regulations at 32 CFR part 195.
- b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 {3 CFR, 1964-1965 Comp. pg. 339}, as implemented by Department of Labor regulations at 41 CFR part 60.
- c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.
- d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.
- e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

2. LOBBYING

a. The Contractor agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the State agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

3. DRUG-FREE WORK PLACE

The Contractor agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

4. ENVIRONMENTAL PROTECTION

a. The Contractor agrees that its performance under this contract shall comply with:

- (1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
- (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
- (3) The Resources Conservation and Recovery Act (RCRA);
- (4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
- (5) The National Environmental Policy Act (NEPA);
- (6) The Solid Waste Disposal Act (SWDA);
- (7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;
- (8) To identify any impact this contract may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

b. In accordance with the EPA rules, the parties further agree that the Contractor shall also identify to the state any impact this contract may have on:

- (1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse

environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

(2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

(3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.

(4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

(5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

(6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking work source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3)

5. USE OF UNITED STATES FLAG VESSELS

a. The Contactor agrees that travel under this contract shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

b. The Contactor agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

6. DEBARMENT AND SUSPENSION

a. The Contractor shall not make any award or permit any award (sub-contract or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension.

b. The Contractor agrees to comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 CFR part 180, as implemented by the DoD in 2 CFR part 1125. The Contractor shall comply with 2 CFR Part 1125 by checking the Excluded Parties List System (EPLS) at www.sam.gov to verify Contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The Contractor shall not solicit offers from, nor award contracts to Contractors listed in EPLS. This verification shall be documented in the Contractor's contract files, and shall be subject to audit by federal/State audit agencies

The Contractor agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the Contractor enters into transactions that are "covered transactions" under Subpart B of 2 CFR part 180 and the DoD implementation in 2 CFR part 1125.

7. BUY AMERICAN ACT

The Contractor agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10a et seq). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

8. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY POLICES

The Contractor agrees that it will comply with CFR 49 part 24, which implements the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

9. COPELAND "ANTI-KICKBACK" ACT

The Contractor agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this contract, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

10. CONTRACT WORK HOURS AND SAFETY STANDARDS

The Contractor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.(40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay.

11. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

Any discovery or invention that arises during the course of the contract shall be reported to the non-Federal entity. Contractor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

12. CLEAN AIR ACT (42 U.S.C. 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED

Any Contract or subcontract in excess of \$150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the State who in turn will report to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

13. BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)

Contractors that bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

14. PROCUREMENT OF RECOVERED MATERIALS

Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

State of New Jersey Standard Terms and Conditions

(Rev: 5/8/18)

1. STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT

Unless the bidder/offeror is specifically instructed otherwise in the Request for Proposals (RFP), the following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event that the bidder/offeror would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFP, the bidder/offeror must present those conflicts during the Question and Answer period for the State to consider. Any conflicting terms and conditions that the State is willing to accept will be reflected in an addendum to the RFP. The State's terms and conditions shall prevail over any conflicts set forth in a bidder/offeror's Proposal that were not submitted through the question and answer process and approved by the State. Nothing in these terms and conditions shall prohibit the Director of the Division of Purchase and Property (Director) from amending a contract when the Director determines it is in the best interests of the State.

1.1 CONTRACT TERMS CROSSWALK

<i>NJSTART</i> Term	Equivalent Existing New Jersey Term
Bid/Bid Solicitation	RFP/Solicitation
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order (Blanket P.O.)	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor	Bidder/Contractor

2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

2.1 BUSINESS REGISTRATION

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the bidder who shall provide it to the State.

The contractor shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The contractor shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of

2.2 ANTI-DISCRIMINATION

All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) and Constructions Contracts (Exhibit B and Executive Order 151, August 28, 2009, attached) as appropriate.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

2.3 PREVAILING WAGE ACT

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on [this proposal] is his/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by [this proposal] has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his/her guarantee that he/she and any subcontractors he/she might employ to perform the work covered by [this proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

2.4 AMERICANS WITH DISABILITIES ACT

The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.

2.5 MACBRIDE PRINCIPLES

The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

2.6 PAY TO PLAY PROHIBITIONS

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:

- A. Make or solicit a contribution in violation of the statute;
- B. Knowingly conceal or misrepresent a contribution given or received;
- C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;

- E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
- H. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

2.7 POLITICAL CONTRIBUTION DISCLOSURE

The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one (1) or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at <http://www.elec.state.nj.us/>.

2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST

The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards;

No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;

No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and

The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

2.9 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

2.10 COMPLIANCE - LAWS

The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

2.11 COMPLIANCE - STATE LAWS

It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

2.12 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT

3.1 COMPLIANCE - CODES

The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

3.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A.

34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

3.3 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

- A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- B. No contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- C. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- D. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- A. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- B. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;

C. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:

1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

3.4 BUILDING SERVICE

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

3.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.

3.6 SERVICE PERFORMANCE WITHIN U.S.

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

3.7 BUY AMERICAN

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the contractor shall be required to so certify.

4. INDEMNIFICATION AND INSURANCE

4.1 INDEMNIFICATION

The contractor's liability to the State and its employees in third party suits shall be as follows:

- A. Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract;
- B. The contractor's indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and
- C. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

4.2 INSURANCE

The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the State of New Jersey at the address shown below. If the contractor's insurer cannot provide 30 days written notice, then it will become the obligation of the contractor to provide the same. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancelation shall be emailed to the State at:

cca.certificate@treas.nj.gov

The insurance to be provided by the contractor shall be as follows:

- A. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent

currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;

- B. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;
- C. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
 - 1. \$1,000,000 BODILY INJURY, EACH OCCURRENCE;
 - 2. \$1,000,000 DISEASE EACH EMPLOYEE; and
 - 3. \$1,000,000 DISEASE AGGREGATE LIMIT.
 - A. This \$1,000,000 amount may have been raised by the RFP when deemed necessary by the Director; and
 - B. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections a., b., and c. above may have been lowered in the RFP for certain commodities when deemed in the best interests of the State by the Director.

5. TERMS GOVERNING ALL CONTRACTS

5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR

The contractor's status shall be that of any independent contractor and not as an employee of the State.

5.2 CONTRACT AMOUNT

The estimated amount of the contract(s), when stated on the RFP form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of the RFP or any contract entered into as a result of the RFP.

5.3 CONTRACT TERM AND EXTENSION OPTION

If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions including pricing of the original contract shall apply unless more favorable terms for the State have been negotiated.

5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision

taking all such information into account, and shall notify the contractor of the final adjusted contract price; and

- B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

5.5 CHANGE IN LAW

Whenever a change in applicable law or regulation affects the scope of work, the Director shall provide written notice to the contractor of the change and the Director's determination as to the corresponding adjusted change in the scope of work and corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the contractor does not agree with the adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the adjusted contract price. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and
- B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

5.6 SUSPENSION OF WORK

The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

- A. For Convenience:
Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor;
- B. For Cause:
 - 1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond; and

2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.
- C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and
 - D. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

5.8 SUBCONTRACTING OR ASSIGNMENT

- A. Subcontracting: The contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws; and
- B. Assignment: The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE

Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the State.

5.10 MERGERS, ACQUISITIONS

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

5.11 PERFORMANCE GUARANTEE OF CONTRACTOR

The contractor hereby certifies that:

- a. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;

- b. All equipment supplied to the State and operated by electrical current is UL listed where applicable;
- c. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location;
- d. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
- e. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;
- f. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and
- g. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

5.12 DELIVERY REQUIREMENTS

- A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;
- B. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice;
- C. Items delivered must be strictly in accordance with the contract; and
- D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

5.13 APPLICABLE LAW AND JURISDICTION

This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

5.14 CONTRACT AMENDMENT

Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.

5.15 MAINTENANCE OF RECORDS

The contractor shall maintain records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment unless a longer period is required by law. Such records shall be made available to the State, including the Comptroller, for audit and review.

5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)

The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent,

hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract. In connection with this assignment, the following are the express obligations of the contractor:

- A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
- B. It shall advise the Attorney General of New Jersey:
 - 1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and
 - 2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
- D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

6. TERMS RELATING TO PRICE AND PAYMENT

6.1 PRICE FLUCTUATION DURING CONTRACT

Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract. In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date.

Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

6.2 TAX CHARGES

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

6.3 PAYMENT TO VENDORS

- a. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price;
- b. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily

completed or delivered. For commodity contracts, the invoice, together with the original Bill of Lading, express receipt and other related papers must be sent to the State Contract Manager or using agency on the date of each delivery. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFP and must be in strict accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the contractor's bid proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized;

- c. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls; and
- d. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

6.4 OPTIONAL PAYMENT METHOD: P-CARD

The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

6.5 NEW JERSEY PROMPT PAYMENT ACT

The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within 60 days of the agency's receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

6.6 AVAILABILITY OF FUNDS

The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

7. TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The provisions set forth in this Section 7 of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

7.1 PROCUREMENT OF RECOVERED MATERIALS

To the extent that the scope of work or specifications in the contract requires the contractor to provide any of the following items, this Section 7.1 of the Standard Terms and Conditions modifies the terms of the scope of work or specification.

Pursuant to 2 CFR 200.322, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- A. Designated items are those set forth in 40 CFR 247 subpart B, as may be amended from time to time, including:
1. Paper and paper products listed in 40 C.F.R. 247.10;
 2. Certain vehicular products as listed in 40 CFR 247.11;
 3. Certain construction products listed in 40 C.F.R. 247.12;
 4. Certain transportation products listed in 40 C.F.R. 247.13;
 5. Certain park and recreation products, 40 C.F.R. 247.14;
 6. Certain landscaping products listed in 40 C.F.R. 247.15;
 7. Certain non-paper office products listed in 40 C.F.R. 247.16; and
 8. Other miscellaneous products listed in 40 C.F.R. 247.17.
- B. As defined in 40 CFR 247.3, "recovered material" means:
1. waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process; and
 2. for purposes of purchasing paper and paper products, means waste material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term recovered materials includes:
 - a. Postconsumer materials such as --
 - i. Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and
 - ii. All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and
 - b. Manufacturing, forest residues, and other wastes such as --
 - i. Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
 - ii. Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

- iii. Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;
- iv. Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and
- v. Fibers recovered from waste water which otherwise would enter the waste stream.

C. For contracts in an amount greater than \$ 100,000, at the beginning of each contract year, contractor shall provide the State estimates of the total percentage of recovered material utilized in the performance of its contract for each of the categories listed in subsection (A). For all contracts subject to this Section 7.1 of the Standard Terms and Conditions, at the conclusion of each contract year, contractor shall certify to the State the minimum recovered material content actually utilized in the prior contract year.

7.2 EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's

commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to

which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

7.3 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED

When required by Federal program legislation, all prime construction contracts in excess of \$ 2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

7.4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708

Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

7.5 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7.6 CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED

Contracts and subgrants of amounts in excess of \$ 150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7.7 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

7.8 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352

Contractors that apply or bid for an award exceeding \$ 100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.A.C. 17:27 et seq.

GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at http://www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase and Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase and Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to **N.J.A.C. 17:27-1 et seq.**

EXHIBIT B

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.S.A. 10:5-39 et seq. (P.L. 1983, c. 197)

N.J.A.C. 17:27-1.1 et seq.

CONSTRUCTION CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

N.J.S.A. 10:5-39 et seq. requires contractors, subcontractors, and permitted assignees performing construction, alteration, or repair of any building or public work in excess of \$250,000 to guarantee equal employment opportunity to veterans.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

- (A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.
- (B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:
- (1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
 - (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
 - (3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
 - (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
 - (5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
 - (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
 - (i) The contractor or subcontractor shall interview the referred minority or women worker.
 - (ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith

determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on the job and/or off the job programs for outreach and training of minorities and women.

- (D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

EXECUTIVE ORDER NO. 151 REQUIREMENTS

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the Division of Purchase and Property's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <http://NJ.gov>/<http://NJ.gov/JobCentralNJ>;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B.



**NASPO ValuePoint
INTENT TO PARTICPATE
Cooperative Contract(s) for**

Data Communications Products & Services (2019-2024)

I. PURPOSE

The purpose of this Agreement is to provide interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for the **Data Communications Products & Services**.

II. SCOPE OF THE CONTRACT(S)

The State of Utah is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for **Data Communications Products & Services**.

The resulting contracts will be permissive contracts.

Administrative Fee

There will be a 0.25% NASPO ValuePoint administrative fee associated with these contracts. It is anticipated that the individual states will be able to add an administrative fee when the state executes its Participating Addendum.

III. TERM OF THE CONTRACT

The initial term of the contract will be established for five (5) years from the date of award with options to extend the contract for (2) two additional years.

IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION

The solicitation and contract development shall be accomplished in compliance with the NASPO ValuePoint Process Guide and the NASPO Memorandum of Agreement for the NASPO cooperative purchasing program, incorporated herein by reference.

Solicitation Publication Period

Bidders/Offerors will be given at least 40 days after publication to submit proposals.

Solicitation Type and Evaluation Criteria

This RFP will be issued and evaluated in concert with the procurement laws and rules of the State of Utah by a sourcing team comprised of members from several states.

Award(s)

The solicitation will permit multiple awards.

Additional Requested Information

State Specific Terms and Conditions: If the participating state wishes to include any State specific terms and conditions with the release of this RFP, please attach those with this Intent to Participate.

Annual Estimated Volume: If your State has an existing contract for this commodity or service, please indicate your annual volume of spend (including any potential political subdivision usage if available).

Annual State Spend \$26,195,865.00

Annual Political Subdivision Spend Unknown

Total Spend \$91,642,561.61

State of Utah

Christopher Hughes

Director Name

801-538-3254

Director Phone

christopherhughes@utah.gov

Director Email

Director has approved ITP to be submitted? Yes No
(Click appropriate box)

State Specific T&Cs to be included in RFP? Yes No
(Click appropriate box)

Solomon Kingston, State Contract Analyst

State Point of Contact Name and Title

801-538-3228

Phone

skingston@utah.gov

Email

Please email completed "Intent to Participate" document by **Tuesday, July 10, 2018** to:

Shannon Berry

Cooperative Development Coordinator

NASPO ValuePoint

sberry@naspovaluepoint.org

**ATTACHMENT A: STATE OF UTAH STANDARD INFORMATION TECHNOLOGY TERMS AND CONDITIONS
STATE OF UTAH COOPERATIVE INFORMATION TECHNOLOGY CONTRACT**

This is a State Cooperative Contract for information technology products and services meaning all computerized and auxiliary automated information handling, including: (a) systems design and analysis; (b) acquisition, storage, and conversion of data; (c) computer programming; (d) information storage and retrieval; (e) voice, radio, video, and data communications; (f) requisite systems controls; (g) simulation; and (h) all related interactions between people and machines.

1. DEFINITIONS:

- a. "Access to Secure Public Facilities, Data, and Technology" means Contractor will (A) enter upon secure premises controlled, held, leased, or occupied by the State of Utah or an Eligible User; (B) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by the State of Utah or an Eligible User; or (C) have access to or receive any Public Data or Confidential Information during the course of performing this Contract.
- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors or other agents of Contractor who need to access Public Data to enable the Contractor to perform its responsibilities under this Contract.
- c. "Confidential Information" means information that is deemed as confidential under applicable record laws. The State of Utah and the Eligible Users reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws by Contractor.
- d. "Contract" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. This Contract may include any purchase orders that result from the parties entering into this Contract.
- e. "Contract Signature Page(s)" means the cover page that Division and Contractor sign.
- f. "Contractor" means the individual or entity delivering the Goods, Custom Deliverables, or performing the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, partners, and/or any other person or entity for which Contractor may be liable under federal, state, or local laws.
- g. "Custom Deliverable" means the Work Product that Contractor is required to deliver to Eligible Users under this Contract.
- h. "Data Breach" means the unauthorized access by a non-authorized person(s) which results in unauthorized acquisition of Public Data and compromises the security, confidentiality, or integrity of Public Data. It is within an Eligible User's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
- i. "Division" means the State of Utah Division of Purchasing.
- j. "DTS" means the Department of Technology Services.
- k. "Eligible User(s)" means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts will be allowed to use this Contract.
- l. "Federal Criminal Background Check" means an in depth background check conducted and processed by the FBI that covers all states. Federal Criminal Background Check reports will show if applicant has had any criminal cases filed against them that violated federal criminal law.
- m. "Good" means any deliverable not classified as a Custom Deliverable or Service that Contractor is required to deliver to the Eligible Users under this Contract.
- n. "Non-Public Data" means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State of Utah and the federal government because it contains information that is exempt by state, federal and local statutes, ordinances, or administrative rules from access by the general public as public information.
- o. "Personal Data" means data that includes information relating to a person that identifies the person by a person's first name or first initial and last name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
- p. "Proposal" means Contractor's response documents, including attachments, to the Division's Solicitation.
- q. "Protected Health Information" (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
- r. "Security Incident" means the potentially unauthorized access by non-authorized persons to Public Data that Contractor believes could reasonably result in the use, disclosure or theft of Public Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Data Breach. It is within an Eligible User's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.

- s. "Services" means the furnishing of labor, time, or effort by Contractor as set forth in this Contract, including but not limited to installation, configuration, implementation, technical support, warranty maintenance, and other support services.
 - t. "Solicitation" means the documents used by the Division to solicit Contractor's Proposal for the Goods, Custom Deliverables, or Services identified in this Contract.
 - u. "Public Data" means all Confidential Information, Non-Public Data, Personal Data, and Protected Health Information that is created or in any way originating with the State of Utah or an Eligible User whether such data or output is stored on the State of Utah's or an Eligible User's hardware, Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State of Utah, an Eligible User, or by Contractor. Public Data includes any federal data, that the State of Utah or an Eligible User controls or maintains, that is protected under federal laws, statutes, and regulations.
 - v. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - w. "Subcontractors" means subcontractors or subconsultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, and includes all independent contractors, agents, employees, or anyone else for whom the Contractor may be liable, at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
 - x. "Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the ordering Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
 3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all the Goods delivered under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
 4. **NO WAIVER OF SOVEREIGN IMMUNITY:** In no event shall this Contract be considered a waiver by the Division, an Eligible User, or the State of Utah of any form of defense or immunity, whether sovereign immunity, governmental immunity, or any other immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
 5. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
 6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 - (1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.
 - (2) Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
 - (3) Contractor's failure to comply with this section will be considered a material breach of this Contract.
 - (4) Contractor shall protect, indemnify, and hold harmless the Division, the Eligible Users, and the State of Utah, and anyone that the State of Utah may be liable for, against any claim, damages, or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
 7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of

Utah, unless disclosure has been made to the Division.

8. **CONFLICT OF INTEREST WITH STATE EMPLOYEES:** Contractor agrees to comply and cooperate in good faith will all conflict of interest and ethic laws including Section 63G-6a-2404, Utah Procurement Code, as amended.
9. **INDEPENDENT CONTRACTOR:** Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the Division, the Eligible Users, or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor, as an independent contractor, shall have no authorization, express or implied, to bind the Division, the Eligible Users, or the State of Utah to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the Division, the Eligible Users, or the State of Utah. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.
10. **CONTRACTOR ACCESS TO SECURE Public FACILITIES, PUBLIC DATA, AND TECHNOLOGY:** An employee of Contractor or a Subcontractor may be required to complete a Federal Criminal Background Check, if said employee of Contractor or a Subcontractor will have Access to Secure Public Facilities, Public Data, and Technology. Contractor shall provide the Eligible User with sufficient personal information (at Contractor's own expense) so that a Federal Criminal Background Check may be completed by the Eligible User, at the Eligible User's expense. The Eligible User will also provide Contractor with a Disclosure Form and Confidentiality Agreement which must be filled out by Contractor and returned to the Eligible User. Additionally, each employee of Contractor or a Subcontractor, who will have Access to Secure Public Facilities, Public Data, and Technology, will be scheduled by the Eligible User to be fingerprinted, at a minimum of one week prior to having such access. At the time of fingerprinting, said employee of Contractor or a Subcontractor will disclose, in full, any past record of felony or misdemeanor convictions. The Eligible User is authorized to conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided. The Eligible User may use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) every two years and reserves the right to revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor agrees to notify the Eligible User if an arrest or conviction of any employee of Contractor or a Subcontractor that has Access to Secure Public Facilities, Public Data and Technology occurs during this Contract. Contractor, in executing any duty or exercising any right under this Contract, shall not cause or permit any of its employees or employees of a Subcontractor (if any) who have been convicted of a felony or misdemeanor to have Access to Secure Public Facilities, Public Data, and Technology. A felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred.
11. **DRUG-FREE WORKPLACE:** Contractor agrees to abide by the Eligible User's drug-free workplace policies while on the Eligible User's or the State of Utah's premises.
12. **CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor agrees to follow and enforce the applicable code of conduct which will be provided upon request by Contractor to the Eligible User. Contractor will assure that each employee or each employee of Subcontractor(s) under Contractor's supervision receives a copy of such code of conduct.
13. **INDEMNITY CLAUSE:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the Division, the Eligible User, or the State of Utah. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
14. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.
15. **SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
16. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract.
17. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract, by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
18. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon

thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

If Services apply to this Contract, then Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the Division, the Eligible Users, or the State of Utah is limited to full payment for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract.

- 19. SUSPENSION OF WORK:** Should circumstances arise which would cause the Division to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Division.
- 20. NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the Division or an Eligible User, if it is reasonably determined that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, the Eligible User will reimburse Contractor for the Goods or Services properly ordered until the effective date of said notice. The Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
- 21. SALES TAX EXEMPTION:** The Goods, Custom Deliverables, or Services being purchased by the Eligible Users under this Contract are being paid from the Eligible User's funds and used in the exercise of the Eligible User's essential function as an Eligible User. The Eligible User will provide Contractor with a copy of its sales tax exemption number upon request. It is the Contractor's responsibility to request the sales tax exemption number from the Eligible User.
- 22. TITLE AND OWNERSHIP WARRANTY:** Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Good or Custom Deliverable delivered to the Eligible Users under this Contract. Contractor fully indemnifies the Eligible Users for any loss, damages or actions arising from a breach of this warranty without limitation.
- 23. HARDWARE WARRANTY:** Contractor agrees to warrant and assume responsibility for all hardware portions of any Good or Custom Deliverable, that it licenses, contracts, or sells under this Contract, for a period of one (1) year. Contractor acknowledges that all warranties granted to the Division and Eligible Users by the Uniform Commercial Code of the State of Utah apply to this Contract. Product liability disclaimers and/or warranty disclaimers from Contractor are not applicable to this Contract. In general, the Contractor warrants that the hardware: (a) will perform as specified in the Proposal; (b) will live up to all specific claims listed in the Proposal; (c) will be suitable for the ordinary purposes for which the hardware is used; (d) will be suitable for any special purposes that the Division has relied on Contractor's skill or judgment to consider when it advised the Division about the hardware in the Proposal; (e) the hardware has been properly designed and manufactured; and (f) is free of significant defects or unusual problems about which Eligible User has not been warned.
- 24. SOFTWARE WARRANTY:** Contractor warrants that for a period of ninety (90) days from the date of Acceptance that the software portions of the Goods and Custom Deliverables, that Contractor licenses, contracts, or sells to the Eligible Users under this Contract, will: (a) perform in accordance with the specific claims provided in the Proposal; (b) be suitable for the ordinary purposes for which such Goods and Custom Deliverables are used; (c) be suitable for any special purposes that the Eligible User has relied on Contractor's skill or judgment to consider when it advised the Eligible User about the Goods or Custom Deliverables in its Proposal; (d) have been properly designed and manufactured; and (e) be free of significant defects or unusual problems. Contractor agrees to provide the Eligible Users with bug fixes, including informing the Eligible Users of any known software bugs or software defects that may affect the Eligible User's use of the software during the Contract.
- 25. WARRANTY REMEDIES:** Upon breach of the hardware or software warranty, Contractor will repair or replace (at no charge to the Eligible Users) the Goods or Custom Deliverables whose nonconformance is discovered and made known to Contractor. If the repaired and/or replaced products prove to be inadequate, or fail to meet the performance of its essential purpose, Contractor will refund the full amount of any payments that have been made for the failing products. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity.
- 26. UPDATES AND UPGRADES:** Contractor grants to the Eligible Users a non-exclusive, non-transferable license to use upgrades and updates provided by Contractor during the term of this Contract. Such upgrades and updates are subject to the terms of this Contract. The Eligible Users shall download, distribute, and install all updates as released by Contractor during this Contract, and Contractor strongly suggests that the Eligible Users also download, distribute, and install all upgrades as released by Contractor during this Contract.
- 27. BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With an Eligible User's prior written authorization, Contractor may perform remote diagnostics to work on reported problems, subject to Contractor's obligation of this Contract. In the event that an Eligible User declines remote diagnostics, Contractor and the Eligible User may agree to on-site technical support, subject to the terms of this Contract.
- 28. TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is a part of the Goods or Custom Deliverables that Contractor provides under this Contract, Contractor will use commercially reasonable efforts to respond, in a

reasonable time, when technical support or maintenance requests regarding the Goods or Custom Deliverables are made to Contractor.

29. SECURE PROTECTION AND HANDLING OF PUBLIC DATA: If Contractor is given Public Data as part of this Contract, the protection of Public Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of Public Data. To the extent that Contractor is given Public Data, Contractor shall safeguard the confidentiality, integrity and availability of the Public Data and comply with the following conditions outlined below. Eligible Users reserve the right to verify Contractor's adherence to the following conditions to ensure they are met during the life of the contract:

1. **Network Security:** Contractor agrees at all times to maintain network security that - at a minimum - includes: network firewall provisioning, intrusion detection, and regular third party penetration testing. Contractor also agrees to maintain network security that conforms to one of the following:

(1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy* (copy available upon request);

(2) Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or

(3) Any generally recognized comparable standard that Contractor then applies to its own network and approved by DTS in writing.

2. **Public Data Security:** Contractor agrees to protect and maintain the security of Public Data with protection that is at least as good as or better than that maintained by the State of Utah which will be provided by an Eligible User upon Contractor's request. These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification). Eligible User reserves the right to determine if Contractor's level of protection adequately meets the Eligible User's security requirements.

3. **Public Data Transmission:** Contractor agrees that any and all transmission or exchange of system application data with the Eligible Users and State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means (ex. HTTPS or FTPS).

4. **Public Data Storage:** Contractor agrees that all Public Data will be stored and maintained in data centers in the United States. Contractor agrees that no Public Data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process. Contractor shall permit its employees and Subcontractors to access non-Public Data remotely only as required to provide technical support. Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.

5. **Public Data Encryption:** Contractor agrees to store all data provided to Contractor, including State, as part of its designated backup and recovery process in encrypted form, using no less than 128 bit key and include all data as part of a designated backup and recovery process.

6. **Password Protection:** Contractor agrees that any portable or laptop computer that has access to the Eligible Users or State of Utah networks, or stores any Public Data is equipped with strong and secure password protection.

7. **Public Data Re-Use:** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. Contractor further agrees that no Public Data of any kind shall be transmitted, exchanged, or otherwise passed to other Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the Eligible Users.

8. **Public Data Destruction:** The Contractor agrees that upon expiration or termination of this Contract it shall erase, destroy, and render unreadable all Public Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the Eligible User, whichever shall come first, unless the Eligible User provides Contractor with a written directive. It is understood by the parties that the Eligible User's written directive may request that certain data be preserved in accordance with applicable law.

9. **Services Shall Be Performed Within United States:** Contractor agrees that all of the Services related to Public Data that it provides to the Eligible Users will be performed by Contractor and Subcontractor(s) within the borders and jurisdiction of the United States.

30. SECURITY INCIDENT OR DATA BREACH NOTIFICATION: Contractor shall immediately inform an Eligible User of any Security Incident or Data Breach.

1. **Incident Response:** Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with the Eligible User should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.

2. **Security Incident Reporting Requirements:** Contractor shall report a Security Incident to the Eligible User immediately if Contractor reasonably believes there has been a Security Incident.

3. **Breach Reporting Requirements:** If Contractor has actual knowledge of a confirmed Data Breach that affects the security of any Public Data that is subject to applicable data breach notification law, Contractor shall: (a) promptly notify the Eligible User

within 24 hours or sooner, unless shorter time is required by applicable law; (b) take commercially reasonable measures to address the Data Breach in a timely manner; and (c) be responsible for its Data Breach responsibilities, as provided in the next Section.

- 31. DATA BREACH RESPONSIBILITIES:** This Section only applies when a Data Breach occurs. Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification in accordance with DTS Policy 5000-0002 Enterprise Information Security Policy (copy available upon request). In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the Eligible User by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach; and (d) in accordance with applicable laws indemnify, hold harmless, and defend DTS and the State of Utah against any claims, damages, or other harm related to such Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with the Eligible User. Contractor shall be responsible for all notification and remedial costs and damages.
- 32. STATE INFORMATION TECHNOLOGY POLICIES:** If Contractor is providing an Executive Branch Agency of the State of Utah with Goods or Custom Deliverables it is important that contractors follow the same policies and procedures that DTS follows for their own internally developed goods and deliverables to minimize security risk, ensure applicable State and Federal laws are followed, address issues with accessibility and mobile device access, and prevent outages and data breaches within the State of Utah's environment. Contractor agrees to comply with the following DTS Policies which are available upon request:
- 1. DTS Policy 4000-0001, Enterprise Application and Database Deployment Policy:** The Enterprise Application and Database Deployment Policy requires any Contractor developing software for the State to develop and establish proper controls that will ensure a clear separation of duties between developing and deploying applications and databases to minimize security risk; to meet due diligence requirements pursuant to applicable state and federal regulations; to enforce contractual obligations; and to protect the State's electronic information and information technology assets.
 - 2. DTS policy 4000-0002, Enterprise Password Standards Policy:** Any Contractor developing software for the State must ensure it is built to follow the password requirements outlined in the Enterprise Password Standards Policy.
 - 3. DTS Policy 4000-0003, Software Development Life Cycle Policy:** The Software Development Life Cycle Policy requires any Contractor developing software for the State to work with DTS in implementing a Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance.
 - 4. DTS Policy 4000-0004, Change Management Policy:** Per the Change Management Policy, any Goods or Custom Deliverables furnished or Services performed by Contractor which have the potential to cause any form of outage or to modify DTS's or the State of Utah's infrastructure must be reviewed by the DTS Change Management Committee. Following this notification, any outages or Data Breaches which are a direct result of Contractor's failure to comply with DTS instructions and policies following notification will result in Contractor's liability for any and all damages resulting from or associated with the outage or Data Breach.
- 33. PUBLIC INFORMATION:** Contractor agrees that this Contract, any related purchase orders, related invoices, related pricing lists, and the Proposal will be public documents, and may be available for distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, any related purchase orders, related invoices, related pricing lists, and Proposal in accordance with GRAMA. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation. The Division, the Eligible Users, or the State of Utah will not inform Contractor of any request for a copy of this Contract, including any related purchase orders, related invoices, related pricing lists, or the Proposal.
- 34. DELIVERY:** Unless otherwise specified in this Contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Contractor is responsible for including any freight charges due by the Eligible User to Contractor when providing quotes to the Eligible User unless otherwise specified in this Contract. Invoices listing freight charges that were not identified in the quote prior to shipment, unless otherwise specified in this Contract, will be returned to the Contractor to remove such costs. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Eligible Users except as to latent defects, fraud, and Contractor's warranty obligations.
- 35. ELECTRONIC DELIVERY:** Contractor may electronically deliver any Good or Custom Deliverable to Eligible Users or provide any Good and Custom Deliverable for download from the Internet, if approved in writing by the Eligible Users. Contractor should take all reasonable and necessary steps to ensure that the confidentiality of those electronic deliveries is preserved in the electronic delivery process, and are reminded that failure to do so may constitute a breach of obligations owed to the Eligible Users under this Contract. Contractor warrants that all electronic deliveries will be free of known, within reasonable industry standards, malware, bugs, Trojan horses, etc. Any electronic delivery that includes Public Data that Contractor processes or stores must be delivered within the specifications of this Contract.
- 36. ACCEPTANCE PERIOD:** A Good, Custom Deliverable, or Service furnished under this Contract shall function in accordance with the specifications identified in this Contract and Solicitation. If the Goods and Custom Deliverables delivered do not conform to the specifications identified in this Contract and Solicitation ("Defects"), the Eligible Users shall within thirty (30) calendar days of the delivery date ("Acceptance Period") to notify Contractor in writing of the Defects. Contractor agrees that upon receiving such notice, it shall use reasonable efforts to correct the Defects within fifteen (15) calendar days ("Cure Period"). The Eligible User's acceptance of a Good, Custom Deliverable, or Services occurs at the end of the Acceptance Period or Cure Period.

If after the Cure Period, a Good, Custom Deliverable, or Service still has Defects, then the Eligible User may, at its option: (a) declare Contractor to be in breach and terminate this Contract; (b) demand replacement conforming Goods, Custom Deliverables, or Services from Contractor at no additional cost to the Eligible User; or (c) continue the Cure Period for an additional time period

agreed upon by the Eligible User and Contractor in writing. Contractor shall pay all costs related to the preparation and shipping of the products returned pursuant to this section. No products shall be accepted and no charges shall be paid until acceptance is met. The warranty period will begin upon the end of the Acceptance Period.

37. ORDERING AND INVOICING: All orders will be shipped promptly in accordance with the delivery schedule. Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the appropriate Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to an order under this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

38. PROMPT PAYMENT DISCOUNT: Contractor may quote a prompt payment discount based upon early payment. Contractor shall list payment discount terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received.

39. PAYMENT:

1. Payments will be made within thirty (30) days from a correct invoice is received, whichever is later. After sixty (60) days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue.

2. Unless otherwise stated in this Contract, all payments to Contractor will be remitted by mail, by electronic funds transfer, or by the Eligible User's purchasing card (major credit card). The Division will not allow Contractor to charge electronic payment fees of any kind.

3. The acceptance by Contractor of final payment without a written protest filed with the Eligible User within ten (10) working days of receipt of final payment shall release the Eligible User, the Division, and the State of Utah from all claims and all liability to Contractor for fees and costs pursuant to this Contract.

4. Contractor agrees that if during, or subsequent to the Contract an audit determines that payments were incorrectly reported or paid by the Eligible Users to Contractor, then Contractor shall, upon written request, immediately refund to the Eligible Users any such overpayments.

40. INDEMNIFICATION – INTELLECTUAL PROPERTY: Contractor warrants that any Good, Custom Deliverable, or Service furnished by Contractor under this Contract, including its use by the Eligible Users in unaltered form, will not, to Contractor's knowledge, infringe any third party copyrights, patents, trade secrets, and/or other proprietary rights that exist on the effective date of this Contract and/or that arise or are enforceable under the law of the United States of America.

Contractor will release, indemnify, and hold the Division, the Eligible Users, and the State of Utah harmless from liability or damages of any kind or nature, including Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in Contractor's performance of this Contract. Additionally, if such a claim or liability is based upon an allegation that a Good, Custom Deliverable, or Service furnished by Contractor infringes on any right protected by any patent, copyright, trademark, trade secret, and/or proprietary right of any third party, Contractor agrees to indemnify and hold harmless the Division, the Eligible Users, and the State of Utah for any judgments, settlements, reasonable costs, and reasonable attorneys' fees resulting from such a claim or liability. Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto; however, the Eligible Users shall have the right, at its option, to participate in the defense of any such action without relieving Contractor of any obligation hereunder. The parties agree that if there are any limitations of liability, including a limitation of liability clause in this Contract, such limitations of liability will not apply to this Section.

41. OWNERSHIP IN INTELLECTUAL PROPERTY: The parties each recognize that each has no right, title, or interest, proprietary or otherwise, in or to the name or any logo, or intellectual property owned or licensed by the other. Each agree that, without prior written consent of the other or as described in this Contract, it shall not use the name, any logo, or intellectual property owned or licensed by the other.

42. OWNERSHIP IN CUSTOM DELIVERABLES: In the event that Contractor provides Custom Deliverables to the Eligible Users, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for Eligible Users and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible Users, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible Users any and all copyrights in and to the Custom Deliverables, subject to the following:

1. Contractor has received payment for the Custom Deliverables,

2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and

3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas,

concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of Eligible Users (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.

4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible Users.

Contractor agrees to grant to the Eligible Users a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible Users and the State of Utah to use the Custom Deliverables. The Eligible Users reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the Eligible User's internal business operation under this Contract. The Eligible User and the Division may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

43. OWNERSHIP, PROTECTION AND USE OF RECORDS: Except for confidential medical records held by direct care providers, the Eligible Users shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached in performance of this Contract without the express written consent of the Eligible User. Contractor agrees to maintain the confidentiality of records it holds for the Eligible Users as required by applicable federal, state, or local laws. Eligible Users shall own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by Contractor under this Contract. Contractor, and any Subcontractors under its control, expressly agrees not to use an Eligible User's confidential data without prior written permission from Eligible User.

44. PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES: In the event that the Eligible User provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, Contractor agrees to hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this Contract. The improper use or disclosure by any party of protected internal federal or state business processes, policies, procedures, or practices is prohibited. Confidential federal or state business processes, policies, procedures, or practices shall not be divulged by Contractor or its Subcontractors, except for the performance of this Contract, unless prior written consent has been obtained in advance from the Eligible User.

45. PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION: All documents and data pertaining to work required by this Contract will be the property of the Eligible Users, and must be delivered to the Eligible Users within thirty (30) working days after termination or expiration of this Contract, regardless of the reason for contract termination, and without restriction or limitation to their future use. The costs for returning documents and data to the Eligible Users are included in this Contract.

46. CONFIDENTIALITY: Confidential Information may be disclosed to the Contractor under the terms of this Contract. If Confidential Information is disclosed to Contractor then Contractor agrees to adhere to the following:

Contractor will: (a) limit disclosure of any Confidential Information to Authorized Persons who have a need to know such Confidential Information in connection with the current or contemplated business relationship between the parties to which this Contract relates, and only for that purpose; (b) advise its Authorized Persons of the proprietary nature of the Confidential Information and of the obligations set forth in this Contract and require such Authorized Persons to keep the Confidential Information confidential; (c) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties, except as otherwise agreed to in writing by the Eligible Users. Contractor will promptly notify the Eligible Users of any misuse or misappropriation of Confidential Information that comes to Contractor's attention.

Contractor shall be responsible for any breach of this duty of confidentiality contract by any of their officers, agents, subcontractors at any tier, and any of their respective representatives, including any required remedies and/or notifications under applicable law (Utah Code Section 13-44-101 thru 301 et al). Contractor shall indemnify, hold harmless, and defend the Division, the Eligible Users, and State of Utah from claims related to a breach of these confidentiality requirements by Contractor or anyone for whom the Contractor is liable. This duty of confidentiality shall be ongoing and survive the term of this Contract.

47. ASSIGNMENT/SUBCONTRACT: Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Division.

48. DEFAULT AND REMEDIES: Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract: (a) nonperformance of contractual requirements or (b) a material breach of any term or condition of this Contract. The Division will issue a written notice of default providing a fourteen (14) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the Division may do one or more of the following: (a) exercise any remedy provided by law; (b) terminate this Contract and any related contracts or portions thereof; (c) impose liquidated damages, if liquidated damages are listed in the contract; (d) suspend Contractor from receiving future solicitations; or (e) request a full refund of the Goods,

Custom Deliverables, or Services furnished by Contractor that are defective or Services that were inadequately performed under this Contract.

- 49. TERMINATION UPON DEFAULT:** In the event this Contract is terminated as a result of a default by Contractor, the Division may procure or otherwise obtain, upon such terms and conditions as the Division deems appropriate, Goods, Custom Deliverables, or Services similar to those terminated, and Contractor shall be liable to the Division for any and all cover costs and damages arising therefrom, including attorneys' fees, excess costs and fees, and cost of cover together with incidental or consequential damages, incurred by the Division in obtaining similar Goods, Custom Deliverables, or Services.
- 50. FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Division and the Eligible Users may immediately terminate this Contract after determining such delay will reasonably prevent successful performance of this Contract.
- 51. PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
- 52. CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
- Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
 - Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
 - Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
 - Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

53. RESERVED

- 54. CONFLICT OF TERMS:** Contractor terms and conditions that apply must be in writing and attached to this Contract. No other terms and conditions will apply to this Contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, purchase orders, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: (a) this Attachment A; (b) Contract Signature Page(s); (c) State of Utah's Additional Terms and Conditions, if any; and (d) Contractor Terms and Conditions, if any. Attachment A will be given precedence over any provisions including, limitation of liability, indemnification, standard of care, insurance, or warranty, and will not be nullified by or exception created by more specific terms elsewhere in this Contract.
- 55. ENTIRE AGREEMENT:** This Contract shall constitute the entire agreement between the parties, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
- 56. SURVIVORSHIP:** This paragraph defines the specific contractual provisions that will remain in effect after expiration of, the completion of, or termination of this Contract, for whatever reason: (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of Public Data; (c) Data Breach Responsibilities; (d) Ownership in Custom Deliverables; (e) Ownership, Protection, and Use of Records, including Residuals of such records; and (f) Ownership, Protection, and Use of Confidential Federal, State, or Local Government Internal Business Processes, including Residuals of such confidential business processes; (g) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (h) Confidentiality; (i) Conflict of Terms; and (j) any other terms that by their nature would survive the expiration of, completion, or termination of this contract.
- 57. WAIVER:** The waiver by either party of any provision, term, covenant, or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant, or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant, or condition of this Contract.
- 58. CONTRACT INFORMATION:** During the duration of this Contract, the Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.
- 59. COMPLIANCE WITH ACCESSIBILITY STANDARDS:** Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractors must also adhere to Utah Administrative rule R895-14-1-3-

3, which states that vendors developing new websites or applications are required to meet accessibility guidelines subject to rule R895 and correct any items that do not meet these guidelines at no cost to the agency; and Rule R895-14-1-4-2, which states that vendors proposing IT products and services shall provide Voluntary Product Accessibility Template® (VPAT™) documents. Contractor acknowledges that all Goods and Custom Deliverables that it licenses, contracts, or sells to DTS under this contract are accessible to people with disabilities.

- 60. **RIGHT TO AUDIT:** Contractor agrees to, upon written request, permit Division, or a third party designated by the Division, to perform an assessment, audit, examination, or review of all of Contractor's sites and environments - including physical, technical, and virtual sites and environments - in order to confirm Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel; physical premises; records; technical and physical infrastructures; and any other person, place, or object which may assist the Division or its designee in completing such assessment. In addition, upon request, Contractor shall provide the Division with the results of any audit performed by or on behalf of Contractor that would assist the Division or its designee in confirming Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards.
- 61. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
- 62. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions and prices of this Contract.
- 63. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
- 64. **QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
- 65. **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
- 66. **REPORTS AND FEES:**

- 1. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
- 2. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The quarterly report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address: salesreports@utah.gov.
- 3. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

- 4. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
- 5. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

If Services are applicable to this Contract, the following terms and conditions apply to this Contract:

- 67. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence.
- 68. **PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
- 69. **ADDITIONAL INSURANCE REQUIREMENTS:**
 - 1. Professional liability insurance in the amount as described in the Solicitation for this Contract, if applicable.
 - 2. Any other insurance policies described or referenced in the Solicitation for this Contract.

3. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any federal, state, or local statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.

4. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order. Contractor must provide proof of the above listed policies within thirty (30) days of being awarded this Contract.

70. STANDARD OF CARE: The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.

71. STATE REVIEWS, LIMITATIONS: The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor.

72. TRAVEL COSTS: The following will apply unless otherwise agreed to in the contract: All travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the Contractor for correction.

(Revision Date: April 16, 2018)

Washington-specific terms and conditions

NASPO ValuePoint Solicitation SK18001 – Data Communications Products & Services

The state of Washington intends to participate in the Master Agreement resulting from NASPO ValuePoint Solicitation SK18001 for Data Communications Products & Services. Washington's complete terms and conditions will be detailed in any Participating Addendum to a Master Agreement resulting from Solicitation SK18001.

Washington-Specific Terms and Conditions

1. Washington's Electronic Business Solution (WEBS).

Contractor represents and warrants that it is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of its information therein is current and accurate and that throughout the term of this Contract, Contractor shall maintain an accurate profile in WEBS.

2. Statewide Payee Desk.

Contractor represents and warrants that it is registered with the Statewide Payee Desk, which registration is a condition to payment.

3. Contract Sales Reporting. Contractor shall report total contract sales quarterly to Enterprise Services, as set forth below.

A. **REPORTING.** Contractor shall report quarterly Contract sales in Enterprise Services' [Contract Sales Reporting System](#). Enterprise Services will provide Contractor with a login password and a vendor number.

B. **DATA.** Each sales report must identify every authorized Purchasing Entity by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasing Entities specified herein during the term of this Participating Addendum. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.

C. **DUE DATES FOR CONTRACT SALES REPORTING.** Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

4. Vendor Management Fee.

Contractor shall pay to Enterprise Services a vendor management fee (“VMF”) of 1.50 percent on the purchase price for all sales (the purchase price is the total invoice price less applicable sales tax).

- D. The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:
- E. Amount owed to Enterprise Services = Total Contract sales invoiced (not including sales tax) x .0150.
- F. The VMF must be rolled into Contractor’s current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
- G. Enterprise Services will invoice Contractor quarterly based on Contract sales reported by Contractor. Contractors are not to remit payment until they receive an invoice from Enterprise Services. Contractor’s VMF payment to Enterprise Services must reference this Contract number, work request number (if applicable), the year and quarter for which the VMF is being remitted, and the Contractor’s name as set forth in this Contract, if not already included on the face of the check.
- H. Failure to accurately report total net sales, to submit a timely usage report, or remit timely payment of the VMF, may be cause for Contract termination or the exercise of other remedies provided by law. Without limiting any other available remedies, the Parties agree that Contractor’s failure to remit to Enterprise Services timely payment of the VMF shall obligate Contractor to pay to Enterprise Services, to offset the administrative and transaction costs incurred by the State to identify, process, and collect such sums. The sum of \$200.00 or twenty-five percent (25%) of the outstanding amount, whichever is greater, or the maximum allowed by law, if less.
- I. Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases, and reserves the right to renegotiate Contract pricing with Contractor when any subsequent adjustment of the VMF might justify a change in pricing.

5. Contractor Representations and Warranties

Contractor makes each of the following representations and warranties as of the effective date of this Participating Addendum and at the time any order is placed pursuant to the Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

- A. **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Contract and the three (3) year period immediately preceding the award of the Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.
- B. **PAY EQUALITY.** Contractor represents and warrants that, as required by Washington state law (Laws of 2017, Chap. 1, § 147), during the term of the Contract for the time period of July 1, 2017 through June 30, 2019, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees

are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Participating Addendum and Contract and any Purchaser hereunder similarly may suspend or terminate its use of the Contract and/or any agreement entered into pursuant to this Participating Addendum.

C. **SUSPENSION & DEBARMENT.** Contractor represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.

6. Compliance with Law; Taxes, Licenses, & Registration: Contractor shall comply with all applicable law. Contractor shall register to conduct business in the State of Washington and promptly acquire and maintain all necessary licenses and registrations and pay all applicable taxes and fees. In addition, for all sales to purchasers in the State of Washington, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.

7. Subcontractors

All Contractor's Distributors authorized in the State of Washington, as shown on the dedicated Contractor NASPO ValuePoint website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's Distributor's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

8. Public Information

This Contract and all related documents are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56.

9. OCIO Policy & Security Compliance

Contractor shall comply with Washington Office of the Chief Information Officer (OCIO) statewide information technology policies 141.10 – Securing Information Technology Assets Standards and 188 - Accessibility, as applicable, for Purchasing Entity and for Contractor's Product(s) implemented by Purchasing Entity. Such policies are located on the OCIO website at: <https://ocio.wa.gov/policies>.

Prior to final execution of a Washington State Agency's Order with a Contractor, the Contractor's Product(s), as implemented by the Washington State Agency, will be subject to a security design

review performed by Washington Consolidated Technology Services to ensure compliance with OCIO Policy 141.10 - Securing Information Technology Assets Standards.



**NASPO ValuePoint
INTENT TO PARTICPATE
Cooperative Contract(s) for**

Data Communications Products & Services (2019-2024)

I. PURPOSE

The purpose of this Agreement is to provide interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for the **Data Communications Products & Services**.

II. SCOPE OF THE CONTRACT(S)

The State of Utah is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for **Data Communications Products & Services**.

The resulting contracts will be permissive contracts.

Administrative Fee

There will be a 0.25% NASPO ValuePoint administrative fee associated with these contracts. It is anticipated that the individual states will be able to add an administrative fee when the state executes its Participating Addendum.

III. TERM OF THE CONTRACT

The initial term of the contract will be established for five (5) years from the date of award with options to extend the contract for (2) two additional years.

IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION

The solicitation and contract development shall be accomplished in compliance with the NASPO ValuePoint Process Guide and the NASPO Memorandum of Agreement for the NASPO cooperative purchasing program, incorporated herein by reference.

Solicitation Publication Period

Bidders/Offerors will be given at least 40 days after publication to submit proposals.

Solicitation Type and Evaluation Criteria

This RFP will be issued and evaluated in concert with the procurement laws and rules of the State of Utah by a sourcing team comprised of members from several states.

Award(s)

The solicitation will permit multiple awards.

Additional Requested Information

State Specific Terms and Conditions: If the participating state wishes to include any State specific terms and conditions with the release of this RFP, please attach those with this Intent to Participate.

Annual Estimated Volume: If your State has an existing contract for this commodity or service, please indicate your annual volume of spend (including any potential political subdivision usage if available).

Annual State Spend 16,000,0000.00

Annual Political Subdivision Spend 16,000,000.00

Total Spend 32,000,000.00

State of Minnesota

Ms. Betsy Hayes, Chief Procurement Officer

Director Name

651.201.2400

Director Phone

Betsy.Hayes@state.mn.us

Director Email

Director has approved ITP to be submitted? Yes No
(Click appropriate box)

State Specific T&Cs to be included in RFP? Yes No
(Click appropriate box)

Mike Brick, Acquisitions Management Specialist

State Point of Contact Name and Title

651.201.2445

Phone

mike.brick@state.mn.us

Email

Please email completed “Intent to Participate” document by **Tuesday, July 10, 2018** to:

Shannon Berry

Cooperative Development Coordinator

NASPO ValuePoint

sberry@naspovaluepoint.org



**NASPO ValuePoint
INTENT TO PARTICIPATE
Cooperative Contract(s) for**

Data Communications Products & Services (2019-2024)

I. PURPOSE

The purpose of this Agreement is to provide interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for the **Data Communications Products & Services**.

It is the intent of the State of Maryland (the “State”) to participate in this joint procurement for Data Communications Products & Services through NASPO in order to obtain the most optimal cost savings and/or reductions in administrative expense for the overall benefit of the State and any of its public bodies, meaning any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or other political subdivision created by law to exercise some sovereign power or to perform some governmental duty (“Public Body”). "Public body" shall include (i) any independent agency of the State.

Additionally, and consistent with the Code of Maryland (the Code), the State’s intent is also to help ensure that all qualified State vendors have access to public business and that no Offeror be arbitrarily or capriciously excluded, and that competition be sought for Maryland businesses to the maximum feasible degree.

To ensure maximum transparency and public access for all State procurement activities and business opportunities, and consistent with Code, the State and any authorized state agency or other Maryland Public Body, hereinafter defined as Authorized Users, shall be required to submit any order directly with a contractor through the State’s central electronic procurement website, eMaryland Marketplace (“eMM”) or any then-current State eProcurement program, and the details for this will be delineated in the ordering instructions at such time that the State may deem it in its best interest to execute a future Participating Addendum (PA).

II. SCOPE OF THE CONTRACT(S)

The State of Utah is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for **Data Communications Products & Services**.

The resulting contracts will be permissive contracts.

Administrative Fee

There will be a 0.25% NASPO ValuePoint administrative fee associated with these contracts. It is anticipated that the individual states will be able to add an administrative fee when the state executes its Participating Addendum.

III. TERM OF THE CONTRACT

The initial term of the contract will be established for five (5) years from the date of award with options to extend the contract for (2) two additional years.

IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION

The solicitation and contract development shall be accomplished in compliance with the NASPO ValuePoint Process Guide and the NASPO Memorandum of Agreement for the NASPO cooperative purchasing program, incorporated herein by reference.

Solicitation Publication Period

Bidders/Offerors will be given at least 40 days after publication to submit proposals.

Solicitation Type and Evaluation Criteria

This RFP will be issued and evaluated in concert with the procurement laws and rules of the State of Utah by a sourcing team comprised of members from several states.

Award(s)

The solicitation will permit multiple awards.

Additional Requested Information

State Specific Terms and Conditions: Maryland specific terms and conditions are attached with this Intent to Participate, for release with this RFP.

Annual Estimated Volume: If your State has an existing contract for this commodity or service, please indicate your annual volume of spend (including any potential political subdivision usage if available).

Annual State Spend	\$20MM (estimated)
Annual Political Subdivision Spend	No data available
Total Spend	\$20MM (Estimated)

State of Maryland

Robert E. Gleason

Director Name

(410) 260-3910

Director Phone

sachin.bhatt3@maryland.gov

Director Email

Director has approved ITP to be submitted? Yes No

(Click appropriate box)

State Specific T&Cs to be included in RFP?

Yes No

(Click appropriate box)

Sachin Bhatt

State Point of Contact Name and Title

410.697.9680

Phone

sachin.bhatt3@maryland.gov

Email

Please email completed "Intent to Participate" document by **Tuesday, July 10, 2018** to:

Shannon Berry

Cooperative Development Coordinator

NASPO ValuePoint

sberry@naspovaluepoint.org

The Code of Maryland Regulations identify the Mandatory Terms and Conditions in 21.07.01.
Please see the following pages for such terms and conditions.

Title 21
STATE PROCUREMENT REGULATIONS

Subtitle 07 CONTRACT TERMS AND CONDITIONS

Chapter 01 Mandatory Contract Provisions — All Contracts (except as provided under COMAR 21.05.07, 21.07.02, and 21.07.03)

Authority:

Election Law Article, §§14-101—14-108;
State Finance and Procurement Article, §§12-101, 13-211, 13-217—13-219, 13-221—13-223, 13-317, 16-202, 17-401, 17-402, and 19-114; and
State Government Article, §§15-502 and 15-503; Annotated Code of Maryland

.01 Parties to the Contract.

Mandatory provision for all contracts.

.02 Scope of Contract.

Mandatory provision for all contracts. This provision shall reflect the unilateral right of the State to order in writing changes in the work within the scope of the contract.

.03 Compensation and Method of Payment.

Mandatory provision for all contracts. The contractor's taxpayer identification number consisting of the Social Security number for individuals and sole proprietors and the federal employer identification number for all other types of organizations shall be indicated in this clause.

.04 Contract Modifications.

Mandatory provision for all contracts.

.05 Non-Hiring of Officials and Employees.

Mandatory provision for all contracts: "No official or employee of the State of Maryland, as defined under State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the contractor or any entity that is a subcontractor on this contract."

.06 Disputes.

Mandatory provision for all contracts. One of the following clauses is preferred:

A. Alternate Disputes Clause (short form). "This contract shall be subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision."

B. Alternate Disputes Clause (long form).

"(1) This contract is subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies).

(2) Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this clause.

(3) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.

(4) A claim shall be made in writing and submitted to the procurement officer for decision in consultation with the Office of the Attorney General.

(5) When a claim cannot be resolved by mutual agreement, the contractor shall submit a written request for final decision to the procurement officer. The written request shall set forth all the facts surrounding the controversy.

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(6) The contractor, at the discretion of the procurement officer, may be afforded an opportunity to be heard and to offer evidence in support of his claim.

(7) The procurement officer shall render a written decision on all claims within 180 days of receipt of the contractor's written claim, unless the procurement officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within 180 days, the procurement officer shall notify the contractor of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The procurement officer's decision shall be deemed the final action of the State.

(8) The procurement officer's decision shall be final and conclusive unless the contractor mails or otherwise files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of the decision.

(9) Pending resolution of a claim, the contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision."

.07 Maryland Law Prevails.

Mandatory provision for all contracts unless otherwise authorized by the Board of Public Works.

.08 Nondiscrimination in Employment.

Mandatory provision for all contracts. The following clause is preferred:

"The Contractor agrees:(a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry genetic information or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection(a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause."

.09 Contingent Fee Prohibition.

Mandatory provision for all contracts:

"The contractor, architect, or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the contractor, architect, or engineer, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement."

.10 Multi-Year Contracts Contingent Upon Appropriations.

Mandatory provision for all contracts and contract modifications to be effective in more than one fiscal year:

"If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first."

.11 Termination for Default.

Mandatory provision for all contracts. One of the following clauses is preferred:

A. Alternate Clause — Termination for Default (short form).

"If the Contractor fails to fulfill its obligation under this contract properly and on time, or otherwise violates any provision of the contract, the State may terminate the contract by written notice to the Contractor. The notice shall specify the acts or

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omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B."

B. Alternate Clause — Termination for Default (long form).

"(1) The State may, subject to the provisions of paragraph (3) of this regulation, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:(a) If the Contractor fails to perform within the time specified herein or any extension thereof; or (b) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the procurement officer may authorize in writing) after receipt of notice from the procurement officer specifying such failure.

"(2) In the event the State terminates this contract in whole or in part as provided in paragraph(1) of this clause, the State may procure substitute performance upon terms and in whatever manner the procurement officer may deem appropriate, and the Contractor shall be liable to the State for any excess costs for substitute performance; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

"(3) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the State in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform shall be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if the default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless substitute performance for the subcontractor was obtainable from another source in sufficient time to permit the Contractor to meet the performance schedule.

"(4) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the State, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

"(5) If this contract is terminated as provided in paragraph(1) of this clause, the State, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the State, in the manner, at the times, and to the extent, if any, directed by the procurement officer,(a) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the State; and the Contractor shall, upon direction of the procurement officer, protect and preserve property in the possession of the Contractor in which the State has an interest. Payment for completed supplies delivered to and accepted by the State shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the State and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and procurement officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The State may withhold from amounts otherwise due the Contractor hereunder such sum as the procurement officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

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"(6) The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

"(7) As used in paragraph (3) of this clause, the terms, "subcontractor" and "subcontractors" mean subcontractor(s) at any tier."

.12 Termination for Convenience.

A. Except as provided in §B of this regulation, mandatory provision for all contracts. One of the following clauses is preferred:

(1) Alternate Clause — Termination for Convenience (short form).

"The performance of work under this contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2)."

(2) Alternate Clause — Termination for Convenience (long form).

"(1) The performance of work under this contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work is terminated and the time when such termination becomes effective.

"(2) After receipt of a Notice of Termination, and except as otherwise directed by the procurement officer, the Contractor shall:

(a) stop work as specified in the Notice of Termination;

(b) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of the work under the contract as is not terminated;

(c) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(d) assign to the State, in the manner, at times, and to the extent directed by the procurement officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the State shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(e) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the procurement officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(f) transfer title and deliver to the State, in the manner, at the times, and to the extent, if any, directed by the procurement officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the State;

(g) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the procurement officer, any property of the types referred to in (f) above; provided, however, that the Contractor (i) may not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the procurement officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the State to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the procurement officer may direct;

(h) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

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(i) take any action that may be necessary, or as the procurement officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the State has or may acquire an interest.

The Contractor shall submit to the procurement officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the procurement officer, and may request the State to remove them or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the State shall accept title to these items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the procurement officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made before final settlement.

"(3) After receipt of a Notice of Termination, the Contractor shall submit to the procurement officer his termination claim, in the form and with certification prescribed by the procurement officer. This claim shall be submitted promptly but in no event later than one(1) year from the effective date of termination, unless one or more extensions in writing are granted by the procurement officer, upon request of the Contractor made in writing within the one-year period or authorized extension thereof. ~~However, if the procurement officer determines that the facts justify such action, he may receive and act upon any such~~ termination claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the procurement officer may determine the claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the procurement officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

"(4) Subject to the provisions of paragraph (3), the Contractor and the procurement officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (5) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the procurement officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts that may be agreed upon to be paid to the Contractor pursuant to this paragraph.

"(5) In the event of the failure of the Contractor and the procurement officer to agree as provided in paragraph (4) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the procurement officer shall pay to the Contractor the amounts determined by the procurement officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (4):

(a) for completed supplies or services accepted by the State (or sold or acquired as provided in paragraph (2)(g) above) and for which payment has not theretofore been made, a sum equivalent to the aggregate price for the supplies or services computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(b) the total of:

(i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph (5)(a) hereof;

(ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (2)(e) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors before the effective date of the Notice of Termination, which amounts shall be included in the costs payable under(i) above); and

(iii) a sum, as profit on(i) above, determined by the procurement officer to be fair and reasonable; provided, however, that if it appears that the contractor would have sustained a loss on the entire contract had it been completed, no profit shall be

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included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(c) the reasonable cost of settlement accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (a) and (b) of this paragraph shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the State shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (5)(a) and (b)(i) above, the fair value, as determined by the procurement officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the State or to a buyer pursuant to paragraph (2)(g).

"(6) Costs claimed, agreed to, or determined pursuant to (3), (4), (5) and (11) hereof shall be in accordance with COMAR 21.09 (Contract Cost Principles and Procedures) as in effect on the date of this contract.

"(7) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the procurement officer under paragraph (3), (5), or (9) hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph (3) or (9) hereof, and has failed to request extension of the time, he shall have no right of appeal. In any case where the procurement officer has made a determination of the amount due under paragraph (3), (5), or (9) hereof, the State shall pay to the Contractor the following: (a) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the procurement officer, or (b) if an appeal has been taken, the amount finally determined on such appeal.

"(8) In arriving at the amount due the Contractor under this clause there shall be deducted (a) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (b) any claim which the State may have against the Contractor in connection with this contract, and (c) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the State.

"(9) If the termination hereunder be partial, the Contractor may file with the procurement officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the procurement officer.

"(10) The State may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the procurement officer the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the State upon demand, together with interest computed at the prime rate established by the State Treasurer for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the State; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or a later date as determined by the procurement officer by reason of the circumstances.

"(11) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall—from the effective date of termination until the expiration of three years after final settlement under this contract—preserve and make available to the State at all reasonable times at the office of the Contractor but without direct charge to the State, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the procurement officer, reproductions thereof."

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B. Leases of Real Property.

(1) Inclusion of a termination for convenience clause in a real property lease is discretionary with the Board of Public Works, upon recommendation of the Secretary of General Services.

(2) In recommending the exclusion of a termination for convenience clause in a real property lease, the Secretary shall consider such factors as:

(a) The practicality of including the termination for convenience clause in a lease of real property located in another state or overseas when the demand for property of a particular type or in some particular geographic location is extremely intense, or when the contents of a lease are established by a foreign government and are effectively non-negotiable, or both;

(b) The perception of some landlords that the termination for convenience clause permits the State to unilaterally convert a fixed term lease to a day-to-day lease; or

(c) The prospects that some lending institutions may reject loan requests from landlords owning property that the State might wish to lease but that must be first upgraded at the owner's expense to meet State User Agency Requirements.

.13 Delays and Extensions of Time.

Mandatory provision for all contracts. It shall be in substantially the same form as follows:

"Delays and Extensions of Time"

"The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

"Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers."

.14 Liquidated Damages.

Mandatory provision for all contracts with certified MBE participation goals and any other contracts deemed appropriate by the procurement officer in consultation with the Office of the Attorney General.

.15 Variations in Estimated Quantities.

Mandatory provision for all contracts that contain estimated quantity items.

.16 Suspension of Work.

Mandatory provision for all contracts. It shall be in substantially the same form as follows:

"The procurement officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the State."

.17 Pre-existing Regulations.

Mandatory provision for all contracts. It shall be in substantially the same form as follows:

"In accordance with the provisions of §11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract."

.18 Payment of State Obligations.

Mandatory provision for all contracts. The following clause is preferred:

"Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor."

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The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

(1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and

(2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

(1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or

(2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable."

.19 Financial Disclosure.

Mandatory provision for all contracts:

"The Contractor shall comply with the provisions of §13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business."

.20 Political Contribution Disclosure.

Mandatory provision for all contracts:

"The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing:(a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contribution in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections:(a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before:(i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Election website: http://www.elections.state.md.us/campaign_finance/index.html."

.21 Retention of Records.

Mandatory provision for all contracts. The following clause is preferred:

"The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer or designee, at all reasonable times."

.22 Compliance with Laws.

Mandatory provision for all contracts. The following clause is preferred:

"The Contractor hereby represents and warrants that:

"A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

"B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

"C. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

CONTRACT TERMS AND CONDITIONS

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"D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract."

.23 Cost and Price Certification.

Mandatory provision for all contracts and contract modifications (excluding real property leases and architectural services or engineering services contracts (see Regulation .24)) if the contract or modification exceeds \$100,000 or a smaller amount determined by the procurement officer under State Finance and Procurement Article, §13-220. The language shall be in substantially the same form as follows:

"Cost and Price Certification"

"A. The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

"(1) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer; or

~~"(2) A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer.~~

"B. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current."

.24 Truth-In-Negotiation Certification.

Mandatory provision for architectural services or engineering services contracts exceeding \$100,000. It shall be in substantially the same form as follows:

"Truth-In-Negotiation Certification"

"The Contractor by submitting cost or price information, including wage rates or other factual unit costs, certifies to the best of its knowledge, information and belief, that:

"A. The wage rates and other factual unit costs supporting the firm's compensation, as set forth in the proposal, are accurate, complete and current as of the contract date;

"B. If any of the items of compensation were increased due to the furnishing of inaccurate, incomplete or noncurrent wage rates or other units of costs, the State is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. The State's right to adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor; and

"C. If additions are made to the original price of the contract, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete or noncurrent wage rates and other factual costs."

.25 Contract Affidavit.

Mandatory contract addendum. The contract addendum shall be in substantially the same form as follows and submitted upon initial award and each renewal thereafter:

A. AUTHORITY

I HEREBY AFFIRM THAT:

I, (print name) _____ possess the legal authority to make this Affidavit.

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

STATE PROCUREMENT REGULATIONS

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The business named above is a (check applicable items):

- (1) Corporation — ___ domestic or ___ foreign;
- (2) Limited Liability Company — ___ domestic or ___ foreign;
- (3) Partnership — ___ domestic or ___ foreign;
- (4) Statutory Trust — ___ domestic or ___ foreign;
- (5) ___ Sole Proprietorship

and is registered or qualified as required under Maryland Law.

I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID

Number: _____

Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: _____

Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

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(2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

- (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;
- (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:

- (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business's policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), of this regulation;
- (h) Notify its employees in the statement required by §E(2)(b), of this regulation, that as a condition of continued employment on the contract, the employee shall:
- (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), of this regulation, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §E(2)(h)(ii), of this regulation, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
- (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program;

and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), of this regulation.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), of this regulation, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
- (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

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(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 20____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (printed name of Authorized Representative and affiant)

_____ (signature of Authorized Representative and affiant)

.26 Commercial Nondiscrimination Clause.

A. The following provision is mandatory for all State contracts and subcontracts: "As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. The following provision is mandatory for all State contracts: "As a condition of entering into this Agreement, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions."

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Administrative History

Effective date: July 1, 1981 (8:13 Md. R. II-5)

Regulation .09A amended effective May 6, 1985 (12:9 Md. R. 816)

Chapter revised effective January 9, 1989 (15:27 Md. R. 3138)

Regulation .03 amended effective August 2, 1993 (20:15 Md. R. 1221)

Regulation .05 amended effective October 2, 2000 (27:19 Md. R. 1730); July 9, 2001 (28:13 Md. R. 1216)

Regulation .08 amended effective December 25, 2000 (27:25 Md. R. 2284); January 2, 2017 (43:26 Md. R. 1449)

Regulation .11A amended effective November 22, 1993 (20:23 Md. R. 1086)

Regulation .12A amended effective November 22, 1993 (20:23 Md. R. 1086)

Regulation .14 amended effective May 13, 2013 (40:9 Md. R. 789)

Regulation .18 amended effective January 2, 2017 (43:26 Md. R. 1449)

Regulation .20 amended effective January 26, 1998 (25:2 Md. R. 79); December 25, 2000 (27:25 Md. R. 2284); January 2, 2017 (43:26 Md. R. 1449)

Regulation .25 amended effective October 1, 1990 (17:19 Md. R. 2322); August 2, 1993 (20:15 Md. R. 1221); August 8, 2011 (38:16 Md. R. 946); May 13, 2013 (40:9 Md. R. 789)

Regulation .25D amended effective January 2, 2017 (43:26 Md. R. 1449)

Regulation .26 adopted as an emergency provision effective August 8, 1997 (24:18 Md. R. 1294); emergency status rescinded effective October 16, 1997 (24:23 Md. R. 1608)

Regulation .26 adopted effective March 12, 2007 (34:5 Md. R. 562)

Regulation .26A amended effective January 2, 2017 (43:26 Md. R. 1449)

Regulation .26B amended effective March 5, 2012 (39:4 Md. R. 338)

STATE OF CALIFORNIA
PARTICIPATING ADDENDUM NUMBER 7-20-70-47-03
DATA COMMUNICATIONS
Utah NASPO ValuePoint Master Agreement Number AR3230
Extreme Networks, Inc. (Contractor)

This Participating Addendum Number 7-20-70-47-03 is entered into between the state of California, Department of General Services (hereafter referred to as "State" or "DGS") and Extreme Networks, Inc. (hereafter referred to as "Contractor") under the lead state of Utah NASPO ValuePoint Master Agreement Number AR3230.

1. SCOPE

- A. This Participating Addendum covers the purchase of Data Communications products and associated services under the Utah NASPO ValuePoint Master Agreement. The Utah NASPO ValuePoint Master Agreement Number AR3230 is hereby incorporated by reference. Product/service categories included under this Participating Addendum are identified in Section 5 (Available Products and Services).
- B. This Participating Addendum is available for use by California state agencies and local governments. A local government is defined as any city, county, city and county, district, or other local governmental body, school district or corporation empowered to expend public funds. The State Agency Listing (<https://www.ca.gov/agenciesall/>) provides a comprehensive list of state agencies.
- C. Each local government is to make its own determination whether this Participating Addendum and the Utah NASPO ValuePoint Master Agreement are consistent with its procurement policies and regulations.

2. TERM

- A. The term of this Participating Addendum shall begin June 1, 2020, or upon signature approval by the State, whichever is later and will end September 30, 2024, or upon termination by the State, whichever occurs first.
- B. Lead State amendments to extend the NASPO ValuePoint Master Agreement term date are not automatically incorporated into this Participating Addendum. Extension(s) to the term of this Participating Addendum will be through a written amendment upon mutual agreement between the State and the Contractor.
- C. Order placement and execution shall be on or before the expiration of this Participating Addendum. However, delivery of products or completion of services may be after the Participating Addendum expiration date.

Participating Addendum 7-20-70-47-03

3. TERMS AND CONDITIONS/INCORPORATION OF DOCUMENTS

A. Terms and conditions listed below are hereby incorporated by reference and made a part of this Participating Addendum as if attached herein and shall apply to the purchase of goods or services made under this Participating Addendum.

- 1) General Provisions – Information Technology (GSPD-401IT) effective 9/5/2014. This document can be viewed on the DGS Procurement Division website (<https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Model-Contract-Language>).

4. ORDER OF PRECEDENCE

A. In the event of any inconsistency between the articles, attachments, or provisions which constitute this agreement, the following descending order of precedence shall apply:

- 1) California Participating Addendum Number 7-20-70-47-03
- 2) Utah NASPO ValuePoint Master Agreement Number AR3230

5. AVAILABLE PRODUCTS AND SERVICES

A. The following product and service categories are listed in the Utah NASPO ValuePoint Master Agreement AR3230:

- 1) Category 1.2 Networking
- 2) Category 1.3 Routers, Switches, Security, and Storage Networking
- 3) Category 1.4 Wireless

6. RESTRICTIONS/DISALLOWED PRODUCTS AND SERVICES

A. The following product and service offerings are prohibited under this Participating Addendum.

- 1) Leasing
- 2) Cloud solutions

These restrictions are not applicable to local governments.

B. Products and services that are available on the California Network and Telecommunications (CALNET) Program and mandatory California statewide contracts cannot be purchased from this Participating Addendum by non-exempt state agencies without an exemption.

State agencies are responsible for contacting the California Department of Technology (CDT) for CALNET contract exemptions and the DGS Procurement Division for mandatory statewide contract exemptions in accordance with the published User Instructions prior to issuing a purchase order.

This restriction is not applicable to local governments.

Participating Addendum 7-20-70-47-03

- C. Services that fall within the definition of "public works" as defined in Public Contract Code, Section 1101 and Labor Code Section 1720 are disallowed under this cooperative agreement and must be procured by alternate means.

This restriction is not applicable to local governments.

7. PRICING

Contractor is responsible for maintaining a current price list of available products and services on the NASPO ValuePoint Data Communications 2019-2026 website.

8. AUTHORIZED RESELLERS

- A. Contractor may use State-approved Authorized Resellers under this Participating Addendum for sales and service functions as defined herein.
 - 1) Authorized Resellers must accept purchase orders and accept payment from ordering agencies for products and services offered under this Participating Addendum.
 - 2) Authorized Resellers are responsible for sending a copy of all purchase orders and invoices to the Contractor for compliance with quarterly usage reporting and administrative fee requirements.
 - 3) All purchase documents to Authorized Resellers shall reference the Participating Addendum Number and Contractor Name.
- B. Contractor shall be responsible for successful performance and compliance with all requirements in accordance with the terms and conditions under this Participating Addendum, even if work is performed by Authorized Resellers. All State policies, guidelines, and requirements shall apply to Authorized Resellers.
- C. Contractor will be the sole point of contact with regard to Participating Addendum contractual matters, reporting, and administrative fee requirements.
- D. Subject to the approval of the State, Authorized Resellers may be added on a quarterly basis during the term of the contract. Contractors shall notify the State of any deleted Authorized Resellers or changes to current Authorized Resellers' contact information in writing at any time during the contract term.
- E. Contractor will be required to submit Authorized Reseller requests, in a format specified by the State, to the State Contract Administrator for approval.
- F. State-approved Authorized Resellers will be posted on the State's Cal eProcure website.

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9. SUBCONTRACTORS

The Contractor shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted.

10. ORDERING AGENCY RESPONSIBILITIES

- A. State agency and local government use of this Participating Addendum is optional.
- B. State agencies and local governments must follow the ordering procedures outlined within the User Instructions guide, administered by the State Contract Administrator, to execute orders against this Participating Addendum. User Instructions are posted on the State's Cal eProcure website.

11. STATE AGENCY BUY RECYCLED CAMPAIGN (SABRC)

- A. State agencies are required to report purchases made within the eleven product categories in the California Department of Resources Recycling and Recovery's State Agency Buy Recycled Campaign (SABRC) per Public Contract Code sections 12200-12217.
- B. Contractor will be required to complete and return a Recycled-Content Certification form (<https://www.calrecycle.ca.gov/contracts/forms>) upon request by a state agency.

12. DELIVERY

- A. Delivery shall occur within 30 days after receipt of order, or as negotiated between ordering agency and contractor and included in the purchase order, or as otherwise stipulated in the NASPO ValuePoint Master Agreement.
- B. Free On Board (F.O.B.) Destination to the ordering agency's receiving point.

13. INVOICING AND PAYMENT

- A. Payment terms for this Participating Addendum are net 45 days. Payment will be made in accordance with IT General Provisions Paragraph 30 (Required Payment Date).
- B. Invoices shall be sent to the address identified in the ordering agency's purchase order. The State Participating Addendum Number and ordering agency purchase order number shall appear on each invoice for all purchases placed under this Participating Addendum.
- C. Contractor does not accept the State of California credit card (CAL-Card) for payment of invoices.

Participating Addendum 7-20-70-47-03**14. USAGE REPORTING**

- A. Contractor shall submit usage reports on a quarterly basis to the State Contract Administrator for all California entity purchases using the report template attached hereto as Attachment A. The report is due even when there is no activity.
- B. The DGS Contract Administrator reserves the right to modify Attachment A and require Contractor to provide additional order information during the course of this Agreement.
- C. The report shall be an Excel spreadsheet transmitted electronically to the DGS Cooperatives mailbox (PDCooperatives@dgs.ca.gov).
- D. Any report that does not follow the required format or that excludes information will be deemed incomplete. Contractor will be responsible for submitting corrected reports within five business days of the date of written notification from the State.
- E. Tax must not be included in the report, even if it is on the purchase order.
- F. Reports are due for each quarter as follows:

Reporting Period	Due Date
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

- G. Failure to meet reporting requirements and submit the reports on a timely basis shall constitute grounds for suspension of this contract.
- H. Time extensions may be approved only if all due reports have been submitted to the State.

15. ADMINISTRATIVE FEE

- A. Contractor shall submit a check, payable to the State of California, remitted to the Cooperative Agreement Unit for the calculated amount equal to 1.25% of the sales for the quarterly period.
- B. Contractor must include the Participating Addendum Number on the check. Those checks submitted to the State without the Participating Addendum Number will be returned to Contractor for additional identifying information.

Participating Addendum 7-20-70-47-03

C. Administrative fee checks shall be submitted to:

State of California
Department of General Services, Procurement Division
Attention: Cooperative Agreement Program
707 3rd Street, 2nd Floor, MS 2-202
West Sacramento, CA 95605

D. The administrative fee shall not be included as an adjustment to Contractor's NASPO ValuePoint Master Agreement pricing.

E. The administrative fee shall not be invoiced or charged to the ordering agency.

F. Payment of the administrative fee is due irrespective of payment status on orders or service contracts from a purchasing entity.

G. Administrative fee checks are due for each quarter as follows:

Reporting Period	Due Date
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

H. Failure to meet administrative fee requirements and submit fees on a timely basis shall constitute grounds for suspension of this contract.

16. CONTRACT MANAGEMENT

A. The primary Contractor Contract Manager for this Participating Addendum shall be as follows:

Contractor	Contract Manager
Name:	Michael Swierk
Phone:	(603) 952-5221
Email	mswierk@extremenetworks.com
Address:	Extreme Networks, Inc. 6480 Via Del Oro San Jose, CA 95119

Participating Addendum 7-20-70-47-03

B. The State Contract Administrator for this Participating Addendum shall be as follows:

State	Contract Administrator
Name:	Julie Matthews
Phone:	(916) 375-4612
Email	Julie.Matthews@dgs.ca.gov
Address:	State of California Department of General Services Procurement Division 707 Third Street, 2nd Floor, MS 2-202 West Sacramento, CA 95605

C. Should the contact information for either party change, the party will provide written notice with updated information no later than ten business days after the change.

17. TERMINATION OF AGREEMENT

The State may terminate this Participating Addendum at any time upon 30 days prior written notice to the Contractor. Upon termination or other expiration of this Participating Addendum, each party will assist the other party in orderly termination of the Participating Addendum and the transfer of all assets, tangible and intangible, as may facilitate the orderly, non-disrupted business continuation of each party. This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

18. AMENDMENT

No amendment or variation of the terms of this Participating Addendum shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Participating Addendum is binding on any of the parties.

19. AGREEMENT

A. This Participating Addendum and the Master Agreement together with its exhibits and/or amendments, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Master Agreement, together with its exhibits and/or amendments, shall not be added to or incorporated into this Participating Addendum or the Master Agreement and its exhibits and/or

Participating Addendum 7-20-70-47-03

amendments, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Master Agreement and its exhibits and/or amendments shall prevail and govern in the case of any such inconsistent or additional terms.

B. By signing below Contractor agrees to offer the same products/and or services as on the Utah NASPO ValuePoint Master Agreement Number AR3230, at prices equal to or lower than the prices on that contract.

C. IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

STATE OF CALIFORNIA

CONTRACTOR

Department of General Services

Extreme Networks, Inc.

Agency Name

Contractor Name

[Signature] *6-18-2020*

[Signature] *6/15/2020*

Authorized Signature *Date Signed*

Authorized Signature *Date Signed*

PATRICK B. MILLER *MANAGER MARS*

Dave Doolittle *SVP Americas*

Printed Name/Title of Person Signing

Printed Name/Title of Person Signing

707 Third Street
West Sacramento, CA 95605

6480 Via Del Oro
San Jose, CA 95119

Address

Address

ATTACHMENT A
Usage Report: Data Communications (2019-2026)

Contract Number:
Contractor:
Reporting Period:
Report Value:
Administrative Fee:

Ordering Agency Name	State/Local Spend	Purchase Order / Service Contract Number	Order Date	Category	Manufacturer Part Number (OEM #)	Item Description	Quantity	List Price/MSRP	Contract Unit Price	Extended Contract Price Paid (Quantity x Unit Price)	Index Date / Catalog Version

ATTACHMENT A
Usage Report: Data Communications (2019-2026)

Template Key

Column Number	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J	Column K	Column L
Description	Ordering Agency Name	State/Local Spend	Purchase Order / Service Contract Number	Order Date	Category	Manufacturer Part Number (OEM #)	Item Description	Quantity	List Price/MSRP	Contract Unit Price	Extended Contract Price Paid	Index Date / Catalog Version
	State Agency or Local Government name as described on the purchase document	Identify ordering agency as a "State" or "Local Government" entity, as applicable.	Ordering agency's unique purchase order or service contract number associated with item(s) purchased.	Date the ordering agency placed the order.	Category for each line item (commodity/service) that includes Contractor respective percent discount off MSRP. This identifier should match the Category provided in the Contractor's Master Agreement.	Manufacturer's unique identifier for the line item.	Information about commodity/service purchased. Narrative should be descriptive enough to validate consistency with the Category/ Group ID stated in Column E	Quantity purchased for each line item. All returned items are reported as a negative number. For service contracts, identify term in months.	An independently verifiable public price (MSRP) available to the general public. When providing usage reports, this information should reflect list prices at time of order.	This is the price paid for given line item.	Total Price (Quantity X Contract Unit Price); (Column H x Column J)	Price or catalog effective date. Helps DGS track index price changes (historical frame of reference)
Format	Text	Text	Variable Characters	Date	Variable Characters	Variable Character	Variable Character	Number	Currency	Currency	Currency	Date / Variable Character
Example	Department of General Services	State	2832820	4/30/2013	1.2	ISINK34	Application Services	1	\$55.00	\$48.95	\$48.95	7/19/2012
Example	Department of General Services	State	2832820	4/30/2013	1.2	M1000	3-year Maintenance	1	\$300	\$270.00	\$610.00	7/19/2012
Example	Department of General Services	State	2832820	4/30/2013	1.3	IS330A1 + SP10	1-year Maintenance	1	\$48.00	\$24.96	\$698.56	7/19/2012

Contract Number: _____
 Participating Addendum Number _____
 Contractor Name _____
 Reporting Period: _____
 Reporting Quarter _____
 Report Value: _____
 Total Sales for Reporting Period _____
 Administrative Fee: _____
 1.25% of Total Sales



CITY COUNCIL AGENDA REPORT

CITY COUNCIL

Mike Nelson, Mayor
Danny Ambriz Tyler Button
John Cale Brian Raymond

MEETING DATE: March 27, 2023
TO: Mayor and City Council
FROM: Greg Thompson, Community Development Director
PREPARED BY: Jim Vang
SUBJECT: **Authorizing Fee Credit Agreement with Sukhdeep Khatra for 1960 Green Sands Avenue Project** (Community Development Director Thompson)

RECOMMENDED COUNCIL ACTION

Approves a Fee Credit Agreement, in a form approved by City Attorney, with Sukhdeep Khatra for 1960 Green Sands Avenue Project; and authorizes and directs the City Manager, or her designee, to execute the agreement on behalf of the City.

I. BACKGROUND/ANALYSIS:

The City, pursuant to Resolution No. PC 0130-20, has approved Site Plan 20-1-0200 for Sukhdeep Khatra's project known as Gas Station/Mini Mart 1960 Green Sands Avenue located on APN:005-120-054 and 005-120-055. The project requires the developer to install various improvements for the benefit of the project and property. The developer and City have concluded that the developer should relocate and construct certain oversized sanitary sewer and water service improvements. This will proportionally benefit other properties within the City and therefore properly the subject of this Fee Credit Agreement (Exhibit "A").

The Developer is willing to advance the cost of designing, financing, constructing, installing, inspecting and bonding for the approved improvements. The sum \$32,135.77 (which is equivalent to the maximum amount of eligible fee credits for sewer and water connection fees that would otherwise be required of Developer, plus an inspection fee credit) is a fair and equitable fee credit amount for the Developer's costs of relocating and oversizing the sanitary sewer and water services for the benefit of future development.

II. FISCAL IMPACTS:

At the time the Developer pays their Development Impact Fees, the amount for the sewer and water connection fees will be credited against the total Development Impact Fees due (no money will be expended by the City).

This item has been reviewed by the Finance Department.

III. LEGAL REVIEW:

This item was reviewed by the City Attorney's office.

IV. EXISTING POLICY:

This item is consistent with goal number one (1) of the City's Strategic Plan: to ensure the City's continued financial stability.

V. ALTERNATIVES:

VI. INTERDEPARTMENTAL COORDINATION:

N/A

VII. PUBLIC PARTICIPATION:

The public will have an opportunity to provide comments on this item prior to City Council action.

VIII. ENVIRONMENTAL REVIEW:

This item is considered an exempt activity under provision of the California Environmental Quality Act (CEQA) under Section 15301 "existing facilities" therefore not subject to further analysis. Further, any other necessary or required environmental review will occur prior to any specific project approval. This item is not a "project" under the California Environmental Quality Act (CEQA) as this activity does not cause either a direct physical change in the environment, or a reasonable foreseeable indirect physical change in the environment, pursuant to Public Resources Code section 21065.

IX. STEPS FOLLOWING APPROVAL:

Following City Council's approval, the City Clerk's office will route the agreement for signatures.

Submitted by:



Greg Thompson, Public Works/Community Development Director

Approved by:



Lori Waterman, City Manager

Attachments:

1. Exhibit A- Fee Credit Agreement

**OVERSIZE AND RELOCATION
FEE CREDIT AGREEMENT**

This Oversize and Relocation Fee Credit Agreement (“Agreement”) between the City of Atwater, a California municipal corporation (“City”) and Sukhdeep Khatra (“Developer”) for the purpose of relocating and constructing certain oversized sanitary sewer and water services and reimbursing Developer for such improvements.

RECITALS

WHEREAS, the Developer owns 1960 Green Sands Avenue (APN: 005-120-054, 055), in the City ("Property") shown in Exhibit "A" attached hereto; and

WHEREAS, the City, pursuant to Resolution No. PC 0130-20, has approved Site Plan 20-1-0200 for Developer’s project, known as Gas Station/Mini Mart 1960 Green Sands Avenue, (“Project”) located at the Property; and

WHEREAS, the Project requires the Developer to install various improvements for the benefit of the Project and Property alone, all as shown on Developer’s Improvement Plans for the Project, which were approved and signed by the City Engineer; and

WHEREAS, Developer and City have also concluded that Developer should relocate and construct certain oversized sanitary sewer and water services improvements, and that the improvements associated with the relocation and oversizing of the sanitary sewer and water services, as further described and listed on Exhibit B (“Improvements”), will proportionally benefit other properties within the City and are therefore properly the subject of this Agreement; and

WHEREAS, Developer is willing to advance the costs of designing, financing, constructing, installing, inspecting, and bonding for the approved Improvements subject to certain fee credits from the City for otherwise required for water and sewer connections and inspections; and

WHEREAS, Government Code 66485 et seq. authorizes a Fee Credit Agreement in these circumstances.

NOW THEREFORE, DEVELOPER AND CITY AGREE AS FOLLOWS:

AGREEMENT

1. Recitals. The recitals set forth above are true and correct.

2. Construction. Developer shall be solely responsible for designing, financing, constructing, installing, providing for the inspection and bonding of the Improvements as described in Exhibit B. City shall approve the plans and specifications for the work prior to construction of the Improvements by Developer. The design, construction and installation of the Improvements shall be to the satisfaction of City in its sole and reasonable discretion. City has not made an independent investigation of the job site, soil conditions, and any and all other conditions that might affect the design and construction of the facilities. It is the responsibility of Developer to construct all Improvements in accordance with the plans and specifications as approved by the City. In the event that job conditions require changes in the approved plans and specifications, a request for such deviation must be submitted in writing by Developer for approval by City; no deviation will be allowed without such approval.

3. Fee Credit. Developer and City agree that Improvements consisting of the relocation and oversizing of the sanitary sewer and water service as described in Exhibit B are properly the subject of this Fee Credit Agreement in the amount of \$32,135.77 (which is equivalent to the maximum amount of eligible fee credits for sewer and water connection fees that would otherwise be required of Developer, plus an inspection fee credits) is a fair and equitable fee credit amount for Developer's costs of relocating and oversizing the sanitary sewer and water services to benefit other properties within the City. City agrees to credit Developer the amount listed above upon completion and dedication of the Improvements by Developer, approval of and acceptance of dedication of Improvements by the City Engineer and/or City Council. Any actual costs, fees, or expenses which exceed the amount stated herein related to, or arising from, the Improvements shall be borne by the Developer.

4. Commencement of Construction and Inspection. Developer and its contractor or subcontractors shall not commence construction of the Improvements until Developer has received written authorization from City to proceed. Written authorization shall be in the form of signed approved plans along with permit issuance. All work performed on the Improvements shall be done in strict compliance with the City approved plans, specifications and in a good and workmanlike manner. All work performed by Developer, its contractor or agents to construct the Improvements shall be subject to inspection by City. All fees and costs to construct the Improvements shall be borne solely by Developer, subject to reimbursement as provided herein. Inspection by City or its employees or agents shall not relieve Developer of its liability for design defects or improper or inadequate workmanship.

5. Access; Compliance with Plans and Specifications. Developer shall allow City's duly authorized representative access and inspection of the work at all times and shall furnish representative with every reasonable facility for ascertaining that the methods, materials, and workmanship comply with the requirements and intent of the approved plans and specifications for the Improvements. City may reject defective work and require its repair, replacement, or removal by Developer, all at no additional expense to City. All work shall conform to the plans and specifications for Improvements as approved by the City.

6. Default. In the event that the Improvements are not completed to the reasonable satisfaction of City, City in addition to any other remedy at law or equity, may complete such work with its own forces or by contract. In the event of such default by Developer, and City's subsequent undertaking, City shall have no obligation to reimburse Developer for any partial performance of this agreement, except that City shall reimburse Developer for that portion of the work which is determined by City in its reasonable discretion to be acceptable.

7. Indemnity and Insurance

(1) Developer shall defend, indemnify, and hold City, its elected officials, officers, employees, and agents free and harmless from any and all liability from loss, damage, or injury to or death of persons or property in any manner arising out of or incident to Developer's performance of this agreement, including without limitation all consequential damages, attorney's fees and court costs, whether or not resulting from the sole negligence of Developer or Developer's agents. This indemnity shall extend to any claims arising because Developer has failed to properly secure any necessary easements, land rights, contracts, or approvals, but shall not extend to any claims arising out of the sole negligence of City. This indemnity shall also extend to any legal action commenced by any third party against City challenging the terms of this agreement or seeking judicial review.

(2) Developer shall require all persons doing work on the Improvements, including its contractors and subcontractors, to obtain and maintain insurance of the types and in the amounts described below in a form and with carriers satisfactory to City.

a. Commercial General Liability Insurance. Developer shall maintain occurrence version commercial general liability insurance or equivalent form with a limit of not less than \$2,000,000.00 (or as otherwise approved, in writing, by the City) each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two times the occurrence limit. Such insurance shall:

i. Name City, its officials, officers, employees and agents as insured by endorsement with respect to performance of this agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insured.

ii. Be primary with respect to any insurance or self-insurance programs covering City, its officials, officers, employees and agents.

iii. Contain standard separation of insured provisions.

b. Business Automobile Liability Insurance. In the event that the Developer operates automobiles at the site of work, Developer shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles and shall contain the provisions set forth in subsections (a) (i) - (iii) set forth directly above.

c. Worker's Compensation Insurance. Developer shall take out and maintain during the life of this agreement, worker's compensation insurance for all Developer's employees employed at the site of the work, and in case any of the work is sublet, Developer shall require any general contractor or subcontractor similarly to provide workers' compensation insurance for contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by Developer. In case any class of employee engaged in work under this agreement at the site of the project is not protected under any workers' compensation law, Developer shall provide and shall cause each contractor and subcontractor to provide, adequate insurance for the protection of employees not otherwise protected. Developer hereby indemnifies City for any damage resulting to it from failure of Developer, its agents, employees, contractors or subcontractors to take out or maintain such insurance. Worker's compensation insurance with statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00 each accident shall be maintained.

d. Other insurance Requirements. Developer shall:

- i. Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance which shall clearly evidence all insurance required in this section and provide that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage except on thirty (30) days prior written notice to City.
- ii. Provide to City certified copies of endorsements and policies if requested by City, and properly executed certificates of insurance evidencing the insurance required herein.
- iii. Replace or require the replacement of certificates, policies and endorsements for any insurance required herein expiring prior to completion and acceptance of the Improvements.
- iv. Maintain all insurance required herein from the time of execution of this Agreement until the acceptance of the Improvements.
- v. Place all insurance required herein with insurers licensed to do business in California.

8. Permits. Prior to commencing construction of Improvements, Developer shall be responsible for obtaining all required permits for the construction and installation of said improvements and facilities, including but not limited to building, grading and encroachment permits from City.

9. Acceptance of Work. Upon completion of the Improvements to the satisfaction of City, the Improvements shall be presented to the City Council for dedication and acceptance and for authorization to file a Notice of Completion. The City Council may accept the Improvements if it determines that the Improvements were constructed in accordance with the approved plans and specifications, that the

Improvements operate satisfactorily, and that all other requirements of this agreement have been satisfied. Immediately upon, and as a condition of the expiration of the guarantee period set forth in Section 9, Developer shall assign to City all of Developer's rights and remedies, including warranties, as set forth in the approved contract documents, and thereafter City shall have the same recourse under said contract documents that City would have had if City itself had engaged Developer's contractor to construct the Improvements.

10. Guarantee. Developer shall guarantee all work and materials for the Improvements to be free from all defects due to faulty materials or workmanship for a period of one (1) year after the date of formal acceptance of the work by City. A guarantee bond in the amount of ten (10) percent of the total cost of the Improvements as determined by the City its sole reasonable exercised discretion, shall be posted with the City prior to its acceptance of the Improvements. Developer shall repair or remove and replace and all such work, together with any other work which may be displaced in so doing, that is found to be defective in workmanship or materials within the one (1) year period, without any expense whatsoever to City. In the event Developer fails to comply with the above-mentioned provisions within thirty (30) days after being notified in writing (or in cases of emergency, immediately) City shall be authorized to proceed to have the defects remedied and made good at the sole cost and expense of Developer, who is hereby contractually bound to pay the costs and charges therefore immediately upon demand. Such action by City will not relieve Developer of the guarantee required by this section. This section shall not, in any way, limit the liability of Developer or any other party for any design or construction defects in the work subsequently discovered by City.

11. Liability for Work Prior to Formal Acceptance. Until the City Council has formally accepted the Improvements, Developer shall be solely responsible for all damage to the work, regardless of cause, and for all damages or injuries to any person or property at the work site, except damage or injury due to the sole negligence of City, or its employees.

12. Record Drawings. Prior to acceptance of the Improvements by the City Council, Developer shall provide City with one electronic file and one mylar copy of record drawings with certification by a licensed engineer in the State of California as to accuracy and completeness. Developer shall be solely responsible and liable for ensuring the completeness and accuracy of the record drawings.

13. Ownership of the Improvements. From and after acceptance of the Improvements by formal action of the City Council, ownership of the Improvements shall be vested exclusively in City.

14. Workmanship. Developer hereby warrants that the design and construction of Improvements will not adversely affect any portion of adjacent properties, and that all work will be performed in a proper and workmanlike manner.

15. No Third Party Beneficiary. Nothing in this agreement does or is intended to create an interest in any person or entity not a party to this agreement.

16. Termination. Upon thirty (30) days written notice and with reasonable

cause, City shall have the right to terminate this agreement by giving written notice to Developer. In the event of such termination, City shall reimburse Developer for the work performed as of the date of termination.

17. Entire Agreement. This agreement contains the entire agreement of the parties hereto with respect to the matters contained herein. No modification of this agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

18. Notice. All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail shall be addressed as follows:

DEVELOPER: Sukhdeep Khatra
1512 Westmore Ct
Atwater CA, 95301

CITY: City of Atwater
Lori Waterman, City Manager
750 Bellevue Road
Atwater, CA 95301

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

19. Status of Developer. The parties intend that Developer, in performing the services hereinafter specified, shall act as an independent contractor, and shall have the control of the work and the manner in which it is performed. Developer is not to be considered an agent or employee City and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits City provides its employees.

20. Compliance with Law, Ordinances and Procedures. Developer shall comply with all applicable laws, including but not limited to the Americans with Disabilities Act (ADA) of 1990, (42U.S.C. 12101, *et seq.*) and any laws which may become applicable due to this Agreement, all applicable ordinances and procedures of City as well as all of the terms and provisions of this Agreement. Developer shall insure that all work performed on the Improvements is performed in a manner which complies with all applicable federal, state, county and local government laws, regulations and rules, including all rules and regulations of City, as these rules and regulations may be modified or changed from time to time.

21. Governing Law; Venue. This Agreement shall be construed, and its performance enforced, under California law. Because this Agreement is to be performed in the County of Merced, the parties hereto agree that the forum for the adjudication of any dispute regarding this Agreement or enforcement thereof shall be brought exclusively and solely in Merced County, California.

22. Assignment. Developer shall not assign any rights or duties under this Agreement to a third party without the express prior written consent of the City in the City's sole and absolute discretion.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CITY OF ATWATER

DEVELOPER

Lori Waterman
City Manager

Sukdeep Khatra

Attest:

Kory Billings
City Clerk

Approved as to form:

Frank Splendorio
City Attorney

Exhibit A

EXISTING PARCEL INFORMATION:

OWNER: SUKHEEP KHATRA
 ASSESSOR PARCEL NUMBER (APN): 005-120-054 & 055
 PROPERTY ADDRESS: UNKNOWN
 PARCEL S.F.: 42,351.62
 GENERAL PLAN DESIGNATION: COMMERCIAL
 ZONING: C-T (THOROUGHFARE COMMERCIAL)
 EXISTING USE OF PROPERTY: VACANT
 EXISTING STRUCTURES: NONE
 SURROUNDING USES: NONE

NORTH: RESIDENTIAL
 SOUTH: COMMERCIAL
 EAST: COMMERCIAL
 WEST: RESIDENTIAL

PROPOSED DEVELOPMENT INFORMATION:

PARCEL SIZE: MERGING TWO PARCELS
 PROPERTY ADDRESS: PER CITY OF ATWATER
 GENERAL PLAN DESIGNATION: NO CHANGE
 ZONING: NO CHANGE
 USE OF PROPERTY: COMMERCIAL/GAS STATION-MINI MART
 STRUCTURES: ±7,836 S.F.

SETBACKS: (AMC 17.37.040(C))

EXTERIOR SETBACK: 10 FT.
 INTERIOR & REAR YARD: SET OR WAIVED BY PLANNING COMMISSION PER USE PERMIT

DEVELOPMENT REQUIREMENTS:

PARKING: (AMC 17.63.040)
 COMMERCIAL: 7,836/250=32 SPACES REQ'D

LANDSCAPING (AMC 17.37.040)
 TOTAL PARCEL 42,351.62 S.F.
 TOTAL LANDSCAPE 4,439.76 S.F.
 PERCENTAGE: 10.48%

PARKING BREAKDOWN:	
STANDARD:	22
COMPACT:	5
ACCESSIBLE: (1-VAN & 1-STANDARD)	2
CALGREEN:	1
PARALLEL STALL:	2
TOTAL PROVIDED:	32

These drawings are instruments of service and are the property of Golden Valley Engineering & Surveying, Inc. All designs and other information on these drawings are for use on the specified project and shall not be used otherwise without the express written permission of Golden Valley Engineering & Surveying, Inc.

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PREPARED BY:

GV
GOLDEN VALLEY
 ENGINEERING & SURVEYING
 405 West 19th Street
 Merced, CA 95340
 P.O. Box 349
 Merced, CA 95341
 Ph.: (209) 722-3200
 Fax: (209) 722-3254

No.	Date	Description

It is the client's responsibility prior to or during construction to verify the designer in writing of any potential errors or omissions in the plans and specifications of which a contractor through investigation with the building codes and methods of construction should be made. While construction drawings are prepared with care and attention, they shall be reviewed from the design prior to the start of construction and any corrections shall be made. The client shall be responsible for any defects in construction if these drawings are not followed.

CALIFORNIA

CIVIL IMPROVEMENT PLANS FOR GAS STATION/MINI MART 1960 GREEN SANDS AVENUE

CITY OF ATWATER

SEAL

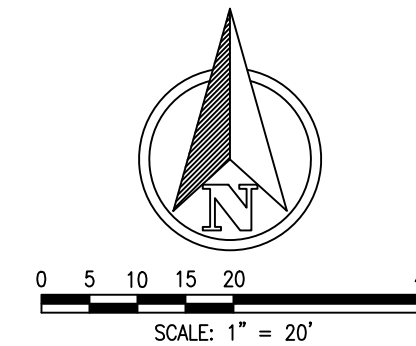
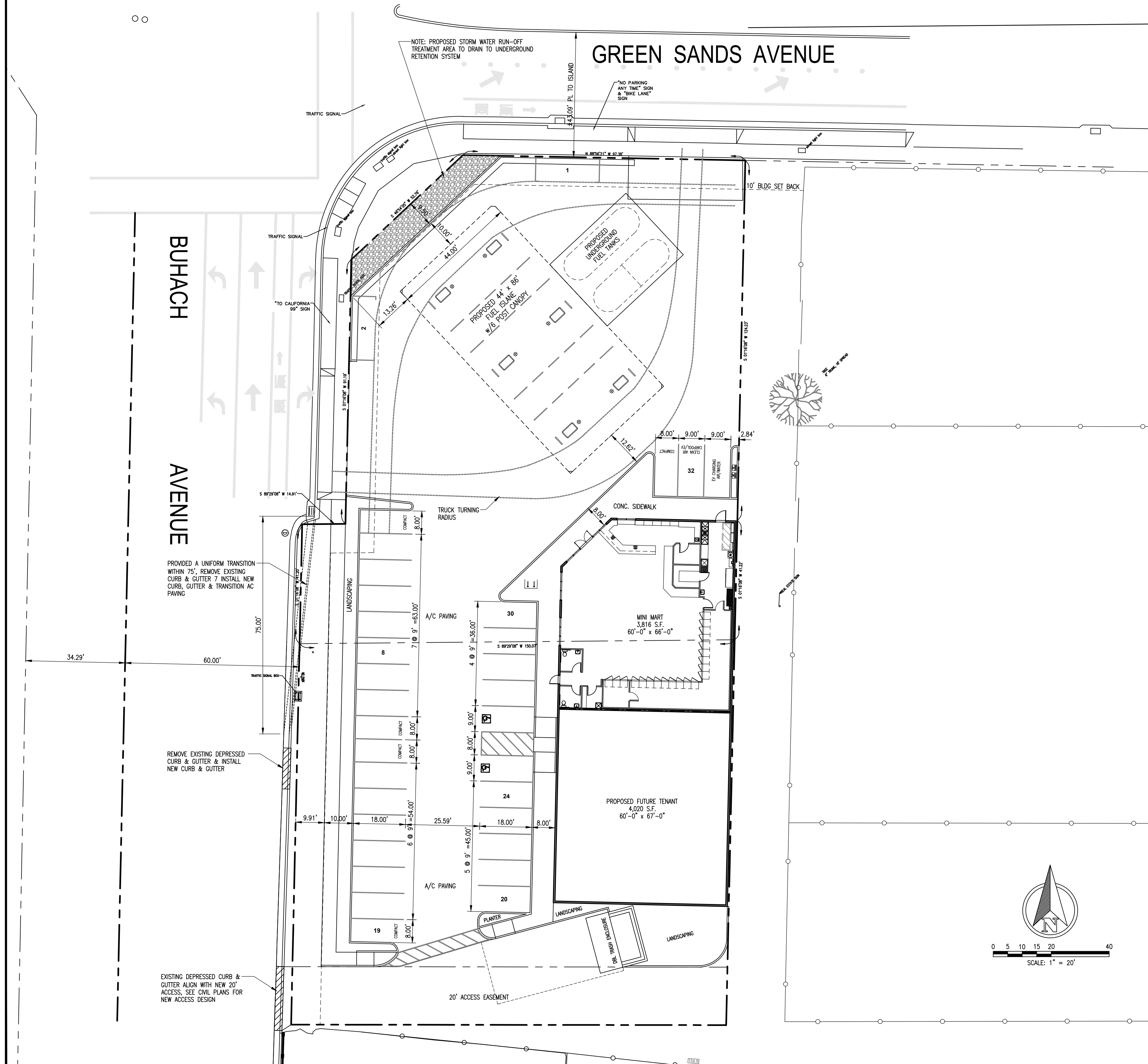
SHEET CONTENTS:
 SITE PLAN

PREPARED FOR:
SUKHDEEP KHATRA
 3480 BUHACH ROAD
 ATWATER, CA

PROJECT DATA:
 Date: DECEMBER 2019
 Checked By: JX
 Drawn By: PRL
 Job No.: 19-121

SHEET NUMBER:

C1.0



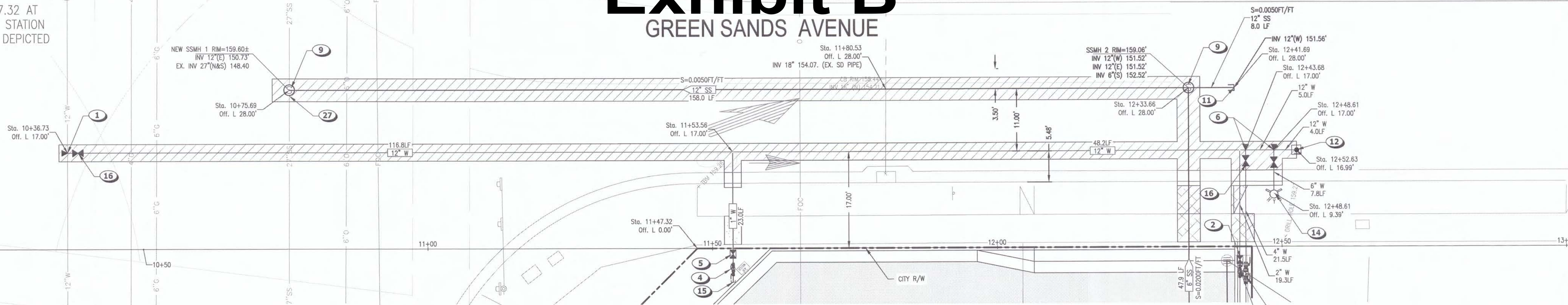
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Exhibit B

GREEN SANDS AVENUE

NOTE:
STATIONING ALIGNMENT RUNS ALONG
PROPERTY LINE WITH STATION 11+47.32 AT
NORTHWEST PROPERTY CORNER AND STATION
10+00 PERPENDICULAR TO ROW AS DEPICTED
IN PLAN VIEW.

BUHACH AVENUE



PLAN & PROFILE KEYNOTES

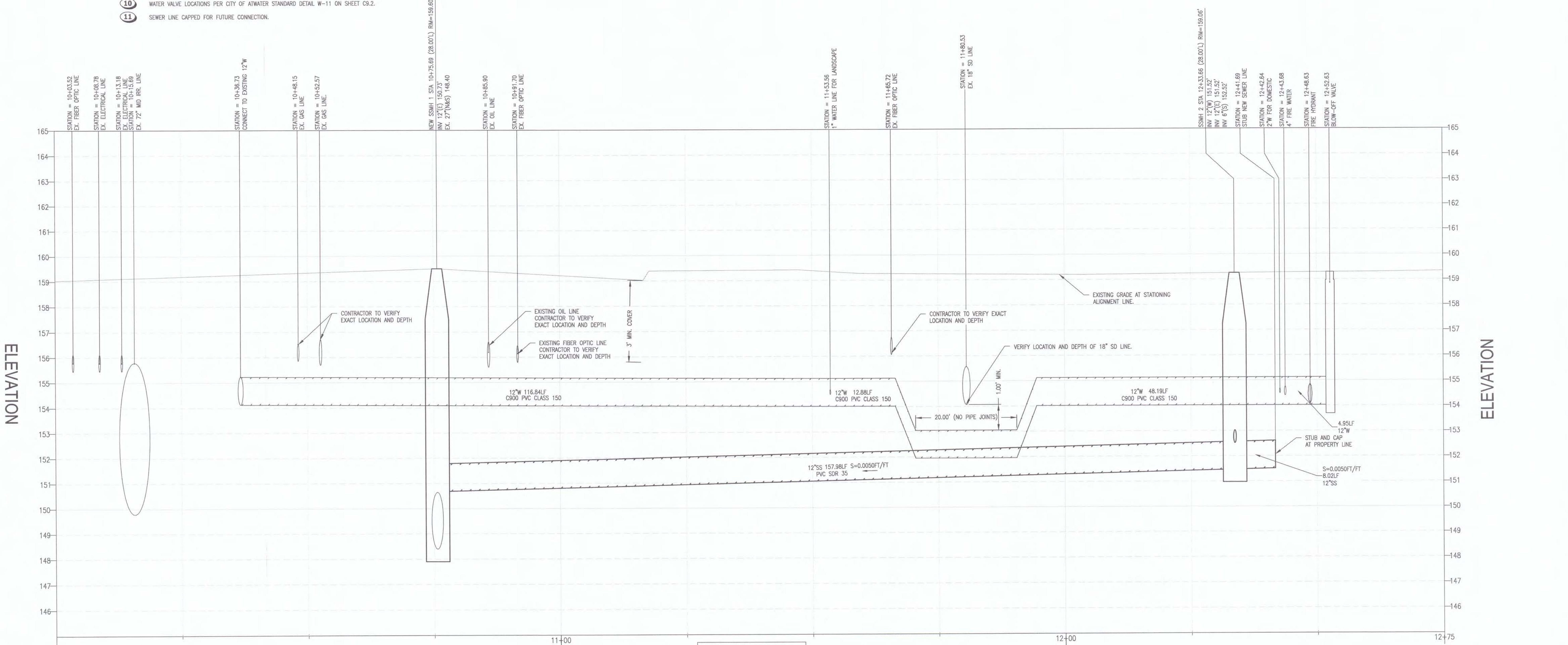
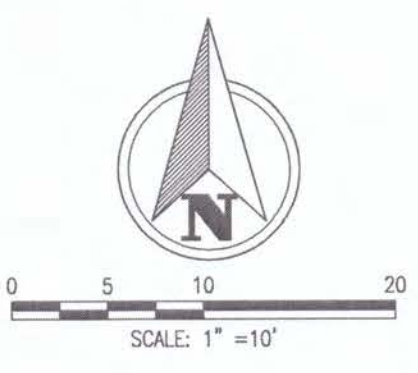
- 1. CONNECT TO EXISTING CITY 12" WATER LINE. FIELD VERIFY CONNECTION POINT.
- 2. 2" WATER METER FOR DOMESTIC WATER LINE PER CITY OF ATWATER STANDARD DETAIL W-3 AS SHOWN ON SHEET C9.3.
- 3. (2") REDUCED PRESSURE BACKFLOW PREVENTER, INCLUDING ENCLOSURE AND CONCRETE PADS, FOR DOMESTIC WATER LINE PER CITY OF ATWATER STANDARD DETAIL W-15 AND W-15A AS SHOWN ON SHEET C9.3.
- 4. (1") REDUCED PRESSURE BACKFLOW PREVENTER, INCLUDING ENCLOSURE AND CONCRETE PADS, FOR LANDSCAPING PER CITY OF ATWATER STANDARD DETAIL W-15 AND W-15A AS SHOWN ON SHEET C9.3.
- 5. (1") WATER METER FOR LANDSCAPE WATER LINE PER CITY STANDARD DETAIL W-1 AS SHOWN ON SHEET C9.3
- 6. THRUST BLOCK, TYPICAL, PER CITY OF ATWATER STANDARD DETAIL WA-06 AS SHOWN ON SHEET C9.3. THRUST BLOCKS TO BE INSTALLED AT HORIZONTAL BENDS, VERTICAL BEND, TEES, DEAD-ENDS AND HYDRANT BURLYS.
- 7. CONNECT TO EXISTING CITY 27" SEWER LINE. FIELD VERIFY CONNECTION POINT AND INVERTS. NOTIFY ENGINEER OF ANY DISCREPANCY PRIOR TO ANY BUILDING PLUMBING. SEE DETAIL S-1 ON SHEET C9.1
- 8. SEWER CLEANOUT, TYPICAL, PER DETAIL "J" ON SHEET C8.0.
- 9. SANITARY SEWER MANHOLE PER CITY OF ATWATER STANDARD DETAIL S-1 ON SHEET C9.1.
- 10. WATER VALVE LOCATIONS PER CITY OF ATWATER STANDARD DETAIL W-11 ON SHEET C9.2.
- 11. SEWER LINE CAPPED FOR FUTURE CONNECTION.

- 12. BLOW OFF VALVE FOR FUTURE CONNECTION PER CITY OF ATWATER STANDARD DETAIL W-10 ON SHEET C9.2.
- 13. 4" DOUBLE DETECTOR CHECK VALVE FOR FIRE SERVICE SIMILAR TO DETAIL W-15 AS SHOWN ON SHEET C9.3. PROVIDE TAMPER SWITCH CONNECT TO FIRE ALARM PANEL.
- 14. FIRE HYDRANT PER CITY OF ATWATER STANDARD DETAIL W-4, W-5, AND W-6 AS SHOWN ON SHEET C9.2.
- 15. SEE LANDSCAPE PLANS FOR CONTINUATION.
- 16. WATER VALVE. LOCATIONS PER CITY OF ATWATER STANDARD DETAIL W-11 ON SHEET C9.2.

- NOTE:
- EXACT CITY SEWER MAIN INVERT IS UNKNOWN. POTHOLE SEWER INVERT PRIOR TO ANY CONSTRUCTION. INVERT SHOWN ON THE PLAN IS CALCULATED INVERT TO MEET MINIMUM SLOPE AND COVER REQUIREMENT. IF EXISTING INVERT IS HIGHER THAN SHOWN, NOTIFY ENGINEERS IMMEDIATELY. CITY ENGINEER SHALL BE NOTIFIED OF EXISTING SEWER TRUNK LINE INVERT ELEVATION PRIOR TO BEGINNING ANY CONSTRUCTION. ANY CHANGE TO IMPROVEMENT PLANS AND/OR DESIGN SHALL BE APPROVED IN WRITING BY THE CITY ENGINEER AND PUBLIC WORKS DIRECTOR.
 - CONTRACTOR TO VERIFY AND NOTIFY ENGINEER, CITY OF ATWATER, UTILITY COMPANY, AND OWNERS OF ANY CONFLICTS.
 - CONTRACTOR RESPONSIBLE TO OBTAIN ALL NECESSARILY PERMITS AND APPROVALS FOR ALL WORK WITHIN PUBLIC RIGHT OF WAY.
 - THRUST BLOCKS PER CITY OF ATWATER STANDARD DETAIL WA-06 AS SHOWN ON SHEET C9.3. THRUST BLOCKS TO BE INSTALLED AT HORIZONTAL BENDS, VERTICAL BEND, TEES, DEAD-ENDS AND HYDRANT BURLYS.



Know what's below.
Call before you dig.
1-800-227-2600



PROFILE SCALE
VERTICAL SCALE: 1"= 1'
HORIZONTAL SCALE: 1"= 5'

PLAN & PROFILE

FILENAME: W:\pand projects\19121_Khatri\DWG\19121 - UTILITY.dwg
 LAYOUT NAME: C7.1 PLAN & PROFILE
 LAST SAVED BY: GVE
 PLOT DATE: 1/25/2023 3:37 PM

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PREPARED BY:

GOLDEN VALLEY
ENGINEERING & SURVEYING
405 West 19th Street 95340
P.O. Box 349
Merced, CA 95341
Ph.: (209) 722-3200
Fax: (209) 722-3254

No.	Date	Description
3/28/21		PER CITY PLAN CHECK
5/28/21		PER CITY PLAN CHECK
1/05/23		PER CITY PLAN CHECK

I, the undersigned, hereby certify that I am a duly licensed Professional Engineer in the State of California, and that I am the author of the designs and specifications shown on these drawings, and that I am not providing any services or information on these drawings to any other project or for any other purpose without the express written permission of Golden Valley Engineering & Surveying, Inc. The client will be responsible for any defects in construction if these drawings are not followed.

CIVIL IMPROVEMENT PLAN FOR
SUKHDEEP KHATRA
1960 GREEN SANDS AVENUE
ATWATER, CA 95301
CITY OF ATWATER
CALIFORNIA

ENGINEER

SHEET CONTENTS:
PLAN & PROFILE

PREPARED FOR:
SUKHDEEP KHATRA
3480 BUHACH ROAD
ATWATER, CA
Ph: (209) 485-8761
Email:
sukhdeep.khatra@gmail.com

PROJECT DATA:
Date: MAY 2020
Checked By: AMT
Drawn By: SY, AN
Job No.: 19121.00
SHEET NUMBER

C7.1

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**CITY COUNCIL
OF THE
CITY OF ATWATER**

ORDINANCE NO. CS 1059

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF ATWATER APPROVING ZONING
ORDINANCE TEXT AMENDMENT NO. 23-02-0100
AMENDING TITLE 17 “ZONING” OF THE
ATWATER MUNICIPAL CODE FOR SITE PLAN
AND ARCHITECTURAL REVIEW REGULATIONS**

WHEREAS, the City of Atwater adopted Residential Design Guidelines on April 11, 2011, and Commercial & Industrial Design Guidelines on October 8, 2012; and,

WHEREAS, the City of Atwater has submitted a Zoning Ordinance Text Amendment (ZOTA) 23-02-0100 for an amendment to Title 17 “Zoning” of the Atwater Municipal Code to update the City’s Site Plan and Architectural Review Regulations; and,

WHEREAS, in accordance with established goals and objectives regarding economic development in the General Plan, the City, through its powers to govern land use can amend, revise, repeal, or place sections of Title 17 “Zoning” within the City’s Municipal Code; and,

WHEREAS, the City Council finds that the action would not have a detrimental effect on the public health, safety, and welfare of the neighborhood nor have any adverse effects on the community.

NOW, THEREFORE, be it ordained by the City Council of the City of Atwater as follows:

Section 1: The following text amendments are made to the various sections of the Municipal Code, with the deleted content noted in strikethrough and the additions in red.

17.03.100 (G) - Areas for collection and loading of recyclable materials in development projects. Review and Approval. ~~The location of the recyclable enclosure area shall be a part of site and architectural review for each site and shall be approved by the Planning Commission.~~ **The location of the recyclable enclosure area shall be part of the site plan review and shall be approved by the Community Development Department.**

17.12.030 - Building permit—New dwelling units.

~~B. If the Community Development Director finds on the written advice of the City Engineer that requests additional public improvements, may be desired, formal site plan and architectural control procedures shall be used so that the Planning Commission can the Community Development Director may consider requiring the additional public improvements beyond curbs and gutters. Final inspection shall not be made until the City Engineer has approved the installation of all required public improvements.~~

17.12.040 - Appeal to decision of building inspector.

B. The notice, if any, of the public hearing on the report of the Commission and the application for architectural control review shall be in the time, form, and manner directed by the **Community Development Director, or designee.** ~~Commission.~~

~~17.12.050 – Interpretation of no action – Appeal to Council.~~

~~If the Commission takes no action with respect to an application for architectural control review referred to it by the building inspector within a period of 30 days after the same has been filed with the building inspector, the Commission shall be deemed to have denied the approval thereto; in the event that the matter and application is appealed to the Council, as provided for in this title, and no decision is rendered by the Council with respect to said matter within 45 days after the initial filing of the application for architectural control review, the Council shall be deemed to have denied its approval thereto.~~

17.12.060 - Public or government structures require Planning Commission approval.

No public and/or governmental building, fountain, monument, wall, arch, or other structure shall be erected, placed on or upon, removed from, relocated or materially altered on or upon any public land or allowed to extend over or upon any street, avenue, square, park, recreation ground, or other public property unless plans for the same and the location thereof have first been submitted to the Planning Commission to ensure consistency with the City of Atwater's Policies, Codes, and guidelines, ~~for its site plan and architectural control review and approval.~~

17.12.090 – Site Plan and architectural Control

~~On occasions specifically designated below, the City Planning Commission, together with the building inspector, shall sit as a board of site plan and architectural review. It shall be the duty of this board to protect and preserve the natural and historical beauty and charm existent in and inherent to the residential character and esthetics quality of the City and thus to preserve and promote the health, safety and welfare of the residents of the City.~~ All applications for building permits **for permitted and conditional uses**, other than agricultural residential, residential estate, and single-family residential buildings and minor structures for the conduct of a business which is to be conducted primarily in the open air outside of a structure, **applications for use permits, proposed structures and parking layouts**, and the plans, site plans, elevations and landscaping plans shall

constitute application for site plans and architectural control review. Unless otherwise referred to the Planning Commission for purposes of efficiency and consolidation of review with other approvals or entitlements, it shall be the duty of the Community Development Director, or designee, to approve applications for site plans and architectural control review to ensure all applications are consistent with the adopted Residential Design Guidelines or Commercial and Industrial Guidelines, as amended from time to time. Such approval shall expire six months from date of approval if operation or construction has not started, or if the use has been discontinued for six months or longer. A one-year extension may be considered for just cause.

17.12.095 Appeal

If the applicant is aggrieved by the Community Director's decision to deny the Architectural Plans and Site Plans, the applicant may appeal such decision in writing to the Planning Department within ten calendar days from the date of the action. The filing of an appeal shall stay all proceedings in furtherance of the action taken by the Planning Commission.

At the conclusion of the hearing, the Planning Commission shall render a decision on the appeal and may affirm, reverse, or modify the decision of the Community Development Director as it deems just and equitable on the premises.

~~17.16.90 – Site Plan and design review.~~

~~All use permits shall require Site Plan and Design Review approvals from the Planning Commission and shall expire six months from date of approval if operation or construction has not started, or if the use has been discontinued for six months or longer. A one-year extension may be considered for just cause.~~

~~17.17.090 – Site plan and design review.~~

~~All use permits shall require Site Plan and Design Review approvals from the Planning Commission and shall expire six months from date of approval if operation or construction has not started, or if the use has been discontinued for six months or longer. A one-year extension may be considered for just cause.~~

~~17.19.090 – Site plan and design review.~~

~~All proposed main structures and parking layouts shall require Site Plan and Design Review approvals from the Planning Commission to ensure consistency with the Residential, Commercial & Design Guidelines.~~

~~17.22.090 – Site plan and design review.~~

~~All proposed structures and parking layouts shall require Site Plan and Design Review approvals from the Planning Commission and shall expire six months from date of approval if a building permit has not been obtained. A one-year extension may be considered for just cause.~~

~~17.24.090 – Site plan and design review.~~

~~All proposed structures and parking layouts shall require Site Plan and Design Review approvals from the Planning Commission and shall expire six months from date of approval if a building permit has not been obtained. A one-year extension may be considered for just cause.~~

17.26.025 - Exceptions.

B. Any parcel existing at the time of adoption of this ordinance, which is smaller than the minimum area required for a mobile home park, shall not exceed the density of one dwelling unit per 4,400 sq. ft. of land, and may construct single-family homes, duplex or apartment units, or erect modular or mobile homes after Site Plan approval ~~by the Planning Commission~~. Other requirements in this chapter shall be followed, as applicable.

17.32.090 - Site plan and design review.

Site plan and design review ~~by the Planning Commission~~ is required for all permitted and conditional uses **as described elsewhere in this title.**

17.34.030 - Accessory uses.

Single story accessory buildings, garages and parking lots incidental to the principal use are permitted subject to site plan review.

17.34.080 - Site plan and design review.

All uses in the C-O zone shall require site plan approval and design review as described elsewhere in this title.

17.35.080 - Site plan and design review.

All uses in the C-N zone shall require site plan approval and design review as described elsewhere in this title.

17.36.090 - Site plan and design review.

All proposed construction or remodeling, and all signs in the C-C zone shall require site plan approval and/or design review as specified elsewhere in this title.

17.37.080 - Site plan and design review.

All uses in the C-T zone shall submit the required drawings for site plan and design review at the time the use permit is applied for, as described elsewhere in this title.

17.38.080 - Site plan and design review.

All uses in the C-G zone shall require site plan approval and design review as described elsewhere in this title.

17.39.060 - Site improvement standards.

A. Open space or percentage of landscaped area shall be reviewed on individual bases and shall be approved ~~by the Planning Commission~~ as part of site and architectural

approval **as described elsewhere in this title**. At the minimum, all setbacks shall be landscaped and equipped with a seven-day automatic irrigation system.

17.39.090 - Site and architectural review.

All development in this zone shall be subject to site and architectural review **as described elsewhere in this title**. ~~by the Planning Commission.~~

17.42.040 - Development Standards.

D. Loading area. Adequate off-street space for the handling of all materials and equipment shall be provided, before use permits are approved by ~~or site plans are approved~~, the Planning Commission, **or site plans are approved as described elsewhere in this title**, ~~shall make specific findings as to adequacy of loading area, depending on the type of activity involved.~~

17.43.050 - Site plan and design review. Commercial and Industrial Design Guidelines

B. All proposed construction and remodeling including tenant improvements above \$500.00 in value shall require site plan approval and design review for conformance with the Commercial and Industrial Design Guidelines as amended by the Planning Department.

17.49.080 - Site plan and design review.

Applicants proposing a mini-warehouse development shall supply site plans, landscaping and irrigation plans, grading, drainage, and improvement plans to the Planning Director for processing with the use permit.

17.63.090 - Uses not specified and mixed uses.

Where off-street parking requirements for a use are not specified, the minimum requirements for each use shall be determined by the Planning Director subject to approval ~~of the Planning Commission~~ as part of the site plan approval process. The determination shall be based upon the requirements for the most comparable use specified in this chapter. At the discretion of the Planning Commission, the minimum parking requirements for such use can be adopted by resolution and shall become effective after approval by the City Council. In the case of mixed uses, the total requirements for off-street parking shall be the sum of the requirements for the various uses unless otherwise proved.

17.78.060 - Expansion of nonconforming use—Conditional use status.

B. The granting of a use permit for such nonconforming uses shall be further subject to the adopted Residential, Commercial & Industrial design guidelines **as described elsewhere in this title**. ~~architectural control review as outlined under Sections 17.12.020 through 17.12.050.~~ As a condition of architectural control approval, the **Community Development Director or designee, or Planning Commission, as the case may be**, may require alterations of the structure, extension of landscaping and shrub planting to a

degree which would best integrate the nonconforming commercial or professional use into the residential district of which it is a part.

Section 2: EFFECTIVE DATE. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

Section 3: SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed, and the balance of the ordinance be enforced.

SECTION 4: CEQA. Approval of the amendments in this Ordinance is exempt from further environmental review under section 15061(b)(3), This exemption states, the activity is covered by the commons sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 5: PUBLICATION. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published in a newspaper of general circulation printed and published within the City of Atwater, pursuant to all legal requirements.

INTRODUCED: **March 13, 2023**
ADOPTED:
AYES: **Ambriz, Button, Raymond, Nelson**
NOES: **None**
ABSENT: **Cale**

APPROVED:

MIKE NELSON, MAYOR

ATTEST:

KORY J. BILLINGS, CITY CLERK

EXHIBIT A

Atwater Municipal Code Re:
Site Plan & Architectural Review

17.03.100 (G) - Areas for collection and loading of recyclable materials in development projects. Review and Approval. The location of the recyclable enclosure area shall be a part of site and architectural review for each site and shall be approved by the Planning Commission. The location of the recyclable enclosure area shall be part of the site plan review and shall be approved by the Community Development Department.

17.12.030 - Building permit—New dwelling units.

B. If the Community Development Director finds on the written advice of the City Engineer that requests additional public improvements, may be desired, formal site plan and architectural control procedures shall be used so that the Planning Commission can the Community Development Director may consider requiring the additional public improvements beyond curbs and gutters. Final inspection shall not be made until the City Engineer has approved the installation of all required public improvements.

D. This section is applicable to all lots that are not covered specifically by the adopted Residential Design Guidelines or Commercial & Industrial Design site plan and architectural control or current subdivision (including minor subdivision, lot splits, etc.) requirements.

17.12.040 - Appeal to decision of building inspector.

B. The notice, if any, of the public hearing on the report of the Commission and the application for architectural control review shall be in the time, form, and manner directed by the Commission.

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On occasions specifically designated below, the City Planning Commission, together with the building inspector, shall sit as a board of site plan and architectural review. It shall be the duty of this board to protect and preserve the natural and historical beauty and charm existent in and inherent to the residential character and esthetics quality of the City and thus to preserve and promote the health, safety, and welfare of the residents of the City. All applications for building permits, other than agricultural residential, residential estate, and single-family residential buildings and minor structures for the conduct of a business which is to be conducted primarily in the open air outside of a structure and the plans, site plans, elevations and landscaping plans shall constitute application for site plans and architectural control review. It shall be the

duty of the Community Development Director or designee to approve Architectural Plans and Site Plans to ensure all applications for building permits are consistent with the adopted Residential Design Guidelines or Commercial and Industrial Guidelines or as amended.

17.12.095 Appeal

If the applicant is aggrieved by the Community Director's decision to deny the Architectural Plans and Site Plans, the applicant may appeal such decision in writing to the Planning Department within ten calendar days from the date of the action. The filing of an appeal shall follow all proceedings in furtherance of the action taken by the Planning Commission.

At the conclusion of the hearing, the Planning Commission shall render a decision on the appeal and may affirm, reverse, or modify the decision of the Community Development Director as it deems just and equitable on the premises.

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CITY COUNCIL AGENDA REPORT

CITY COUNCIL

Mike Nelson, Mayor
Danny Ambriz Tyler Button
John Cale Brian Raymond

MEETING DATE: March 27, 2023
TO: Mayor and City Council
FROM: Greg Thompson, Community Development Director
PREPARED BY: Sam Rashe, Senior Planner
SUBJECT: **Waiving the first reading, by title only and introducing a Zoning Ordinance Text Amendment of the City Council amending certain sections of Chapter 17.69 “Sign Regulations,” of the Atwater Municipal Code (Community Development Director Thompson)**

RECOMMENDED COUNCIL ACTION

Open the public hearing and take any testimony given;

Close the public hearing; and,

Motion to waive the first reading, by title only, and introduce Ordinance No. CS 1057 amending certain sections of Chapter 17.69 “Sign Regulations,” of the Atwater Municipal Code.

Motion to approve staff’s recommendation as presented.

I. BACKGROUND/ANALYSIS:

1. BACKGROUND:

The City of Atwater is seeking to amend Chapter 17.69 “Sign Regulations” to regulate certain signs within the City limits to promote the public health, safety, and welfare of the community. Certain signs have caused issues related to accessibility impediments, distraction to drivers, created safety hazards, and diminished the appearance of the City’s commercial areas. These concerns prompted staff to re-evaluate the sign regulations within the City.

Staff recommends draft ordinance amending Sections 17.69.120 and 17.69.720 and deleting Sections 17.69.340, 17.69.360.

1. **ANALYSIS:**

The proposed ordinance is determined to be in conformance with the goals and policies within City of Atwater's General Plan. Specifically, the Land Use Element and the Circulation Element establish goals and policies to improve pedestrian safety and circulation, to beautify and enhance City's streetscapes and aesthetics; and ensure public safety.

Goal LU-2 of the General Plan States to ensure the appearance of non-residential development contributes positively to the community's image. The regulations of the signs would improve the appearance of the commercial areas by removing the signs from areas that cause distractions or diminish the aesthetic of the area.

General Plan Goal CIRC-8 states to provide a safe and efficient pedestrian circulation that connects residential areas, schools, and commercial areas with parking lots and public transportation. The draft ordinance intends to regulate signs that impede pedestrian traffic in public areas, parking lots, and other areas that would endanger pedestrians.

The proposed ordinance is determined to be in conformance with the ADA Transition Plan. This plan asserts to create and maintain accessibility for all individuals with disabilities. Part of this plan is to ensure that all sidewalks and public places are free of obstructions and maintain full pedestrian access. Many of these signs are placed on sidewalks which cause impediments in the rights of way for individuals. The draft ordinance intends to regulate such signs to prevent these obstructions.

The proposed ordinance is consistent with the Zoning Ordinance. Currently, the purpose of the 17.69 Sign Regulations is to regulate appearance, number, location, and construction of signs to protect the public health, safety, and welfare; to protect the property values of businesses and private residents; and preserve an attractive City environment. The draft ordinance is intended to regulate certain signs that have continuously violated the purpose of this chapter including placement of such signs in public rights-of-way and depreciating the City environment.

The intent of this chapter is also to provide orderly and consistent methods for regulating the signs within the City while implementing General Plan policies which encourage beautifying the City's streetscapes and its major traffic corridors. The draft ordinance intends to regulate signs that are considered to be detrimental to the implementation policies of the General Plan to beautify the City's streetscapes. Such signs have also proven to be distracting to drivers and crowd the streets and sidewalks of major traffic corridors such as Bellevue Road and Atwater Boulevard.

II. **FISCAL IMPACTS:**

No negative fiscal impacts are anticipated with the approval of this project. This item

has been reviewed by the Finance Department.

III. LEGAL REVIEW:

This item has been reviewed by the City Attorney's Office.

IV. EXISTING POLICY:

This item is consistent with Goal 2.5 of the 2020-2025 Strategic Plan to maintain safe streets, roads, and sidewalks.

The item does not conflict with any existing policy within the Zoning Ordinance or General Plan.

V. ALTERNATIVES:

VI. INTERDEPARTMENTAL COORDINATION:

Interdepartmental coordination between Code Enforcement, Planning, and Legal was utilized for the appropriate direction of the amendment to Chapter 17.69.

VII. PUBLIC PARTICIPATION:

The public hearing was adequately noticed and advertised for the regularly scheduled City Council meeting.

The public will have the opportunity to provide comments on this item prior to City Council action.

VIII. ENVIRONMENTAL REVIEW:

Pursuant to the California Environmental Quality Act (CEQA), the project is exempt under section 15061(b)(3), the "Common Sense" Exemption, which states "the activity is covered by a common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

The draft ordinance is amending certain text within the Atwater Municipal Code. These amendments relate to the prohibition of certain signs with the City. The text amendment can be determined to not have any significant effects on the environment.

IX. STEPS FOLLOWING APPROVAL:

The second reading and adoption of the ordinance will be scheduled for the next regular City Council meeting.

Submitted by:



Greg Thompson, Public Works/Community Development Director

Approved by:



Lori Waterman, City Manager

Attachments:

1. CHAPTER_17.69__SIGN_REGULATIONS
2. Ordinance No. CS 1057 Amending Certain Sections of Chapter 17.69 -c1

CHAPTER 17.69 SIGN REGULATIONS

17.69.020 Purpose.

The City acknowledges the right of business to advertise and recognizes that signs are a significant part of the City's streetscape. However, the City also recognizes it is important to regulate their appearance, number, location, and construction to protect the public health, safety, and welfare; to protect the property values of both business and private citizens; and to preserve an attractive City environment. The objectives of this ordinance are to provide an orderly and consistent method for regulating the City's signs while implementing General Plan policies which encourage beautifying the City's streetscape and its major traffic corridors.

(Prior Code § 17.69.010; Ord. CS 711, 1994)

17.69.040 Applicability.

Except as otherwise provided in this chapter, it is unlawful for any person to erect, locate, alter or relocate within the City any sign without first obtaining a sign permit or a building permit from the building inspector and paying the required fees.

(Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.050 Definitions.

Sign. Any device, letter, figure, design, symbol, trademark, illuminating device or display intended to attract attention to an person, place, subject, firm, occupation, public performance, article, machine, or merchandise whatsoever and painted, printed, or constructed and displayed in any manner whatsoever for recognized advertising.

- A. Area of Sign. That area enclosed by one continuous line, connecting the extreme points or edges of a sign. The area shall be determined using the largest sign area or silhouette visible at any one time from any one point. This sign area excludes the main supporting sign structure, but all other ornamented attachments and inner connecting links which are not a part of the main supports of the sign are included in determining sign area.
 - 1. On a two-sided sign, both sides shall be computed to determine the total sign area.
 - 2. To compute the area of a sign in square footage, standard mathematical formulas shall be used.
- B. Animated Sign. A sign or device design to attract attention by visual means through the movement or semblance of movement of whole or part of the sign.
- C. Awning Sign. Any sign painted, stained, sketched, or sewn onto the exterior of an awning. Letters to be a maximum of 18 inches.
- D. Bench Sign. A sign located on any part of the surface of a bench or seat placed on or adjacent to a public right-of-way.
- E. Building Frontage. The vertical and horizontal outer surface of the wall of a building which directly fronts onto a public right-of-way or a public street that is used to calculate allowable signing.

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- F. Bulletin Board. A sign used to announce a coming event or attraction or used to convey a specific message related to the building or use of the property to be viewed by the public or form a public right-of-way.
 - G. Business Identification Signs. A sign limited to the name of a tenant, type of business or registered logo of the tenant or business.
 - H. Copy Area of Sign. Actual area of the sign copy applied to any background.
 - I. Changeable Copy Sign. A sign whether freestanding, wall, marquee, or projecting that has a changeable copy.
 - J. Canopy. The portion of a roof of a building or a fixed overhead shelter used as a roof which may or may not be attached to a building or which does not encroach into nor overhang a public street or alley right-of-way.
 - K. Canopy Sign. A sign attached to or hung from a canopy and:
 - 1. Is mounted in a vertical plane.
 - 2. Is mounted parallel to the leading edge of a canopy, except an under canopy sign, which may be mounted at an angle to the leading edge of a canopy.
 - L. Clip Board. A temporary changeable promotional sign attached to permanent frame on a wall of a building. The sign is calculated in the permitted sign area.
 - 3. Does not project above the top of the canopy when mounted on a canopy with a slope of 45 degrees or steeper which may be mounted anywhere on the slope.
 - 4. Does not project above the leading edge of the canopy when mounted on a canopy with a slope flatter than 45 degrees.
 - 5. On a flat canopy (no slope), projects above the top of the canopy but does not project higher than the wall of the building to which the canopy is attached.
 - M. Commercial Center. Two or more buildings, collectively, containing a minimum of 5,000 square feet of building area located on one (1) or more contiguous parcels which utilize common off-street parking and access.
 - N. Construction Sign. A sign with the names of the architect, engineer, contractor, subcontractor and/or financing institutions of buildings or structures under construction which is located on the construction site premises.
 - O. Directional Sign. Freestanding or wall signs used to guide or direct pedestrian or vehicular movement.
 - P. Directory Sign. A sign that includes the names and location of businesses, firms, offices, residential complexes or establishments but does not otherwise promote or advertise a project.
 - Q. Electronic Message Board. A sign capable of displaying words, symbols, figures, or images that can be electronically or mechanically changed by remote or automatic means. The duration of a message shall be displayed for a period no less than 20 seconds. The transition from one message to another shall be instantaneous as perceived from the human eye and each electronic message board message shall be complete in itself and shall not continue by fading, scrolling, or other manner to a subsequent message. No electronic message board shall display animated messages, including flashing, blinking, fading, rolling, dissolving, or any other effect that gives the appearance of movement. No electronic message board shall include or emit an audio message. Electronic message boards shall be limited to locations which front a designated arterial or collector roadway. Electronic message boards shall be subject to approval through a conditional use permit.

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- R. Freestanding Sign. A sign detached from any building or structure that is supported by one or more uprights, poles or other supports and is permanently affixed to the ground.
 - S. Fascia. The flat horizontal band or face of a roof that is located above the exterior wall.
 - T. Garage Sale Sign. A sign used to advertise the sale of used or secondhand goods or merchandise at dwellings on residentially zoned property. Such sales are also identified as patio sales, yard sales, etc.
 - U. Height. The vertical distance from the top of the curb of a street, ground level or the finished grade to the highest point of the sign.
 - V. Marquee. A permanent roofed structure which may or may not be attached to a building which projects into or overhangs a public street or alley right-of-way.
 - W. Marquee Sign. A sign attached to or hung from a marquee and:
 - 1. Is mounted on a vertical plane.
 - 2. Is mounted parallel to the leading edge of a marquee, except an under marquee sign which may be mounted at an angle to the leading edge of a marquee.
 - 3. Does not project higher than the fascia of the marquee to which it is attached.
 - X. Menu Sign. A sign used to display food products and prices at fast food establishments and may be either freestanding or wall sign.
 - Y. Monument Sign. A free-standing sign mounted on a solid base and placed at grade level. The monument sign may have multiple sides but shall not exceed the maximum height and/or area regulations as are adopted for each zone district.
 - Z. Name Plate (Plaque). A sign not exceeding four square feet which contains the name of an occupant, a building, a room number or a suite number and may include a directional arrow with the words "Entrance" or "Exit."
 - AA. Noncommercial Sign. Any sign which does not direct attention to a business, profession, product, commodity or mercantile-oriented service. This includes but is not limited to any sign expressing personal, political, religious, social message, idea or point of view.
 - BB. Off-Premise Sign. Any sign that directs attention to a business, profession, product, commodity, or mercantile-orientated service that is not the primary business, profession, product, commodity or mercantile-orientated service sold, manufactured, conducted, or offered on the site on which the sign is located.
 - CC. On-Premise Sign. A sign which advertises or directs attention to goods, services, facilities, events or attractions available on the premises where located or identifies the owner or occupant or directs traffic on the premise. All other signs are off-premise signs.
 - DD. Open House Sign. A sign with the words "Open House" and may include an arrow or other directional symbol and real estate office name.
 - EE. Political Sign. Any temporary sign or advertising device or display with or without letters, words, numbers, or figures thereon, which is designed to advertise a candidate for political office, a political party or a measure scheduled for an election.
 - FF. Portable Sign. Any sign that is not permanently attached to the ground or a structure or is designed to be transported.
 - GG. Projecting Sign. Any sign attached to and projecting from face of a wall, canopy, or marquee or any sign mounted on a canopy roof with a slope flatter than a 45-degree angle.

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- HH. Real Estate Sign. Shall include For Sale, For Rent, and Open House directional signs which identify the firm's name, address, phone number, and contact person.
 - II. Ridgeline. Shall mean the highest point of the roof, the top of a parapet, or the top of the wall of a building.
 - JJ. Roof Sign. A sign that is placed above the ridgeline of a building, canopy, or other structure.
 - KK. Scenic Corridors. Arterial streets designated in the City's General Plan as having significant scenic and aesthetic value and are subject to specific design, location, height and landscaping requirements. The scenic corridors are Atwater Boulevard, First Street, Bellevue Road, Shaffer Road, Winton Way, Buhach Road, Broadway from Winton Way to First Street, and Third Street from Atwater Boulevard to Grove Avenue.
 - LL. Street Frontage. Shall mean the wall of a building or structure which has frontage on a public street, parking lot, walkway or mall. The street frontage which is determined to have the highest traffic volume.
 - MM. Subdivision Sign. A sign indicating the name of a recorded subdivision, the name of a contractor or subdivider, the name of the owner or agent and/or giving information regarding directions, price and/or terms.
 - NN. Temporary Outdoor Promotional Sign. Any banner, pennant, valance, balloon, streamer, or similar sign or advertising device or display with or without words, number, or figures which directs or promotes service or price, or which is otherwise designed to attract attention.
 - OO. Temporary Window Sign. A sign located on the inside of a window which display temporary pricing or promotional information.
 - PP. Tenant Identification Sign. A sign or plaque that is mounted on the building and used to identify the building's name or tenants.
 - QQ. Time and Temperature Sign. Signs showing digital changes in time and temperature, both centigrade and Fahrenheit and not occurring more frequently than at five (5) second intervals.
 - RR. Wall Sign. Any sign attached to or erected against the wall of a building or structure with the exposed face of the sign in a place approximately parallel to the plane of the wall.
 - SS. Window Sign. A sign permanently displayed on the inside of a window or painted on a window and having a street frontage.

(Prior Code § 10-5.101; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997; Ord. CS 791, 3-12-2001; Ord. CS 925, § 1, 2-13-2012)

17.69.060 Approvals.

- A. All signs except exempt signs shall be subject to Planning Department review and approval. Submittals for Planning Department review shall be on forms provided by the Planning Department with all the required drawings.
- B. Applications for a building permit shall be made to the building inspector upon a form provided by the City and shall contain such information as required therein. The building inspector shall issue permits for the location erection, alteration or relocation of signs within the City when:
 - 1. An application and required drawings have been submitted.
 - 2. A review of such application has been made to determine that the sign complies with the ordinances and codes of the City.

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3. The building permit fee is paid.
- C. Building Permits Issued in Error. If a sign permit is issued in error by the chief building inspector and the sign does not comply with all of the requirements of this article and all other laws and ordinances of the City. The permit shall be null and void and no rights or privileges shall be conferred upon the permittee by said permit.
- (Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.080 Right to appeal.

- A. Appeal of Staff Decision. Appeals from administrative decisions rendered on sign ordinance interpretation may be made to the Planning Commission within ten days from the date the notice of action is given. The written appeal shall be filed with the City Clerk and shall state the expected decision and the grounds for appeal. Upon proper application and public hearing, a decision shall be rendered by the Planning Commission as to the reasonableness of the administrative decision based upon applicable ordinance standards.
- B. Appeal of Planning Commission Decision. Within ten days following a Planning Commission decision, an appeal may be made to the City Council by the applicant or other interested parties. The written appeal shall be filed with the appropriate fee to the City Clerk and shall state wherein the decision was inappropriate. The appeal shall be set for public hearing before the City Council. The decision by the City Council shall be final.
- (Prior Code § 10-5.117; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.100 Exempt signs.

- A. The following signs are exempt from the provisions of this ordinance:
1. Flags or insignia of any government, unless displayed in connection with a commercial promotion.
 2. Memorial signs or tablets containing names of buildings and dates or erections.
 3. Public utility signs regulated by the California Public Utilities Commission.
 4. Legal notices, identification, information or directional signs erected by governmental agencies.
 5. Christmas decorations and lights displayed from November 15 to January 15.
- B. If a sign is less than six feet in height, measured from the finished grade to the top of the sign, the sign is exempt from a building permit but is subject to the provisions of this ordinance.
- (Prior Code § 10-5.103; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.120 Prohibited signs.

The following signs are not permitted:

- A. Signs that portray indecent or morally objectionable language or descriptions.
- B. Stationary motor vehicles, trailers, and similar devices that contain displays to circumvent the intent of this ordinance.
- C. Roof signs.
- D. Signs of a nonpermanent or temporary nature that are hung, nailed, posted, or in any similar way attached to the outside of a structure for advertising purposes.

- E. Signs that may cause a traffic hazard or nuisance by distracting or confusing a motorist.
- F. Signs that may cause glare, reflection, or which contain any moving or rotating parts; or which flash, blink or are otherwise animated. The provision of this subsection shall not apply to the following types of signs:
 - 1. A conventional clock face.
 - 2. A sign showing time and/or temperature and changes not more frequently than at five second intervals.
 - 3. An on-premise barber pole of a length not to exceed ten feet in height measured from the finished grade to the top of the sign.
- G. Signs that are not expressly permitted in a specific zone are otherwise prohibited.
- H. Electronic message boards that do any of the following:
 - 1. Display animated messages, including flashing, blinking, fading, rolling, dissolving, or any other effect that gives the appearance of movement;
 - 2. Include or emit an audio message;
 - 3. Display a message for a period less than 20 seconds;
 - 4. Have the transition from one message to another that is not instantaneous as perceived from the human eye; or
 - 5. Display messages that are not complete, requiring any message to continue by fading, scrolling, or other manner to a subsequent message.

All electronic message boards shall comply with this section and the requirements located in the definition of "electronic message boards" in Section 17.69.050.Q. of this chapter.

(Ord. CS 711, 1994; Ord. CS 744, 10-13-1997; Ord. CS 925, § 2, 2-13-2012)

17.69.140 General requirements.

- A. All signs shall be erected in compliance with adopted City codes and standards.
- B. All signs shall be properly maintained.
- C. All signs shall remain out of the City's recognized clear zones, as defined in section 17.12.120 and public rights-of-way, and in no way shall any sign constitute a vehicular traffic hazard by distracting or confusing a motorist.
- D. No sign shall be attached to any City street tree, utility pole, street signal, street light, street name sign, traffic warning sign, bus shelter, or similar device or facility.
- E. Signs if other wise authorized, are permitted to be located in a front, side, or rear yard. The projection of an authorized sign into any street or right-of-way shall be as follows:

1. Freestanding Sign	No projection
2. Wall Sign	Up to 14 inches in thickness
3. Marquee/Canopy Sign	Not closer than two (2) feet from the face of the curb
4. Projecting Sign	Not closer than two (2) feet from the face of the curb.

(Ord. CS 711, 1994)

17.69.160 Scenic corridors.

Freestanding signs erected along scenic corridors are subject to the following setback, landscaping, and design requirements:

- A. No closer than ten feet to property line or 18 feet to curb face. Areas along Atwater Boulevard shall conform to established building setbacks.
- B. Signs shall be of a monument style, mounted on a solid base, and not to exceed eight feet in height measured from the finished grade to the top of the sign.
- C. The sign shall be placed in a landscaped area equipped with a seven-day automatic irrigation system.
- D. The design and construction materials of monument signs shall be reviewed and approved by the Planning Department.

(Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.180 Gasoline service stations.

Permanent signs in service stations shall not exceed 300 square feet.

- A. Identification Sign.
 - 1. Signs may be permitted on pump islands, canopy uprights, or non-movable structures in the pump island. If there is no canopy, these signs shall not exceed three feet in height and shall not extend beyond the pump island.
 - 2. No sign shall project above the canopy or beyond a building edge.
 - 3. One freestanding sign is permitted not to exceed 90 square feet in sign area and 20 feet in height measured from the finished grade to top of the sign, except on a scenic corridor.
 - 4. Wall signs shall be limited to two street frontages and shall not exceed one square foot of sign area per lineal foot of building frontage.
 - 5. Temporary window signs for mini marts within service stations shall be limited to two principle street frontages and to 15 percent of each window area.
- B. Motor Fuel Sign.
 - 1. Motor fuel price signs for each street frontage of the site are permitted. Maximum square footage for all fuel price signs shall be 60 square feet.
 - 2. Such signs may be on an individual sign or on a combination of cash and discount pricing signs.
 - 3. If motor fuel signs are to be freestanding, then such signs must be combined with the freestanding identification signs and not to exceed the allowable sign area.
 - 4. Sign copy of fuel price signs shall comply with applicable State codes and regulations.

(Ord. CS 711, 1994; Ord. CS 744, 1997; Ord. CS 791, 3-12-2001)

17.69.200 Outdoor advertising signs, billboards.

Outdoor advertising signs may be permitted in the M-1 and M-2 zones provided the signs are located within 300 feet of the Freeway 99 right-of-way.

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- A. Maximum sign area is 600 square feet and 50 feet in height measured from the finished grade to the top of the sign.
 - B. Signs located on property within 660 feet of the Freeway 99 right-of-way may be higher than 50 feet measured from the finished grade to the top of the sign or larger than 600 square feet subject to obtaining a conditional use permit with the following findings:
 - 1. The Commission may grant approval if the applicant can show that an overcrossing of Freeway 99 or ramps thereto obstruct visibility of said sign. The applicant shall also present plans illustrating the means by which the minimum height necessary to clear said visual obstruction was determined.
 - 2. In deciding whether to grant additional height and sign area, the Commission shall take into consideration the location, size, and proximity of the proposed sign and surrounding signs.

(Prior Code § 10-5.113; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.220 Commercial center uniform design standards.

Uniform Design Standards shall be a method to provide consistency, uniformity and coherence in design and construction of signs erected in commercial centers whose building square footage totals a minimum 5,000 square feet.

- A. Uniform Design Standards shall be established at the site plan, use permit or at the initial development plan review stage. The design, construction, materials, color scheme and location of such signs shall be uniform, compatible and consistent with all other identification signs in the commercial center.
- B. The Planning Commission shall establish the location, colors, and construction of the shopping center signs.
- C. Subsequent signs in the same commercial center, even if the businesses are in separate ownership or on separate parcels, shall follow the Uniform Design Standards as established at the initial review stage.
- D. Registered logos or trademarks may be used if the location, color, design and construction materials remain consistent with the adopted standards.
- E. Illuminated, neon, or other self-lighted signs may be used.
- F. In shopping centers over 50,000 square feet, the shopping center identification signs and the individual business identification signs shall be illuminated during the same time periods. Anchor tenants over 30,000 square feet shall establish their own illumination schedule.
- G. One sign 25 feet in height measuring from the finished grade on arterial streets and one sign 15 feet in height measuring from the finished grade on secondary streets for shopping centers.

(Ord. CS 711, 1994; Ord. CS 791, 3-12-2001)

17.69.240 Freeway corridors.

Businesses located within 300 feet of the Freeway 99 right-of-way may have one freestanding sign up to 50 feet in height measured from the finished grade to the top of the sign and 250 square feet in sign area, if the sign is oriented to attract freeway traffic. A use permit shall be required for signs higher than 50 feet measured from the finished grade to the top of the sign and larger than 250 square feet.

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- A. For a freestanding tourist-oriented hotel, motel, restaurant, service station or similar business located on property within 300 feet of the Freeway 99 right-of-way, one freestanding identification sign exceeding 250 square feet in area and higher than 50 feet measured from the finished grade to the top of the sign may be approved subject to approval of a conditional use permit. Said use permit shall be dependent upon the following findings:
1. That the use or occupancy is a freestanding use. In this section, a freestanding use is defined as a use or occupancy that does not attract customers by its proximity to another business or businesses that jointly attract customers though their proximity to each other or be adequately identified by other signs otherwise permitted.
 2. That the use or occupancy cannot be adequately identified by other signs otherwise permitted.
 3. That an overcrossing of Freeway 99 or ramps thereto obstruct visibility of said sign to the northbound or south bound lanes of Freeway 99. Applicants shall present plans illustrating the means by which the minimum height necessary to clear said visual obstruction was determined.

(Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.280 Real estate signs.

The following regulations apply to on site real estate signs in residential and commercial zones:

- A. Residential Zones.
1. One unlighted For Sale or Rent sign, per street frontage, not to exceed eight square feet in area and four feet in height measured from the finished grade to the top of the sign.
 2. Three unlighted For Sale, For Rent, or Open House signs, not to exceed four square feet each and three feet in height measured from the finished grade to the top of the sign.
 3. Real estate rental signs may include copy describing the rental units and prices.
- B. Commercial and Industrial Zones.
1. One freestanding sign per street frontage not exceeding 64 feet in area and ten feet in height measured from the finished grade to the top of the sign.
 2. In a shopping center over 50,000 square feet, a permanent leasing sign may be installed providing the sign area does not exceed 32 square feet and ten feet in height measured from the finished grade to the top of the sign.
- C. Real estate signs shall be removed 15 days after close of escrow, rent, or lease of the property or building.
- D. Temporary off premise real estate open house signs are permitted subject to the property owner approval. The displays shall not be erected prior to one hour before, or shall be removed one hour after, the advertised time of the open house. The height and sign area shall comply with portable signs Section 17.69.340.C, E.1, E.2 and H.

(Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.290 Construction signs.

- A. Residential Zones.

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1. One construction sign per residential development not to exceed 32 square feet in area and ten feet in height measured from the finished grade to the top of the sign.
 2. Construction signs shall be removed no later than three years from date of erection or 30 days from completion of the last unit in the subdivision.
- B. Commercial/Industrial Zones. One construction sign per property not exceeding 64 square feet in area and ten feet in height measured from the finished grade to the top of the sign provided such signs are removed no later than 30 days after completion of construction.

(Prior Code § 10-5.109; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.300 Subdivision real estate signs.

One subdivision sign per street frontage for residential subdivision not to exceed 64 square feet in area and ten feet in height measured from the finished grade to the top of the sign provided that such signs shall be removed no later than three years from the recording date of the subdivision except as follows:

- A. The City Manager or Planning Director shall have the authority to extend the time period for one additional year. A request for an extension shall be submitted to the Planning Department prior to the expiration of the initial time approval.
- B. Where building permits have been taken out for more than 50 percent, but less than 65 percent of the lots in such subdivision at the end of said three-year period, such sign may remain for an additional one-year period.
- C. Where building permits have been taken out for 50 percent or less of the lots in such subdivision at the end of said three-year period, such sign may remain for an additional two-year period.
- D. Up to three unlighted off-premise directional signs not exceeding 32 square feet in area and ten feet in height measured from the finished grade to the top of the sign may be permitted. These signs shall be removed at the same time as the subdivision sign.
- E. Up to ten off-premise directional signs for weekend use may be displayed for each residential subdivision subject to the following requirements:
 1. The signs shall be placed only on major collectors and provide the most direct routes to the advertised subdivision.
 2. The signs shall not be placed in public rights-of-ways and shall have property owner approval where displayed.
 3. The signs shall be displayed for weekend promotion only and shall be erected no earlier than 12:00 p.m. Friday, and shall be removed no later than 12:00 a.m. Monday.
 4. The signs shall be no higher than four feet in height measured from the finished grade to the top of the sign, and no larger than four square feet in area.

(Prior Code, § 10-5.107; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.320 Temporary political signs.

In any zone, subject to obtaining property owner's or possessor's prior consent, temporary political signs shall be permitted to be on display for a maximum of ten days after the election involving the candidate or issue display has been held; provided that in no case shall any such sign be displayed for more than 140 days during any

calendar year. One temporary political sign per candidate or issue is permitted and shall be subject to the same regulations of the zone in which it is located except as noted below.

- A. In Residential zones, two signs per candidate or issue and shall not exceed 12 square feet in area and three feet in height measured from the finished grade to the top of the sign.

(Prior Code § 10-5.112; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.340 Portable signs.

- A. One portable sign may be allowed for each business location.
- B. Each portable sign shall be limited to a maximum display time of 60 days per year.
- C. The sign may have two faces but not exceed a maximum of four feet in height measured from the finished grade to the top of the sign and six square feet in area for each face.
- D. An annual permit must be obtained from the Building Official prior to placement of a portable sign and will specify the allowable days for display.
- E. A portable sign shall only be permitted if the following conditions are met:
 - 1. The sign shall not obscure or visibly impair vehicular traffic
 - 2. The sign shall not be placed within the public right-of-way, on publicly owned property, or off the premises.
- F. The portable sign is to be used for promotional advertising and shall not contain the business name.
- G. The sign shall be constructed of permanent materials.
- H. Any violations of the above requirements will result in forfeiture of the permit.

(Prior Code § 10-5.111; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.360 Temporary outdoor promotional displays.

- A. Outdoor promotional displays are allowed for special promotional uses only and are authorized by permit from the Director or his/her designees.
- B. Only one display may be used at a time.
- C. Outdoor promotional displays are valid for a period of 15 days and may be used for no more than three promotional events per calendar year for a total of 45 days.
- D. Outdoor promotional displays are to be used for promotional uses only and shall not contain the business name, address, or directional information.
- E. One permanent Clip Board for temporary promotional signs may be used in commercial zones. The sign's design is subject to the wall sign regulations of the zone in which placed and is calculated in the permitted sign area.

(Prior Code § 10-5.110; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.380 Temporary window signs.

- A. Temporary banners or posters may be installed inside windows when used in conjunction with national, state, holiday advertising programs or weekly market specials.
- B. Window coverage of temporary window signs may not exceed 50 percent of the total window area.
- C. For businesses with more than one frontage, 25 percent of window area of a second frontage may also be used.

(Ord. CS 711, 1994)

17.69.400 Temporary seasonal sales signs.

Signs erected for fireworks stands, pumpkin stands or Christmas tree lots shall not exceed 64 square feet in area and no higher than eight feet in height measured from the finished grade to the top of the sign and shall not encroach into any public right-of-way. Such signs shall be displayed for no more than the allowable, permitted time for that event.

(Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.420 Garage sale signs.

Two unlighted garage sale signs not exceeding three feet each in area and maximum of three feet in height measured from the finished grade to the top of the sign and may be displayed as follows:

- A. Said signs may be displayed only at times when the garage sale is actually being held or conducted.
- B. Said signs may only be erected and displayed on private property with the consent of the owner thereof.
- C. No sign shall be attached or placed on any utility poles, traffic signal poles, or within the public right-of-way.

(Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.440 Directional signs.

A directional sign shall not bear any advertising message and shall be located on the same premises as the use which it is intended to serve.

- A. Two on-site directional signs are allowed for each egress or ingress. More than two on-site directional signs for each business shall require approval by the Planning Commission. The design and location shall be approved by the Planning Department.
- B. Maximum allowable square footage is 12 square feet per sign.
- C. Maximum allowable height is six feet measured from the finished grade to the top of the sign.
- D. Directional signs shall not be calculated in the total allowable square footage allocated for a specific zone.

(Prior Code § 10-5.106; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997; Ord. CS 791, 3-12-2001)

17.69.460 Non-commercial signs.

Non-commercial signs may be established and maintained on private property provided that they conform to all applicable provisions of this chapter. If displayed on a parcel containing no permanent or temporary building, the applicable maximum height and area of such signs is that maximum applicable to signs for the predominant use within that zone district. The design, materials and placement of non-commercial signs shall conform to all applicable provisions of this Code.

(Ord. CS 711, 1994)

17.69.470 Residential zones.

Signs other than for religious or institutional uses are not permitted.

(Ord. CS 744, 10-27-1997)

17.69.480 Multifamily zone.

One building or complex identification sign per frontage which may be either a monument type sign or a wall sign.

- A. Monument signs shall not exceed 32 square feet in area for a maximum height of four feet measured from the finished grade to the top of the sign.
- B. Wall signs shall not exceed 24 square feet in area, are limited in height to ten feet from ground level, and shall not be internally illuminated.
- C. One manager's plaque sign may be permitted provided the sign does not exceed four square feet.

(Prior Code § 10-5.106; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.500 Institutional and religious signs.

- A. Institutional Signs. The following signs are permitted for institutional uses including government buildings and facilities, museums, private schools, and convention or gathering halls:
 1. One (1) monument sign not to exceed 64 square feet in area and eight (8) feet in height measured from the finished grade to the top of the sign.
 2. Freestanding Reader Board or Electronic Message Board. One Freestanding Reader Board sign not to exceed 20 feet in height and 30 square feet in area, or one Electronic Message Board provided that the Electronic Message Board is integrated into either a permitted Monument Sign or Freestanding Reader Board to form a cohesive design unit and the Electronic Message Board component does not exceed 75 percent of the total sign area. An applicant may not have both a Freestanding Reader Board and an Electronic Message Board. An Electronic Message Board shall be subject to approval of a Conditional Use Permit, pursuant to Chapter 17.71 of this Code. Approval of the Conditional Use Permit shall also require the following findings:
 - a. The Electronic Message Board is consistent with Sections 17.69.500(A), 17.69.050(Q) and 17.69.120(H) of this Code.
 - b. The Electronic Message Board will be located adjacent to an established arterial or collector roadway as designated in the City's General Plan.

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- c. The Electronic Message Board is consistent with the City's General Plan, the City's Zoning Code, City Municipal Code and all other applicable codes and regulations.
 - d. The orientation of the face of the Electronic Message Board is not detrimental to the character of development in the immediate neighborhood, and does not pose a safety risk to motorists or pedestrians.
 3. Two on-site directional signs per egress/ingress not to exceed 12 square feet in area and a maximum of six feet in height measured from the finished grade to the top of the sign. More than two signs per business shall require approval by the Planning Commission. The design and location shall be approved by the Planning Department.
 4. One wall identification sign not to exceed one square foot per each linear foot of building frontage.
 5. All monument signs, freestanding signs, and directional signs shall be placed within the landscaped area to be equipped with a seven day automatic irrigation system.
 6. The design and materials of all monument signs shall be reviewed and approved by the Planning Department.
- B. Religious Signs. The following signs are permitted for religious centers (churches):
1. One (1) monument sign per frontage (maximum of two) with One primary monument sign not to exceed 64 square feet in area and eight feet in height measured from the finished grade to the top of the sign and a secondary, provided the lot has two frontages, not to exceed 32 square feet in area and eight feet in height measured from the finished grade to the top of the sign.
 2. Two on-site directional signs per egress/ingress not to exceed twelve square feet in area and a maximum of six feet in height measured from the finished grade to the top of the sign. More than two signs for each business shall be approved by the Planning Commission. The design and location shall be approved by the Planning Department.
 3. One wall identification sign not to exceed one square foot per each linear foot of frontage.
 4. Electronic Message Board. The use of an Electronic Message Board is permitted subject to the approval of a Conditional Use Permit. An Electronic Message Board shall be integrated into one of the two permitted Monument Signs or the wall identification sign as permitted within this section provided that the Electronic Message Board component does not exceed 75 percent of the total sign area and is integrated with the remainder of the sign to form a cohesive design unit. Only one Electronic Message Board will be allowed. An Electronic Message Board shall be subject to approval of a Conditional Use Permit, pursuant to Chapter 17.71 of this Code. Approval of the Conditional Use Permit shall also require the following findings:
 - a. The Electronic Message Board is consistent with Sections 17.69.500(B), 17.69.050(Q) and 17.69.120(H) of this Code.
 - b. The Electronic Message Board will be located adjacent to an established arterial or collector roadway as designated in the City's General Plan.
 - c. The Electronic Message Board is consistent with the City's General Plan, the City's Zoning Code, City Municipal Code and all other applicable codes and regulations.
 - d. The orientation of the face of the Electronic Message Board is not detrimental to the character of development in the immediate neighborhood, and does not pose a safety risk to motorists or pedestrians.
 5. All monument and directional signs shall be placed within a landscaped area equipped with a seven day automatic irrigation system.

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6. The design and materials of monument signs shall be reviewed and approved by the Planning Department.

(Ord. CS 711, 1994; Ord. CS 744, 10-13-1997; Ord. 791, 3-12-2001; Ord. CS 925, § 3, 2-13-2012; Ord. CS 933, § 1, 4-8-2013)

17.69.520 Planned development zone.

All signs in Planned Developments shall be reviewed and approved by the Planning Commission as part of the Final Development Plan or by the Planning Department thereafter.

(Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.540 Commercial center standards.

Commercial centers shall include all commercial complexes, whether retail or service oriented located in any of the commercial zones which contain 5,000 square feet or more commercial space and are developed as an integral unit on one or more contiguous parcels and utilize common off-street parking shall be subject to the Uniform Design Standards per Section 17.69.220

A. Freestanding Identification Sign.

1. One commercial center or complex identification sign may be erected for each street frontage.
2. The commercial center identification sign shall be limited to a maximum of 250 square feet of sign area and limited to 12 feet in height measured from the finished grade to the top of the sign except in scenic corridor.
3. The commercial center identification sign shall be located a minimum of ten feet behind the public right-of-way and not interfere with vehicular traffic or safety.
4. The sign copy shall be limited to the name of the center and may include the street address of the complex.
5. A commercial center sign may include the individual business names if the height, square footage, and all other requirements of this section are maintained.
6. The area surrounding the sign shall be attractively landscaped and be equipped with a seven-day automatic irrigation system.

B. Individual Business Identifications Sign.

1. One wall or fascia sign one and one half (1½) square feet per linear foot of building frontage. Businesses with two frontages may have a second sign with a maximum of 50 percent of the main sign area. No sign shall exceed 300 square feet in area.
2. Window signs shall be limited to 15 percent of a window area.
3. Canopy signs shall be limited to one per business and not exceed 30 percent of the building frontage.
4. Under canopy signs shall be limited to eight square feet per side and have a minimum vertical clearance of seven feet, six inches above the finished grade.

C. Directional Sign.

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1. Two exterior directional signs per use is permitted and shall not exceed 12 square feet in area and six feet in height measured from the finished grade to the top of the sign. Business identification shall not exceed one-half (½) of the area on a given sign face. More than two signs per business shall require approval by the Planning Commission. Design and location shall be approved by the Planning Department.
 2. As an alternative, any number of interior directional signs may be permitted providing each sign does not exceed four feet in area and four feet in height measured from the finished grade to the top of the sign.
- D. Menu Sign. Two menu signs may be permitted for a drive-in restaurant or other eating place with drive-through facilities providing the sign does not exceed 48 square feet in area or six feet in height measured from the finished grade to the top of the sign.
 - E. Wall Menu Sign. For non drive-through restaurants, one wall menu sign at the main entrance is permitted provided the sign does not exceed 12 square feet in area.

(Prior Code § 10-5.106; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997; Ord. CS 791, 3-12-2001)

17.69.560 General commercial zone.

Total allowable square footage for all signs shall be 200 square feet per business.

- A. Freestanding Sign. One freestanding sign per parcel not to exceed 70 square feet of total sign area or 12 feet in height measured from the finished grade to the top of the sign, except when located on a scenic corridor, the height shall not exceed eight feet.
- B. Wall Sign.
 1. One sign per business frontage not to exceed one and one-half square feet of sign area per linear foot of building frontage and not to exceed 300 square feet.
 2. For businesses with a second frontage, a second wall sign is limited to 50 percent of the main sign.
- C. Nameplate or Plaque Sign. One sign for each business or tenant may be permitted not to exceed four square feet in area and to be located near the principal business entrance.
- D. Directory Sign. A directory sign shall be considered a freestanding sign. One sign per office complex or business establishment. If the office complex has more than one principal street frontage, then one directory sign may be allowed for each frontage providing the signs do not exceed 30 square feet each.
- E. Canopy Sign. One sign for each business tenant not exceed 20 percent of the tenant's business frontage.
- F. Permanent Window Sign. Window signs are limited to 15 percent of each window area.

(Prior Code § 10-5.106; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997; Ord. CS 791, 3-12-2001)

17.69.580 Central commercial zone.

- A. General Regulations.
 1. Freestanding signs are not permitted in the area along Broadway from Fifth Street to First Street and along the north side of Atwater Boulevard from Winton Way to First Street.

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2. Total maximum sign area for all signs including canopy, marquee, wall, projecting, freestanding, and window signs in the C-C zone is 200 square feet per parcel or lot.

B. Permitted Sign. The following signs are permitted in the C-C zone:

1. Freestanding Sign. One sign per property not to exceed 50 square feet in area and eight feet in height measured from the finished grade to the top of the sign.
2. Projecting Sign. One sign per business not to exceed 12 square feet in area.
3. Wall Sign. One sign per tenant, frontage not to exceed one square foot in area per lineal foot of building frontage. If suite with two frontages, 50 percent of allowable sign area can be used for the second frontage sign.
4. Canopy Sign/Marquee Sign. One sign per building frontage not to exceed 24 square feet in area.
5. Under Canopy Sign. One sign per building tenant not to exceed eight square feet in area and shall have a vertical clearance of seven and one-half feet from the finished grade.
6. Building/Tenant Identification. One plaque per tenant not to exceed four square feet in area.

(Prior Code § 10-5.106; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997; Ord. CS 791, 3-12-2001)

17.69.600 Industrial zone.

- A. On-premise advertising signs in the industrial zones shall be limited to a total maximum square footage of 400 square feet per parcel.

B. Freestanding Sign.

1. One monument sign per lot or parcel may be allowed provided the sign is limited to 12 feet in height measured from the finished grade to the top of the sign, located ten feet behind the property line and does not exceed 100 square feet in area. The design and construction materials shall be reviewed and approved by the Planning Department.
2. Landscaping, a seven-day automatic irrigation system, is to be provided in an area surrounding the base of the sign.
3. The design, style and color scheme of the sign shall match or complement the design of the business.

- C. Wall Signs. Each business occupant located in the industrial zone may have one wall sign per tenant building frontage. Such sign shall be limited to one square foot in area per linear foot of building frontage, and total sign area shall not exceed a maximum of 300 square feet for the entire parcel.

(Prior Code § 10-5.106; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997; Ord. CS 791, 3-12-2001)

17.69.620 Sign abatement.

After the date of adoption of this ordinance, the City shall commence a program to inventory and identify all illegal or abandoned signs within its jurisdiction and shall commence abatement of illegal or abandoned signs, pursuant to the same procedural rules set forth in section 17.69.640 of this Chapter.

(Ord. CS 711, 1994)

17.69.640 Nonconforming signs.

A nonconforming sign is one which was lawfully erected or placed upon real property, but which could not be established in the same manner under the present ordinance.

- A. Nonconforming signs may be maintained, but not substantially altered, modified, added to, or increased in area. A change in copy shall be permitted if no structural changes are made. Any substantial changes would require full conformance with the provisions of this ordinance. Notwithstanding this section, certain signs shall be required to conform.
- B. A nonconforming sign which is destroyed or damaged to an extent in excess of 50 percent of its estimated value shall not be replaced or repaired, except by a sign which conforms to the provisions of this ordinance.
- C. A nonconforming sign whose use is discontinued for over 180 days shall be removed within 30 days, unless within that period of time it is made to conform.
- D. Each nonconforming sign shall be removed or made to conform to the provisions of this article at the sole cost of the owner thereof.
- E. All nonconforming signs shall be provided a useful life of 15 years. Legal signs erected prior to March 12, 1983, shall remain in existence for a period of 15 years beginning March 12, 1983.

(Prior Code § 10-5.114; Ord. CS 711, 1994)

17.69.660 Removal of illegal signs, procedure.

- A. Any sign which is prohibited, illegally installed or which does not conform to the provisions of this Chapter, and any illegal nonconforming sign which meets the criteria set forth in California Business and Professions Code Section 5497, as it presently exists or as it may be amended, shall be either abated and removed, or in the alternative, brought into compliance with the provisions of this Chapter, without payment of any compensation to the owner, pursuant to the procedure provided herein.
- B. The City Manager or the Director of Planning, after conducting an investigation, shall order the abatement and removal of any such sign, or direct that such sign shall comply with the provisions of this Chapter, by giving Notice of Violation to the business owner using said sign and to the owner of the real property upon which the sign is located. The Notice of Violation shall contain the following information:
 - 1. It shall describe or otherwise identify the sign and specify the violation requiring its removal or correction.
 - 2. It shall order that the sign be either removed or that in the alternative it be brought into compliance with the provisions of this Chapter within 30 days from the date that the Notice of Violation is mailed.
 - 3. It shall contain a notice of the right to appeal as provided herein.
- C. The Notice of Violation shall be sufficient if it is mailed via first class U.S. mail to the business owner at the business address upon which the sign is located, and to the property owner at the address shown on the last equalized assessment roll of the county. If there is no known business owner conduction business upon the property, then notice to the owner of the real property as provided herein shall be sufficient.
- D. If the business owner and/or the real property owner do/does not agree with the determination of the City Manager or Planning Director, either or both such parties may appeal the determination by filling with the office of the Director a written Notice of Appeal, which notice shall be served and received by the Director not later than 30 days from the date that the Notice of Violation was mailed.

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- E. The City Manager or Planning Director shall have the authority to extend the 30 days time period for the removal or correction of a sign, if he/she determines that the affected party is acting in good faith. Such extensions of time shall not exceed a total of 120 days without prior approval of the Planning Commission.
 - F. Upon the timely receipt of written appeal by the City Manager or Planning Director, a Hearing shall be set before the Planning Commission within 30 days of receipt of the said Notice of Appeal. Written notice of the date of the hearing on the appeal shall be given to the appellant via first class U.S. mail at least ten days prior to the hearing date.
 - G. The Planning Commission shall hear and determine the appeal, and its decision shall be final.
 - H. Upon a determination by the Planning Commission that the offending sign must be removed, or in the absence of an appeal and upon the expiration of the 30-day compliance period, the City may cause the removal of the sign, either by use of its own personnel or by contracting for its removal with appropriate and qualified contractors. The owner of the real property and the owner of the business upon which the sign is located shall be jointly and severally responsible for all cost and expense incurred by the City for the removal of the sign, and the City may cause a lien to be placed against said real property for such costs plus administrative expense. Nothing contained herein shall otherwise limit the City from enforcing such other legal remedies.
 - I. Signs removed by the City pursuant to this Chapter shall be stored for a period of 30 days, during which time they may be recovered by the owner upon payment to the City of all costs of removal and storage. The City shall give written notice to the business owner and/or the owner of the real property of their to reclaim the stored property within 30 days upon the payment to the City of all costs of removal and storage. The written notice so given shall contain a statement of the amount required to redeem said property. Said notice shall be served as provided in Section 17.69.640.C hereof.

If said property is not recovered prior to the expiration of the 30-day period, the sign and supporting structures shall be deemed abandoned, title thereto shall vest in the City, and the City may sell or otherwise dispose of the property as it may determine, and apply any proceeds received therefrom to the satisfaction of its cost and expenses.

(Prior Code § 10-5.115; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.680 Sign variance.

The Planning Commission may grant variances from the provisions of this article in accordance with the provisions of Section 17.74 of the Atwater Municipal Code.

(Ord. CS 711, 1994)

17.69.700 Safety and maintenance.

All signs shall be subject to the following:

- A. The owner of any sign shall maintain all parts, portions, units and materials composing the sign together with the frame, background, supports or anchorage thereof in a proper state of repair and safety and state of preservation.
- B. All parts of the sign, inclusive of the frame, background, supports, or anchorage shall be maintained in a neatly painted condition.
- C. All signs shall be inspected by the building official and shall be made to comply with this article when directed in writing by the City Manager or Planning Director.

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- D. An owner of a sign must comply within ten days after receiving Notice of Noncompliance, or the building official may cause such sign to be removed. Any expense incurred to remove the sign shall be paid by the owner of the business or real property.

(Prior Code § 10-5.104; Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)

17.69.720 Enforcement.

It shall be the duty of the building official, the City Manager or Planning Director to enforce the provisions of this ordinance. Any sign installed, substantially altered, or relocated contrary to the provisions of this ordinance shall be declared to be in violation of this ordinance. Violation of this section shall constitute an infraction and will be punishable by a fine of up to \$500.00 for each violation or subsequent violations.

(Ord. CS 711, 1994; Ord. CS 744, 10-13-1997)



CITY COUNCIL OF THE CITY OF ATWATER

ORDINANCE NO. CS 1057

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER AMENDING CERTAIN SECTIONS OF CHAPTER 17.69 "SIGN REGULATIONS" OF THE ATWATER MUNICIPAL CODE

WHEREAS, the City Council has adopted an ADA Transition Plan for the City of Atwater ("City") to improve accessibility standards in the City, and this ordinance is intended to adhere to such standards by alleviating accessibility impediments; and,

WHEREAS, in addition to accessibility impediments, some current sign placements are distracting to drivers and detrimental to the City's aesthetics; and,

WHEREAS, this ordinance is intended to improve the regulations of signs within the City by providing orderly and consistent methodology for sign placement and approvals, and continuing to beautify the City's streetscapes and major traffic corridors; and,

WHEREAS, the City Council finds it is in the interest of the public health, safety, and welfare to amend such sections in the municipal code.

NOW, THEREFORE, be it ordained by the City Council of the City of Atwater as follows:

SECTION 1: The City Council of the City of Atwater does hereby amend 17.69.120 of the Atwater Municipal Code to read as follows (deletions are marked in ~~strikethrough~~, and additions are marked in underline):

17.69.120 Prohibited signs.

The following signs are not permitted:

- A. Signs that portray indecent or morally objectionable language or descriptions.
- B. Signs or displays that are affixed to ~~S~~stationary motor vehicles, trailers, and similar devices ~~that contain displays for which the primary purpose of the vehicle, trailer, or device is advertising, and the intent is to circumvent the~~ intent application of this ordinance.

- C. Signs painted or mounted on roofs or placed above the roofline.~~Roof signs.~~
- D. Signs of a nonpermanent or temporary nature that are hung, nailed, posted, or in any similar way attached to the outside of a structure for advertising purposes.
- E. Because of the City's compelling interest in ensuring traffic safety, any signs that simulate (in color, size, or design) any traffic control signal, or that make use of words, symbols, characters, or design Signs that may cause a traffic hazard or nuisance by distracting or confusing a motorist or pedestrian.
- F. Signs that may cause glare, reflection, or which contain any moving or rotating parts; or which flash, blink or are otherwise animated. The provision of this subsection shall not apply to the following types of signs:
1. A conventional clock face.
 2. A sign showing time and/or temperature and changes not more frequently than at five second intervals.
 3. An on-premise barber pole of a length not to exceed ten feet in height measured from the finished grade to the top of the sign.
- G. Signs that are not expressly permitted in a specific zone are otherwise prohibited.
- H. Electronic message boards that do any of the following:
1. Display animated messages, including flashing, blinking, fading, rolling, dissolving, or any other effect that gives the appearance of movement;
 2. Include or emit an audio message;
 3. Display a message for a period less than 20 seconds;
 4. Have the transition from one message to another that is not instantaneous as perceived from the human eye; or
 5. Display messages that are not complete, requiring any message to continue by fading, scrolling, or other manner to a subsequent message.
- All electronic message boards shall comply with this section and the requirements located in the definition of "electronic message boards" in Section 17.69.050.Q. of this chapter.
- I. Portable signs, as defined in this chapter, including, but not limited to, A-frame signs.
- J. Persons or costumed persons holding signs with the purpose of drawing attention to or advertising a commercial enterprise, including but not limited to sign spinners/twirlers, commercial mascots, and sign clowns.

K. Commercial flags, banners, or any signs attached to poles with the intent to flap in the wind.

SECTION 2: The City of Atwater does hereby remove the following sections from the Atwater Municipal Code:

~~17.69.340 Portable signs.~~

- ~~A. One portable sign may be allowed for each business location.~~
- ~~B. Each portable sign shall be limited to a maximum display time of 60 days per year.~~
- ~~C. The sign may have two faces but not exceed a maximum of four feet in height measured from the finished grade to the top of the sign and six square feet in area for each face.~~
- ~~D. An annual permit must be obtained from the Building Official prior to placement of a portable sign and will specify the allowable days for display.~~
- ~~E. A portable sign shall only be permitted if the following conditions are met:
 - ~~1. The sign shall not obscure or visibly impair vehicular traffic~~
 - ~~2. The sign shall not be placed within the public right-of-way, on publicly owned property, or off the premises.~~~~
- ~~F. The portable sign is to be used for promotional advertising and shall not contain the business name.~~
- ~~G. The sign shall be constructed of permanent materials.~~
- ~~H. Any violations of the above requirements will result in forfeiture of the permit.~~

~~17.69.360 Temporary outdoor promotional displays.~~

- ~~A. Outdoor promotional displays are allowed for special promotional uses only and are authorized by permit from the Director or his/her designees.~~
- ~~B. Only one display may be used at a time.~~
- ~~C. Outdoor promotional displays are valid for a period of 15 days and may be used for no more than three promotional events per calendar year for a total of 45 days.~~
- ~~D. Outdoor promotional displays are to be used for promotional uses only and shall not contain the business name, address, or directional information.~~
- ~~E. One permanent Clip Board for temporary promotional signs may be used in commercial zones. The sign's design is subject to the wall sign regulations of the zone in which placed and is calculated in the permitted sign area.~~

SECTION 3: The City Council does hereby amend section 17.69.720 of the Atwater Municipal Code to read as follows (deletions are marked in ~~strikethrough~~, and additions are marked in underline):

17.69.720 Enforcement.

It shall be the duty of the building official, the City Manager, ~~or~~ Planning Director, or designee to enforce the provisions of this ordinance. Any sign installed, substantially altered, or relocated contrary to the provisions of this ordinance shall be declared to be in violation of this ordinance. ~~Violation of this section shall constitute an infraction and will be punishable by a fine of up to \$500.00 for each violation or subsequent violations.~~ Enforcement of this Chapter shall be in accordance with Section 8.32.030, 8.32.070, 8.32.080, 8.32.090 of this code.

SECTION 4: EFFECTIVE DATE. This ordinance shall take effect and be enforced thirty (30) days after its adoption.

Section 5: SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed, and the balance of the ordinance be enforced.

SECTION 6: CEQA. Approval of the amendments in this Ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (“CEQA”) Guidelines section 15061(b)(3), that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment.

SECTION 7: PUBLICATION. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published in a newspaper of general circulation printed and published within the City of Atwater, pursuant to all legal requirements.

INTRODUCED:

ADOPTED:

AYES:

NOES:

ABSENT:

APPROVED:

MIKE NELSON, MAYOR

ATTEST:

KORY J. BILLINGS, CITY CLERK



CITY COUNCIL AGENDA REPORT

CITY COUNCIL

Mike Nelson, Mayor
Danny Ambriz Tyler Button
John Cale Brian Raymond

MEETING DATE: March 27, 2023
TO: Mayor and City Council
FROM: Sam Rashe, Senior Planner
PREPARED BY: Sam Rashe, Senior Planner
SUBJECT: **Waiving the first reading, by title only and introducing an Ordinance Approving a Site Plan, Architectural Review and Zone Change No. 22-24-0400 to develop four vacant parcels located along the south side of Commerce Avenue and adopt an Initial Study and Mitigated Negative Declaration (Senior Planner Rashe)**

RECOMMENDED COUNCIL ACTION

Open the public hearing and take any testimony given;

Close the public hearing; and,

Motion to waive the first reading, by title only, and introduce Ordinance No. CS 1060 approving a Site Plan No. 22-24-0100, Architectural Review No. 22-24-0300 and Zone Change No. 22-24-0400 to develop four vacant parcels located along the south side of Commerce Avenue and adopt an Initial Study and Mitigated Negative Declaration; (APNs: 056-241-012, 056-241-013, 056-241-014).

Motion to approve staff's recommendation as presented.

I. BACKGROUND/ANALYSIS:

The project site is located on the south side of Commerce Avenue, less than a quarter mile west of its intersection of Industry Way, and consists of four parcels (APN: 056-241- 012; 013; 014). It should be noted that the fourth parcel located on the south end of the project site does not have an APN (refer to figure 1). The project area is approximately twenty-two acres. The project proposes constructing seven buildings totaling 87,000 square feet with 234 parking spaces throughout the four parcels, including ADA-compliant and CalGreen parking.

Buildings One, Six, and Seven, identified in figure 1, will be the project's retail components. Building One will be approximately 10,000 square feet with an anticipated use as an automotive/trailer sales operation. Building Six, approximately 25,000 square feet, and Building Seven, approximately 10,000 square feet, will be used as a hardware

store and garden center. While the primary function of these facilities will be to operate as retail stores, they will hold seasonal sale events, which will include outdoor activities. The project also intends to host mobile food vendors. However, the mobile food vendors will not be limited to the retail and industrial components of the project.

Buildings Two, Three, Four, and Five will be primarily used for industrial-type uses. Buildings Two and Three are approximately 10,000 square feet each. Building Four is approximately 14,000 square feet, 3,000 square feet of which will be used as office space. Building Five, approximately 8,000 square feet, will be used as a maintenance/vehicle storage area. An above-ground tank containing approximately 12,000 gallons of diesel will be located between Buildings Four and Five. There will also be container drums that will store 250 gallons of unleaded gasoline. As a result, a Hazardous Materials Business Plan will need to be implemented.

Access to the project site will be from a roadway that the project proponent will dedicate to the City of Atwater and which will be configured as a cul-de-sac. The dedicated road will be located on the south side of Commerce Avenue, and Commerce Avenue will be reconstructed with a striped center turn lane. The dedicated roadway (cul-de-sac) will lead to the parking areas of all seven buildings. Much of the parking area will be constructed of asphalt, and the parking area around Building Seven will be concrete.

II. ANALYSIS:

The project has a land use designation of Institutional and is zoned as Industrial. As part of the Project, the applicant is seeking a rezone from Industrial to Business Park. Environmental review for the Project was completed and resulted in the preparation of an Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring Report Program (MMRP).

Institutional is intended for public and quasi-public facilities, including, but not limited to, government services and facilities, fire/police stations, wastewater treatment facilities, electrical substations, domestic water treatment and storage, and other similar uses. New facilities may be appropriate in any land use category based on need and environmental review. The term "new facilities" within the land use designation of Institutional allows the City to place facilities in this land use designation that could range from commercial to industrial based on the environmental impact and the need of the community. Currently, there are no hardware stores located in the City of Atwater. With the implementation of the mitigations from the IS/MND, the project is therefore, consistent with the land use designation.

Land Use Designation

The project currently has the zoning designation of Industrial. The purpose of the Industrial district is to provide sites to accommodate process-oriented industries, heavy commercial uses, and heavy industrial plants. Commercial uses are specifically excluded in the Industrial Zone (M-2); the proposed activities would not be permitted

either by right or with a Use Permit with the current zoning. As a result, the applicant is seeking a zone change from Industrial to Business Park.

Zoning

The Business Park District Overlay (Mixed Use District) was established to be consistent with the General Plan Land Use Element and to encourage a mixture of commercial and industrial development. The zone's objectives are to provide an attractively designed business park that allows mixed commercial and industrial uses made compatible through the promotion of architectural elements and to ensure that the developments are visually organized, clear, and coherent to achieve a "sense of place" for this district.

Recommendation

As previously stated, the current land use designation of Institutional is not limited to government services and facilities, and the term new facilities within the land use designation of Institutional allows the city to place facilities that could range from commercial to industrial based on the environmental impact and the need of the community. The zone change from Industrial to Business Park would also be consistent with the land use designation of Institutional.

II. FISCAL IMPACTS:

No negative fiscal impacts are anticipated with the approval of this project. The City does anticipate growth in tax revenue as a result of the approval of this Project. This item has been reviewed by the Finance Department.

III. LEGAL REVIEW:

This item has been reviewed by the City Attorney's Office.

IV. EXISTING POLICY:

LU-2: Ensure that the appearance of non-residential development contributes positively to the community's image.

LU-2.2: Encourage the design of large-scale commercial, industrial, and business park projects that are oriented to a human scale.

LU-11: Identify appropriate locations and timing for future Business Park development.

LU-12 Ensure the utilization of consistent City and County development standards within proposed growth areas.

V. ALTERNATIVES:

VI. INTERDEPARTMENTAL COORDINATION:**VII. PUBLIC PARTICIPATION:**

The public hearing was noticed and advertised for the regularly scheduled City Council meeting. The public can provide comments on this item prior to City Council action.

VIII. ENVIRONMENTAL REVIEW:

An IS/MND was prepared for this project to comply with CEQA, which adequately addresses (with appropriate mitigation measures) the environmental impacts associated with the project. Staff is therefore recommending approval and adoption of the IS/MND.

Pursuant to the California Environmental Quality Act (CEQA), the Initial Study and Proposed Mitigated Negative Declaration (IS/MND) intends to identify and evaluate the potential environmental impacts and mitigation measures associated with the proposed project. Pursuant to Section 15367 LEAD AGENCY of the California Environmental Quality Act (CEQA) Guidelines, the Lead Agency (City of Atwater) has the principal responsibility for carrying out or approving/denying a proposed project. The IS/MND identified the following resources requiring mitigation:

Aesthetics:

Exterior Street lighting and lights from adjacent industrial areas already exist near the project area. The new source of lighting generated by project operations would be via exterior lighting for early morning and late evening operations. The new source of lighting created from the project will be hooded and faced downward, minimizing the impact of the project's contribution to the existing light sources.

Biological:

The project site is surrounded primarily by industrial and commercial uses and is devoid of vegetation. The project site is regularly disked for weed abatement and is unlikely used as a habitat for species of special status. Although it is unlikely the project would not impact the habitat of species with special status, the potential cannot be ruled out. Therefore, within fourteen days of the start of project activities, a pre-activity survey shall be conducted by a qualified biologist knowledgeable in the identification of these species. The surveys will cover the project site plus a 500 - foot buffer to include pedestrian surveys achieving 100 percent visual coverage will be conducted.

Cultural:

As defined by CEQA Guidelines Section 15064.5, "historical resources" are: A resource listed in, or determined to be eligible by, the State Historical Resources Commission, for listing in the California Register of Historical Resources (Public Resource Code Section 5024.1, Title 14 California Code of Regulations, Section 4850 et seq.).

- A resource included in a local register of historical resources, as defined in Section 5020.1(k) of the Public Resources Code or identified as significant in a historical resource survey meeting the requirements of Section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

- Any object, building, structure, site, area, place, record, or manuscript which a Lead Agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the Lead Agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the Lead Agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Public Resources Code Section 5024.1, Title 14 CCR, Section 4852), including the following:

- o Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

- o Is associated with the lives of persons important in our past;

- o Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or

- o Has yielded, or may be likely to yield, information important in prehistory or history. Impacts on cultural resources can result either directly or indirectly from preconstruction activities and construction of a project. Direct impacts are those that result from the immediate disturbance of resources from vegetation removal, vehicle travel over the surface, earthmoving activities, excavation, or alteration of a resource. Indirect impacts are those that result from increased erosion due to site clearance and preparation or from inadvertent damage or outright vandalism to exposed resource materials which could occur due to improved accessibility. It is unlikely that there will be a discovery of a significant historical resource. Despite this, there is still the possibility of a presence of undocumented tribal or cultural resources within the project site. Construction-related impacts on tribal or cultural resources could be potentially significant prior to mitigation. Implementation of the following mitigation measure would require appropriate steps to preserve and/or document any previously undiscovered resources that may be encountered during construction activities, including human remains.

If prehistoric or historic-era cultural materials are encountered during construction activities, all work in the immediate vicinity of the find shall halt until a qualified archaeologist can evaluate the find and make recommendations. Cultural resource materials may include prehistoric resources such as flaked and ground stone tools and debris, shell, bone, ceramics, and fire-affected rock, as well as historic resources such as glass, metal, wood, brick, or structural remnants. If the qualified archaeologist

determines

that the discovery represents a potentially significant cultural resource, additional investigations may be required to mitigate adverse impacts from project implementation. These additional studies may include avoidance, testing, and evaluation or data recovery

excavation. Implementation of the mitigation measure below would ensure that the proposed project would not cause a substantial adverse change in the significance of a historical resource. Therefore, the project would have a less than significant impact with incorporation of mitigation measures.

Although unlikely, subsurface construction activities could cause a potentially significant impact to previously undiscovered human burial sites. Despite no human remains being discovered when the site was previously developed, construction would involve earth disturbing activities, and it is still possible that human remains may be discovered. Implementation of the below mitigation measure would ensure that the project would not directly or indirectly destroy previously unknown human remains. The project would not disturb any known human remains, including those interred outside of formal cemeteries.

If human remains are discovered during construction or operational activities, further excavation or disturbance shall be prohibited pursuant to Section 7050.5 of California Health and Safety Code. The specific protocol, guidelines, and channels of communication outlined by the Native American Heritage Commission, in accordance with Section 7050.5 of the Health and Safety Code, Section 5097.98 of the Public Resources Code (Chapter 1492, Statutes of 1982, Senate Bill 297), and Senate Bill 447 (Chapter 44, Statutes of 1987), shall be followed. Section 7050.5(c) shall guide the potential Native American involvement, in the event of discovery of human remains, at the direction of the Merced County Coroner.

Hazards & Hazardous Materials:

Project construction would require the use of nominal amounts of fuels and lubricants for

operation of construction equipment and vehicles. All such use would be done in compliance with local, state, and federal management, transport, and disposal requirements. The project operations would not require the routine of transporting hazardous materials; however, the project does intend to store approximately 12,000 gallons of diesel and 250 gallons of unleaded gasoline. The State of California requires a

Hazardous Business Plan (HMBP) if a facility handles the following:

55 gallons (liquids), 500 pounds (solids), or 200 cubic feet for a compressed gas

- The business is required to submit chemical inventory information pursuant to Section 11022 of Title 42 of the United States Code
- The business handles at any one time during the reporting year an amount of hazardous material that is equal to, or greater than the threshold planning quantity, under both of the following conditions:
 - The hazardous material is an extremely hazardous substance, as defined in Section

355.61 of Title 40 of the Code of Federal Regulations

- The threshold planning quantity for that extremely hazardous substance listed in Appendices A and B of Part 355 (commencing with Section 355.1) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations is less than 500 pounds.
- A total weight of 5,000 pounds for solids or a total volume of 550 gallons for liquids, if the hazardous material is a solid or liquid substance that is classified as a hazard for purposes of Section 5194 of Title 8 of the California Code of Regulations solely as an irritant or sensitizer, unless the unified program agency finds, and provides notice to the business handling the product, that the handling of lesser quantities of that hazardous material requires the submission of a business plan, or any portion of a business plan, in response to public health, safety, or environmental concerns.
- A total of 1,000 cubic feet, if the hazardous material is a compressed gas and is classified as a hazard for the purposes of Section 5194 of Title 8 of the California Code of Regulations solely as a compressed gas, unless the unified program agency finds, and provides notice to the business handling the product, that the handling of lesser quantities of that hazardous material requires the submission of a business plan, or any portion thereof, in response to public health, safety, or environmental concerns.


The project proponent will not store 12,000 gallons of diesel or 250 gallons of unleaded gasoline until a Hazardous Material Business Plan has been approved by Merced's County Department of Environmental Health.

IX. STEPS FOLLOWING APPROVAL:

The second reading and adoption of the ordinance will be scheduled for the next regular City Council meeting.

Submitted by: /s/ Sam Rashe, Senior Planner

Approved by:



Lori Waterman, City Manager

Attachments:

1. Ordinance No. CS 1060 Approving Site Plan, Architectural Review and Zone Change No. 22-24-0400



**CITY COUNCIL
OF THE
CITY OF ATWATER**

ORDINANCE NO. CS 1060

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF ATWATER APPROVING SITE PLAN,
ARCHITECTURAL REVIEW AND ZONE CHANGE
NO. 22-24-0400 TO DEVELOP FOUR VACANT
PARCELS LOCATED ALONG THE SOUTH SIDE
OF COMMERCE AVENUE AND ADOPT AN
INITIAL STUDY AND MITIGATED NEGATIVE
DECLARATION**

WHEREAS, a duly noticed public hearing on February 15, 2023, the Planning Commission of the City of Atwater reviewed Site Plan 22-24-0100, Architectural Review 22-24-0300, Zone Change 22-24-0400 (the Project), and an Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring Report Program (MMRP) to recommend to City Council.

WHEREAS, The applicant, Terry Rolfe has submitted a Site Plan, Architectural Review, and Zone change.

WHEREAS, __ person(s) spoke in favor of the Zone Change, __ person(s) spoke in opposition of the Zone Change, and __ written comment(s) have been submitted either in opposition or in favor of the Zone Change; and,

WHEREAS, the proposed Site Plan No. 22-24-0100, Architectural Review No. 22-24-0300, and Zone Change No. 22-24-0400 would not have a detrimental effect on the health, safety, and welfare of the neighborhood nor have any adverse effect on the community; and,

WHEREAS, pursuant to the IS/MND and MMRP, the applicant has proposed adequate mitigation measures for the environmental impacts associated with the Project; and

WHEREAS, the City Council finds that the following findings can be made for Site Plan No. 22-24-0100, Architectural Review No. 22-24-0300, Zone Change No. 22-24-0400, and the IS/MND and MMRP in support of the Project:

1. The proposed zone change from Industrial to Business Park is consistent with the City's General Plan, and will allow for development of this and future uses which are attractively designed and consist of a mix of commercial and industrial uses.
2. The Site Plan and Architectural Review components of the Project are consistent with the City's General Plan and Zoning Ordinance.
3. The project underwent CEQA review, and an IS/MND and MMRP were prepared to adequately identify and address any environmental impacts associated with the Project.
4. The public hearing for this Project has been adequately noticed and advertised.
5. Adoption of the resolution will not have a detrimental effect on the health, safety, and welfare of the neighborhood or any adverse effects on the community.

NOW THEREFORE BE IT RESOLVED, that the recitals above are true and correct and hereby incorporated by reference. City Council of the City of Atwater does hereby approve and adopt an Initial Study/Mitigated Declaration, Mitigation Monitoring Reporting Program, Site Plan No. 22-24-0100, Architectural Review No. 22-24-0300, Zone Change No. 22-24-0400 and;

1. The project is compliant with CEQA;
2. Consistent with the General Plan and Zoning;
3. Find no adverse effect on Public Health, Safety, and Welfare;
4. And is subject to the following conditions:

BUILDING

1. Building Construction Plans and calculations shall be developed by a California Licensed Engineer or Architect and shall meet all current California Building Codes, California Energy Codes, Federal and State accessibility requirements, and Atwater Municipal Code.
2. Any special inspections for welding, concrete pour break test, and any hardware securements as directed by the California Building Code will be witnessed by said special inspector(s) and passing reports developed and copies given to the Building Division.

FINANCE

3. When buildings are up and ready to connect to City Water and Sewer, owner must submit a Start Service Application for Water, Sewer, and Garbage services.
4. Before businesses are up and running, owner must submit a business license application for review and approval and pay all applicable taxes and fees.

FIRE

5. Project shall meet the latest Atwater Municipal Code and California Fire Code.

6. Must show location of closest hydrants or additional hydrants added and hydrants must be within 50ft of all risers.
7. A Knox box shall be installed on the exterior of the building, as per CFC 506.1, placed 5-6 feet in height within 10 feet of the main entry on the address side of the buildings and have keys with access to all common doors and gates.

MERCED IRRIGATION DISTRICT (MID)

8. If the project's storm drainage is to be discharged to an MID facility or the adjacent Atwater Drain, the property owner must enter into a "Storm Drainage Agreement" with the Merced Irrigation District Drainage Improvement District No. 1 (MIDDID No. 1), paying only an annual maintenance fee. The connection fees are being waived because the entire project is within Drainage District No. 2. The annual maintenance fee will be assessed and collected on the Merced County tax rolls.

POLICE

9. All external utility connections, Electrical and Water, be enclosed in lockable boxes.
10. Fencing to have anti climb features in compliance with the Atwater Municipal Code.
11. Traffic issues need to anticipate future growth of the development and leave proper easements to accomplish them.

PUBLIC WORKS

12. No obstructions greater than 24" above street grade shall be located in the sight line that a motorist in their vehicle at the driveway limit line has to a point 555' east and west of the driveway to the center of oncoming through traffic lanes. These line-of-sight triangles shall be depicted on the project site plan from all project driveways to Commerce Avenue.
13. A turn assessment shall be completed at both driveways to ensure that trucks can safely make movement in and out of the driveways. The truck turn templates shall be included as part of the first submittal of the Project Street improvement plans.
14. Construct Commerce Avenue as a four-lane collector divided by a continuous two-way left turn lane adjacent to the Project. This two-way left turn lane should also extend west of the Project to align with Commerce Avenue west of the Project.
15. The Project shall construct at its sole expense the following improvements at the intersection of Commerce Avenue at Project Driveway which can be implemented as the following option:

- a. Construct the intersection with two eastbound through lanes, an eastbound right-turn lane, two westbound through lanes, a westbound left-turn lane, a northbound left turn lane and a northbound right turn lane.

ENGINEERING

16. Notwithstanding condition number 8, applicant shall deed or dedicate a basin of sufficient size to the City of Atwater as the project requires.
17. Indicate the location of the proposed above-ground fuel storage tank.
18. All geologic hazards must be plotted on a site plan.
19. Fire hydrants must be provided in compliance with Fire Department specifications. A 10-foot PUE is typically required, and the fire hydrant may be located in that easement if it cannot be located within the right of way. Waivers of street improvements do not waive fire hydrant requirements.
20. All necessary utility easements shall be retained, reserved, or dedicated.
21. The project shall establish or annex into a Lighting and Drainage District, as determined by the City, for on-going maintenance of the public systems.
22. Where required, automatic fire sprinkler systems shall be designated and installed in compliance with CCR Title 24 and NFPA (National Fire Protection Association) standards. Where required, Fire Department Connections (FDC's) shall be located within 50 feet of a fire hydrant.
23. The grade of the fire apparatus access road shall be within the limits established by the code official based on fire apparatus. (Shall not exceed 10 percent.)
24. Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus (75,000 pounds) and shall be surfaced so as to provide all-weather driving capabilities.
25. Where applicable, NO PARKING – FIRE LANE signage and/or marking(s) shall be provided for fire apparatus access roads to identify such roads or prohibit the obstruction thereof.
26. Developer shall comply with all applicable regulations for above ground fuel tanks (ASTs), including but not limited to the California Building Code, the Aboveground Petroleum Storage Act, and the design requirements of Merced County and Cal Fire.
27. The developer shall cause On-Site Improvement Plans to be prepared. The plans shall be prepared by a Licensed Civil Engineer or under his/her direction. The plans shall be

prepared on 24" X 36" plan sheets and to a reasonable scale. The plans shall be in a format to be approved by the City Engineer and shall show all the proposed grading and on-site improvements for the proposed development. All proposed phasing of the project shall be identified on the improvement plans. The title of the plan shall be shown at the top of Sheet No. 1. Sheets shall be numbered in consecutive order. An index showing the sheets contained within and as a part of the On-Site Improvement Plans shall be shown on Sheet 1.

28. The developer shall cause Off-Site Improvement Plans to be prepared. The plans shall be prepared by a Licensed Civil Engineer or under his/her direction. The plans shall be prepared on 24" X 36" plan sheets and to a reasonable scale. The plans shall be in a format to be approved by the City Engineer and shall show all the proposed grading, drainage, surface improvements, utilities, street lighting, pavement markings, signage, and all other off-site improvements proposed to be offered for dedication to the City of Atwater. The title of the plan shall be shown at the top of Sheet No. 1. Sheets shall be numbered in consecutive order. An index showing the sheets contained within and as a part of the Off-Site Improvement Plans shall be shown on Sheet 1.
29. The Developer shall cause Joint Trench Utility Plans to be prepared. The plans shall be prepared by a Licensed Civil Engineer or under his/her direction. The plans shall be prepared on 24" X 36" plan sheets and to a reasonable scale.
30. Off-site public improvements shall be accepted by the City prior to scheduling final inspection for any certificate of occupancy.
31. All utilities shall be installed underground in conformance with existing City policy including without limitation the City of Atwater Subdivision and Zoning Ordinances.
32. Developer may be required to relocate any utilities that conflict with grade or cannot be installed below grade within a travel lane.
33. Developer shall underground all existing and proposed on-site and off-site utilities as specified in the Municipal Code or Public Works Director.
34. The developer shall provide and show on the final map and/or site development plan all necessary easements for access, streets, alleys, sewer and water facilities, utilities and drainage facilities, irrigation facilities and other facilities as requested by the City.
35. Meters, hydrants, poles, etc. shall be located clear of the sidewalk and driveways or as determined by the City Engineer. Final locations and the number of such facilities shall be determined at the time the improvement plans are reviewed.
36. An encroachment permit shall be required for any construction to be done in the public right of way, in easements, or on lands to be dedicated to the City of Atwater upon completion of the improvements. The encroachment permit shall be obtained prior to the

start of said work. The permit fees shall be determined per the current adopted fee schedule at the time of application.

37. Any portion of the drainage system that conveys runoff from public streets shall be installed within a dedicated drainage easement or public street.
38. The developer shall provide joint trenching for telephone, gas, electric, cable TV and fiber optic service for every parcel.
39. Detailed plans reflecting the design and construction of all public infrastructure improvements for street, sewer, water, and storm drain, both on- and off-site, shall be in conformance with the adopted Infrastructure Master Plans and as directed by the City Engineer. Developer shall have written approval from the City Engineer for any variations from the City's Master Plans prior to any final map or improvement plans approval.
40. Street alignments and grades, including the change of any existing or proposed street alignment and grade, shall be as required by the Public Works Director.
41. Sight distance requirements at all street intersections and driveways shall conform to City Standards and Caltrans Standards.
42. If the improvement plans show a need to excavate in any public road right-of-way, the developer shall place a cash deposit with the Community Development Department to ensure that any damage to the existing roadway is repaired in a timely manner.
43. Portland cement concrete cross gutters or culverts shall be installed where water crosses the roadways. Cross gutters shall be used only where drain inlets cannot be constructed.
44. An adequate energy dissipater shall be constructed at the outlet of the storm drain, or verification shall be provided that such improvement is not needed.
45. Developer shall comply with Chapter 13.22 of the Atwater Municipal Code "Storm Water Management and Discharge Control" and with the City of Atwater Post Construction Standards Plan.
46. "Material and Storage Areas" shown on Site Plan shall be designed to discourage infiltration and to encourage containment. Preventative measures include enclosures, secondary containment structures, and impervious surfaces. Equipment and/or vehicles containing fuels, oils and/or other hydrocarbons shall be stored on impervious (paved) surfaces only. Source Controls BMPs and Site Design and Treatment Control Measures shall be implemented consistent with the MEP (Maximum Extent Practicable) Standard.

47. The developer shall process Post-Construction Stormwater BMP Operation and Maintenance Plans for review and approval to the satisfaction of the City Engineer.
48. The developer shall execute any agreements identified in the Post-Construction Standards Plan that pertain to the transfer of ownership and/or long-term maintenance of stormwater treatment or hydrograph modification BMPs to the satisfaction of the Public Works Director.
49. The developer shall install water services to the proposed development. Individual water services shall be provided for potable and landscape purposes, of adequate size for the proposed development. All services shall be metered.
50. A blowoff or fire hydrant shall be installed at the terminal end of water mains located in cul-de-sacs, as determined by the City Engineer.
51. Where required, the developer shall install a reduced pressure principal backflow device for potable water and an approved backflow device for irrigation water. Individual services are to be provided for potable water and landscaping purposes. The services shall be metered; a Sensus "Flex-Net" radio read meter shall be used. Service shall include a backflow prevention device enclosure, mounted on a concrete pad. Backflow devices shall include unions on both riser pipes for easier maintenance. All backflow devices shall be shown on the Site Improvement Plans, including types, brand names, and model numbers.
52. If required, fire hydrants shall be installed along property frontages and on-site in accordance with the California Fire Code and City of Atwater Standards and Specifications. Fire hydrants shall be placed on-site in accordance with the California Fire Code and City of Atwater Fire Department requirements; on-site placement of fire hydrants shall be reviewed and approved by the Fire Chief. All fire hydrants shall have a minimum flow of 1,500 gallons per minute. Water lines and services shall be installed in accordance with City of Atwater City Standards and specifications. Fire protection lines shall be separate from domestic service lines and shall utilize detector check meter installations.
53. All water trenches or excavations shall be excavated, backfilled and compacted in accordance with applicable City Standards.
54. Prior to occupancy, the developer shall supply the City with both hardcopy and electronic (Adobe PDF and AutoCAD file formats) showing plans that reflect the project as it was built (As-Builts or Record Drawings) to the satisfaction of the City Engineer. As-built hardcopy plans shall be 4-mil minimum matte Mylar film.
55. The installation (if required) of all gas, electric, telecommunications, sewer, and water lines and any other below-surface utilities is to take place before the installation of any concrete curbs, gutter, sidewalks, and the surfacing of streets.

56. All walls adjacent to public rights-of-way shall be provided with decorative treatment, subject to approval by the Community Development Director.
57. 6-inch (6") high Portland Cement Concrete curbing shall be provided between all paved areas and landscaped areas.
58. Curb cuts shall be allowed for LID drainage designs.
59. During construction, water trucks or sprinkler systems are to be used in sufficient quantities to prevent dust from leaving the site during any earthmoving and/or construction activities.
60. Any water wells found during construction shall be destroyed in accordance with approved City Standards and requirements.
61. Any septic systems found during construction shall be destroyed in accordance with approved Merced County Environmental Health requirements.
62. Applicant shall abandon and remove from the site any existing irrigation lines and other structures found. Lines shall be plugged at the property line with concrete.
63. Developer shall properly abandon or relocate all utilities as necessary or required.
64. Developer shall construct sidewalks along all street frontages.
65. Each parcel shall be served by an individual sanitary sewer lateral.
66. All broken, cracked or otherwise damaged public improvements, such as curb, gutter, and sidewalk, shall be saw cut, removed and replaced in accordance with applicable city standards to the satisfaction of the City Engineer.
67. All broken or damaged fencing shall be repaired or removed and replaced in accordance with applicable City Standards to the satisfaction of the City Engineer.
68. Applicant is responsible for street name signs in accordance with City of Atwater Standards.
69. In conjunction with the recordation of the map (or by separate instrument), the developer shall provide all necessary easements for streets, alleys, sewer and water facilities, utilities and drainage facilities, irrigation district facilities, fiber optics and other facilities as required by the City or serving utility. Utility easements shall be a minimum of a clear fifteen feet (15') for one utility and a clear twenty feet (20') for two or more utilities or as specified by generally accepted engineering design guidelines. Easements shall not be split between property lines unless determined otherwise by the City Engineer. The

easement widths identified are minimums and in certain circumstances, additional easement widths may be required as determined by the City Engineer.

70. The developer shall irrevocably offer for dedication all required public rights-of-way and shall record grant deeds for all required utility easements prior to City's approval of any on-site or off-site improvement plans.

71. The developer shall construct the public improvements shown on the improvement plans as approved by the City Engineer prior to City's acceptance of any dedication of public rights-of-way.

72. The developer shall construct, to the satisfaction of the Public Works Director, a public street lighting system that complies with the following conditions:

- a. All fixtures shall use an LED light source, Cree XSP Series as approved by the City Engineer.
- b. All light standards, heads, and spacing shall be per City Standards or as approved by the City Engineer.
- c. Proposed lights of an ornamental nature shall not exceed 16 feet in height designed to the satisfaction of the Community Development Director and shall be spaced and located to the satisfaction of the City Engineer.
- d. Deposit with the City of Atwater, through the Department of Public Works, a cash deposit sufficient to:

Energize, maintain, and operate the street lighting system until tax revenues begin accruing from the subdivision/project for those purposes.

Pay the cost to process lighting district administration of this project. After recording of the Final Map, or on acceptance of the improvements, the subdivision/project shall be transferred without notice or hearing, to a City-designated lighting district to operate and maintain the system.

73. The applicant shall construct and improve the pedestrian circulation system to the following design standards to the satisfaction of the City Engineer and the Community Development Director:

- a. Sidewalk surface shall consist of Portland Cement Concrete.
- b. Sidewalk gradients shall not exceed the gradient of the adjoining roadway.
- c. Sidewalks shall intersect roads at approximately 90-degree angles.

- d. The sidewalk system shall be continuous through the subdivision/project.
 - e. Where sidewalk exists, the subdivision/project shall be coordinated with existing or planned sidewalk locations on adjacent property.
74. If required, Covenants, Conditions and Restrictions (CC&R's) for the project shall contain appropriate provisions for joint maintenance of any infrastructure, roadways, utilities, landscaping, drainage, and irrigation as determined necessary by the City Engineer. The CC&R's will provide for a manager to be responsible for maintenance and repair, with each lot owner responsible for its pro rata share of the maintenance costs. The manager may be an owner, a third-party manager designated by the owners, or a special purpose entity such as an owners' association. The CC&R's shall be subject to the review and approval of the City Engineer, City Attorney, and Community Development Director prior to recordation.
75. Provide the City with a certification from each public utility and each public entity owning easements within the proposed project stating that in case of a street dedication affected by their existing easement, they will sign a 'subordination certificate" or "joint- use certificate" when required by the City. In addition, the developer shall furnish proof to the satisfaction of the City Engineer that no new encumbrances have been created that would subordinate the City's interest over areas to be dedicated for public road purposes since submittal of the development application.
76. On-street parking will be prohibited along Commerce Avenue and within the proposed cul-de-sac turnaround bulb. Developer shall be responsible for posting "no stopping or parking at any time" signs and providing curb markings as required to the satisfaction of the City Engineer.
77. Developer shall submit three (3) sets of landscaping and irrigation plans to be reviewed and approved by the City of Atwater Engineering Division and Public Works Department. Said plans shall be prepared by a landscape architect licensed in the State of California. All landscaped areas shall be equipped with seven-day automatic irrigation systems with battery back-up. All landscaping shall always be maintained and said maintenance shall be the responsibility of the developer. Specific landscaping for screening shall have an appearance of mature growth subject to a field check and approval by the Community Development Director prior to Certificate of Occupancy.
78. Trees shall be installed and thereafter maintained throughout all parking areas to meet CALGreen regulations.
79. Final inspection for occupancy permits will not be granted until all construction and landscaping is complete in accordance with approved plans.
80. The project shall be in compliance with the most recent Americans with Disabilities Act (ADA) and California Building Code (CBC) accessibility regulations.

81. Developer shall comply with all applicable mandatory non-residential requirements of the California Green Building Standards Code (CalGreen), including but not limited to grading and drainage, designated parking, short-term and long-term bicycle facilities, and provision of electric vehicle charging spaces (EVCS) capable of supporting electric vehicle supply equipment (EVSE).
82. Trash and recycling enclosure(s) shall be constructed for each parcel unless otherwise approved. All trash and recycling enclosures shall be constructed per City Standards of masonry material with solid, self-enclosing doors and a second access, and shall drain to a landscape area. Refuse containers must have integral lids/covers, or the enclosure shall be constructed with a sloped roof. Enclosures must be sized for at least one refuse bin and one recycling bin. Door hardware must meet accessible design criteria where required. The enclosure shall have materials and colors consistent with the primary building. If commercial or industrial trash compactors are to be utilized, then the location(s) and screening for all equipment and bins must be shown on the Site Plan and approved by the City Engineer, Community Development Director, and Public Works Director.

PLANNING

83. All on-site graffiti shall be the responsibility of the property owner. All graffiti shall be abated in accordance with City Graffiti Ordinances.
84. Applicant shall comply with the Atwater Municipal Code, Zoning, Chapter 17.39
85. Project shall comply with the most current California Code of Regulations Title 24, parts 1 through 12, the most current Health and Safety Codes and the most current Fire and Life Safety Codes, all along with the California State Amendments. All building permit applications received by the City of Atwater Building Division on or after January 1, 2020, shall comply with parts 1 through 10 and part 12 of the 2019 edition of the California Code of Regulations Title 24.
86. Applicant shall comply with all the conditions of approval prior to issuance of a business license.
87. Applicant shall comply with all Commercial and Industrial Design Guidelines.
88. Applicant shall submit for a Lot Line Adjustment for parcel three identified on the site plan resulting in the proposed storm basin being moved to the City of Atwater (Deed Inst. No. 2022-031920)
89. The Planning Commission shall retain the right to reconsider Site Plan No. 22-24-0100, Architectural Review No. 22-24-0300, and Zone Change No. 22-24-0400.
90. This approval is dependent upon and limited to the proposals and plans contained, supporting documents submitted, presentations made to staff, and Planning

Commission as affirmed to by the applicant. Any variation from these plans, proposals, supporting documents, or presentations is subject to review and approval prior to implementation.

91. Applicant must pay the Annual Conditional Use Permit Monitoring Fee
92. Enter into an agreement for Deferment of Construction of Public Improvements as approved by the City Attorney.
93. The applicant or applicant's successor in interest shall indemnify and defend and hold harmless the City of Atwater, its agents, officers, and employees from any and all claims, actions, or proceedings against the City of Atwater, its agents, officers, and employees to attack, set aside, void, or annul any approval by the City of Atwater and its advisory agency, appeal board, or legislative body concerning this application, which action is brought within applicable statutes of limitations. The City of Atwater shall promptly notify the applicant or applicant's successor in interest of any claim or proceedings and shall cooperate fully in the defense. If the City fails to do so, the applicant or applicant's successor in interest shall not thereafter be responsible to defend, indemnify or hold the City harmless. This condition may be placed on any plans or other documents pertaining to this application.

The foregoing Ordinance is hereby adopted this 27th day of March 2023.

INTROUDCED:

ADOPTED:

AYES:

NOES:

ABSENT:

APPROVED:

MIKE NELSON, MAYOR

ATTEST:

KORY J. BILLINGS, CITY CLERK



CITY COUNCIL AGENDA REPORT

CITY COUNCIL

Mike Nelson, Mayor
Danny Ambriz Tyler Button
John Cale Brian Raymond

MEETING DATE: March 27, 2023
TO: Mayor and City Council
FROM: Justin Vinson
PREPARED BY: Ana Jaramillo, Administrative Assistant II
SUBJECT: **Adopting a Resolution Awarding a Collection Services Agreement and Franchise to Mid Valley Disposal of Kerman, California for Residential and Commercial Garbage, Recyclable Material, and Organic Waste Collection Services (Public Works Director Vinson)**

RECOMMENDED COUNCIL ACTION

Motion to adopt Resolution No.3382-23 to award a Collection Services Agreement and Franchise to Mid Valley Disposal of Kerman, California for the provision of Residential and Commercial Garbage, Recyclable Material, and Organic Waste Collection Services; and authorizes the Mayor of City of Atwater to execute said agreement; or

Motion to approve staff's recommendation as presented.

I. BACKGROUND/ANALYSIS:

The current Solid Waste Collection Agreement between the City of Atwater and Republic Services (Republic) will terminate on June 30, 2023. Due to a high volume in recent years of customer complaints regarding the residential and commercial hauling services, council requested city staff to release a Request for Proposals (RFP) for Residential and Commercial Garbage, Recyclable Materials and Organic Waste. The City contracted with HF&H Consultants, LLC (HF&H) to assist the City as technical advisors by evaluating the proposals received, providing their thoughts on the proposals and items for negotiation, requesting additional information to assist the evaluation, and ultimately evaluating the proposals.

On March 13, 2023, the City Council adopted Resolution No. 3374-23 directing staff to negotiate a new franchise agreement with Mid Valley Disposal (MVD) for the Residential and Commercial Garbage, Recyclable Material, and Organic Waste Services Contract.

As noted on March 13, 2023 staff report, a key issue facing the City and how the hauler would assist the City in complying with the state mandates and CalRecyclable regulations governing management of recyclable materials and organic waste. Senate

Bill 1383 (SB1383) mandates that all customers must actively participate in an organic waste diversion program to substantially reduce organic waste being sent to landfill. Assembly Bill (AB341) mandates that all commercial customers participate in all recyclable diversion programs. CalRecycle has strongly indicated that non-participation in organic waste or recyclable materials diversion programs may result in fines for the City and/or residents and businesses. The new organic recycling program, included in the new franchise agreement, is a key aspect of meeting state regulatory compliance.

The service proposed by MVD will result in the City being compliant with CalRecycle's regulatory requirements while providing the City's rate payers with good value. The proposed Franchise Agreement includes full organics (food waste and green waste) and recyclables will be processed at the Highway 59 Landfill. Additionally, MVD will directly pay for disposal at the Highway 59 Landfill.

Also included in the Collection Services Agreement is a limited licensing for temporary roll offs, which allow MVD and one other hauler to provide customers temporary roll offs. The duration that defines temporary roll offs, is as follows; "limited period of time not to exceed thirty days except that Collection Service related to an on-going construction project may do so through completion of the construction project. All construction projects must have an active City building or demolition permit." A bulk item service is available for the residents at a \$60.00 occurrence fee, and includes up to two (2) large items. The items must be called into MVD a week ahead of time and placed outside the day that the item(s) is scheduled for pickup. MVD is also required to offer jobs to all qualified Republic employees and follow the provisions of Labor Code section 1072. MVD will offer the employees competitive benefits, and based upon what the city received, higher pay. Also included in the agreement, the city will receive a fee of 10% of the contract for administration of the sanitation services. This will net the city an additional amount of approximately \$60,000 per month or \$720,000 a year. This is currently close to double the amount the city receives with its current hauler.

The rates that MVD will charge the city are included in Exhibit A of the Collection Services Agreement. At this time, the city will not be charging the residents these rates. The city must first conclude a sanitation study and Prop 218 before it can increase the rates for customers. The increase in prices on the sanitation rates are largely due to the mandates put upon the city due to Senate Bill 1383. MVD anticipates that with recycling and organics collection services provided to all customers as part of "bundled" services, commercial customers will "migrate" from higher levels of garbage services to less garbage and more recycling and organics services. This will allow some customers to reduce their total monthly bill, while others will be able to actively participate in recycling and organics programs at no additional cost. For example, customers which have a 1.5 cubic yards of garbage service could reduce could reduce garbage service to 1 cubic yard, and have 96 gallons of recyclables and 64 gallons of organic services. A similar "downsizing" could occur at all garbage service levels.

The rates that MVD will charge the city are included in Exhibit A of the Collection Services Agreement. At this time, the city will not be charging the residents these rates. The city must first conclude a sanitation study and Prop 218 before it can increase the

rates for customers. The increase in prices on the sanitation rates are largely due to the mandates put upon the city due to Senate Bill 1383, if it were not for SB1383, the city may not have had to go out for a rate study at this time or see an increase in the cost of the service that Mid-Valley will provide. Every year, the maximum service rate will be adjusted by the CPI increase (capped at 5%) and tipping fee increases at the Landfill.

MVD will provide all new collection vehicles and containers at the start of the Agreement, and will confirm the specific collection vehicles (i.e., Autocar/Amrep) and containers (Toter colors/labeling) to be used. MVD will purchase 15 new collection vehicles, 3 support vehicles, and approximately 39,000 carts and bins for a total initial capital cost of \$7.1 million. The vehicles will be equipped with on-board scales, on-board GPS tracking, on-board tablets, multi-cameras for safety monitoring and contamination monitoring.

MVD has performed multiple transitions in the Central Valley over the past few years. As a part of MVD's transition strategy, it includes:

- Newsletters
- Print Advertisement
- Visual Posters
- Social Media (Twitter, Facebook, Instagram)
- Informative websites pages
- Smart Phone / Tablet App
- Other Custom-Tailored Materials

MVD, city staff, and Republic, will meet and go over the timing of bin/ toter exchanges and pick-ups. This will more than likely take place the first two weeks in July. Prior to this, city staff and MVD will start the education and outreach to customers on the process of disposing of waste and which containers the waste belongs in. This outreach will be done in multiple languages.

II. FISCAL IMPACTS:

The projected 23/24 cost to the City for garbage collection and disposal, green waste processing and recycling processing is approximately \$7.2M. Currently, staff are working on a sanitation rate study and Prop 218 that ensures the city will receive enough revenue to meet the expenses for this contract.

This item has been reviewed by the Finance Department.

III. LEGAL REVIEW:

This item has been reviewed by the City Attorney's office.

IV. EXISTING POLICY:

This item is consistent with goal numbers one (1) and two (2) of the City's Strategic

Plan: to ensure the City's continued financial stability and to improve public safety, respectively.

V. ALTERNATIVES:

VI. INTERDEPARTMENTAL COORDINATION:

N/A

VII. PUBLIC PARTICIPATION:

The public will have an opportunity to provide comments prior to City Council action.

VIII. ENVIRONMENTAL REVIEW:

This item is not a "project" under the California Environmental Quality Control Act (CEQA) as this activity does not cause either a direct physical change in the environment, or a reasonable foreseeable indirect physical change in the environment, pursuant to Public Resources Code Section 21065.

IX. STEPS FOLLOWING APPROVAL:

Upon City Council approval, the Collection Services Agreement and Franchise to Mid-Valley Disposal of Kerman, California will be routed for signatures.

Submitted by:



Justin Vinson, Public Works Director

Approved by:



Lori Waterman, City Manager

Attachments:

1. FRANCHISE AGREEMENT DRAFT MVD (packet version 03.23.23)-c1
2. Resolution No. 3382-23 Approving Collection Services Agreement and Franchise to Mid Valley Disposal for the provision of Residential and Commercial Ga

**COLLECTION SERVICES AGREEMENT
AND FRANCHISE FOR THE PROVISION OF**

**RESIDENTIAL AND COMMERCIAL GARBAGE,
RECYCLABLE MATERIALS AND ORGANIC WASTE
COLLECTION SERVICES**

**Executed By and Between the
City of Atwater and
Mid Valley Disposal (CONTRACTOR)**

Approval Date: March 27, 2023

Effective Date: July 1, 2023

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This Collection Services Agreement and Franchise for the Provision of Residential and Commercial Solid Waste, Recyclable Materials and Organics Collection Services (“Agreement”) in entered into this 28th of March , 2023, by and between the City of Atwater a general law city and municipal corporation in the State of California, (“CITY”) and Mid Valley Disposal, (“CONTRACTOR”) on the terms and conditions set forth herein. CITY and CONTRACTOR may be referred to herein individually as a “Party” or collectively as the “Parties”. Capitalized terms not otherwise defined shall have those definitions as hereinafter set forth in Article 2, “Definitions”.

RECITALS

A. Article XI, § 7 of the California Constitution authorizes cities to protect public health and safety by taking measures in furtherance of their authority over police and sanitary matters; and

B. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, (“**AB 939**” or the “**Act**”) (codified at Public Resources Code §§ 4000 *et seq.*) established a solid waste management process which requires cities and other local jurisdictions to implement plans for source reduction, reuse, and recycling as integrated waste management practices for solid waste attributed to sources within their respective jurisdictions; and

C. The Act provides that aspects of solid waste handling of local concern include, but are not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and the nature, location, and extent of providing solid waste services; and

D. The Act confers discretion on cities to provide for the delivery of refuse services to its residents by the CITY itself providing the services or by the CITY conferring the authority to do so on private profit-making entities; and when cities confer the authority to provide refuse services on private profit-making entities cities are authorized to do so by means which include the award of a nonexclusive, partially exclusive or wholly exclusive franchise, contract, license or otherwise; and

E. Pursuant to Public Resources Code section 40059(a)(1) and Atwater Municipal Code section 8.16.030, the City Council of the CITY has determined, in the exercise of its legislative discretion, that it is in the best interests of the CITY and its residents to award an exclusive franchise for comprehensive refuse services to a qualified Solid Waste private enterprise with the special skills, knowledge, facilities, and other capabilities to ensure a high level of service and compliance with the existing statutory and regulatory requirements; and

F. The City Council during its regular meeting of March 27, 2023, approved the award of an exclusive franchise agreement for comprehensive refuse services with CONTRACTOR because the City Council determined, in the exercise of its legislative discretion, that CONTRACTOR would provide high quality services to Service Recipients; and

G. CITY and CONTRACTOR are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of residential and commercial Solid Waste, including AB 939, the Resource Conservation and Recovery Act (“**RCRA**”), 42 U.S.C. §§ 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 U.S.C. §§ 9601 *et seq.*; the Electronic Waste Recycling Act of 2003 (SB 20, Sher, Chapter 526, Statutes of 2003; SB 50, Sher, Chapter

863, Statutes of 2004; AB 575, Wolke, Chapter 59, Statutes of 2011), laws governing Universal Waste, including, but not limited to, Universal Waste Electronics Devices (“**UWED**”), non-empty aerosol cans, fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and any other lamp exhibiting a characteristic of a hazardous waste, batteries (rechargeable nickel-cadmium batteries, silver button batteries, mercury batteries, small sealed lead acid batteries [burglar alarm and emergency light batteries], alkaline batteries, carbon-zinc batteries and any other batteries which exhibit the characteristic of a hazardous waste), mercury thermometers, mercury-containing switches; and

H. CITY and CONTRACTOR desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, CITY is not thereby becoming a “generator” or an “arranger” as those terms are used in the context of CERCLA § 107(a)(3) and that it is CONTRACTOR, an independent entity, not CITY, which will arrange to collect Solid Waste from Single-Family Dwelling (SFD), Multi-Family Dwelling (MFD), CITY and Commercial Service Units in the City of Atwater, transport for recycling and disposal and dispose of Solid Wastes which may contain small amounts of household products with the characteristics of hazardous wastes, collect and compost Organic Waste and collect and recycle Recyclable Materials from SFD, MFD, CITY, and Commercial Service Units in the City of Atwater, and collect and recycle or dispose of Construction and Demolition Materials; and

I. CONTRACTOR represents and warrants to CITY that CONTRACTOR has the experience and qualifications to conduct recycling and waste diversion programs; to provide CITY with information sufficient to meet the CITY’s reporting requirements to CalRecycle and other agencies under the Act; to meet CITY’s other requirements under the Act; to arrange with persons in charge of day-to-day activities of Service Units in the City of Atwater for the collection, safe transport and disposal of Solid Wastes, which may contain small amounts of household products with the characteristics of Hazardous Wastes, in a safe manner which shall minimize the adverse effects of collection vehicles on air quality and traffic; and that CONTRACTOR has the ability to indemnify CITY in accordance with this Agreement; and

J. The City Council of the City of Atwater determines and finds pursuant to California Public Resources Code § 40059(a)(1) that the award of an exclusive franchise is in the public interest, health, safety, and well-being, including the minimization of adverse impacts on air quality and traffic from excessive numbers of collection vehicles; the implementation of measures consistent with the City’s Source Reduction and Recycling Component; and in an effort to reduce the CITY’s potential CERCLA liability, would be served if CONTRACTOR were to be awarded an exclusive Franchise for collection, recycling, diversion, and disposal of Solid Waste from Service Units in the City of Atwater; and

K. The Parties agree that Solid Waste collection services shall be provided by CONTRACTOR beginning at 12:00 a.m. July 1, 2023 (the “Effective Date”) at which time the Parties agree that this Agreement shall be controlling.

OPERATIVE PROVISIONS

Now, therefore, in consideration of the mutual covenants, agreements, and other good and valuable consideration contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, CITY and CONTRACTOR agree as follows:

ARTICLE 1. Recitals

The Parties acknowledge the above recitals are true and correct and incorporate them as though fully set forth herein.

ARTICLE 2. Definitions

For the purpose of this Agreement, the definitions contained in this Article apply unless otherwise specifically stated. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender includes the feminine gender. The meaning of terms or words not defined in this Article will be as commonly understood in the solid waste collection services industry when the common understanding is uncertain.

2.01. AB 341. State of California Assembly Bill No. 341 approved October 5, 2011. AB 341 requires businesses, defined to include commercial or public entities that generate more than 4 cubic yards of commercial solid waste per week, or multifamily residential dwellings of 5 units or more, to arrange for recycling services, on and after July 1, 2012. AB 341 further requires jurisdictions, on and after July 1, 2012, to implement a commercial solid waste recycling program.

2.02. AB 939. State of California Assembly Bill No. 939 approved September 29, 1989 enacting the California Integrated Waste Management Act of 1989, codified in part at Public Resources Code §§ 40000 and following, as it may be amended and as implemented by the regulations of the California Department of Resources Recycling and Recovery (CalRecycle), or its successor agency.

2.03. AB 1594. State of California Assembly Bill No. 1594 approved September 28, 2014. AB 1594 provides that the use of green material as Alternative Daily Cover does not constitute diversion through recycling and would be considered disposal.

2.04. AB 1826. State of California Assembly Bill No. 1826 approved September 28, 2014. AB 1826 requires each jurisdiction, on and after January 1, 2016, to implement an organic waste recycling program to divert organic waste from businesses. Each business meeting specific organic waste or solid waste generation thresholds phased in from April 1, 2016 to January 1, 2020 is required to arrange for organic waste recycling services.

2.05. Act. Act means the Integrated Waste Management Act of 1989, as amended (California Public Resources Code section 40000 *et. seq.*).

2.06. Affiliate. Affiliate means any person or legal entity that, directly or indirectly, controls, is controlled by, or is under common control with CONTRACTOR. For purposes of determining whether an

indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof, and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded, and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

2.07. Agreement. This written document and all amendments, between CITY and CONTRACTOR, governing the provision of Collection Services.

2.08. Agreement Administrator. The City Manager, or his or her designee, designated to administer and monitor the provisions of this Agreement.

2.09. Agreement Year. Agreement Year means each twelve (12) month period from July 1st to June 31st of the following calendar year during the term of this Agreement.

2.010. Annual Diversion Report. The annual report submitted by CONTRACTOR to the CITY describing the previous Calendar Year’s diversion activities, diversion percentages, and associated calculations and the description of the diversion activity planned for the upcoming year, if applicable.

2.10. Appendix. Appendix means an appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof.

2.11. Applicable Law. All federal, state, county, and local laws, regulations, rules, orders, judgments, decrees, rulings, permits, approvals, or other requirement of any governmental entity or regulatory or quasi-regulatory authority having jurisdiction over an aspect of the Collection Services, including judicial interpretations thereof, that are in force on the Effective Date including without limitation AB 341, AB 939, AB 1594, AB 1826 and SB 1383, and as may be enacted, issued, or amended thereafter, until termination or expiration of this Agreement.

2.12. Best Management Practice. Best Management Practice means the collection of written activities, practices, policies and procedures prepared and proposed by a responsible party, and then approved by the Agreement Administrator, to prevent or reduce, to the maximum extent that is technologically and economically feasible, the discharge of pollutants to the storm drain system which might be generated from any site in the CITY.

2.13. Bins. A metal or plastic container, with a capacity of approximately one (1) cubic yard up to and including six (6) cubic yards, designed or intended to be mechanically dumped into a loader packer type truck, that is approved for Collection Services by CITY. Bins may also include Compactors that are owned by Commercial Service Units by which the Commercial Collection Service occurs. The specifications for CONTRACTOR-provided Bins are set forth in **Exhibit 4**.

2.14. Biohazardous or Biomedical Waste. Any waste which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are waste resulting from the operation of medical clinics, hospitals, and other facilities processing wastes which may consist of, but are not limited to, human

and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves.

2.15. Brown Goods. Electronic equipment such as stereos, televisions, computers, VCR's and other similar items collected from SFD Service Units.

2.16. Business. All retail, professional, wholesale and industrial facilities, and other commercial enterprises offering goods or services to the public.

2.17. Business Days. Any Monday through Friday, excluding any holidays as defined in Section 8.01.6.

2.18. Calendar Year. Each twelve (12) month period from January 1st to December 31st.

2.19. Carts. A heavy plastic receptacle with a rated capacity of at least thirty-two (32) and not more than one-hundred (100) gallons, having a hinged tight-fitting lid and wheels, that is approved by the Agreement Administrator for use by Service Recipients for Collection Services under this Agreement. The specifications for CONTRACTOR-provided Carts are set forth in **Exhibit 4**.

2.20. CEQA. CEQA means the California Environmental Quality Act, codified at Cal. Pub. Res. Code sections 21000 et seq. as amended or superseded, and the regulations promulgated thereunder and as set forth in the California Code of Regulations.

2.21. CERCLA. The Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. sections 9601 and following, as may be amended and regulations promulgated thereunder.

2.22. Change in Laws. Change in Laws means any of the following events or conditions which has a material and adverse effects on the performance by the parties of their respective obligations under this Agreement (except for payment obligations), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, management operation or maintenance of the operating assets or providing the franchise service or other matters to which Applicable Law applies:

(1) the enactment, adoption, promulgation, issuance, modification, or written change of or in Applicable Law, including but not limited to new or increased fees and charges imposed by the State of California or the U.S. Federal government directly related to the collection, handling, processing, recycling or disposal of Solid Waste, or the enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after Effective Date of any Applicable Law;

(2) the order or judgment of any Governmental Body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the CITY or of the CONTRACTOR, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(3) the denial of an application for, delay in the review, issuance or renewal of, suspension, termination, interruption, or imposition of a new or more stringent condition in connection with

the issuance, renewal or failure of issuance or renewal on or after the Effective Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition, or failure materially and adversely interferes with the performance of this Agreement, of and to the extent that such denial, delay, suspension, termination, interruption, imposition, or failure is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the CITY or of the CONTRACTOR, whichever is asserting the occurrence of a Change of Law; provided, however, that the contesting in good faith or failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition, or failure shall not be construed as such a willful or negligent action, error, omission, or the lack of reasonable diligence.

2.23. CITY. The City of Atwater, California.

2.24. City Collection Service. City Solid Waste Collection Service, City Organic Waste Collection Service, and City Recycling Service.

2.25. City Facility. City Facility(ies) means any building or other site owned, leased or used regularly and significantly (i.e., more than seventy-five percent (75%)) by employees or contractors of the CITY, and excludes those portions of such facilities used by others.

2.26. City Manager. City Manager means the City Manager of the City of Atwater, or his or her designated representative, or any employee of the CITY who succeeds to the duties and responsibilities of the City Manager.

2.27. CITY's Waste Stream. Solid Waste generated within the CITY and collected by the CONTRACTOR in accordance with the terms and conditions of this Agreement.

2.28. Code. Code means the City of Atwater Municipal Code.

2.29. Collection. The process whereby Residential, Commercial, and City Solid Waste are removed and transported to a Disposal Facility, Organic Waste Processing Facility or Materials Recycling Facility as appropriate.

2.30. Collection Services. SFD Collection Service, MFD Collection Service, Commercial Collection Service, City Collection Service, and Construction and Demolition Debris and Other Temporary Collection Service.

2.31. Commercial Collection Service. Commercial Solid Waste Collection Service, Commercial Organic Waste Collection Service, and Commercial Recycling Service. Commercial Collection Service shall also include Collection from MFD Service Units and City Service Units. Commercial Collection Service specifically includes the following:

- A. Commercial Garbage Collection Service. The Collection of Commercial Garbage by CONTRACTOR, from Commercial Service Units in the Service Area and the delivery of that Commercial Solid Waste to a Disposal Facility.
- B. Commercial Organic Waste Collection Service. The Collection of Organic Waste, by CONTRACTOR, from Commercial Service Units in the Service Area, the delivery of those Organic Waste materials to an Organic Waste Processing Facility

and the processing and marketing of those Organic Waste materials, and the disposal of all Commercial Organic Waste Processing Residue.

- C. Commercial Recycling Collection Service. The Collection of Recyclable Materials, by CONTRACTOR, from Commercial Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility and the processing and marketing of those Recyclable Materials, and the disposal of all Commercial Recyclable Materials Processing Residue.

2.32. Compactor. Any Bin or Roll-Off Container which has a compaction mechanism, whether stationary or mobile.

2.33. CONTRACTOR. Mid Valley Diposal, the entity that has obtained from the CITY this Agreement to provide Collection Services.

2.34. CONTRACTOR Representative. The person, or designee, designated by the CONTRACTOR to manage the provisions of this Agreement.

2.35. Construction and Demolition Debris and Other Temporary Collection Service. Temporary Collection and processing of Construction and Demolition Debris and other Solid Waste, and which is placed in a Bin or Roll-Off Container.

2.36. County. Merced County, California.

2.37. Consumer Price Index (CPI). The index published by the U.S. Department of Labor, Bureau of Labor Statistics, (San Francisco – Oakland – Hayward, All Urban Consumers, Not Seasonally Adjusted),” (or another mutually agreed-upon index if this one is no longer published).

2.38. Dispose or Disposal. The final disposition of Solid Waste collected.

2.39. Disposal Facility. The CITY approved facility(ies) utilized by CONTRACTOR for the disposal, or processing as appropriate, of Garbage and other materials as appropriate and acceptable.

2.40. Dwelling Unit. Any individual living unit in a single-family dwelling, condominium, or town home (SFD), or MFD Units, or building intended for, or capable of being utilized for, residential living.

2.41. Effective Date. Effective date shall mean July 1 2023.

2.42. Electronic Waste (E-Waste). Electronic Waste or E-Waste means discarded electronics equipment such as cell phones, computers, monitors, televisions, and other items containing cathode ray tubes.

2.43. Exempt Waste. Biohazardous or Biomedical Waste, Hazardous Waste, Sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, dead animals, and those wastes under the control of the Nuclear Regulatory Commission.

2.44. Facility Fee. The tipping, processing or similar fee charged by the Disposal Facility, Organic Waste Processing Facility, or MRF to CONTRACTOR for the delivery and disposal of materials

Collected under this Agreement.

2.45. Food Waste. Food Waste means those discarded materials that will decompose and/or putrefy including: (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) fruit waste, grain waste, dairy waste, meat, and fish waste; (iv) vegetable trimmings, houseplant trimmings and other compostable organic waste common to the occupancy of residential premises or commercial premises. Food Waste is a subset of Organic Waste.

2.46. Franchise Area. Franchise Area means all premises within CITY limits, including premises which may be annexed and thereby added to CITY limits following the Effective Date.

2.47. Franchised Diversion. Franchise Diversion means the rate of diversion for which CONTRACTOR is responsible to achieve as defined and calculated to achieve in Article 8.

2.48. Garbage. Garbage means those elements of the solid waste stream designated for the "garbage container," and excludes hazardous waste, excluded waste, materials designated for the "compost container" or "recycling container," or materials which have been separated for reuse.

2.49. Garbage Collection Service. The Collection and disposal of Garbage from City Service Units, Commercial Service Units, MFD Service Units, SFD Service Units.

2.50. Gross Billings. All billings as submitted by CONTRACTOR to CITY in accordance with Article 18 of this Agreement for the provision of Collection Services pursuant to this Agreement.

2.51. Household Hazardous Waste (HHW). Household products that can catch fire, react, or explode under certain circumstances, or that are corrosive or toxic as household hazardous waste. Products, such as paints, cleaners, oils, batteries, and pesticides can contain hazardous ingredients and require special care in their disposal.

2.52. Hazardous Waste. Any material which is defined as a hazardous waste under California or United States laws or any regulations promulgated pursuant to such laws, as such laws or regulations may be amended from time to time.

2.53. Materials Recycling Facility (MRF). Any facility designed, operated, and legally permitted for the purpose of receiving, sorting, processing, storing, or preparing Recyclable Materials for sale.

2.54. Maximum Service Rate. The maximum amount that CONTRACTOR may charge Service Recipients for Collection Services, as listed in **Exhibit 1**, and as may be adjusted in accordance with the provisions of this Agreement.

2.55. Mixed Use Dwelling. A building or structure which contains at least one (1) Business Service Unit and at least one (1) Dwelling Unit and utilizes a common Garbage Bin or Garbage Cart for the accumulation and Collection of Commercial Solid Waste.

2.56. MFD Collection Service. MFD Solid Waste Collection Service, MFD Recycling Service,

MFD Organic Waste Collection Service, and MFD Large Item Collection Service. MFD Collection Service specifically includes the following:

- A. MFD Garbage Collection Service. The Collection of Residential Garbage, by CONTRACTOR, from MFD Service Units in the Service Area and the delivery of that Residential Garbage to a Disposal Facility.
- B. MFD Large Item Collection Service. The periodic on-call Collection of Large Items, by CONTRACTOR, from MFD Service Units in the Service Area and the delivery of those Large Items to a Disposal Facility, Materials Recycling Facility or such other facility as may be appropriate under the terms of this Agreement. MFD Large Item Collection Service may include the Collection of Large Items through the use of Roll-Off Containers. MFD Large Item Collection Service shall be provided at the rate set forth in **Exhibit 1**.
- C. MFD Organic Waste Collection Service. The Collection of Organic Waste, by CONTRACTOR, from MFD Service Units in the Service Area, the delivery of those Organic Waste materials to an Organic Waste Processing Facility and the processing and marketing of those Organic Waste materials, and the disposal of all MFD Organic Waste Processing Residue.
- D. MFD Recycling Service. The Collection of Recyclable Materials by the CONTRACTOR from MFD Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility and the processing and marketing of those Recyclable Materials, and the disposal of all MFD Recyclable Materials Processing Residue.

2.57. MFD Unit. A building, or a portion thereof, designed for occupancy by three (3) or more families living independently of each other, and containing three (3) or more dwelling units.

2.58. Non-Collection Notice. A form developed and used by CONTRACTOR, as approved by CITY, to notify Service Recipients of the reason for non-collection of materials set out by the Service Recipient for Collection by CONTRACTOR pursuant to this Agreement.

2.59. Organic Waste Collection Service. The collection, processing and marketing of Organic Waste from City Service Units, Commercial Service Units, MFD Service Units, SFD Service Units (in the Service Area and the disposal of all Organic Waste Processing Residual.

2.60. Organic Waste Processing Facility. The CITY designated facility designed, operated and legally permitted for the purpose of receiving, and processing Food Waste, Green Waste, Large Green Waste, and Other Organics. The CONTRACTOR must transport all of the collected Organic Waste to this CITY designated facility.

2.61. Organic Waste Processing Residual. Materials Collected pursuant to this Agreement, including both Organic Waste, and Contaminants, that are delivered to an Organic Waste Processing Facility but are Residual as defined in Section 2.66.

2.62. Overage. Overage means excess Garbage, Organic Waste and Recyclable Materials (i) placed inside a Container that prevents the lid on the Container from being completely closed (i.e., lid remains open greater 45-degrees) or (ii) that could potentially result in excess materials spilling/dislodging during collection activity by CONTRACTOR's vehicles or require cleanup of the area around the Container.

2.63. Person. Person includes, but is not limited to, any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Merced, towns, cities, and special purpose districts.

2.64. Rebuilt Vehicle. For purposes of this Agreement, "rebuilt" means, at a minimum, replacement of all of the following: worn parts and reconditioning or replacement of hydraulic systems, transmissions, differentials, electrical systems, engines, and brake systems. In addition, the rebuilt vehicle must be repainted, and its tires must have at least eighty-five percent (85%) of tread remaining.

2.65. Recyclable Materials Collection Service. The collection, processing and marketing of Recyclable Material from City Service Units, Commercial Service Units, MFD Service Units, SFD Service Units and the disposal of all Recyclable Materials Processing Residual.

2.66. Residual or Residuals. Residual or Residuals means Garbage that is not diverted from landfill disposal after it has been delivered to an Organic Waste Processing Facility or a Recyclables Processing Facility for processing for diversion from landfill disposal. For determining the amount of Residuals in Recyclable Materials, CONTRACTOR shall conduct a characterization study of inbound Recyclable Materials by service line by July 1st of each year to be used for the subsequent twelve (12) month period.

2.67. Roll-Off Collection Service. The collection of Roll-Off Containers containing Solid Waste from SFD Service Units, MFD service Units, City Service Units, or Commercial Service Units on a permanent or temporary basis.

2.68. Roll-Off Container. A metal container with a capacity of ten (10) or more cubic yards that is normally loaded onto a motor vehicle and transported to an appropriate facility.

2.69. SB 1016. State of California Senate Bill 1016, approved September 16, 2008, establishing a per capita disposal based accounting system for diversion reporting in meeting the mandated 50 percent diversion requirement as set by AB 939. SB 1016 also changed reporting and review process so that jurisdictions meeting the 50 percent diversion requirement would be subject to review by CalRecycle (formally referred to as the CIWMB), every four years, while those jurisdictions not meeting the 50 percent diversion requirement would continue to be reviewed by CalRecycle every two years.

2.70. SB 1383. State of California Senate Bill 1383, approved September 19, 2016 mandates a fifty percent (50%) reduction statewide in disposal of Organic Materials from the 2014 levels by 2020 and seventy-five percent (75%) by 2025. A seventy-five percent (75%) reduction from the 2014 level requires California to limit disposal to roughly five (5) million tons of organics annually on and after 2025. Further, SB 1383 requires CalRecycle's regulations to include requirements designed to improve the recovery of edible food that is currently landfilled by twenty percent (20%) by 2025.

2.71. Service Area. That area within the city limits of the City of Atwater designated by CITY

as the Service Area as those limits may be adjusted from time to time by annexation or similar process as allowed under California law.

2.72. Service Recipient. An individual, Business, or the CITY, receiving SFD, MFD, Commercial, or CITY Collection Services.

2.73. Service Unit. SFD Service Units, MFD Service Units, City Service Units, or Commercial Service Units. Service Unit specifically includes the following:

- A. City Service Unit. City Facility(ies) that utilize a Bin, Cart, or Roll-Off Container(s) for the accumulation and set-out of Solid Waste. City Service Units are listed in **Exhibit 3**, and as may be modified by written notice to CONTRACTOR by the CITY.
- B. Commercial Service Unit. Business Service Units, City Service Units and Mixed-Use Dwellings that utilize a Garbage Bin, Cart, Compactor, Roll-Off Container for the accumulation and set-out of Commercial Solid Waste.
- C. Multi-Family Dwelling Service Unit (MFD). Five (5) or greater Dwelling Units in the Service Area sharing a Cart or Bin for the accumulation and set out of Commercial Solid Waste.
- D. SFD Service Unit. Any Single-Family Dwelling Unit (SFD) in the Service Area utilizing a Cart, or any combination of 1 – 4 Dwelling Units sharing Carts, for the accumulation and set out of Residential Solid Waste.

2.74. SFD Collection Service. SFD Garbage Collection Service, SFD Recycling Service, SFD Organic Waste Collection Service, SFD Large Item Collection Service, and SFD Used Oil Collection Service. SFD Collection Service specifically includes the following:

- A. SFD Garbage Collection Service. The Collection of Residential Garbage, by CONTRACTOR, from SFD Service Units in the Service Area and the delivery of that Residential Garbage to a Disposal Facility.
- B. SFD Large Item Collection Service. The periodic on-call Collection of Large Items, by CONTRACTOR, from SFD Service Units in the Service Area and the delivery of those Large Items to a Disposal Facility, Materials Recycling Facility or such other facility as may be appropriate under the terms of this Agreement. SFD Large Item Collection Service does not include the Collection of Large Items through the use of Roll-Off Containers. SFD Large Item Collection Service shall be provided at the rate set forth in **Exhibit 1**.
- C. SFD Organic Waste Collection Service. The Collection of Organic Waste, by CONTRACTOR, from SFD Service Units in the Service Area, the delivery of those Organic Waste materials to an Organic Waste Processing Facility and the processing and marketing of those Organic Waste materials, and the disposal of all SFD Organic Waste Processing Residual.

- D. SFD Recycling Service. The Collection of Recyclable Materials by the CONTRACTOR from SFD Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility and the processing and marketing of those Recyclable Materials, and the disposal of all SFD Recyclable Materials Processing Residual.

2.75. Sludge. The accumulated solids, residues, and precipitates generated as a result of waste treatment or processing in the Service Area, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances or any other such waste having similar characteristics or effects.

2.76. Solid Waste. The materials described in Public Resources Code section 40191, including Garbage, Recyclable Materials, Organic Waste, Construction and Demolition Debris, and Large Items. Solid Waste does not include Exempt Waste. Solid Waste specifically includes the following:

- A. Construction and Demolition Debris. Used or discarded materials resulting from construction, remodeling, repair or demolition operations on any type of structure.
- B. Food Waste. Food scraps and trimmings and other putrescible waste that results from food production, preparation, storage, consumption or handling. Food Waste includes but is not limited to meat, fish and dairy waste, fruit and vegetable waste, grain waste, and compostable food contaminated paper products. Food Waste does not include Exempt Waste.
- C. Garbage. All putrescible and non-putrescible solid, semi-solid and associated liquid waste, as defined in California Public Resources Code section 40191. Garbage does not include Recyclable Materials, Organic Waste, Large Items, Construction and Demolition Debris, or Exempt Waste. Garbage must be generated by and at the Service Unit wherein the Garbage is Collected. Garbage does not include those items defined as Exempt Waste. Garbage must be generated by and at the Service Unit wherein the Garbage is Collected. Garbage does not include those items defined as Exempt Waste.
- D. Green Waste. Any vegetative matter resulting from normal yard and landscaping maintenance that is not more than five (5) feet in its longest dimension or six (6) inches in diameter or weighs more than fifty (50) pounds. Green Waste includes plant debris, such as grass clippings, leaves, pruning, weeds, branches, brush, Holiday trees, and other forms of organic waste and must be generated by and at the SFD Service Unit where the Green Waste is Collected. Green Waste does not include items defined as Exempt Waste.
- E. Large Green Waste. Oversized Green Waste such as tree trunks and branches with a diameter of not less than six (6) inches and not more than two (2) feet and a length of not more than five (5) feet in its longest dimension, which are attributed to the normal activities of an SFD Service Unit. Large Green Waste must be generated by and at the SFD Service Unit where the Large Green Waste is

Collected, and is Collected by means of Large Item Collection.

- F. Large Items. Those materials including furniture; carpets; mattresses; White Goods; Brown Goods; Large Green Waste which are attributed to the normal activities of an SFD Service Unit. Large Items must be generated by and at the SFD Service Unit wherein the Large Items are Collected. Large Items do not include items defined as Exempt Waste.
- G. Organic Waste. Food Waste, Green Waste, Large Green Waste, and Other Organics, either separately or commingled with each other, that has been separated at the source of generation from Garbage and Recyclable Materials.
- H. Other Organics. Other Organics includes compostable food-soiled paper and paper products, compostable food wares and compostable food packaging, stable materials, manure, and natural fiber textiles, and other compostable materials as may be required by the CITY or CalRecycle.
- I. Recyclable Materials. Those materials which are capable of being recycled using available processes and markets and which would otherwise be processed or disposed of as Residential Garbage or Commercial Garbage. These materials will be as defined by CITY. Recyclable Materials currently being Collected are included in **Exhibit 10**. CITY and CONTRACTOR agree to meet from time to time as needed to discuss additions or deletions from the list of Recyclable Materials. CONTRACTOR may request removal of Recyclable Materials due to market limitations, which request will be decided by the Agreement Administrator.
- J. White Goods. Inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar household appliances.

2.77. Used Oil. Any oil that has been refined from crude oil or has been synthetically produced, and is no longer useful to the Service Recipient because of extended storage, spillage or contamination with non-hazardous impurities such as dirt or water; or has been used and as a result of such use has been contaminated with physical or chemical impurities. Used Oil must be generated by an SFD or MFD Service Recipient. Used Oils does not include diesel oil, cooking oils or grease, mineral oil, transmission fluid, gasoline, hydraulic fluid, brake fluid or antifreeze.

2.78. Temporary Roll-Off. Collection Service through the use of Roll-Off Containers to Service Recipients for a limited period of time not to exceed thirty days except that Collection Service related to an on-going construction project may do so through completion of the construction project. All construction projects must have an active City building or demolition permit.

2.79. Used Oil Filter. Any oil filter that is no longer useful to the Service Recipient because of extended storage, spillage or contamination with non-hazardous impurities such as dirt or water; or has been used and as a result of such use has been contaminated with physical or chemical impurities. Used Oil Filters must be generated by SFD or MFD Service Recipients.

2.80. Work Day. Any day, Monday through Saturday, that is not a holiday as set forth in this

Agreement.

ARTICLE 3. Grant of Exclusive Franchise; Consideration

3.01. Scope of Franchise. Except as hereinafter expressly set forth, CITY hereby grants to CONTRACTOR and CONTRACTOR hereby accepts from CITY, the exclusive franchise, right, and privilege to collect, remove, and dispose of, in a lawful manner, Solid Waste accumulating in the CITY's Service Area, as may be adjusted from time to time by approved annexations, that are required to be accumulated and offered for collection to the CONTRACTOR in accordance with the CITY's Municipal Code, for the Term of and within the scope set forth in this Agreement. The exclusive franchise, right, and privilege to provide Solid Waste Handling Services within CITY granted to CONTRACTOR by this Agreement shall be interpreted to be consistent with all applicable state and federal laws, now in effect and adopted during the Term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing laws and regulations. In the event that future interpretations of current law or future enactments limit the ability of CITY to lawfully grant CONTRACTOR the scope of services as specifically set forth herein, CONTRACTOR agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that CITY shall not be responsible for any lost profits claimed by CONTRACTOR as a result thereof. The provisions of Title 8, Chapter 8.16 of the Atwater Municipal Code, as they now exist or as they may be amended, and the regulations adopted pursuant thereto, and any future amendments to said regulations, are specifically incorporated herein and made a part hereof as if fully set forth in this Agreement.

If the scope of this Agreement is limited or changed due to changes in the Atwater Municipal Code not required by applicable federal or state law and if the changes result in a material change in costs or loss of revenue to Contractor, City and Contractor shall negotiate in good faith, a change in Contractors compensation or a reduction of services equal to the value of the adjustment if a change Contractors compensation cannot be implemented. If City and Contractor are unable to reach agreement about such a change in Contractors compensation or a reduction in services, then Contractor may terminate this Agreement upon six (6) months' written notice to City.

3.02. Consideration for Franchise. In consideration for CITY's grant of the exclusive franchise, for negotiation of this Agreement, and for retention of the longstanding relationship with CITY, CONTRACTOR shall make when due to CITY all payments described in this Agreement. All of CONTRACTOR's payments to CITY, whether described in this Article or otherwise in the Agreement, reflects reimbursement to CITY for CITY's actual and reasonable costs and payment for the reasonable value of the exclusive franchise, and is subject to characterization, appropriation, and expenditure by the City Council and may be used for any lawful purpose as determined by CITY in its sole discretion.

3.03. Matters Excluded from Scope of Franchise. Notwithstanding any other provisions set forth in this Agreement to the contrary, the exclusive franchise granted herein shall exclude the Collection, transportation, processing, recycling, and/or disposal of:

- A. Any Solid Waste otherwise within the scope of this Agreement which is transported by a Self-Hauler as that term is used in the Municipal Code, or any other CITY ordinance, resolution, regulation, or policy, as such may be adopted or amended from time to time;

- B. The sale or donation of Recyclable Material sold or donated by the person or entity that generated such Recyclable Material (the "Generator") to any Person or entity other than CONTRACTOR; provided, however, to the extent permitted by law, if the Generator is required to pay monetary or non-monetary consideration for the Collection, transportation, transfer, or processing of Recyclable Material to any Person or entity other than CONTRACTOR, the fact that the Generator receives a reduction or discount in price (or in other terms of the consideration the Generator is required to pay) shall not be considered a sale or donation;
- C. Any Solid Waste otherwise within the scope of this Agreement which is Collected or transported to a disposal or recycling facility by CITY employees in the course and scope of their employment with CITY;
- D. The Collection, transportation, or disposal of Hazardous Waste; Universal Waste; E-Waste; biohazardous waste; untreated medical waste; infectious waste; Animal Waste; used cooking fats, oils, grease, and similar waste; or other materials which do not constitute Solid Waste;
- E. The Collection, transportation, and processing of Construction and Demolition Debris by a contractor, handyman, repairman, or other similar service provider, using its own equipment, as an incidental part of the services provided to its customers, rather than as a hauling service, provided that such waste is not Collected or transported by a third party hired for the primary purpose of Collecting and transporting said materials;
- F. Temporary Roll Off Service provided by one additional exclusive franchisee which shall be subject to substantially similar requirements as those set forth in this Agreement, provided that the City may require different insurance, performance bond, and similar requirements reflecting the size and risk of such franchisee.
- G. The Collection, transportation, and processing of Green Waste and related Solid Waste by a gardener, or landscaper, as an incidental part of the gardening or landscaping services provided to its customers, rather than as a hauling service provided that such Solid Waste is not Collected or transported by a third party hired for the primary purpose of Collecting and transporting said materials;
- H. Nothing in this Agreement will be construed as requiring Service Recipients to set out Recyclable Materials, Organic Waste, or Large Items for Collection by CONTRACTOR. Service Recipients may dispose of Recyclable Materials, Organic Waste, and Large Items by other appropriate means, including but not limited to, taking Recyclable Materials, Organic Waste, or Large Items to drop-off facilities and donating or selling such items to private or public entities;
- I. Solid Waste Handling Services provided by any Person having a legal right to continue doing so, pursuant to Public Resources Code section 49520, et. seq., or

otherwise, as long as and to the extent such legal right continues to exist; except that to the degree any territory in which CONTRACTOR has a franchise granted by another governmental entity is annexed into CITY during the Term, CONTRACTOR agrees the provisions of this Agreement shall apply to such territory and further acknowledges that this Agreement constitutes any notice required by the Public Resources Code in connection therewith.

ARTICLE 4. Enforcement of Exclusivity

CONTRACTOR shall be responsible for enforcing the exclusivity of this Agreement. CITY may reasonably assist CONTRACTOR in its efforts to enforce the exclusivity hereof. In addition, CITY may adopt such ordinances or other regulations as it deems to be necessary or desirable to protect the exclusive rights granted herein and may enforce such regulations in its reasonable discretion. CONTRACTOR may enforce such exclusivity provisions when requested to do so and CITY may assign any claim to CONTRACTOR to assist in such enforcement. The CITY reserves to itself the right to make reasonable changes in the Atwater Municipal Code and the Regulations adopted pursuant thereto amended or changed in the future. The Parties understand and agree that CITY shall not be liable for damages resulting from failure to enforce its Municipal Code, nor shall such failure constitute a breach of this Agreement entitling CONTRACTOR to rescission or any other remedy.

ARTICLE 5. Acceptance; Waiver

CONTRACTOR agrees to be bound by and comply with all the requirements of this Agreement. CONTRACTOR waives CONTRACTOR's right to change the terms of this Agreement under federal, state, or local law, or administrative regulation. CONTRACTOR waives any right or claim to serve CITY or any part of CITY under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity, including but not limited to any right under section 49520 of the Public Resources Code.

ARTICLE 6. Term of Agreement

6.01. Initial Term. Subject to the provisions of this Agreement relating to termination, the initial term of this Agreement is a ten (10) year period beginning midnight July 1, 2023 (the "Effective Date"), and terminating on 11:59 pm June 30, 2033 (the "Initial Term").

6.02. Extension of Term Option. Provided that CONTRACTOR (1) is not then in default of any material term or condition of the Agreement; (2) has not been designated as a "habitual violator" as provided in this Agreement; and (3) that the Extension Term Option has not been voided as otherwise provided in this Agreement, CONTRACTOR may request a five (5) year term extension to the Initial Term (the "Extended Term") by providing CITY with written notice of the request at least eighteen (18) months prior to the expiration of the Initial Term. In that event, CITY shall meet and confer with CONTRACTOR at least two (2) times prior to expiration of the Initial Term, but under no circumstances will CITY be obligated to extend the term. Any extension shall be set forth in a written amendment to this Agreement.

6.03. Other Provisions. CITY may, at the end of the Initial Term or the Extended Term, renegotiate the terms and conditions of the Agreement with the CONTRACTOR, excluding the negotiation of a payment to CITY, for an Extended Term and / or may request proposals from qualified contractors to

provide Collection Services. CITY retains the right to both negotiate with CONTRACTOR while concurrently conducting a request for proposal process.

ARTICLE 7. Conditions to Agreement's Effectiveness

The satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by CITY in writing, is a condition precedent to the effectiveness of this Agreement, and a condition of CONTRACTOR's continued right to the benefits conveyed herein:

7.01. Accuracy of Representations. All representations and warranties made by CONTRACTOR and set forth in this Agreement are accurate, true, and correct on and as of the Effective Date of this Agreement.

7.02. Absence of Litigation or Referendum Petition. There is no litigation pending in any court challenging the award of this exclusive franchise for Solid Waste Handling Services to CONTRACTOR or the execution of this Agreement or seeking to restrain or enjoin its performance.

7.03. Furnishing of Insurance, Bond, and Letter of Credit. CONTRACTOR shall have furnished evidence of any insurance and surety required by this Agreement, and shall comply with all ongoing requirements relating thereto.

7.04. Effectiveness of City Council Action. Except as set forth in Article 17, the City Council's Resolution approving this Agreement shall have become effective pursuant to California law. If a referendum petition or legal challenge to the award of this Agreement is submitted or filed, CONTRACTOR shall defend, indemnify, and hold CITY harmless for all costs incurred to defend such challenge. CONTRACTOR shall further reimburse CITY for any costs incurred in any election subject to this Section.

7.05. Payment of Fees and Costs. CONTRACTOR shall have made payment to CITY of all fees, costs, and other payments due, including but not limited to those fees, costs, and payments set forth in Article 18.

ARTICLE 8. Services Provided by Contractor

8.01. General.

8.01.1. Equipment. CONTRACTOR shall furnish all labor, supervision, materials, supplies, and equipment necessary to provide for all services required by the terms of this Agreement.

8.01.2. Service Standards. CONTRACTOR must perform all Collection Services under this Agreement in a thorough, workmanlike, and professional manner consistent with all relevant provisions of law.

8.01.3. Noise and Disruption. CONTRACTOR shall perform all Collection Services as required hereunder in such a manner as to minimize noise and other disruptive impacts including, without limitation, those upon traffic. CONTRACTOR shall use its best efforts to coordinate its Collection schedules

such that CONTRACTOR's Collection of Solid Waste occurs on the business day immediately preceding street sweeping on any given street.

8.01.4. Collection Times. CONTRACTOR shall perform all Collection Services at the collection times set forth in this Agreement and according to the type of Service Recipient for whom Collection Services are performed.

8.01.5. Labor and Equipment. CONTRACTOR must provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of CONTRACTOR's obligations under this Agreement. CONTRACTOR must at all times have sufficient backup equipment and labor to fulfill CONTRACTOR's obligations under this Agreement. No compensation for CONTRACTOR's services or for CONTRACTOR's supply of labor, equipment, tools, facilities or supervision will be provided or paid to CONTRACTOR by CITY or by any Service Recipient except as expressly provided by this Agreement.

8.01.6. Holiday Service. The CITY observes New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day as legal holidays. CONTRACTOR is not required to provide Collection Services or maintain office hours on the designated holidays. In any week in which one of these holidays falls on a Work Day, SFD Collection Services for the holiday and each Work Day thereafter will be delayed one Work Day for the remainder of the week with normally scheduled Friday SFD Collection Services being performed on Saturday. Commercial Collection Services will be adjusted as set forth in this Article 8 but must meet the minimum frequency requirements of one (1) time per week.

8.01.7. CONTRACTOR's Bins, Carts, and other Containers. CONTRACTOR's Bins, Carts, and other containers must be compliant with SB 1383 and shall meet the minimum standards set forth on the attached **Exhibit 4**, including but not limited to the following:

8.01.7.1. Each container must be newly painted in a color distinctive to each use and all bins for the same use shall be colored the same. The following colors shall be used for collection container lids: Garbage (black or grey); Recyclable Materials (blue); Organic Materials (green); Contractor-owned Compactor Bins (color appropriate to content as previously designated); Food Waste (yellow).

8.01.7.2. Each container shall be marked with an adhesive label or imprinted with its intended usage in letters and pictures. The label shall specify what materials are allowed to be placed in each container. Labels must represent acceptable versus unacceptable items in written or graphic form.

8.01.7.3. CONTRACTOR must provide all-new Carts and Bins to each Service Recipient within ninety (90) days after the commencement of Collection Services under this Agreement. CONTRACTOR must provide all new Carts to each new Service Recipient within five (5) Work Days of a request for Collection Services under this Agreement.

8.02. Commingling of Routes, Materials.

8.02.1. Non-CITY Solid Waste. CONTRACTOR may not at any time commingle any materials Collected pursuant to this Agreement with any other material Collected by CONTRACTOR from

any non-CITY Solid Waste, whether inside or outside the CITY, without at least thirty (30) days prior to the proposed commingling providing the Agreement Administrator with written justification of need to commingle materials, to the reasonable satisfaction of the Agreement Administrator. If commingling is approved and takes place, CONTRACTOR agrees to indemnify, defend, and hold CITY harmless from any claims, demands, fines, or penalties arising from CONTRACTOR's commingling.

8.02.2. Recyclable Materials. Subject to this Article, CONTRACTOR must not at any time commingle SFD or Commercial Recyclable Materials Collected pursuant to this Agreement with any other material type Collected by CONTRACTOR without the express prior written authorization of the Agreement Administrator.

8.02.3. Organic Waste. Subject to this Article, CONTRACTOR must not at any time commingle SFD or Commercial Organic Waste Collected pursuant to this Agreement with any other material type Collected by CONTRACTOR, without the express prior written authorization of the Agreement Administrator.

8.03. Recyclable Materials and Organic Waste Contamination. CONTRACTOR must offer the Service Recipients the correct combination of Cart, Bin, and Roll-Off Container sizes and Collection frequency that matches their unique service needs to reduce contamination of Recyclable Materials and Organic Waste. To support CITY's diversion goals and CONTRACTOR's Diversion Requirements as set forth in this Agreement, CONTRACTOR is only required to collect Recyclable Materials if they have been separated by the Service Recipient from Garbage and Organic Waste, and is only be required to collect Organic Waste if it has been separated by the Service Recipient from Garbage and Recyclable Materials.

As part of CONTRACTOR's Public Education Services under this Agreement, CONTRACTOR agrees to provide outreach and support to SFD Service Recipients. Additionally, CONTRACTOR's route collection personnel will report to CONTRACTOR's supervisors if they observe potential contamination problems, and/or insufficient collection capacity. For purposes of determining if Recyclable Materials or Organic Waste are deemed to be contaminated, if, by visual or digital inspection, Recyclable Materials are commingled with ten percent (10%) by weight or volume of Garbage or Organic Waste, or if, by visual inspection, Organic Waste is commingled with three percent (3%) by volume of Garbage or Recyclable Materials, then Recyclable Materials and/or Organic Waste will be deemed to be contaminated and CONTRACTOR may take the following steps:

8.03.1. SFD Service Recipients.

8.03.1.1. First Occurrence. For the first occurrence of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR must collect the contaminated container (as Solid Waste) and must affix a Contamination Violation Notice to the contaminated container which contains instructions on the proper procedures for sorting Recyclable Materials or Organic Waste, and must notify the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag), that for the second and subsequent incidents of excess contamination, the Service Recipient may be charged a contamination fee for the contaminated container, and for the third or subsequent occurrence of contamination, CONTRACTOR may increase the Cart size, or require an additional Cart, if necessary to provide the Service Recipient with adequate capacity to timely dispose of Recyclable Materials and Organic Waste without commingling. Prior to requiring an additional Cart, CONTRACTOR's representative must first attempt to contact the Service Recipient by phone, U.S. mail, e-

mail, or in person (which may be a container tag) to ensure that they have the appropriate level of service for proper collection of Recyclable Materials and/or Organic Waste. CONTRACTOR must also provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems.

8.03.1.2. Second Occurrence. For the second occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR will provide a Contamination Violation Notice that contains instructions on the proper procedures for setting out Recyclable Materials or Organic Waste, and CONTRACTOR must collect the contaminated Container (as Solid Waste) and will notify the CITY. For any contamination fee charge being assessed, CONTRACTOR must provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems. The CITY may charge the Service Recipient a contamination fee as set forth in **Exhibit 1**.

8.03.1.3. Third and Subsequent Occurrence. For the third or subsequent occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR must collect the contaminated Container (as Solid Waste) and must charge the Service Recipient a contamination fee as set forth in **Exhibit 1**. CONTRACTOR must continue providing the Recyclable Materials or Organic Waste Collection Services. CONTRACTOR must provide (or have provided) digital documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems and written Notices of contamination as described above. CONTRACTOR must either (i) notify CITY within five (5) Business Days to adjust the offending Service Recipient to the appropriate Service Rate as set forth in **Exhibit 1** if CONTRACTOR increases in the Cart size or requires an additional Cart for excessive contamination, or (ii) notify the CITY to impose a contamination surcharge to the account for a period of six months or until the Service Recipient has demonstrated no contamination for a period of three consecutive months. CITY will consult with CONTRACTOR and consider, and pursue as applicable, appropriate legal remedies against offending Service Recipients in order to secure discontinuance of the contamination. All CITY costs of such action shall be recoverable from the offending Service Recipients.

8.03.2. Commercial and MFD Service Recipients. The following provisions will apply to all Commercial and MDF Service Recipients except those eligible for temporary treatment pursuant to Section 8.03.3.

8.03.2.1. First Occurrence. For the first occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR must collect the contaminated container (as Solid Waste) and must affix a Contamination Violation Notice to the contaminated container which contains instructions on the proper procedures for sorting Recyclable Materials or Organic Waste, and must notify the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag), that for the second and subsequent incidents of contamination, the Service Recipient will be charged a contamination fee for the contaminated container, and for the third or subsequent occurrence of excess contamination, CONTRACTOR may increase the Cart or Bin size, if necessary to provide the Service Recipient with adequate capacity to timely dispose of Recyclable Materials and Organic Waste without commingling, or collection frequency or impose a contamination surcharge on the account for a period of six months or until the Service Recipient has demonstrated no contamination for a period of three consecutive months. Prior to increasing the Cart or

Bin size Cart CONTRACTOR's representative must first attempt to contact the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag) to ensure that they have the appropriate level of service for proper collection of Recyclable Materials and/or Organic Waste. CONTRACTOR must also provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's contamination problem.

8.03.2.2. Second Occurrence. For the second occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR will provide a Contamination Violation Notice that contains instructions on the proper procedures for setting out Recyclable Materials or Organic Waste, and CONTRACTOR must collect the contaminated Container (as Solid Waste) and will notify the CITY. For any contamination fee charge being assessed, CONTRACTOR must provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems. The CITY may charge the Service Recipient a contamination fee as set forth in **Exhibit 1**.

8.03.2.3. Third and Subsequent Occurrence. For the third and subsequent occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR must collect the contaminated Container (as Solid Waste) and must charge the Service Recipient a contamination fee as set forth in **Exhibit 1**. CONTRACTOR must continue providing the Recyclable Materials or Organic Waste Collection Services. CONTRACTOR must provide (or have provided) digital documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems and written Notices of contamination as described above. CONTRACTOR must either (i) notify CITY within five (5) Business Days to adjust the offending Service Recipient to the appropriate Service Rate as set forth in **Exhibit 1** if CONTRACTOR increases in the Bin or Cart size or frequency of collection for excessive contamination, or (ii) notify the CITY to impose a contamination surcharge to the account for a period of six months or until the Service Recipient has demonstrated no contamination for a period of three consecutive months. CITY will consult with CONTRACTOR and consider, and pursue as applicable, appropriate legal remedies against offending Service Recipients in order to secure discontinuance of the contamination. All CITY costs of such action shall be recoverable from the offending Service Recipients.

8.03.3. Exception to Commercial or MFD Contamination Procedures. The following provisions will only apply to New Commercial and MFD Service Recipients on or after July 1, 2023, and to those Service Recipients as of July 1, 2023 who were not then receiving Recyclable Materials or Organic Waste Collection Service. For eligible Service Recipients the contamination procedures provided below will apply for the first year of their new service, or for existing service recipients will only apply for one year commencing July 1, 2023. After this grace period, the provisions of Section 8.03.2 will be applicable to the Service Recipient.

8.03.3.1. First Occurrence. For the first occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR must collect the contaminated container (as Solid Waste) and must affix a Contamination Violation Notice to the contaminated container which contains instructions on the proper procedures for sorting Recyclable Materials or Organic Waste, and must notify the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag), that for the second and subsequent incidents of excess contamination, the Service Recipient may be charged a contamination fee for the contaminated container, and for the third or subsequent occurrence of excess contamination, CONTRACTOR may increase the Cart

or Bin size, if necessary to provide the Service Recipient with adequate capacity to timely dispose of Recyclable Materials and Organic Waste without commingling, or collection frequency or impose a contamination surcharge as provide in Section 8.03.2. Prior to requiring an additional Cart CONTRACTOR's representative must first attempt to contact the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag) to ensure that they have the appropriate level of service for proper collection of Recyclable Materials and/or Organic Waste. CONTRACTOR must also provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems.

8.03.3.2. Second Occurrence. For the second occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR will provide a Contamination Violation Notice that contains instructions on the proper procedures for setting out Recyclable Materials or Organic Waste, and CONTRACTOR must collect the contaminated Container (as Solid Waste) and will notify the CITY. For any contamination fee charge being assessed, CONTRACTOR must provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems. The CITY may charge the Service Recipient a contamination fee as set forth in **Exhibit 1**.

8.03.3.3. Third and Subsequent Occurrence. For the third or subsequent occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR must collect the contaminated Container (as Solid Waste) and must charge the Service Recipient a contamination fee as set forth in **Exhibit 1**. CONTRACTOR must continue providing the Recyclable Materials or Organic Waste Collection Services. CONTRACTOR must provide (or have provided) digital documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems and written Notices of contamination as described above. CONTRACTOR must either (i) notify CITY within five (5) Business Days to adjust the offending Service Recipient to the appropriate Service Rate as set forth in **Exhibit 1** if CONTRACTOR increases in the Bin or Cart size or frequency of collection for excessive contamination, or (ii) notify the CITY to impose a contamination surcharge to the account for a period of six months or until the Service Recipient has demonstrated no contamination for a period of three consecutive months. CITY will consult with CONTRACTOR and consider, and pursue as applicable, appropriate legal remedies against offending Service Recipients in order to secure discontinuance of the contamination. All CITY costs of such action shall be recoverable from the offending Service Recipients.

8.03.4. Tracking Occurrences of Contamination. In all instances, each Contamination occurrence is tracked annually per Calendar Year, and resets at the start of each Calendar Year.

8.03.5. Disputes Over Excess Contamination Charges. If Service Recipient disputes a contamination charge (which dispute must be received by CITY within 30 days of being assessed), CITY shall temporarily halt any contamination charge and/or increased Maximum Service Rate resulting from increasing the Cart or Bin size or collection frequency, and request a ruling by the City Manager to resolve the dispute. A rule by the City Manager on any such dispute must be filed within ten (10) Business Days of CITY's halting of contamination charge, or increased Maximum Rate, and must include written documentation and digital/visual evidence of ongoing overall problems. The City Manager may request a meeting (in person or phone) with both the Service Recipient and CONTRACTOR to resolve the dispute. Following such a meeting, the City Manager will rule on the dispute within ten (10) Business Days, and the

City Manager's decision on resolving the dispute between and Service Recipient will be final. If the City Manager rules in favor of the Service Recipient, the CITY will credit the disputed contamination charges or increased Maximum Service Rate. If the City Manager rules in favor of CONTRACTOR, CITY may charge Service Recipient the prior halted contamination charge and/or increased Maximum Service Rate resulting from increasing the Cart or Bin number, size, or collection frequency.

8.04. Container Overage and Correction Procedures.

8.04.1. Overage and Correction Procedures. CONTRACTOR shall offer the Service Recipients the correct combination of Cart, Bin and Roll-Off Container sizes and collection frequency that matches each Service Recipient's unique service needs to enable clean, efficient, and cost-effective collection of Solid Waste. CITY and CONTRACTOR agree that overflow of Solid Waste that is not properly in the Service Recipient's Cart(s), Bin(s) or Roll-Off Container(s) may negatively impact public health and safety. CONTRACTOR has also agreed to conduct recycling audits and provide outreach and support to Service Recipient accounts receiving the correct service level. However, in the event that Service Recipients are found to habitually overflow their Solid Waste Cart(s), Bin(s) or Roll-Off Container(s), CONTRACTOR may take the steps as listed below to correct Service Recipient's on-going overflow of Solid Waste.

8.04.1.1. Prior Arrangements for Collection. If the Service Recipient has made prior arrangements with CONTRACTOR for collection of Solid Waste Overages, CONTRACTOR must collect such overages as arranged, and must notify the City to charge the Service Recipient the Solid Waste Overage fee (prior arrangement) rate set forth in **Exhibit 1**.

8.04.1.2. No Prior Arrangements. If the Service Recipient has not made prior arrangements with CONTRACTOR for collection of Solid Waste Overage, (i) CONTRACTOR may collect such Solid Waste Overage without notifying the CITY to charge Service Recipient the Solid Waste Overage fee as a courtesy; (ii) CONTRACTOR may not collect the Solid Waste Overage and leave a Non-Collection Notice explaining the reason for non-collection of the Solid Waste Overage; and (iii) CONTRACTOR may collect the Solid Waste Overage and notify the CITY to charge the Service Recipient the Solid Waste Overage fee (no prior arrangement) rate set forth in **Exhibit 1** as provided below, or increase the capacity or frequency of collection of the existing Cart(s), Bin(s), and Roll-Off Container(s) to match documented service needs as provided below. In managing Solid Waste Overages, the following apply:

8.04.1.2.1. SFD Service Recipients – Each Occurrence. For each occurrence CONTRACTOR will not collect the Solid Waste Overage and CONTRACTOR must provide the following written notice (via e-mail, U.S. mail, or in person (which may be by Non-Collection Notice) to the Service Recipient: (i) the date, description and photograph of the Solid Waste Overage. CONTRACTOR's Non-Collection Notice for SFD Service Recipients shall also contain instructions on (a) how to schedule a Large Item Collection or (b) request an additional Cart to eliminate future Overages.

8.04.1.2.2. Commercial and MFD Service Recipients – Each Occurrence. CONTRACTOR must provide a written notice on the Container, and may provide a copy of the notice via e-mail, U.S. mail, or in person (which may be by Non-Collection Notice) to the Service Recipient with the date, description and photograph of the Solid Waste Overage and notify the CITY of each occurrence. CITY may charge the Service Recipient a Solid Waste Overage fee as set forth in **Exhibit 1**, and increase the capacity or collection frequency of the Cart, Bin or Roll-Off Container to match documented service needs. At least ten (10) Business Days prior to increasing the Cart, Bin or Roll-Off Container size or frequency of Collection, CONTRACTOR's representative must also contact the Service Recipient by phone, U.S. mail, e-mail or in person (which may be by Non-Collection Notice) to ensure that Service

Recipient has the appropriate level of service. CONTRACTOR must notify CITY within ten (10) Business Days of any changes in Service Recipient's Cart, Bin or Roll-Off Container size or collection frequency. The increased capacity or collection frequency will remain in effect until CONTRACTOR determines that it is no longer needed to prevent overages, which may be longer than the one Calendar Year stated above. Such determination will be in CONTRACTOR's sole but reasonable discretion and will be subject to the dispute resolution procedure set forth below. CITY will consider, and pursue as applicable, appropriate legal remedies against offending Service Recipients in order to secure discontinuance of the overages. All CITY costs of such action shall be recoverable from the offending Service Recipients.

8.04.2. Tracking Occurrences of Solid Waste Overage. In all instances, each Solid Waste Overage occurrence is tracked annually per Calendar Year, and resets at the start of each Calendar Year.

8.04.3. Disputes Over Container Overage Charges. If Service Recipient disputes Solid Waste Overage charge or size or collection frequency change (which dispute must be received by CITY within 30 days of the disputed action), CITY must temporarily halt Solid Waste Overage charge(s) and/or increased Maximum Service Rate(s) resulting from increasing the Solid Waste Cart, Bin, or Roll-Off Container size or collection frequency, and request a ruling by the City Manager to resolve the dispute. The City Manager to rule on any such dispute must be filed within ten (10) Business Days of CITY's halting of Solid Waste Overage charge, or increased Maximum Rate, and must include written documentation and digital/visual evidence of ongoing overall problems. The City Manager may request a meeting (in person or phone) with both the Service Recipient and CONTRACTOR to resolve the dispute. Following such a meeting, the City Manager will rule on the dispute within ten (10) Business Days, and the City Manager's decision on resolving the dispute between and Service Recipient will be final. If the City Manager rules in favor of the Service Recipient, CITY must credit the disputed charge or increased Maximum Service Rate. If the City Manager rules in favor of CONTRACTOR, CITY may charge Service Recipient the prior halted Solid Waste Overage charge and/or increased Maximum Service Rate resulting from increasing the Solid Waste Cart, Bin or Roll-Off Container number, size, or collection frequency.

8.05. Ownership of Materials. Except as provided otherwise under Applicable Law, title to Solid Waste will pass to CONTRACTOR at such time as said materials are placed in the appropriate collection container and set out for collection by CONTRACTOR.

8.06. Voluntary Use of Facilities. The CONTRACTOR, without constraint as a free-market business decision in accepting this Agreement, agrees to use the Disposal Site, Recyclable Materials Processing Site, and Organic Materials Processing Site as approved and directed by CITY for the purpose of Disposing of all Solid Waste, and Transferring and Processing of all Recyclable Materials and Organic Waste it collects in the CITY. Such decision by CONTRACTOR in no way constitutes a restraint of trade notwithstanding any change in law regarding flow control limitations or any definition thereof.

8.07. Spillage and Litter. CONTRACTOR shall not litter any street, right-of-way, or premises in the process of providing Collection Services or while its vehicles are on the road. CONTRACTOR must transport all materials Collected under the terms of this Agreement in such a manner as to minimize the spilling or blowing of such materials from CONTRACTOR's vehicles. CONTRACTOR must exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping of Solid Waste and must immediately, at the time of occurrence, clean up such spilled or dropped Solid Waste.

8.07.1. Except as provided in this Agreement, CONTRACTOR is not responsible

for cleaning up sanitary conditions caused by the carelessness of the Service Recipient; however, CONTRACTOR must clean up any material or residue that is spilled or scattered by CONTRACTOR or its employees and report such instances in writing to the CITY by the close business within one (1) working day of the occurrence.

8.07.2. Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from CONTRACTOR's operations or equipment repair must be covered immediately with an absorptive material and removed from the street surface. If such fluid leakage or spillage results in staining the street or sidewalk surface, CONTRACTOR must apply a suitable cleaning agent to the street surface to provide adequate cleaning.

8.07.3. The above paragraphs notwithstanding, CONTRACTOR must clean up any spillage or litter caused by CONTRACTOR within the same Work Day upon notice from the CITY.

8.07.4. To facilitate such cleanup, CONTRACTOR's vehicles must at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.

8.08. Regulations and Record Keeping. CONTRACTOR must comply with emergency notification procedures required by applicable laws and regulatory requirements. All records required by regulations must be maintained at CONTRACTOR's facility. These records must include waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

8.09. Diversion Requirements. CONTRACTOR shall fully implement the Diversion Plan provided as set forth in Article 10, and shall assist CITY in reaching CalRecycle's 75% goal by June 31, 2031.

8.10. Mutual Cooperation. CITY and CONTRACTOR will reasonably cooperate in good faith with all efforts by each other to meet CITY's diversion and other compliance requirements imposed by the Applicable Laws, including without limitation, AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383, and to meet CONTRACTOR's obligations under this Agreement. In this regard, CITY's obligations include, without limitation, making such petitions and applications as may be reasonably requested by CONTRACTOR for time extensions in meeting diversion goals, or other exceptions from the terms of Applicable Laws, and to agree to authorize such changes to CONTRACTOR's Solid Waste Collection Services, or Collection Service programs as may be reasonably be requested by CONTRACTOR.

8.11. Guarantee. Except for programs currently required by Applicable Law but not set forth in this Agreement, or programs CONTRACTOR is expressly instructed by CITY not to implement, or services which a Service Recipient refuses to accept, CONTRACTOR guarantees that it will implement the diversion programs set forth in this Agreement such that CONTRACTOR and CITY will at all times be in compliance with the requirements of the Applicable Laws applicable to them including without limitation AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383 to the extent applicable to the Collection Services as set forth in this Agreement. In this regard CONTRACTOR agrees that it will, in addition to any other Agreement requirement, at its sole cost and expense:

8.11.1. Assist CITY in responding to inquiries from CalRecycle or any other regulatory agency;

8.11.2. Assist CITY in preparing for, and participating in, CalRecycle's biannual review of CITY's SRRE pursuant to Public Resources Code section 41825;

8.11.3. Assist CITY in applying for any extension, including under Public Resources Code section 41820.5, if so directed by CITY;

8.11.4. Assist CITY in any hearing conducted by CalRecycle, or any other regulatory agency, relating to CITY's compliance with the Applicable Laws including without limitation AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383;

8.11.5. Assist CITY with the development of and implement a public awareness and education program that is consistent with CITY's SRRE and Household Hazardous Waste Element, as well as any related requirements of the Applicable Laws; and

8.11.6. Provide CITY with Recycling, source reduction, and other technical assistance as may be needed to comply with the Applicable Laws including without limitation AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383.

8.12. Service Units. Service Units include all the following categories of premises which are in the Service Area as of July 1, 2023, and all such premises which may be added to the Service Area by means of annexation, new construction, or as otherwise set forth in this Agreement during the term of this Agreement:

8.12.1. SFD Service Units;

8.12.2. Commercial Service Units (includes MFD Service Units);

8.12.3. City Service Units;

8.12.4. Any question as to whether a premise falls within one of these categories will be determined by the Agreement Administrator and the determination of the Agreement Administrator will be final.

8.13. Service Unit Changes. CITY and CONTRACTOR acknowledge that during the term of this Agreement it may be necessary or desirable to add or delete Service Units for which CONTRACTOR will provide Service. Additions and Deletions. CONTRACTOR must provide services described in this Agreement to new Service Units in CONTRACTOR's Service Area within five (5) Work Days of receipt of notice from CITY or the new Service Unit to begin such Service.

8.14. Annexation. If during the term of the Agreement, additional territory within or adjacent to the CONTRACTOR's Service Area is acquired by CITY through annexation, subject to the requirements of Public Resources Code section 49520, CONTRACTOR agrees to provide Collection Services in such annexed area in accordance with the provisions and service rates set forth in this Agreement. Such Collection Services must begin within five (5) Work Days of receipt of written notice from CITY. CONTRACTOR may not begin Collection Service without written authorization from CITY.

8.15. Route Map Update. CONTRACTOR must revise the Service Unit route maps to show the addition of Service Units added due to annexation and must provide such revised maps to the Agreement Administrator as requested.

8.16. SFD Collection Services. The SFD Collection Services are governed by the following terms and conditions:

8.16.1. Conditions of Service. CONTRACTOR must provide SFD Collection Service to all SFD Service Units in the Service Area whose SFD Garbage is properly containerized in Garbage Carts; Recyclable Materials are properly containerized in Recycling Carts; Organic Wastes are properly containerized in Organic Waste Carts; where the Solid Waste carts have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility to CONTRACTOR's Collection crew and vehicle. The standard level for an SFD Service Unit shall be approximately one (1) 96- gallon Garbage Cart, one (1) 96-gallon Recycling Cart, and one (1) 96-gallon Organic Waste Cart. Optional 32- or 64-gallon Carts shall be provided at the Service Recipient's request.

8.17. On-Premises Service. Notwithstanding any term or definition set forth in this Agreement, CONTRACTOR must provide on-premises Collection of SFD Solid Waste to an SFD Service Unit as follows:

8.17.1. At no additional cost to the SFD Service Unit. SFD Service Units where all adult Service Recipients residing therein have disabilities that prevent them from setting their Solid Waste Cart at the curb for Collection, and if a request for on-premises service has been made.

8.17.2. At an additional cost to the SFD Service Unit. CONTRACTOR must provide on-premises service to SFD Service Recipients on a subscription basis and may charge an additional Service Rate as specified in **Exhibit 1**.

8.17.3. Collection Day. CONTRACTOR must provide On-Premises Service Collection on the same Work Day that curbside Collection would otherwise be provided to the SFD Service Unit.

8.18. Frequency and Scheduling of Service. Except for the SFD Large Item Collection Service, SFD Collection Service must be provided one (1) time per week on a scheduled route basis. SFD Collection Service must be scheduled so that all SFD Service Units receive SFD Garbage Collection Service, SFD Recyclable Material Collection Service, and SFD Organic Waste Collection Service on the same Work Day.

8.19. Hour and Days of Collection. SFD Collection Service must be provided Monday through Friday, commencing no earlier than 5:00 a.m. and terminating no later than 6:00 p.m. The hours, day, or both of Collection may be extended due to extraordinary circumstances or conditions with the prior verbal or written consent of the Agreement Administrator.

8.20. Manner of Collection. The CONTRACTOR must provide SFD Collection Service with as little disturbance as possible and must leave any Solid Waste Cart(s) in an upright position at the same point it was collected without obstructing alleys, roadways, driveways, sidewalks, or mail boxes.

8.20.1. CONTRACTOR's employees providing SFD Collection Service must follow the regular walk for pedestrians while on private property and may not trespass nor cross property to the adjoining premises unless the occupant or owner of both properties has given permission. Care should be taken to prevent damage to property, including flowers, shrubs, and other plantings.

8.20.2. Replacement of Carts. CONTRACTOR's employees must take care to prevent damage to Carts by unnecessary rough treatment. However, any Cart damaged by the CONTRACTOR must be replaced by CONTRACTOR, at CONTRACTOR's expense, within five (5) Work Days at no cost or inconvenience to the Service Recipient.

8.20.2.1. Upon notification to CONTRACTOR by CITY or a Service Recipient that the Service Recipient's Cart(s) has been stolen or damaged beyond repair through no fault of CONTRACTOR, CONTRACTOR must deliver a replacement Cart(s) to such Service Recipient within five (5) Work Days. CONTRACTOR must maintain records documenting all Cart replacements occurring on a monthly basis.

8.20.2.2. Each Service Recipient is entitled to the replacement of one (1) damaged by no fault of Service Recipient, lost, destroyed, or stolen Cart every ten (10) years during the life of this Agreement at no cost to the Service Recipient. Except in the case of a Cart that must be replaced because of damage caused by CONTRACTOR or in the case where CONTRACTOR elects to replace a Cart rather than repair it on-site, CONTRACTOR will be compensated for the cost of those replacements in excess of one (1) per type of Cart per Service Recipient every ten (10) years during the term of the Agreement, in accordance with the "Cart Exchange" Service Rate set forth in **Exhibit 1**, or as may be adjusted by the CITY from time to time as provided under this Agreement.

8.20.2.3. CONTRACTOR understands and agrees that this provision is intended to be applied on a per Cart type, individual Service Recipient basis and accordingly each Service Recipient could receive up to three (3) replacement Carts, one (1) of each type, every ten (10) years during the term of the Agreement.

8.20.2.4. CONTRACTOR must comply with CalRecycle container requirements as they may apply during the term of this Agreement. If any such changes are adopted after the Effective Date that results in CONTRACTOR being required to replace containers before they have been fully depreciated, CONTRACTOR will be eligible for additional compensation in accordance with this Agreement.

8.20.3. Repair of Garbage, Recycling and Organic Waste Carts. CONTRACTOR is responsible for the repair of Carts, including but not be limited to, hinged lids, wheels, and axles. Within five (5) Work Days of notification by the CITY or a Service Recipient of the need for such repairs, CONTRACTOR must repair the Cart or if necessary, remove the Cart for repairs and deliver a replacement Cart to the Service Recipient.

8.20.4. Cart Exchange. Upon notification to CONTRACTOR by CITY or a Service Recipient that a change in the size of a Cart is requested, CONTRACTOR must deliver such Cart to such Service Recipient within five (5) Work Days. Each SFD Service Unit is eligible to receive one (1) free Cart exchange per Calendar Year during the term of this Agreement with a total of five (5) Carts being exchanged. Accordingly, CONTRACTOR will be compensated only for the cost of those exchanges in excess of one (1) occurrence per Calendar Year for those SFD Service Units receiving different Cart sizes, in accordance with the "Cart Exchange" service rate as set forth in **Exhibit 1** or as may be adjusted this Agreement.

8.20.5. Additional Garbage Cart Request. Upon notification to the CONTRACTOR by CITY or a Service Recipient that additional Carts for Garbage are requested, CONTRACTOR must deliver such Carts to such Service Recipient within five (5) Work Days, at the rate set forth in **Exhibit 1**.

8.20.6. Additional Recyclable Materials or Organic Waste Carts. For those Service

Recipients utilizing 96 gallon Recyclable Materials Carts or 96 gallon Organic Waste Carts, CONTRACTOR must provide additional Recyclable Materials Carts and Organic Waste Carts to SFD Service Recipients within five (5) Work Days, at the rates set forth in **Exhibit 1**.

8.20.7. Ownership of Carts. Ownership of Carts is vested in the CONTRACTOR.

8.21. SFD Garbage Collection Service. This service is governed by the following terms and conditions:

8.21.1. Non-Collection. CONTRACTOR is not required to collect any Residential Garbage that is not placed in a Garbage Cart. In the event of non-collection, CONTRACTOR will follow the steps set forth in Section 8.04.

8.21.2. Disposal Facility. Except as set forth below, all Residential Garbage Collected as a result of performing SFD Garbage Collection Services must be transported to, and disposed of, at the Disposal Facility. In the event the Disposal Facility is closed on a Work Day, CONTRACTOR must transport and dispose of the Residential Garbage at another legally permitted disposal facility. Failure to comply with this provision will result in the levy of an administrative charge as specified in this Agreement and may result in the CONTRACTOR being in default under this Agreement.

8.22. SFD Recycling Service. This service is governed by the following terms and conditions:

8.22.1. Material Recycling Facility. Subject to Section 8.03, all Recyclable Materials Collected as a result of performing recycling services must be delivered to the Material Recycling Facility. Failure to comply with this provision will result in the levy of an administrative charge as specified in this Agreement and may result in CONTRACTOR being in default under this Agreement.

8.22.2. Recycling - Changes to Services. Should changes in Applicable Law arise that necessitate any additions or deletions to the services described in this Agreement, including the type of items included as Recyclable Materials, the parties will negotiate any necessary cost changes and will enter into an Agreement amendment covering such modifications to the services to be performed and the compensation to be paid before undertaking any changes or revisions to such services.

8.23. SFD Organic Waste Collection Service. This service is governed by the following terms and conditions:

8.23.1. Starting July 1, 2023, CONTRACTOR's SFD Organic Waste Collection Service is required to include only Green Waste to comply with AB 1594. However, CONTRACTOR must expand the SFD Organic Waste Collection Service to include Food Waste and Other Organics as part of the SFD Organic Waste Collection Services by July 1, 2024, or as may be required by CalRecycle to comply with SB 1383. Collected Organic Waste shall be delivered to the CITY designated Organic Waste Processing Facility.

8.23.2. CONTRACTOR must comply with CalRecycle collection frequency requirements as they may apply during the term of this Agreement. In the event such required changes to collection frequency that cause CONTRACTOR to incur additional collection costs, CONTRACTOR is entitled to receive additional compensation in accordance with Section 18.08.

8.23.3. [reserved]

8.23.4. Organic Waste Processing Facility. CONTRACTOR must deliver all Collected Organic Waste to a CITY approved fully permitted Organic Waste Processing Facility or a fully permitted Organic Waste transfer station. All expenses related to Organic Waste processing and marketing will be the sole responsibility of CONTRACTOR.

8.23.5. Holiday Tree Collection. CONTRACTOR must Collect Holiday Trees set out at the curb for Collection beginning December 26th each year through the second Friday in January during the term of this Agreement. CONTRACTOR must deliver the Collected Holiday Trees to an appropriate facility for processing. This annual service will be provided at no additional charge to the SFD Service Recipient. CONTRACTOR is not required to divert Holiday Trees with tinsel, flocking, or ornaments.

8.24. Construction and Demolition Debris and Other Temporary Collection Service. This service is governed by the following terms and conditions:

8.24.1. Conditions of Service. Upon request of an SFD Service Unit, CONTRACTOR must provide Construction and Demolition Debris and Other Temporary Collection Service on a temporary on-call basis.

8.24.2. Charges for Bins or Roll-off Containers will be in accordance with **Exhibit 1**.

8.24.3. Frequency of Service. Construction and Demolition Debris and Other Temporary Collection Service must be provided within seven (7) Work Days of receipt of the request.

8.24.4. CONTRACTOR must provide SFD Service Units with Construction and Demolition Debris and Other Temporary Collection Service with as little disturbance as possible and without obstructing alleys, roadways, driveways, sidewalks, or mail boxes. CONTRACTOR may only place Roll-off Containers in strict adherence with CITY's right-of-way requirements and Municipal Code.

8.25 Commercial Collection Service. Except as set forth below, CONTRACTOR must provide Commercial Collection Services to all Commercial Service Units in the Service Area, including those City Service Units listed in **Exhibit 3**. All provisions of this Article 8 shall also apply to MFD Service Units and MFD Collection Service. This service is governed by the following terms and conditions:

8.25.1 Provision of Service. CONTRACTOR must provide Commercial Collection Service to all Commercial Service Units in the Service Area whose Solid Waste are properly containerized in Bins, Carts, or Roll-off Containers as appropriate where the Carts, Bins, or Roll-off Containers are accessible as set forth in Section 8.25.4, below. The size of the container and the frequency (above the minimum) of collection will be determined between the Service Recipient and CONTRACTOR. However, the size and frequency must be sufficient to provide that no Solid Waste need be placed outside the Cart, Bin, or Roll-off Container. The base Commercial Garbage Collection Service will include Commercial Recycling Service as described in Section 8.27 below, and Commercial Organic Waste Collection Service as described in Section 8.28 below, at no additional cost to the Service Recipient.

8.25.2 Required Capacity. CONTRACTOR must provide Commercial Recycling Service and Commercial Organic Waste Collection Service to all Commercial Service Units in the Service Area. For each Service Unit, CONTRACTOR must provide a minimum capacity of Commercial Recycling Service and Commercial Organic Waste Collection Service at no additional cost. For those Commercial Units which need more capacity than the minimum standard, CONTRACTOR may charge the Collection Service Rates as defined in **Exhibit 1**.

8.25.3 Hours of Collection. Commercial Collection Service must be provided, commencing no earlier than 4:00 a.m., and terminating no later than 6:00 p.m., Monday through Saturday. The hours of Collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the Agreement Administrator.

8.25.4 Accessibility. CONTRACTOR must collect all Carts, Bins or Roll-Off Containers that are readily accessible to CONTRACTOR's crew and vehicles and not blocked. However, CONTRACTOR must provide "push services" as necessary during the provision of Commercial Collection Services for the Service Rate set forth in **Exhibit 1**. Push services include, but are not limited to, dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for Collection and returning the Bins or Carts to their storage location. CONTRACTOR may charge an extra pickup fee for the Service Rate set forth in **Exhibit 1** where it is required to return to the Customer location to service the Cart, Bin or Roll-off Container because access was blocked.

8.25.5 Manner of Collection. CONTRACTOR must provide Commercial Collection Service with as little disturbance as possible and must leave any Bin, Cart, or Roll-Off Container at the same point it originally located without obstructing alleys, roadways, driveways, sidewalks or mail boxes.

8.25.5.1 Purchase and Distribution of Bins and Carts for New Commercial Service Units. CONTRACTOR must also distribute Bins, Carts or Roll-off Containers to new Commercial Service Units that are added to CONTRACTOR's Service Area during the term of this Agreement. The size of the Bins, Carts or Roll-Off Containers and the combination of Bins, Carts or Roll-Off Containers to be distributed as requested by the Service Recipient and the distribution must be completed within five (5) Work Days of receipt of the request for service.

8.25.6 Replacement of Bins and Carts. CONTRACTOR's employees must avoid damage to Bins or Carts by unnecessary rough treatment. Any Bin or Cart damaged by the CONTRACTOR, or damaged through ordinary wear and tear, must be replaced by CONTRACTOR, at CONTRACTOR's expense, within five (5) Work Days at no cost or inconvenience to the Service Recipient.

8.25.6.1 Each Commercial Service Unit is entitled to the replacement of one (1) lost, destroyed, or stolen Bin or Cart once each ten (10) years of the term of this Agreement at no cost to the Service Unit, except where loss or damage is caused by the Service Recipient. Accordingly, CONTRACTOR will be compensated for the cost of those replacements in excess of one (1) Bin or Cart per Commercial Service Unit during each ten (10) years of the term Agreement, in accordance with the "Cart or Bin Exchange" Service Rate, as appropriate, set forth in **Exhibit 1**. CONTRACTOR must deliver a replacement Bin or Cart to such Service Unit within five (5) Work Days.

8.25.6.2 CONTRACTOR must comply with CalRecycle container

requirements as they may apply during the term of this Agreement. If any such changes are adopted after the Effective Date that results in CONTRACTOR being required to replace containers before they have been fully depreciated, CONTRACTOR will be eligible for additional compensation in accordance with Section 18.08.

8.25.7 Repair of Bins and Carts. CONTRACTOR is responsible for repair of Bins and Carts. Within five (5) Work Days of notification by CITY or a Service Recipient of the need for such repairs, CONTRACTOR must repair the Bin or Cart or if necessary, remove the Bin or Cart for repairs and deliver a replacement Bin or Cart to the Service Recipient. Bin or Cart repair also includes the removal of graffiti from the Bin or Cart.

8.25.8 Bin and Cart Exchange. Upon notification to CONTRACTOR by CITY or a Service Recipient that a change in the size, or number of the Bins or Carts is required, CONTRACTOR must deliver such Bins or Carts to such Service Recipient within five (5) Work Days. Each Commercial Service Unit is eligible to receive one (1) free Bin or Cart exchange per Calendar Year during the term of this Agreement. CONTRACTOR is allowed to charge the Commercial Service Unit for the cost of those exchanges in excess of one (1) Bin or Cart exchange per Calendar Year, in accordance with the appropriate "Bin or Cart Exchange" service rate set forth in **Exhibit 1** as may be adjusted by CITY under this Agreement. Additional Carts or Bins or different size Carts and Bins are subject to the applicable Service Rate set forth in **Exhibit 1**.

8.25.9 Ownership of Bins. Ownership of Carts, Bins, and Roll-off Containers distributed by CONTRACTOR is vested in CONTRACTOR.

8.25.10 Ownership of Carts. Ownership of Carts distributed by the CONTRACTOR is vested in CONTRACTOR.

8.25.11 Cleaning of Bins and Carts. Once each Calendar Year, if requested by the Commercial Service Unit or if CITY requests to have a Bin or Cart cleaned or repaired, CONTRACTOR must clean all Bins and Carts at the Commercial Service Unit's premises, or must replace the dirty Bins and Carts with clean Bins and Carts. This service must be provided at no charge to the Commercial Service Unit, so long as the Service Recipient does not request the service more than once per Calendar Year. In addition, regardless of whether or not this cleaning is requested by the Service Unit, CONTRACTOR will ensure that all Carts and Bins are cleaned on an as-needed basis so as to maintain a clean appearance and proper function. Any Bin or Cart cleanings cannot be done in a manner that results in water entering the CITY's storm drain system. Additional cleanings beyond once each Calendar Year will be subject to the Service Rate set forth in **Exhibit 1**.

8.26 Commercial and MFD Garbage Collection Service.

8.26.1 Conditions of Service. CONTRACTOR must provide Commercial and MFD Garbage Collection Service to all Commercial and MFD Service Units in the Service Area whose Commercial or MFD Garbage is properly containerized in Garbage Carts, Bins, or Roll-off Containers, where the Garbage Carts, Bins, or Roll-off Containers are accessible.

8.26.2 Size and Frequency of Service. This service must be provided as deemed necessary and determined between CONTRACTOR and the Commercial or the MFD Service Unit, but such service must be received no less than one (1) time per week with no exception for holiday(s) as set

forth herein, except that Collection service scheduled to fall on a holiday may be rescheduled as determined between the Commercial or the MFD Service Unit and CONTRACTOR as long as the minimum frequency requirement is met. Service may be provided by Garbage Bin, Cart, or Roll-off Container at the option of the Commercial or MFD Service Unit. The size of the container and the frequency of Collection will be determined between the Commercial or the MFD Service Unit and CONTRACTOR. However, size and frequency must be sufficient to provide that no Commercial or MFD Garbage need be placed outside the Bin, Cart or Roll-Off Container. CONTRACTOR must provide containers as part of the Commercial or MFD Collection Service Rates set forth in **Exhibit 1**, however, Commercial or MFD Service Units may own their Garbage Bin or Roll-Off Containers provided that the Commercial or the MFD Service Unit is completely responsible for its proper maintenance and that such Bin or Roll-Off Container must be of a type that can be serviced by the CONTRACTOR's equipment.

8.26.3 Non-Collection. CONTRACTOR is not required to Collect any Commercial or MFD Solid Waste that is not placed in a Cart, Bin, or Roll-off. In the event of non-collection due to Overage, CONTRACTOR must follow the steps as set forth in Section 8.04.

8.26.4 Disposal Facility. All Commercial and MFD Garbage collected as a result of performing Commercial and MFD Garbage Collection Services must be transported to, and disposed of, at the Disposal Facility. In the event the Disposal Facility is closed on a Work Day, CONTRACTOR must transport and dispose of Commercial and MFD Garbage at another legally permitted disposal facility. Failure to comply with this provision will result in the levy of an administrative charge as specified in this Agreement and may result in CONTRACTOR being in default under this Agreement.

8.27 Commercial and MFD Recycling Service. This service is governed by the following terms and conditions:

8.27.1 Conditions of Service. CONTRACTOR must provide Commercial Recycling Service to all Commercial Service Units in the Service Area whose Recyclable Materials are properly containerized in Recycling Bins, Recycling Carts, or Recycling Roll-off Containers except as set forth below, where the Recycling Bins or Carts are accessible. CONTRACTOR will charge for collection of Recyclable Materials collected in Carts, Bins, or Roll-off Containers at the rates set forth in **Exhibit 1**. Commercial Recycling Collection will occur Monday through Friday, and on Saturdays upon request and as necessary.

8.27.2 Base Commercial Recycling Service. All Commercial Service Recipients subscribing to Commercial Garbage Collection Service must receive weekly collection of the equivalent volume of one (1) 96-gallon Recycling Cart per Service Recipient at no additional cost. This equivalent volume may be provided in the form of up to two (2) smaller Cart sizes, if requested by the Service Recipient and/or to help meet space constraints. In situations where shared service is provided, the equivalent volume of one (1) 96-gallon Recycling Cart per individual Commercial entity that is sharing service must be provided at no additional cost, except that Contractor may charge for services that exceed 50% of the volume of Garbage services provided at the Contractor's Maximum Service Rates. The actual configuration of Recycling Cart and/or Bin sizes to be provided will be based on the total equivalent volume and configured in a manner determined by the Service Recipient in consultation with CONTRACTOR.

8.27.3 Base MFD Recycling Service. All MFD Service Recipients subscribing to MFD Garbage Collection Service must receive weekly collection of the equivalent volume of one (1) 32-gallon Recycling Cart per Service Recipient at no additional cost. In situations where shared service is provided,

the equivalent volume of one (1) 32-gallon Recycling Cart per individual MFD entity that is sharing service must be provided at no additional cost, except that Contractor may charge for services that exceed 50% of the volume of Garbage services provided at the Contractor's Maximum Service Rates. The actual configuration of Recycling Cart and/or Bin sizes to be provided will be based on the total equivalent volume and configured in a manner determined by the Service Recipient in consultation with CONTRACTOR.

8.27.4 Size and Frequency of Service. This service will be provided as deemed necessary and determined between CONTRACTOR and the Service Recipient, but such service must be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that Collection service scheduled to fall on a holiday may be rescheduled as determined between the Service Recipient and CONTRACTOR as long as the minimum frequency requirement is met. Service may be provided by Bin, Cart, or Roll-off Container at the option of the Service Recipient. The size of the container and the frequency (above the minimum) of Collection will be determined between the Service Recipient and CONTRACTOR. However, size and frequency must be sufficient to provide that no Recyclable Materials need be placed outside the Bin, Cart, or Roll-off Container. CONTRACTOR may charge for Commercial or MFD Recycling Services (above the minimum 96 or 32 gallon, respectively, Recyclable Materials Cart requirement as established in Sections 8.27.2 and 8.27.3 above) and must provide containers as a bundled service as part of the Commercial or MFD Collection Service rates set forth in **Exhibit 1**, however, Service Recipients may own their Bin or Roll-Off Container provided that the Service Recipient is completely responsible for its proper maintenance and such Bin or Roll-Off Container must be of a type that can be serviced by CONTRACTOR's equipment.

8.27.5 Material Recovery Facility. Recyclable Materials Collected as a result of performing Recycling Services must be delivered to the Material Recovery Facility. Failure to comply with this provision will result in the levy of an administrative charge as specified in this Agreement and may result in CONTRACTOR being in default under this Agreement.

8.27.6 Recycling - Changes to Work. Should changes in law arise that necessitate any additions or deletions to the work described herein including the type of items included as Recyclable Materials, the parties will negotiate any necessary cost changes and will enter into an Agreement amendment covering such modifications to the work to be performed and the compensation to be paid before undertaking any changes or revisions to such work.

8.27.7 Compliance with AB 341. CONTRACTOR will provide Commercial Recycling Service in a manner to exceed compliance with AB 341, as it may be amended from time to time. Starting January 1, 2023, and each January 1st thereafter, CONTRACTOR will notify all Commercial Service Units of the requirements to comply with the law. CONTRACTOR must provide the volume of collection service that all Commercial Service Units in order to be in full compliance with the law. CONTRACTOR will conduct in-person outreach to all non-participating commercial covered generators a minimum of once per calendar year.

8.27.8 Additional Recycling Bins, Carts or Roll-Off Containers. CONTRACTOR must provide additional Commercial or MFD Recycling Bins and Carts to Commercial or MFD Service Recipients above the minimum requirements within five (5) days of request and may charge for such additional capacity set forth in **Exhibit 1** provided that additional Bins, Carts or Roll-Off Containers are used by Commercial or MFD Service Recipients for the purposes of setting out additional Recyclable Materials for regular weekly Recycling Service.

8.28 Commercial Organic Waste Collection Service. This service is governed by the following terms and conditions:

8.28.1 Conditions of Service. CONTRACTOR must provide Commercial and MFD Organic Waste Collection Service to all Commercial and MFD Service Units in the Service Area whose Organic Waste is properly containerized in Organic Waste Bins or Organic Waste Carts, except as set forth below, where the Organic Waste Bins or Carts are accessible. CONTRACTOR will charge for collection of Organic Waste collected in Carts or Bins at the rate set forth in **Exhibit 1**. Commercial and MFD Organic Waste Collection will occur Monday through Friday, and on Saturdays upon request and as necessary.

CONTRACTOR must comply with CalRecycle collection frequency requirements as they may apply during the term of this Agreement. If any such changes to collection frequency are adopted after July 1, 2023, that result in CONTRACTOR being allowed to reduce the frequency of Garbage or Organic Waste Collection, or otherwise cause CONTRACTOR to reduce its collection costs as a result in a change in Garbage or Organic Waste collection frequency, CONTRACTOR must provide CITY with its estimate of reduced its costs and shall make adjustments to the Maximum Service Rates.

8.28.2 Base Commercial Organic Waste Service. All Commercial Service Recipients subscribing to Commercial Garbage Collection Service must receive weekly collection of the equivalent volume of one (1) 64-gallon Organic Waste Cart per Service Recipient at no additional cost. In situations where shared service is provided, the equivalent volume of one (1) 64-gallon Organic Waste Cart per individual Commercial entity that is sharing service must be provided at no additional cost, except that Contractor may charge for services that exceed 25% of the volume of Garbage services provided at the Contractor's Maximum Service Rates. The actual configuration of Organic Waste Cart and/or Bin sizes to be provided will be based on the total equivalent volume and configured in a manner determined by the Service Recipient in consultation with CONTRACTOR. CONTRACTOR may charge for Commercial Organic Waste Collection Services (above the minimum 64 gallon Organic Waste Cart) and must provide containers as a bundled service as part of the Commercial Collection Service rates set forth in **Exhibit 1**, however, Service Recipients may own their Bin provided that the Service Recipient is completely responsible for its proper maintenance and such Bin must be of a type that can be serviced by CONTRACTOR's equipment.

8.28.3 Base MFD Organic Waste Service. All MFD Service Recipients subscribing to MFD Garbage Collection Service must receive weekly collection of the equivalent volume of one (1) 32-gallon Organic Waste Cart per Service Recipient at no additional cost. In situations where shared service is provided, the equivalent volume of one (1) 32-gallon Organic Waste Cart per individual MFD entity that is sharing service must be provided at no additional cost, except that Contractor may charge for services that exceed 25% of the volume of Garbage services provided at the Contractor's Maximum Service Rates. The actual configuration of Organic Waste Cart and/or Bin sizes to be provided will be based on the total equivalent volume and configured in a manner determined by the Service Recipient in consultation with CONTRACTOR. CONTRACTOR may charge for MFD Organic Waste Collection Services (above the minimum 32 gallon Organic Waste Cart) and must provide containers as a bundled service as part of the MFD Collection Service rates set forth in **Exhibit 1**, however, Service Recipients may own their Bin provided that the Service Recipient is completely responsible for its proper maintenance and such Bin must be of a type that can be serviced by CONTRACTOR's equipment

8.28.4 Size and Frequency of Service. This service will be provided as deemed

necessary and determined between CONTRACTOR and the Service Recipient, but such service must be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that Collection service scheduled to fall on a holiday may be rescheduled as determined between the Service Recipient and CONTRACTOR as long as the minimum frequency requirement is met. Service may be provided by Bin or Cart at the option of the Service Recipient. The size of the container and the frequency (above the minimum) of Collection will be determined between the Service Recipient and CONTRACTOR. However, size and frequency must be sufficient to provide that no Organic Waste needs be placed outside the Bin or Cart. A Service Recipient may own their Bin provided that the Service Recipient is completely responsible for its proper maintenance and such Bin must be of a type that can be serviced by the CONTRACTOR's equipment.

8.28.5 Organic Waste Processing Facility. All Organic Waste Collected as a result of performing Commercial and MFD Organic Waste Collection Services must be delivered to the Organic Waste Processing Facility. Failure to comply with this provision will result in the levy of an administrative charge as specified in this Agreement and may result in CONTRACTOR being in default under this Agreement.

8.28.6 MFD Holiday Tree Collection. CONTRACTOR must Collect Holiday Trees set out for Collection at one centralized location within an MFD complex no less than one time per week beginning December 26th each year through the second Friday in January during the term of this Agreement. As an alternative, CITY and CONTRACTOR may mutually agree upon a centralized location within the CITY to collect Holiday Trees from MFD Service Recipients. CONTRACTOR must deliver the Collected Holiday Trees to an appropriate facility for processing. This annual service will be provided at no additional charge to the MFD Service Recipient. CONTRACTOR is not required to divert Holiday Trees with tinsel, flocking or ornaments.

8.28.7 Organic Waste - Changes to Services. Should changes in law arise that necessitate any additions or deletions to the services described in this Section 8.28 including the type of items included as Organic Waste, the parties will negotiate any necessary cost changes and will enter into an Agreement amendment covering such modifications to the services to be performed and the compensation to be paid before undertaking any changes or revisions to such services.

8.28.8 Compliance with AB 1826 and SB 1383. The CONTRACTOR will provide Commercial and MFD Recycling and Organic Service in a manner to exceed compliance with AB 1826 and SB 1383, as they may be amended from time to time. Starting January 1, 2021 and each January 1st thereafter, CONTRACTOR will notify all Commercial and MFD Service Units of the requirements to comply with the law. CONTRACTOR must provide the volume of collection service that all Commercial and MFD Service Units in order to be in full compliance with the law. In conjunction with the CITY's ordinance supporting full compliance with AB 341 by Commercial Service Units (i.e., "generators"), CONTRACTOR will conduct in-person outreach to all non-participating commercial covered generators a minimum of once per calendar year.

8.28.9 Additional Organic Waste Bins or Carts. CONTRACTOR must provide additional Commercial or MFD Organic Waste Bins and Carts to Commercial or MFD Service Recipients above the minimum requirements within five (5) Work Days of request and may charge for such additional capacity set forth in **Exhibit 1** provided that additional Bins and Carts are used by Commercial or MFD Service Recipients for the purposes of setting out additional Organic Waste materials for regular weekly

Organic Waste Collection Service.

8.29 Construction and Demolition Debris and Other Temporary Collection Service. This service is governed by the following terms and conditions:

8.29.1 Conditions of Service. Upon request of a Commercial Service Unit, CONTRACTOR must provide Construction and Demolition Debris and Other Temporary Collection Service on a temporary on-call basis.

8.29.2 Charges for Bin or Roll-off Containers must be in accordance with **Exhibit 1** of this Agreement.

8.29.3 Frequency of Service. Construction and Demolition Debris and Other Temporary Collection Service must be provided within seven (7) Work Days of receipt of the request.

8.29.4 CONTRACTOR must provide Commercial Service Units with Construction and Demolition Debris and Other Temporary Collection Service with as little disturbance as possible and without obstructing alleys, roadways, driveways, sidewalks, or mail boxes. CONTRACTOR may only place Roll-off Containers in strict adherence with CITY's right-of-way requirements and Municipal Code.

8.30 Services Provided by Contractor to CITY. CITY Collection Services shall be provided at no cost to the CITY and shall be governed by the following terms and conditions:

8.30.1. Conditions of Service. CONTRACTOR shall provide Solid Waste Collection Services to all CITY Service Units as set forth in **Exhibit 3**, and as may be modified by written notice by the CITY as a CITY-directed change under Section 20.01, where the Containers are not blocked and are accessible by CONTRACTOR's collection vehicles. CONTRACTOR must provide CITY Collection Services in the same manner as service provided to Commercial Service Units in Article 8. Construction and Demolition Debris and Other Temporary Collection Service related to CITY construction or public works projects undertaken on force account solely by CITY employees, shall be provided by CONTRACTOR at no cost to the CITY.

8.30.2. CONTRACTOR shall receive written permission from the CITY before placing any containers on CITY owned property for service, except that no such permission shall be needed to place Containers at locations specified in **Exhibit 3**.

8.30.3. CONTRACTOR shall limit the number of trips and the path of travel for collection vehicles in CITY parking lots.

8.31. CITY-Sponsored Events Service. Upon request by the CITY, CONTRACTOR shall provide delivery and pick-up of Containers, and Collection Services at up to fifteen (15) events that are sponsored, organized, or substantially supported by the CITY including, but not limited to, those specified in **Exhibit 2**, and as may be modified by written notice by the CITY at no cost to the CITY, but subject to the limitation in the last sentence of this Section 8.31. The Solid Waste collection and disposal plan for each event shall be developed by CONTRACTOR and submitted to the Agreement Administrator in writing for approval prior to each event. Current events are set forth on **Exhibit 2**, and as may be modified by written notice by the CITY. CITY may change or increase the number of the City-Sponsored Event receiving

services, and the service levels provided at any City-Sponsored Events, by written notice to CONTRACTOR, as a CITY-directed change under Section 20.01.

8.32. Non-City Large Venue Event Collection Service. Upon request by a Non-City Large Venue Event, CONTRACTOR shall provide delivery and pick-up of Containers and Collection Services. The Solid Waste collection and disposal plan for each event shall be developed by CONTRACTOR in coordination with the event planner and submitted to the Agreement Administrator in writing for approval prior to each event. The CONTRACTOR shall receive compensation from the Non-City Large Venue Event at the rate for such service as set in **Exhibit 1**.

8.33. Clean-Up Days Events. CONTRACTOR shall provide Collection Services at Clean-Up Days Events at a maximum of two (2) per year upon request by CITY. Each event shall occur on a Saturday between the hours of 8:00 a.m. and 12:00 p.m. at a location selected by the CITY and shall be limited to SFD and MFD Service Recipients within the CITY. The Agreement Administrator shall notify CONTRACTOR in writing or e-mail not less than eight (8) weeks prior to the date of the Clean-Up Days Event. The services shall be provided in a manner that meets all needs of the Clean-Up Days Event. The events shall be conducted by CONTRACTOR at no cost of any kind to the CITY. CONTRACTOR shall provide staffing to support CITY management at all times during the Clean Up Days Events.

8.33.1. CONTRACTOR shall prepare and distribute to SFD and MFD Service Recipients Clean-Up Days Event notices no later than six (6) weeks prior to each event. At a minimum, the dates and hours of operation, locations of the collection sites, and acceptable materials for collection shall be included in the notices. CONTRACTOR may separately mail electronically transmit the notices, or provide the notices as billing inserts to each SFD and MFD Service Recipient. CONTRACTOR shall provide Spanish-translated notices upon request by the CITY. The costs of production, printing, mailing and all associated costs for the notices shall be borne by CONTRACTOR. CONTRACTOR shall also provide their information in digital format to the CITY.

8.33.2. CONTRACTOR shall require that each SFD and MFD Service Recipient turn in the notice to CONTRACTOR's staff at the collection site as proof of CITY residency as a condition to collection.

8.33.3. On the first (1) Working Day following each Clean-Up Days Event, CONTRACTOR shall remove and clean up any remaining materials left for collection.

8.34. Free Paper Shredding Events. Two (2) times per year, use for HHW concurrent with a Clean-Up Days Event, at no additional cost to CITY or its residents, CONTRACTOR will conduct a free paper shredding event at the same location as the Clean-Up Days Event. At each event, all CITY residents will be permitted to deliver an unlimited amount of paper for shredding free of charge by CONTRACTOR. CONTRACTOR must arrange for all shredded paper generated by each event to be processed in such a manner so as to ensure the diversion of this material from landfilling.

8.35. SB1383 Procurement requirements. Contractor agrees to provide City with any renewable fuels credits related to services performed under this Agreement to help City satisfy SB1383 procurement targets.

8.36. Service Routes. CONTRACTOR must provide CITY with maps precisely defining

Collection routes, together with the days and the times at which Collection will regularly commence.

8.37. Service Route Changes. CONTRACTOR must submit to CITY, in writing, any proposed route change (including maps thereof) not less than forty-five (45) calendar days prior to the proposed date of implementation. CONTRACTOR may not implement any route changes without the prior review of the Agreement Administrator. If the change will change the Collection day for a Service Recipient, CONTRACTOR must notify those Service Recipients in writing of route changes not less than fifteen (15) days before the proposed date of implementation.

8.38. Collection Route Audits. CITY reserves the right to conduct audits of CONTRACTOR's Collection routes. CONTRACTOR must cooperate with CITY in connection therewith, including permitting CITY employees or agents, designated by the Agreement Administrator, to ride in the Collection vehicles in order to conduct the audits. CONTRACTOR has no responsibility or liability for the salary, wages, benefits, or worker compensation claims of any person designated by the Agreement Administrator to conduct such audits.

8.39 Minimum Performance and Diversion Standards.

8.39.1. Agreement Term Extension. In order to receive the Agreement term extension offer set forth in Article 6 of this Agreement, CONTRACTOR must meet or exceed the following annual minimum performance and diversion standards in each Agreement Year beginning July 1, 2023.

8.39.1.1. Performance Standards. CONTRACTOR must not have received assessment of Administrative Charges, as set forth in this Agreement more than \$50,000 in any one (1) Agreement Year.

8.39.1.2. Minimum Diversion Standards. CONTRACTOR must meet the requirements set forth in this Agreement.

8.39.1.3. No Current Default. CONTRACTOR is not currently in default of the Agreement.

8.40 Collection Equipment.

8.40.1. Equipment Specifications.

8.40.1.1. General Provisions. All equipment used by CONTRACTOR in the performance of services under this Agreement must be of a high quality and comply with all Applicable Laws and meet or exceed all applicable air quality standards, including all applicable provisions of Merced Air Pollution Control District. The vehicles must be designed and operated so as to prevent Collected materials from escaping from the vehicles. Hoppers must be closed on top and on all sides with screening material to minimize Collected materials from leaking, blowing or falling from the vehicles. All trucks and containers must be leak resistant and must be operated to minimize spillage of liquids during Collection or in transit.

8.40.1.2. Large Items. Vehicles used for Collection of Large Items may not use compactor mechanisms or mechanical handling equipment that may damage reusable goods or

release Freon or other gases from pressurized appliances.

8.40.1.3. New Collection Vehicles. CONTRACTOR must use new collection vehicles at the start of this Agreement.

8.40.1.4. Collection Vehicle Size Limitations / Overweight Vehicle Charge. CONTRACTOR may not use any Collection vehicle for in violation of weight limitations set forth in Applicable Law. CONTRACTOR must report all instances of overweight vehicles to CITY on a monthly basis as part of its monthly CITY Reports submittal described in this Agreement. CONTRACTOR may be assessed administrative charges as set forth in this Agreement as a result of exceeding an overweight vehicle rate of ten percent (10%) in any month during the term of the Agreement. The overweight vehicle rate will be calculated as the total number of overweight collection vehicle instances during each month, divided by the total number of collection vehicle loads transported during the same corresponding month. Prior to collecting administrative charges for overweight vehicles, the CITY shall afford CONTRACTOR a reasonable opportunity to provide the Agreement Administrator documentation of the extraordinary circumstance that caused the overweight vehicles. Extraordinary circumstances in this particular case include, but may be limited to, heavy rains or high winds that caused excess Green Waste to be generated, rain to accumulate in open Collection Containers, or normal Collection routes to be delayed or shortened to extreme weather conditions. The Agreement Administrator shall have authority to consider CONTRACTOR's documentation and uphold and collect the assessed charge, to reduce the charge, or waive and dismiss the charge. The Agreement Administrator shall also have the authority to waive charges in advance of an anticipated, or in response to and actual, emergency event.

8.40.1.5. Registration; Inspection. All vehicles used by CONTRACTOR in providing Collection Services under this Agreement, except those vehicles used solely on CONTRACTOR's premises, are to be registered with the California Department of Motor Vehicles. In addition, each such vehicle must be inspected by the California Highway Patrol in accordance with Applicable Law. Within two (2) Work Days of a request from the Agreement Administrator, CONTRACTOR must provide CITY a copy of its vehicle maintenance log and any safety compliance report, including, but not limited to, any report issued under California Vehicle Code sections 34500 and following, as well as the biennial "BIT" inspections conducted by the California Highway Patrol.

8.40.1.6. Safety Markings All Collection equipment used by CONTRACTOR must have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and effective reflective markings. All such safety markings must be in accordance with the requirements of the California Vehicle Code, as may be amended from time to time.

8.40.1.7. Vehicle Signage and Painting. Collection vehicles must be painted and numbered without repetition and must have CONTRACTOR's name, CONTRACTOR's customer service telephone number, and the number of the vehicle painted in letters of contrasting color, at least four (4) inches high, on each side and the rear of each vehicle. No advertising is permitted other than the name of CONTRACTOR, its logo and registered service marks except promotional advertisement of the Recyclable Materials and Organic Waste programs. CONTRACTOR must repaint all vehicles (including a vehicle's striping) during the term of this Agreement on a frequency not less often than every five (5) years, as necessary to maintain a positive public image, or as reasonably determined by the Agreement Administrator, beginning January 1, 2023.

8.40.1.8. Bin Signage, Painting, and Cleaning. All metal or plastic Bins of any service type furnished by CONTRACTOR must be either painted or galvanized. All metal or plastic Bins must display CONTRACTOR's name, CONTRACTOR's customer service telephone number, and the

number of the Bin and must be kept in a clean and sanitary condition. The Bins provided by CONTRACTOR must be steam cleaned by CONTRACTOR as frequently as necessary so as to maintain them in a sanitary condition. Bins may be subject to periodic, unscheduled inspections by CITY and determination as to sanitary condition will be made by CITY. Bin cleanings beyond once each Calendar Year will be subject to the Service Rate set forth in **Exhibit 1**. Any and all steam cleaning or sanitizing of Bins, Carts, Compactors, or Roll-Off Containers by CONTRACTOR is not allowed within the CITY limits, unless approved by the Agreement Administrator.

8.40.1.9. Bins and Carts. CONTRACTOR must have new Garbage, Recycling and Organics Bins and Carts for all Service Recipients within ninety (90) days after start of this Agreement.

8.40.2. Vehicle Certification. For each Collection vehicle used in the performance of services under this Agreement, CONTRACTOR must obtain a certificate of compliance (smog check) issued pursuant to Part 5 of Division 26 of the California Health and Safety Code (section 43000 and following) and regulations promulgated thereunder and/or a safety compliance report issued pursuant to Division 14.8 of the California Vehicle Code (section 34500 and following) and the regulations promulgated thereunder, as applicable to the vehicle. CONTRACTOR must maintain copies of such certificates and reports and must make such certificates and reports available for inspection upon request by the Agreement Administrator.

8.40.3. No later than January 1, 2023, CONTRACTOR must submit to the Agreement Administrator verification that each of the CONTRACTOR's Collection vehicles has passed the California Heavy Duty Vehicle Inspection. Thereafter, CONTRACTOR must cause each vehicle in CONTRACTOR's Collection fleet to be tested annually in the California Heavy Duty Inspection Program and must submit written verification to CITY upon request by the Agreement Administrator. CONTRACTOR may not use any vehicle that does not pass such inspection.

8.40.4. Equipment Maintenance. CONTRACTOR must maintain Collection equipment in a clean condition and in good repair at all times. All parts and systems of the Collection equipment must operate properly and be maintained in a condition satisfactory to CITY. CONTRACTOR must wash all Collection vehicles at least once a week.

8.40.5. Maintenance Log. CONTRACTOR must maintain a maintenance log for all Collection vehicles. The log must at all times be accessible to CITY by physical inspection upon request of the Agreement Administrator, and must show, at a minimum, each vehicle's CONTRACTOR assigned identification number, date purchased or initial lease, dates of performance of routine maintenance, dates of performance of any additional maintenance, and description of additional maintenance performed.

8.40.6. Equipment Inventory. On or before January 1, 2023, and each January 1st through the Term of this Agreement, CONTRACTOR must provide to CITY an inventory of Collection vehicles and major equipment used by CONTRACTOR for Collection or transportation and performance of services under this Agreement. The inventory must indicate each Collection vehicle by CONTRACTOR assigned identification number, DMV license number, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of vehicles by type, the date of acquisition, the decibel rating and the maintenance and rebuild status. CONTRACTOR must submit to the Agreement Administrator, either by fax or e-mail, an updated inventory each Calendar Year to the CITY or more often at the request of the Agreement Administrator. Each inventory must also include the tare weight of each vehicle. Each vehicle inventory must be accompanied by a certification signed by CONTRACTOR that all Collection vehicles meet the requirements of this Agreement.

8.40.7. Reserve Equipment. CONTRACTOR must have available to it, at all times, reserve Collection equipment which can be put into service and operation within one (1) hour of any breakdown. Such reserve equipment must correspond in size and capacity to the equipment used by the CONTRACTOR to perform the contractual duties.

8.41. Privacy. CONTRACTOR shall strictly observe and protect the privacy rights of Service Recipients. Information identifying individual Service Recipients or the composition or contents of a Service Recipient's Solid Waste stream, or any of the Billing information pertaining to any Service Recipient, shall not be revealed to any Person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, ordinance, or regulation of a governmental agency having jurisdiction, or upon valid authorization of the Service Recipient. This provision shall not be construed to preclude CONTRACTOR from preparing, participating in, or assisting in the preparation of waste characterization studies or waste audits which may be required by AB 939 or this Agreement. CONTRACTOR shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of Service Recipients. The rights afforded Service Recipients pursuant to this Section shall be in addition to any other privacy right afforded Service Recipients pursuant to federal or state law.

ARTICLE 9. Customer Service

9.01. CONTRACTOR's Customer Service. All service inquiries and complaints from Service Recipients will be directed to CONTRACTOR. A representative of CONTRACTOR must be available to receive the complaints during normal business hours. All service complaints will be handled by CONTRACTOR in a prompt and efficient manner. In the case of a dispute between CONTRACTOR and a Service Recipient, the matter will be reviewed, and a decision made by the Agreement Administrator.

9.01.1. CONTRACTOR will utilize the Customer Service Log to maintain a record of all inquiries and complaints in a manner prescribed by CITY. CONTRACTOR must maintain a record of all inquiries and complaints for a minimum of three (3) years, available upon CITY request.

9.01.2. For those complaints related to missed Collections, where Containers are properly and timely set out, that are received by 12:00 noon on a Work Day, CONTRACTOR will return to the Service Unit address and Collect the missed materials before leaving the Service Area for the day. For those complaints related to missed Collections that are received after 12:00 noon on a Work Day, CONTRACTOR will have until the end of the following Work Day to resolve the complaint. For those complaints related to repair or replacement of Carts or Bins, the appropriate Sections of this Agreement will apply.

9.01.3. CONTRACTOR agrees that it is in the best interest of CITY that all Solid Waste be Collected on the scheduled Collection day. Accordingly, missed Collections will normally be Collected as set forth above regardless of the reason that the Collection was missed. However, in the event a Service Recipient requests missed Collection service more than two (2) times in any consecutive two (2) month period the Agreement Administrator will work with CONTRACTOR to determine an appropriate resolution to that situation. In the event CONTRACTOR believes any complaint to be without merit, CONTRACTOR will notify the Agreement Administrator, either by fax or e-mail. The Agreement Administrator will investigate all disputed complaints and render a decision.

9.01.4. CONTRACTOR's service and emergency telephone numbers must be accessible by a local (CITY) phone number. The telephone number(s) must be listed in the area's telephone directories under CONTRACTOR's name in the White Pages and Yellow Pages.

9.02. CONTRACTOR's Office. CONTRACTOR must maintain a Customer Service office within the City's Service Limits where complaints can be received. Such office must be equipped with sufficient telephones that all Collection Service related calls received during normal business hours are answered by an employee within five (5) rings, and must have responsible persons in charge during Collection hours and must be open during such normal business hours, 8:00 a.m. to 5:00 p.m. on Monday through Friday. CONTRACTOR must provide a local telephone number, and a telephone answering service or mechanical device to receive Service Recipient inquiries during those times when the office is closed. Calls received after normal business hours must be addressed the next Work Day morning.

CONTRACTOR shall keep records of all Service Recipient's calls for at least three (3) years, collected on a Calendar Year cycle. The CONTRACTOR must include the type of call (Complaint, compliment, Other), a summary of the call the time and date of the call, and if a complaint was made, the resolution to the complaint. CONTRACTOR must report a record of each month's calls as part of the quarterly report. CONTRACTOR must report a record of each year's calls as part of the Annual Report. These records will also be made available to the CITY upon request.

9.02.1. Emergency Contact. CONTRACTOR must provide the Agreement Administrator with an emergency phone number where the CONTRACTOR can be reached outside of the required office hours.

9.02.2. Multilingual/TDD Service. CONTRACTOR must at all times maintain the capability of responding to telephone calls in English and such other languages as CITY may direct. CONTRACTOR must at all times maintain the capability or responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

9.02.3. Service Recipient Calls. During office hours, CONTRACTOR must maintain a telephone answering system capable of accepting at least fifteen (15) incoming calls at one time. CONTRACTOR must record all calls including any inquiries, service requests and complaints into a customer service log.

9.02.4. All incoming calls will be answered within five (5) rings. Any call "on-hold" in excess of one and one-half (1.5) minutes must have the option to remain "on-hold" or request a "call-back" from a customer service Agreement Administrator. CONTRACTOR's customer service representatives must return Service Recipient calls. For all messages left before 3:00 p.m., all "call backs" must be attempted a minimum of one time prior to 6:00 p.m. on the day of the call. For messages left after 3:00 p.m., all "call backs" must be attempted a minimum of one time prior to noon the next Work Day. CONTRACTOR must make minimum of three (3) attempts within one (1) Work Day of the receipt of the call. If CONTRACTOR is unable to reach the Service Recipient on the next Work Day, CONTRACTOR must send a postcard to the Service Recipient on the second Work Day after the call was received, indicating that the CONTRACTOR has attempted to return the call.

ARTICLE 10. CONTRACTOR Support Services

10.01. Public Outreach and Education Services. CONTRACTOR, at its own expense, must prepare, submit, and implement an annual (Calendar Year) Public Education and Outreach Program beyond CITY's Public Education and Outreach Program. The proposed action plan must be submitted annually for CITY approval no later than August 1st for the next Calendar Year.

10.01.1. Sustainability Representative. The CONTRACTOR will collaborate with CITY staff to make available reasonable use of one or more CONTRACTOR representatives to assist CITY in meeting requirements of the California Integrated Waste Management Act (IWMA) of 1989. On an annual basis, CONTRACTOR will make an individual available as needed to implement, in cooperation with the CITY, Recycling programs in the Service Area on an average of approximately two days a week.

10.01.2. Diversion and Sustainability Work Plan. Collaboratively, CONTRACTOR and CITY staff will develop an annual Waste Diversion and Sustainability Work Plan to help guide CONTRACTOR's staff's work efforts. This program must be designed to increase diversion and Service Recipients participation and should target certain Recyclable Materials or "problem" areas of CONTRACTOR's Service Area where improvements can be maximized. Targets of outreach should be based on local trends and recycling patterns based on information obtained by both the Agreement Administrator and CONTRACTOR staff. To the extent possible, CONTRACTOR will work to modernize its public outreach and education services throughout the term of this Agreement by providing outreach materials to Service Recipient electronically (e.g., via email). The parties will make good faith efforts to complete each annual Work Plan by August 1st.

10.01.3. Website. CONTRACTOR will maintain a website that describes and promotes the use of the available Recycling services. The CONTRACTOR will consult, collaborate, and coordinate its activities with the CITY regarding Recycling programs so that the CITY is fully informed and provided as opportunity for input to the CONTRACTOR's Recycling programs.

10.01.4. Annual Recycling Awards. CONTRACTOR will recognize outstanding participation in Recycling and/or Organic Waste programs by identifying "recycling all-stars" for recognition at a City Council meeting during each November, beginning November 2024.

10.01.5. Outreach Activities. On an annual basis the CONTRACTOR will coordinate Recycling and Organics education and outreach programs for Residential and Commercial Service Recipients, in conformance with Applicable Laws including without limitation SB 1383, AB 1826, AB 939, AB 341, in coordination with the CITY. This program will consist of the following:

10.01.5.1. CONTRACTOR will attend public events and host booths to promote recycling education and awareness. CONTRACTOR will work with CITY to identify which special events will be attended.

10.01.5.2. CONTRACTOR to distribute educational material to Service Recipients on an annual basis. Examples include recycling tips, battery and bulb education, proper Cart placement, resource information, and HHW education. This material will be mailed or electronically transmitted to Service Recipients.

10.01.5.3. Service Recipients will have access to CONTRACTOR's local website to find information specific to the CITY's programs. The CONTRACTOR will ensure that information

provided on the website is maintained and up-to-date. This content will include proper container set out, educational materials, newsletters and program descriptions. Service Recipients will also have the ability to use CONTRACTOR's web-based service request system.

10.01.5.4. CONTRACTOR with CITY and will work with local media to ensure information is communicated to the community (new programs, events, recycling information, etc.).

10.01.5.5. CONTRACTOR to use options, such as; local newspaper, broadcast news, websites, home owners associations (HOA), and civic groups.

10.01.5.6. CONTRACTOR will assist the CITY in supporting Food Waste and Green Waste diversion surveys and programs.

10.01.5.7. CONTRACTOR will complete Garbage, Organic Waste, and Recycling audits for Commercial Service Recipients and provide recommendations to Commercial Service Recipients on how to improve overall resource efficiency.

10.01.6. News Media Requests. CONTRACTOR will notify the Agreement Administrator by fax, e-mail or phone of all requests for news media interviews related to the services covered under this Agreement within one (1) Work Day of CONTRACTOR's receipt of the request. When practicable, before responding to any inquiries involving controversial issues or any issues likely to affect participation or Service Recipient's perception of services, CONTRACTOR will discuss CONTRACTOR's proposed response with the Agreement Administrator.

10.01.6.1. Copies of draft news releases or proposed trade journal articles that use the name of CITY or relate to the services provided hereunder must be submitted to the Agreement Administrator for prior review and approval at least five (5) working days in advance of release, except where CONTRACTOR is required by any law or regulation to submit materials to any regulatory agency in a shorter period of time, in which case CONTRACTOR must submit such materials to CITY simultaneously with CONTRACTOR's submittal to such regulatory agency.

10.01.6.2. Copies of articles resulting from media interviews or news releases that use the name of CITY or relate to the services provided hereunder must be provided to the CITY within five (5) days after publication.

10.02. Annual Collection Service Notice. Each year during the term of this Agreement, CONTRACTOR must publish and distribute (by mail or electronically) a notice to all Service Units regarding the Collection Service programs. The notice must contain at a minimum; definitions of the materials to be Collected; procedures for setting out the materials; the days when Garbage Collection Services, Recycling Services, and Organic Waste Collection Services will be provided; CITY customer service phone number; instructions on the proper filling of Containers; instructions as to what materials may or may not be placed in Recyclable Materials or Organic Waste Containers; and the amount of overage and contamination fees in the event of non-compliance. The notice must also advertise the availability of on-premises Collection Services, SFD Large Items Collection Services and Temporary Construction and Demolition Debris Collection Services, and specifically the availability of no-charge on-premises Collection Services for specific qualified Service Recipients as described in Section 8.17. The notice must also advertise the date

and location of upcoming free paper shredding events as described in Section 8.34. The notice must be provided in English, and other languages as directed by the CITY and must be distributed by CONTRACTOR no later than March 31 of each year.

10.03. Edible Food Recovery Support. At no cost to the CITY, CONTRACTOR must provide support to the CITY's Edible Food Recovery program as required under SB 1383. CONTRACTOR support may include educating commercial edible food generators, and providing records of site visits, conducting education efforts, and listing food recovery organizations.

10.04. Additional Outreach Programs and Services. CONTRACTOR will provide additional public outreach services and programs as requested by CITY at a price to be mutually agreed upon by written agreement between the CONTRACTOR and the Agreement Administrator. This agreement will ultimately take the form of a standard CONTRACTOR personal services agreement. In the event the CONTRACTOR and Agreement Administrator cannot reach a mutually agreed upon price for the requested service or program, CITY shall have the right to procure the service of other vendors or contractors to provide the requested public outreach services, and CONTRACTOR shall reimburse CITY for the reasonable costs incurred to obtain the public outreach services.

ARTICLE 11. Emergency Service

11.01. Revised Services During an Emergency. In the event of a natural disaster or Act of God, the Agreement Administrator may grant the CONTRACTOR a variance from regular routes and schedules, which will not be withheld unreasonably. As soon as practicable after such event, CONTRACTOR must advise the Agreement Administrator when it is anticipated that normal routes and schedules can be resumed. The Agreement Administrator will make an effort through the local news media and in coordination with the CITY to inform the public when regular services may be resumed. The clean-up from a natural disaster or Act of God may require that CONTRACTOR hire additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the natural disaster or Act of God. CONTRACTOR will receive additional compensation for extraordinary clean-up directly in response to a natural disaster or Act of God above the normal compensation contained in this Agreement, to cover the costs of rental equipment, additional personnel, overtime hours and other documented expenses based on the rates set forth in **Exhibit 1** provided CONTRACTOR has first secured written authorization and approval from CITY through the Agreement Administrator. CITY will be given equal priority and access to resources as with other franchise jurisdictions held by CONTRACTOR or its affiliates.

11.02. CITY Provision of Service. Notwithstanding the foregoing, should CONTRACTOR, for any reason whatsoever, refuse or be unable to provide Solid Waste Handling Services for a period of more than seventy-two (72) hours, and if as a result thereof, Solid Waste should accumulate in CITY to such an extent or in such a manner that the City Manager finds that such accumulation endangers or menaces the public health, safety, or welfare, CITY shall have the right, upon twenty-four (24) hours prior written notice to CONTRACTOR, during the period of such emergency, to temporarily take possession of any or all equipment and facilities of CONTRACTOR previously used in providing Collection, transportation, and disposal of Solid Waste and provide, through its own forces or otherwise, Solid Waste Handling Services which CONTRACTOR otherwise would be obligated to provide pursuant to this Agreement. CONTRACTOR agrees that in such event it shall fully cooperate with CITY to affect such a transfer of possession for CITY's use.

11.03. Possession of Equipment. CONTRACTOR agrees, that in the event of circumstances described in Section 11.01 above, CITY may take temporary possession of and use all of said equipment and facilities without paying CONTRACTOR any rental or other charge. Upon CONTRACTOR giving CITY notice that it is able to resume its normal responsibilities under this Agreement, CITY shall relinquish possession of all of the above-mentioned property to Contractor.

ARTICLE 12. Record Keeping and Reporting Requirements

12.01. Record Keeping.

12.01.1. Accounting Records. CONTRACTOR must maintain full, complete, and separate financial, statistical, and accounting records, pertaining to cash, billing, and provisions of all Collection Services, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records will be subject to audit and inspection upon thirty (30) days' notice. Gross receipts derived from provision of the Collection Services, whether such services are performed by CONTRACTOR or by a subcontractor or subcontractors, will be recorded as revenues in the accounts of CONTRACTOR. CONTRACTOR must maintain and preserve all cash, billing, and disposal records for a period of not less than three (3) years following the close of each of CONTRACTOR's fiscal years.

12.01.2. Agreement Materials Records. CONTRACTOR must maintain records of the quantities of Solid Waste collected, processed, and disposed under the terms of this Agreement, by type, Collected, purchased, processed, sold, donated or given for no compensation, and Residual disposed.

12.01.3. Other Records. CONTRACTOR must maintain all other records reasonably related to provision of Collection Services, whether or not specified in this the Agreement.

12.02. Monthly Reporting.

12.02.1. General. Monthly reports must be submitted no later than 5 p.m. PT on the fifteenth (15th) day of the month following the close of the reporting period. If the fifteenth (15th) day falls on a day that CITY is closed or a holiday, then the payment will be due on the next business day.

12.02.2.1. Overweight Vehicle Reporting. The monthly report must include a summary total of all instances of overweight collection vehicles. This summary must include the number of overweight vehicle instances expressed as a percentage of the total number of collection vehicle loads transported during the reported month.

12.02.2.2. Contamination Reporting. To the extent required by Applicable Law, the monthly report must include a summary of all instances of qualifying contamination under the procedures in Section 8.03. This summary must include the total number of accounts where contamination occurred, the total number of Contamination Violation Notices issued by CONTRACTOR to Service Recipients, and the total number of instances where Collection Cart or Bins size or Collection frequency was increased specifically due to contamination. Within twenty (20) work days of request by CITY, CONTRACTOR will provide copies of the Contamination Violation Notices and the digital documentation of

contamination.

12.02.2.3. CONTRACTOR Billing Account Information. The monthly report must include a complete customer billing account and service level data for all Collection services provided by CONTRACTOR under this Agreement during the prior month.

12.03. Quarterly Reporting.

12.03.1. General. Quarterly reports must be submitted no later than 5 p.m. PT on the twenty-fifth (25th) day following the last month of the quarter. If the twenty-fifth (25th) day falls on a day that CITY is closed or a holiday, then the report will be due on the next business day.

12.03.2. CITY Reports. Quarterly reports to CITY must include:

12.03.2.1. CONTRACTOR Billing Account Information. CONTRACTOR must include a complete customer billing account and service level data for all Collection services provided during the preceding quarter.

12.03.2.2. Franchised Tonnage Data. CONTRACTOR must report the tonnage of Garbage, Recyclable Materials and Organic Waste collected, processed for diversion, Residual amounts and landfilled for broken down by SFD, MFD, Commercial, and City Service Collection Services.

12.03.2.3. Non-Collection. The quarterly report must include a summary of each Service Unit receiving a Non-Collection Notice in the previous quarter along with a description for the Non-Collection Notice.

12.03.2.4. Collection Overage Charges. The quarterly report must include each Service Unit incurring a charge for a Solid Waste Overage in the previous quarter.

12.03.2.5. Service Recipient Complaint Log. The quarterly report must include the Service Recipient call log collected from the previous quarter as required in Section 9.01 of this Agreement.

12.03.2.6. Account Verification. CONTRACTOR shall notify the CITY of service starts, holds, or terminations.

12.04. Annual Reporting.

12.04.1. General. An annual report must be submitted no later than 5:00 p.m. PT on February 15, 2022 and each February 15th thereafter for the previous Calendar Year. If February 15th falls on a day that CITY is closed, then the report will be due on the next business day. Annual reports must be provided electronically in software acceptable to the CITY.

12.04.2. CITY Reports. Annual reports to CITY must include:

12.04.2.1. Financial Reports. CONTRACTOR must prepare an annual Financial Report for submittal to the CITY. At a minimum, the Financial Report must include the number of SFD Service Units and Commercial Service Units provided with Collection Services, including any additional services, the CONTRACTOR's gross billing and amount collected for each type of Service Unit.

12.04.2.2. Public Education Summary. Public education and information activities undertaken during the year, including distribution of bill inserts, collection notification tags, community information and events, tours and other activities related to the provision of Collection Services. This report will discuss the impact of these activities on Recycling program participation and include amounts Collected from SFD and Commercial Service Units.

12.04.2.3. Summary of Programs. An analysis of any Recycling and Organic Waste Collection, processing and marketing issues or conditions (such as participation, setouts, contamination, etc.) and possible solutions, discussed separately for SFD and Commercial programs.

12.04.2.4. Garbage Data. The number of SFD and Commercial Service Units and the number of Bins, Carts and Roll-Off Containers distributed by size and Service Unit type.

12.04.2.5. Recycling Data. Gross tons Collected daily on average by material type by route for SFD and Commercial Recycling service. The average participation rates by quarter relative to the total number of Service Units by Service Unit type.

12.04.2.6. Organic Waste Data. Include average daily gross tons Collected by route. Include the total number of generators that receive each type of Organic Waste Collection Service provided by the CONTRACTOR. Indicate average daily number of set-outs by route. Indicate average participation rates relative to the total number of Service Units in terms of weekly set-out counts. Indicate number of Bins and Carts distributed by size and Service Unit type. Include the number of route reviews conducted for prohibited contaminants and the number of Non-Collection Notices issued to Service Recipients.

12.04.2.7. Commercial Outreach Report. A complete list of all Commercial accounts, which includes each account's status as a "covered generator" under AB 341 and AB 1826, the date and status of CONTRACTOR's outreach efforts at each account, and the current level of Recycling and Organics program participation at each account.

12.04.2.8. Customer Service Log. A summary of the type and number of complaints and their resolution, including calls related to missed pickups and responses to such calls. (with three-year retention).

12.04.2.9. Green Pages. A copy of CONTRACTOR's most recent "Green Pages" (i.e., customer call center "cheat sheet") for the City of Atwater, or the equivalent information used by customer service representatives in the event that the "Green Pages" are renamed or otherwise reworked during the term of this Agreement.

12.04.2.10. Overweight Vehicle Data. A summary of all instances of overweight collection vehicles. This summary must also include the number of overweight vehicle instances as a percentage of the total number of collection vehicle loads transported during the Calendar Year.

12.04.2.11. Summary Narrative. A summary narrative of problems encountered with Collection and processing activities and actions taken. Indicate type and number of Non-Collection Notices left at Service Recipient locations. Indicate instances or numbers of property damage or injury, significant changes in operation, market factors, publicity conducted, or needs for publicity. Include description of processed material loads rejected for sale, reason for rejection and disposition of load after rejection.

12.04.2.12. Bin, Cart, and Vehicle Inventory. An updated complete inventory of Bins and Carts by type and size, and an updated complete inventory of Collection vehicles including for each vehicle: truck number, date purchased, vehicle type, tare weight, license plate number, and vehicle make and model.

12.04.2.13. AB 341, AB 1826, and SB 1383 Compliance Data. CONTRACTOR must report the total number of Commercial Service Units serviced and the number of containers, container sizes and frequency of Collection for Garbage, Recyclable Materials and Organic Waste for each Commercial and MFD Service Unit. CONTRACTOR must also provide the following information separately for both AB 341, AB 1826 and SB 1383.

12.04.2.14. The total number of Commercial and MFD Service Units that fall under the AB 341 or AB 1826 thresholds, and the total number of those Commercial Service Units that are not receiving CONTRACTOR's required services to Commercial and MFD Recycling Collection Service or Commercial and MFD Organics Collection Service.

12.04.2.15. A summary of the type of follow-up outreach that was provided to those Commercial Service Units that are not subscribed to Commercial and MFD Recycling Collection Service or Commercial and MFD Organics Collection Service.

12.05. Diversion Data. By 5:00 p.m. PT on February 15, 2024, and annually thereafter during the term of this Agreement, CONTRACTOR must deliver to CITY diversion data for the franchised services performed under this Agreement in the format specified by CITY.

12.06. CalRecycle Reports. CONTRACTOR will provide reasonable assistance to CITY in preparing annual reports to CalRecycle, including but not limited to supplying required data for preparation of the reports.

12.06.1. In the event that CalRecycle requires CITY to submit an Implementation Schedule to comply with AB 341, AB 1826, SB 1383 and other Applicable Laws, CONTRACTOR will provide reasonable assistance to CITY in preparing a report, including CONTRACTOR's policies and procedures related to compliance with AB 341, AB 1826, SB 1383, and other Applicable Laws and how recycling or organics are collected, a description of the geographic area, routes, list of addresses served and a method for tracking contamination, copies of route audits, copies of notice of contamination, copies of notices, violations, education and enforcement actions issued, and copies of educational materials, flyers, brochures, newsletters, website, and social media.

12.07. Additional Reporting. CONTRACTOR must furnish CITY with any additional reports as may reasonably be required, such reports to be prepared within a reasonable time following the reporting period.

12.08. Adverse Information. CONTRACTOR shall provide CITY two copies of all reports and other material adversely affecting this Agreement submitted by CONTRACTOR to the United States Environmental Protection Agency, CalRecycle, the California Regional Water Quality Control Board, and any other federal, state, regional, or local regulatory agency. Copies shall be submitted to CITY simultaneously with CONTRACTOR's filing of such matters with said agencies. CONTRACTOR's routine correspondence to said agencies need not be automatically submitted to CITY, but shall be made available to CITY upon written request. CONTRACTOR shall submit to CITY copies of all pleadings, applications,

notifications, communications, and documents of any kind submitted by CONTRACTOR to, as well as copies of all decisions, correspondence, and actions by, any federal, state, and local courts, regulatory agencies, and other government bodies relating in any manner to CONTRACTOR's performance of services pursuant to this Agreement. To the degree authorized by law, any confidential data exempt from public disclosure shall be retained in confidence by CITY and its authorized agents and shall not be made available for public inspection. CONTRACTOR shall submit to CITY such other information or reports in such forms and at such times as CITY may reasonably request or require. All reports and records required under this or any other Section hereof shall be furnished at the sole expense of CONTRACTOR.

12.09. Disaster Plan. Within 60 days from a request by CITY, CONTRACTOR shall prepare a draft disaster plan that sets forth procedures for maintaining regular Collection service and Collection of debris following a major natural disaster such as an earthquake, fire or other similar emergency event (not including labor disputes). The disaster plan shall address arrangements to provide needed vehicles and personnel, priorities for cleanup at critical facilities, and procedures for reimbursement for costs, describe communication plans, list key contact persons, and provide maps showing proposed sites for stockpiling of disaster debris that cannot be transported to the landfill. CONTRACTOR shall coordinate the plan with CITY's emergency service teams. The draft plan shall be presented to the City Manager for consideration and approval. The final plan shall be distributed to those employees of CONTRACTOR and CITY who would have a role in implementing it in the event of a disaster. In addition, at CITY's request, CONTRACTOR shall assist the CITY with such emergency Collection service and Collection of debris following a major natural disaster such as an earthquake, fire, or other similar emergency event. In the event of such a request, CONTRACTOR and CITY shall meet and confer in good faith to determine a fair and reasonable rate to compensate CONTRACTOR for providing such assistance.

12.010. Failure to Report. The refusal or failure of CONTRACTOR to timely file any of the reports required under this Agreement, or the inclusion of any materially false or misleading statement or representation made knowingly by CONTRACTOR in such report, shall be deemed a material breach of this Agreement and shall subject CONTRACTOR to all remedies, legal or equitable, which are available to CITY under this Agreement or otherwise.

ARTICLE 13. Nondiscrimination

13.01. Nondiscrimination. In the performance of all work and services under this Agreement, CONTRACTOR may not discriminate against any person on the basis of such person's race, color, sex (including pregnancy, childbirth, and related medical conditions), age, ancestry, national origin, religion, marital status, or sexual orientation, gender identify and gender expression, disability (physical and mental), medical conditions, AIDS/HIV, citizenship status and genetic information, military or veteran status, political affiliations or activities, and status as a victim of domestic violence, assault or stalking. CONTRACTOR must comply with all applicable local, state and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

ARTICLE 14. Quality of Performance of Contractor

14.01. Intent. CONTRACTOR acknowledges and agrees that one of CITY's primary goals in entering into this Agreement is to ensure that the Collection Services are of the highest caliber, that Service Recipient satisfaction remains at the highest level, that maximum diversion levels are achieved, and that materials Collected are put to the highest and best use to the extent possible.

14.02. Service Supervisor. CONTRACTOR must assign a qualified supervisor to be in charge of the Collection Service within the Service Area and must provide the contact name of that person in writing to the Agreement Administrator within thirty (30) days of the execution of this Agreement, and annually by January 1st of each subsequent Calendar Year of the term of this Agreement, and any other time the person in that position changes. The supervisor must be physically located in the Service Area and available to the Agreement Administrator through the use of telecommunication equipment at all times that CONTRACTOR is providing Collection Services. In the event the supervisor is unavailable due to illness or vacation, CONTRACTOR must designate an acceptable substitute who will be available and who has the authority to act in the same capacity as the supervisor.

14.03. CONTRACTOR Representative. CONTRACTOR must designate a Representative (CONTRACTOR's Representative) and must provide the name of that person in writing to CITY within thirty (30) days of the execution of this Agreement and annually by January 1st of each subsequent Calendar Year of this Agreement and any other time the person in that position changes. The CONTRACTOR's Representative must be available to the CITY through the use of telecommunications equipment at all times that CONTRACTOR is providing Collection Services in the Service Area. The CONTRACTOR's Representative must provide CITY with an emergency phone number where the CONTRACTOR's Representative can be reached outside of normal business hours.

14.04. Administrative Charges. Should CONTRACTOR be in material breach of the requirements set forth in this Agreement, it is mutually understood and agreed that the public will necessarily suffer damages and that such damages, from the nature of the default in performance will be extremely difficult to value and impractical to fix. CITY finds, and the CONTRACTOR agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages or the costs related thereto which will be incurred by CITY as a result of a material breach by CONTRACTOR of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration and deprivation of the benefits of this Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) services might be available at substantially lower costs than alternative services, and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches. Accordingly, the CONTRACTOR and CITY agree that the following table of Administrative charges are acceptable as liquidated damages, and not a penalty or forfeiture, in the amounts set forth opposite the breach described.

ADMINISTRATIVE Charges			
	Item	Amount if Not Cured in 30 Days	If Cured in 15 Days
a.	Failure to respond to each complaint within three (3) Work Days of receipt of complaint.	\$100 per day per incident per Service Recipient.	

b.	Failure to maintain call center hours as required by this Agreement.	\$100 per day.	-0-
c.	Failure to submit to CITY all reports by the deadlines required under the provisions of this Agreement.	\$100 per day.	-0-
d.	Failure to submit to CITY all payments by the deadlines required under the provisions of this Agreement.	\$500 per day.	-0-

ADMINISTRATIVE Charges			
Item		Amount if Not Cured in 30 Days	If Cured in 15 Days
e.	Failure to display CONTRACTOR's name and customer service phone number on collection vehicles.	\$100 per incident per day.	-0-
f.	Failure to collect a missed collection by close of the next Work Day upon notice to CONTRACTOR that exceeds twenty (20) in any Calendar Year.	\$1,000 per Calendar year, plus \$10 per incident per day.	-0-
g.	Failure to repair or replace damaged Containers to deliver or exchange Containers within the time required by this Agreement, that exceeds twenty (20) in any Calendar year.	\$1,000 per Calendar year, plus \$10 per incident per day.	
h.	Failure to maintain collection hours as required by this Agreement.	\$100 per day.	-0-
i.	Failure to have CONTRACTOR personnel in CONTRACTOR-provided uniforms.	\$25 per day per employee.	-0-
j.	Failure of CONTRACTOR to follow Recyclable Materials and Organic Waste Contamination procedures as set forth under Section 8.03.	Submit plan of correction to CITY	-0-
k.	Failure of CONTRACTOR to meet the Customer Service Requirements.	\$1,000 per day	-0-
The following items Can Not Be Cured			
	Item	Amount (cannot be cured)	
l.	Failure to clean up spillage or litter on public streets located within CITY caused by CONTRACTOR's collection vehicles within two (2) hours after notice by CITY to CONTRACTOR.	\$500 per incident per location and reimbursement to CITY for cleanup.	
m.	Disposal of separately collected Recyclable Materials or separately collected Organic Waste in the Disposal Facility without first obtaining the required permission of the CITY.	\$500 per load.	
n.	Failure to deliver Garbage collected under this Agreement to the Disposal Facility, except as otherwise expressly provided in this Agreement.	\$5,000 each failure.	

ADMINISTRATIVE Charges			
Item		Amount if Not Cured in 30 Days	If Cured in 15 Days
o.	Failure to submit a corrective action plan as set forth in Section 12.06.1.	The current disposal cost/ton for each ton under the diversion requirement.	
p.	Overweight Collection Vehicles, as set forth by Section 8.40.01.4.	\$500 per day per load after CITY has considered CONTRACTOR's reason for excessive overweight vehicles.	

14.05. Procedure for Review of Administrative Charges. The Agreement Administrator may assess administrative charges pursuant to this Agreement on a monthly basis. At the end of each month during the term of this Agreement, the Agreement Administrator will issue a written notice to CONTRACTOR ("Notice of Assessment") of the administrative charges assessed and the basis for each assessment.

14.06.18. The assessment will become final unless, within ten (10) business days of the date of the notice of assessment, CONTRACTOR provides a written request for a meeting with the City Manager to present evidence that the assessment should not be made, or the alleged deficiency has been cured.

14.06.19. The Agreement Administrator will schedule a meeting between CONTRACTOR and the City Manager as soon as reasonably possible after timely receipt of CONTRACTOR's request.

14.06.20. The City Manager will review CONTRACTOR's evidence and render a decision sustaining or reversing the administrative charges within ten (10) business days after the meeting. Written notice of the decision will be provided to CONTRACTOR.

14.06.21. In the event CONTRACTOR does not submit a written request for a meeting within ten (10) calendar days of the date of the Notice of Assessment and the alleged deficiency is not cured, the Agreement Administrator's determination will be final.

14.06.22. CITY's assessment or collection of administrative charges are in addition to and not in lieu of any other remedy available to it and will not prevent CITY from exercising any other right or remedy, including the right to terminate this Agreement, for CONTRACTOR's failure to perform the work and services in the manner set forth in this Agreement.

14.06. Acts of God and Natural Disasters.

14.06.1. If either party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, acts of the State of California or the U.S. Federal government, acts of God or natural disasters, whether of the kind enumerated or otherwise, that are not reasonably within the control of the affected party, then the affected party will be excused from performance hereunder during the period of such disability.

14.06.2. The party claiming excuse from performance must promptly notify the other party when it learns of the existence of such cause, including the facts constituting such cause, and when such cause has terminated.

14.06.3. The interruption or discontinuance of services by a party caused by circumstances outside of its control will not constitute a default under this Agreement.

ARTICLE 15. Performance Bond

15.01. Performance Bond. The Agreement must be executed, and a performance bond furnished by CONTRACTOR within thirty (30) calendar days of City Council approval of the Agreement; otherwise, the bid bond shall be forfeited to the CITY.

15.01.1. CONTRACTOR shall furnish to the CITY, and keep current, a performance bond in a form acceptable to the CITY, for the faithful performance of this Agreement and all obligations arising hereunder in an amount of **Five-Hundred Thousand Dollars (\$500,000)** during the term of the Agreement.

15.01.2. The performance bond shall be executed by a surety company that is acceptable to the CITY; an admitted surety company licensed to do business in the State of California; that has an "A:VII" or better rating by A.M. Best or Standard and Poors; and is included on the list of surety companies approved by the Treasurer of the United States.

15.02. Letter of Credit. As an alternative to the performance bond required by this Article, at CITY's option, within thirty (30) calendar days from the date the City Council approves this Agreement, CONTRACTOR must furnish to CITY, an irrevocable letter of credit, for the faithful performance of this Agreement and all obligations arising hereunder in an amount as follows:

15.02.1. From July 1, 2023, and so long as this Agreement or any extension thereof remains in force, CONTRACTOR must maintain a letter of credit in the amount of **Five- Hundred Thousand Dollars (\$500,000)**. The letter of credit must be issued by an FDIC insured banking institution chartered to do business in the state of California, in CITY's name, and be callable at the discretion of the CITY.

15.03. Adjustments. The amount of the performance bond and letter of credit required under this Article shall be adjusted equal to the percentage change in the Maximum Service Rates from the commencement of this Agreement if this Agreement is extended past its initial Term.

ARTICLE 16. Insurance

16.01. Insurance Policies. CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work described herein and the results of that work by the CONTRACTOR, its agents, representatives, employees, or subcontractors. With respect to General Liability and Contractors Pollution Liability, coverage should be maintained for a minimum of five (5) years after contract completion.

16.02. Minimum Scope and Limit of Insurance. If the CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown below in Sections 16.02.1 through 16.02.4, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY. Insurance coverage must be at least this broad:

16.02.1. Commercial General Liability (CGL). Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

16.02.2. Automobile Liability. Insurance Services Office Form Number CA 0001 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired (Code 8) and non-owned (Code 9) autos, with limit no less than \$5,000,000 per accident for bodily injury and property damage.

16.02.3. Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$3,000,000 per accident for bodily injury or disease.

16.02.4. Contractor's Pollution Liability. Applicable to the work being performed, with a limit no less than \$3,000,000 per claim or occurrence and \$10,000,000 aggregate per policy period of one year.

16.03. Self-Insured Retentions. Any self-insured retentions must be declared to the Agreement Administrator. Should CITY form a reasonable belief that CONTRACTOR may be unable to pay any self-insured retentions, CONTRACTOR must procure a letter of credit issued by a state of federal guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by CITY's risk manager.

16.04. Other Insurance Provisions.

16.04.1. The General Liability, Automobile Liability, and Contractors Pollution Liability, policies are to contain, or be endorsed to contain, the following provisions:

16.04.1.1. The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or

on behalf of the CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations, but excepting workers' compensation liability. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance (at least as broad as ISO Form CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

16.04.1.2. For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

16.04.1.3. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the CITY.

16.04.2. The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by CONTRACTOR pursuant to the Agreement. This coverage may also be provided on the Contractors Pollution Liability policy.

16.04.3. If General Liability and Contractors Pollution Liability coverages are written on a claims-made form:

16.04.3.1. The retroactive date must be shown and must be before the date of the Agreement or the beginning of work under this Agreement.

16.04.3.2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

16.04.3.3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the CONTRACTOR must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.

16.04.3.4. A copy of the claims reporting requirements must be submitted to the CITY for review.

16.05. Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A-: VII if admitted in the State of California.

16.06. Verification of Coverage. CONTRACTOR shall furnish the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to CITY before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The CITY reserves the right to review complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time, at CONTRACTOR's address indicated for receipt of notices in this Agreement.

16.07. Waiver of Subrogation. CONTRACTOR hereby grants to CITY a waiver of subrogation which any insurer may acquire against CITY, its officers, officials, employees, and volunteers, from CONTRACTOR by virtue of the payment of any loss arising from CONTRACTOR's performance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONTRACTOR, its employees, agents, and subcontractors under this Agreement.

16.08. Subcontractors. CONTRACTOR shall require and verify that all subcontractors performing work in the CITY maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that CITY is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

16.09. Special Risks or Circumstances. CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

ARTICLE 17. Indemnification

17.01. General Indemnification. CONTRACTOR must indemnify, defend (with attorneys acceptable to CITY), and hold harmless CITY, CITY's contractors, and its elected and appointed public officials, officers, directors, employees, agents, volunteers, and other contractors of each of them (collectively, "CITY Indemnitees"), from and against any and all claims, costs, losses and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals as well as all court or other dispute resolution costs), liabilities, expenditures, or causes of action of any kind (including negligent, reckless, willful, or intentional acts or omissions of the CONTRACTOR, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), arising from, relative to or caused by the performance of the services (collectively, "Claims"). This indemnity includes but is not limited to Claims attributable to bodily injury, sickness, disease, or death, and to injury or destruction of tangible property. CONTRACTOR agrees, at CONTRACTOR's expense, after written notice from the CITY, to defend any action against the CITY Indemnitees that falls within the scope of this indemnity using counsel selected by CONTRACTOR and approved by CITY in its reasonable judgment. Additionally, if CONTRACTOR, after receipt of written notice from the CITY, fails to make any payment due under this Agreement to CITY, CONTRACTOR must pay any reasonable attorneys' fees or costs incurred by CITY in securing any such payment from CONTRACTOR. Payment of any amount due pursuant to the foregoing indemnity must, after receipt of written notice by CONTRACTOR from CITY that such amount is due, be made by CONTRACTOR prior to CITY being required to pay same, or in the alternative, CITY, at CITY's option, may make payment of an amount so due and CONTRACTOR must promptly reimburse CITY for the same, together with interest thereon at the rate of 12% per annum simple interest from the date of receipt by CONTRACTOR of written notice from CITY that such payment is due. The foregoing indemnity and hold harmless provisions shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death, or damage is also caused in part by any of CITY Indemnitees' negligence, but shall not extend to matters resulting from CITY Indemnitees' sole negligence or willful misconduct.

17.02. Diversion Indemnification. Subject to the requirements of Public Resources Code section 40059.1, which will control in the event of any conflict with the provisions of this Section, CONTRACTOR agrees to protect and defend CITY Indemnitees with counsel selected by CONTRACTOR and approved by CITY, to pay all attorneys' fees, and to indemnify and hold CITY Indemnitees harmless from and against all fines or penalties imposed by the CalRecycle if the diversion goals specified in California Public Resources Code section 41780, as it may be amended, are not met by CITY with respect to the materials Collected by CONTRACTOR and if the lack in meeting such goals are attributable to the failure of CONTRACTOR to implement and operate the recycling or diversion programs or undertake the related activities required by this Agreement. In the event CalRecycle provides an administrative process to challenge the imposition of a compliance order or a fine or fines, CONTRACTOR will be responsible for engaging any consultants or attorneys necessary to represent CITY in any challenge. CONTRACTOR will be responsible for the retention of and payment to any consultants engaged to perform waste generation studies (diversion and disposal). All consultants and attorneys engaged hereunder are subject to the mutual agreement of CITY and CONTRACTOR.

17.03. Hazardous Substances Indemnification. CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by CITY), protect and hold harmless the CITY Indemnitees from and against any and all Claims of any kind whatsoever paid, suffered or incurred by or against the CITY Indemnitees resulting from any repair, cleanup, removal action or response action undertaken pursuant to CERCLA, the Health & Safety Code or other similar federal, state or local law or regulation, with respect to CONTRACTOR's activities or omissions under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to section 107(e) of CERCLA and section 25364 of the Health & Safety Code to defend, protect, hold harmless and indemnify the CITY Indemnitees from all forms of liability under CERCLA, the Health & Safety Code or other similar federal, state or local law or regulation.

17.04. Proposition 218. CONTRACTOR understands and agrees that CITY may elect to or be required to comply with California Constitution Article XIII D (Proposition 218) or other Applicable Law before approving any new maximum service rate or any maximum service rate increase. CITY shall not be in breach of this Agreement if its residents lawfully delay or prevent CITY from raising or imposing the rates. In such event, CITY and CONTRACTOR shall meet in good faith to consider alternatives and options, which may include permitting CONTRACTOR to terminate the Agreement. CITY and CONTRACTOR agree that such meeting shall take place within six (6) months of any failure or delay to impose rates. All costs incurred in providing notices required under California Constitution Article XIII D or other applicable law in connection with a rate adjustment shall be paid by CONTRACTOR subject to an annual cap of Ten Thousand Dollars (\$10,000) which shall be adjusted annually in the same manner as the Maximum Service Rates.

17.05. Consideration. It is specifically understood and agreed that the consideration inuring to CONTRACTOR for the execution of this Agreement consists of the promises, payments, covenants, rights, and responsibilities contained in this Agreement.

17.06. Obligation. This Agreement obligates CONTRACTOR to comply with the foregoing indemnification and release provisions; however, the collateral obligation of providing insurance must also be complied with as set forth in this Agreement.

17.07. Subcontractors. CONTRACTOR must require all subcontractors performing work in the CITY to enter into an Agreement containing the provisions set forth in this Article in which the subcontractor(s) fully indemnifies CITY in accordance with this Agreement.

17.08. Exception. Notwithstanding other provisions of this Agreement, CONTRACTOR's obligation to indemnify, hold harmless, and defend CITY, its officers, and employees will not extend to any loss, liability, penalty, damage, action, or suit arising or resulting from acts or omissions constituting sole or active negligence, willful misconduct, material breach of this Agreement, or violation of law on the part of CITY, its officers, or employees.

17.09. Damage by CONTRACTOR. If CONTRACTOR's employees or subcontractors cause any injury, damage, or loss to CITY property, including but not limited to CITY streets or curbs, excluding normal wear and tear, CONTRACTOR must reimburse CITY for CITY's cost of repairing such injury, damage, or loss. Such reimbursement is not in derogation of any right of CITY to be indemnified by CONTRACTOR for any such injury, damage, or loss. With the prior written approval of CITY, CONTRACTOR may repair the damage at CONTRACTOR's sole cost and expense. Any injury, damage, or loss to private property caused by the negligent or willful acts or omissions of CONTRACTOR to private property must be repaired or replaced by CONTRACTOR at CONTRACTOR's sole expense. Disputes between CONTRACTOR and its Service Recipients or private property owners as to damage to private property are civil matters and complaints of damage will be referred to CONTRACTOR as a matter within its sole responsibility and as a matter within the scope of Section 17.01 (Indemnification).

ARTICLE 18. Charges, Fees, and Contractor Compensation

18.01. Responsibility for Service Billing and Collection. The CITY, and not the CONTRACTOR, shall be responsible for the billing and collection of payments from SFD Service Recipients. CONTRACTOR will work directly with the CITY Representative to develop a protocol for answering all Customer billing questions. CITY shall, strictly as a billing agent for CONTRACTOR, bill all SFD Service Units for Collection Service (with the exception of SFD Service Units that do not receive waste and sewer services from CITY which shall be billed by CONTRACTOR) at the rate set forth in **EXHIBIT 1**. Billings may be made monthly or bimonthly for Service Recipients, as determined by CITY. CITY shall include in its bills to Service Recipients any applicable fees imposed by action of the City Council, including, but not limited to those as set forth in this Article.

Contractor shall be responsible for the billing and collection of payments from Commercial and MFD Service Recipients and for Roll Off Collection Services. Customer billing and service inquiries for Commercial and MFD Service Units shall be received directly by Contractor. For accounts that are aggregated on a single bill or other unique circumstance, City and Contractor shall meet and agree on procedures for billing. Contractor shall provide City an invoicing report for all customers directly billed each month. The report shall include total services provided, gross billings, and calculated City fees due to City. City may deduct any City fees from payment to Contractor for Residential Service Recipients under section 18.03.

18.02. CONTRACTOR Billing Account Information. The CONTRACTOR shall be responsible for providing the CITY with complete customer billing account and service level data for all Collection services provided by CONTRACTOR under this Agreement during the prior month, in an electronic format that is acceptable to the CITY. Each invoice shall be accompanied by an accounting, which sets forth CONTRACTOR'S Gross Billings for all services provided during the preceding month in sufficient detail to allow for an independent recalculation of monies due to CONTRACTOR. This information will be provided

on a monthly basis by the 15th day of the month for services provided by CONTRACTOR during the prior month. Any changes to the electronic format or submission date shall be expressly approved in writing by the CITY.

18.03. CITY Payments for CONTRACTOR's Compensation. CITY shall pay CONTRACTOR on the last day of each month for services provided by CONTRACTOR and billed by CITY during the prior invoice period. The CITY shall deduct franchise fees from the payments due to CONTRACTOR by CITY the amounts as set forth in Sections 18.09.1 – 18.09.3 below.

18.04. CPI Adjustments to CONTRACTOR'S Compensation. CONTRACTOR'S sole compensation is derived from the application of the Maximum Service Rates to actual services provided to SFD, MFD, and Commercial Service Recipients. The Maximum Service Rates are as specified in **Exhibit 1** of this Agreement, and are firm and fixed through June 30, 2024. CONTRACTOR shall not be entitled to any compensation that is not listed in **Exhibit 1**, as adjusted from time to time in accordance with this Agreement. On or after July 1, 2024, and each subsequent July 1st, CONTRACTOR's Maximum Service Rates shall be adjusted as follows:

18.04.1. Adjustments to Maximum Service Rates on July 1, 2024. Beginning on July 1, 2024, and annually thereafter, the Maximum Service Rates will be adjusted to the calculated percentage in this section, but capped at maximum increase of five percent (5.0%). In any year that the calculation of the CPI is negative (below 0.00%), the adjustment to Maximum Service Rates will be set to 0.00% (no adjustment). In the event the calculation above is greater than 5.0%, the adjustment to Fees shall be 5.0% for that year and any amount above 5.0% shall be carried forward and added to any subsequent years' adjustment until such time there is no carryover. The annual CPI adjustment applied to the Fees shall not exceed 5.0% in any one year. The calculations are as follows:

Each Maximum Service Rate adjustment shall be calculated by multiplying the prior year's rate by 80% of the percentage change in the "Consumer Price Index (San Francisco – Oakland – Hayward, All Urban Consumers, Not Seasonally Adjusted)," (or another mutually agreed-upon index if this one is no longer published) between the most recently published February index and the corresponding index published twelve months earlier, or 5.0% whichever is less.

Service Rate = Prior Years' Service Rate x (0.80 ((February 2023 CPI – February 2022 CPU)/February 2022 CPI)) + Prior Year's Service Rate

For Example,

Prior Year's Service Rate = \$25.00

February 2023 CPI = 180.2

February 2022 CPI = 172.8

Calculated CPI = (180.2 – 172.8)/172.8 = 0.0428

Eighty percent of Calculated CPI = 0.0428 x 80% = 0.0342

Amount of increase = \$25.00 x 0.0342 = \$0.86

Adjusted Monthly Service Rate = \$25.00 + \$0.86 = \$25.86

18.04.2. Rounding. Adjustments to the overall Maximum Service Rates shall be made only in units of one cent (\$0.01). Fractions of less than one cent (\$0.01) shall not be considered in making

adjustments.

18.04.3. CITY Approval of Maximum Service Rates. On or before June 1, 2024, and annually thereafter during the term of this Agreement, the CITY Representative shall notify CONTRACTOR of the Maximum Service Rate adjustments to take place on the subsequent July 1st. CITY shall take action on any changes in the Maximum Service Rates in accordance with the CITY'S Municipal Code.

18.05. Facility Fee Adjustments. The facility fee adjustment shall be a 100% pass-through of any increase in tipping fees paid by Contractor at the Designated Disposal Facility, Organic Waste Processing Facility, or Materials Recycling Facility for materials delivered under this Agreement. Contractor shall be entitled on the effective date of any increase. City may request Contractor submit a calculation of the facility fee adjustment as part of the annual adjustment under Section 18.04 so that Maximum Service Rates can be adjusted to compensate Contractor for the increase in tipping fees. The facility fee adjustment shall be in addition to the CPI calculation and not be subject to the 5.0% cap.

The Facility Fee Adjustment shall be applied to 20% of the Maximum Service Rates in the following manner:

Solid Waste Tipping Fee:	13.0%
Mixed Organics Tipping Fee:	5.0%
Recyclable Material:	2.0%

The % increase in any tipping fee shall factored by the % above and applied to the Maximum service rates. For example,

Prior tipping fee Solid Waste = \$50.00

New tipping fee Solid Waste = \$55.00

Increase in tipping fee = \$5.00

% increase in tipping fee = 10.0% (\$5.00 ÷ \$50.00)

Solid Waste factor = 13.0%

Adjustment applied to Maximum Service Rates = 1.30% (10% x 13.0%)

For purposes of calculating the Facility Fee Adjustment, the tipping fees at the Designated Disposal Facility at the beginning of this agreement are as follows:

Solid Waste Tipping Fee:	\$43.05/ton
Mixed Organics Tipping Fee:	\$55.00/ton
Recyclable Materials:	\$ 8.26/ton

18.06. Adjustments Due to Material Change In Law.

18.06.1. If a Material Change in Law occurs after the date hereof, then CITY and CONTRACTOR shall negotiate in good faith a reasonable and appropriate adjustment to Maximum Service Rates sufficient to offset CONTRACTOR's increased allowable costs of operation or reduced Gross Billings resulting from the Material Change in Law. As an exception to the preceding sentence, CONTRACTOR shall not be entitled to an adjustment in Maximum Service Rates with respect to the first **Thirty Thousand Dollars (\$30,000)** in increased costs or decreased revenues incurred by CONTRACTOR resulting from the Material Change in Law.

18.06.2. The Parties may negotiate and agree on the amount of any Maximum Service Rate adjustment pursuant to this Section 18.06 without a Detailed Rate Review. CONTRACTOR shall bear the burden of justifying to CITY any adjustment due to a Material Change in Law and shall bear its own costs of preparing its request for an adjustment and supporting documentation. CITY may request from CONTRACTOR such further information as it reasonably deems necessary to fully evaluate CONTRACTOR'S request and make its determination whether CONTRACTOR has satisfied its burden, which determination shall not be unreasonably withheld. CITY shall notify CONTRACTOR of its determination within ninety (90) calendar days of receipt of the written request and all other additional information reasonably requested by CITY. Any such change will be implemented on the following July 1st, or within any other time frame agreed upon between CITY and CONTRACTOR. The adjustment in Maximum Service Rates shall be approved by the City Council and memorialized in a written amendment to this Agreement.

18.07. Detailed Rate Review. Only if requested by the CITY a Detailed Rate Review may be conducted provided that a pre-established methodology, found in **Exhibit 9**, is agreed to by both the CITY and the CONTRACTOR. The CONTRACTOR is responsible for paying for the Detailed Rate Review.

18.08. Adjustments Due to Changes in Fees, Payments, or CITY Services. In the event that CITY elects to increase the amount of fees or payments beyond those increases provided for in Section 18.09 below, or in the event the CITY requests CONTRACTOR to perform additional CITY Collection Services beyond those services listed in this Agreement, the CONTRACTOR shall be eligible for an additional adjustment as part of their regularly scheduled July 1st Maximum Service Rate adjustment to cover the cost of those new fees, payments and/or services. This additional adjustment shall be calculated using the following methodology, and such calculation must be included in the CONTRACTOR'S regular rate adjustment request submitted to the CITY by February 1st in order for the CONTRACTOR to be eligible to receive the additional rate adjustment:

18.08.1. The CONTRACTOR shall calculate this additional rate adjustment percentage using the following steps:

- (A) Determine Percent of CONTRACTOR's Gross Billings: The total dollar value of the new/increased fees, payments and/or services *Divided by* the total reported CONTRACTOR's prior year annual Gross Billings.

*Example: \$200,000 value of new fees or services /
\$5,000,000 CONTRACTOR's Gross Billings = 4.0%*

- (B) Determine Additional Percentage Rate: The total dollar value of the new/increased fees, payments and/or services *Multiplied by the* total dollar value of the new/increased fees, payments and/or services.

*Example: \$200,000 value of new fees or services X
4.0% from (A) above = \$6,000*

- (C) Determine Percentage Rate: CONTRACTOR's prior year annual *Gross Billings + dollar value of new fees or services + the dollar value of increased Administrative Fee Divided by* CONTRACTOR's prior year annual *Gross Billings*.

$$\text{Example } \$5,000,000 + \$200,000 + \$6,000 = \$5,206,000 / \\ \$5,000,000 = 4.12\% \text{ Rate Increase}$$

“The total estimated CONTRACTOR Gross Billings for the current Agreement Year” (B) shall be calculated as: the CONTACTOR’S total Gross Billings as reported to the CITY for the previous Agreement Year, multiplied by one (1) plus the approved rate adjustment percentage which became effective on the most recent July 1st. If approved, the calculated additional rate adjustment percentage shall be added to the CONTRACTOR’S regularly scheduled CPI rate adjustment percentage effective the upcoming July 1st in accordance with this Agreement.

18.09. CONTRACTOR’S Payments to CITY. CONTRACTOR shall make payment to the CITY of an Administrative Fee, AB 939 Support Fee, Vehicle Impact Fee, and Other Fees as may be specified in this Section. Contractor Payments to CITY will be done on a monthly basis in the manner as specified in Section 18.03. The amount for each payment is specified in this Section 18.09. All Fees as listed in this Section 18.09 shall be paid on a monthly basis in a manner specified in Section 18.03 above.

18.09.1. Administrative Fee. The CONTRACTOR shall pay an Administrative Fee to the CITY. The Administrative Fee will be a percentage of CONTRACTOR’S Gross Billings each month, whether billed to customers by the CITY or billed directly by CONTRACTOR, under the terms of this Agreement. The Administrative Fee percentage shall be **Seven Percent (7.00%) of Gross Billings** unless otherwise adjusted by the CITY. In the event that the CITY adjusts the Administrative Fee percentage, the Maximum Service Rates will also be adjusted simultaneously and commensurately, to incorporate any such changes in the Administrative Fee percentage.

18.09.2. AB 939 Support Fee. The CONTRACTOR shall pay an AB 939 Support Fee to the CITY for the CITY’S costs to provide AB 939 Support Services. The AB 939 Support Fee will be a percentage of CONTRACTOR’S Gross Billings each month under the terms of this Agreement. The AB 939 Support Fee percentage shall be **Three Percent (3.00%) of Gross Billings** unless otherwise adjusted by the CITY. In the event that the CITY adjusts the AB 939 Support Fee percentage, the Maximum Service Rates will also be adjusted simultaneously and commensurately, to incorporate any such changes in the AB 939 Support Fee percentage.

18.09.3. Other Fees. The CONTRACTOR shall pay any other fees the City establishes. The City may set other fees, as it deems necessary. Such other fees may include, but shall not be limited to, franchise fees, landfill closure funding, and street sweeping operations. The amount, time, and method of payment and adjustment process shall be set in a manner similar to that for other fees described in this Section. In the event that the CITY establishes or modifies a new or different fee, the Maximum Service Rates will also be adjusted simultaneously and commensurately, to incorporate any such changes.

18.09.4. Resolution of Disputes Regarding Rate Adjustments. Any dispute regarding an adjustment to the maximum rates CONTRACTOR may charge, or the computation thereof, shall be decided by the City Manager. The rates in effect at the time such dispute is submitted to the City Manager shall remain in effect pending resolution of such dispute. The effective date of the adjusted maximum rate following the resolution of any such dispute, whether retroactive or prospective, shall be determined by the City Manager.

18.010. Annual Billing and Account Reconciliation.

18.09.1. CONTRACTOR Field Billing Audit. CONTRACTOR must, on a quarterly basis, physically verify all Service Recipients service levels against the service billing information provided by CONTRACTOR to the CITY. CONTRACTOR shall send a summary report to the CITY on the 15th day following the close of the prior quarter.

18.09.2. CITY Billing Audit. The CITY, on a quarterly basis, shall conduct an internal Billing Audit to verify that their customer billing information matches the results from Section 18.09.1.

18.09.3. Billing Account Information Reconciliation. Should a discrepancy be found between the CONTRACTOR's and the CITY's customer billing information in Sections 18.09.2 and 18.09.2, the customer billing data will be updated in both party's customer data bases, and discrepancies shall be credited to the CITY or credited to the CONTRACTOR on the next month's CONTRACTOR's payments to the CITY, as set forth in this Agreement.

18.10. Open Code Violation Cases. Service Recipients (SFD, MFD, or Commercial) which have open code violation cases with the CITY relating to their Service Unit related to the performance of this Agreement are ineligible to enter service of construction contracts with the CITY. This restriction applies whether the open code violation case applies to the work proposed to be performed under contract with the CITY or other violations of CITY Code or regulations. If a code violation case is open after the Agreement is signed, the CITY will withhold **ten percent (10%)** of the CONTRACTOR's compensation pursuant to this Agreement until compliance is achieved. If compliance is not achieved by the termination or expiration date of this Agreement, or within one hundred and eighty (180) days of the opening date of the case (whichever is longer) the withheld amount shall be permanently retained by the CITY. If monies are withheld from the CONTRACTOR, CONTRACTOR shall be ineligible to bid on future CITY work until the City Manager verifies that compliance has been achieved. This remedy is non-exclusive, and in addition to any other remedies in law or equity available to the CITY.

ARTICLE 19. Default of Agreement; Termination

19.01. Termination. CITY may terminate this Agreement, except as otherwise provided below in this Section, by giving CONTRACTOR thirty (30) calendar days advance written notice, to be served as provided in this Agreement, upon the happening of any one of the below-listed events. CONTRACTOR may only terminate this Agreement for cause.

19.01.1. CONTRACTOR takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

19.01.2. By order or decree of a court, CONTRACTOR is adjudged bankrupt or an order is made approving a petition filed by any of its creditors or by any of the stockholders of CONTRACTOR, seeking its reorganization or the readjustment of its indebtedness under the Federal

bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) calendar days after the entry thereof, any notice of default will be and become null, void and of no effect; unless such stayed judgment or order is reinstated in which case, such default will be deemed immediate; or

19.01.2.1. By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of CONTRACTOR, and such possession or control continues in effect for a period of sixty (60) calendar days; or

19.01.3. CONTRACTOR has defaulted, by failing or refusing to pay in a timely manner the administrative charges or other monies due CITY and such default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

19.01.4. CONTRACTOR has defaulted by allowing any final judgment for the payment of money owed to CITY to stand against it unsatisfied and such default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

19.01.5. In the event that the monies due CITY or an unsatisfied final judgment is the subject of a judicial proceeding, CONTRACTOR will not be in default if the sum of money is bonded. All bonds must be in the form acceptable to the CITY Attorney; or

19.01.6. CONTRACTOR has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Agreement or any of the rules and regulations promulgated by CITY pursuant thereto or has wrongfully failed or refused to comply with the instructions of the Agreement Administrator relative thereto and such default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so, or if by reason of the nature of such default, the same cannot reasonably be remedied within thirty (30) calendar days following receipt by CONTRACTOR of written demand from CITY to do so, CONTRACTOR fails to commence the remedy of such default within such thirty (30) calendar days following such written notice or having so commenced fails thereafter to continue with diligence the curing thereof (with CONTRACTOR having the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure such default, and such default will be cured within a reasonable period of time).

19.02. Violations. Notwithstanding the foregoing and as supplemental and additional means of termination of this Agreement under this Article, in the event that CONTRACTOR's record of performance shows that CONTRACTOR has defaulted in the performance of any of the covenants and conditions required herein excepting those for which CITY's remedy is to levy and collect a penalty as Administrative Charges under Article 14, to be kept and performed by CONTRACTOR three (3) or more times in any twenty-four (24) month period, and regardless of whether the CONTRACTOR has corrected each individual condition of default, CONTRACTOR will be deemed a "habitual violator," will be deemed to have waived the right to any further notice or grace period to correct, and all such defaults will be considered cumulative and collectively will constitute a condition of irredeemable default. CITY will thereupon issue CONTRACTOR a final warning citing the circumstances therefore, and any single default by CONTRACTOR of whatever nature, subsequent to the occurrence of the last of such cumulative defaults, will be grounds for immediate termination of the Agreement. In the event of any such subsequent default,

CITY may terminate this Agreement upon giving of written final notice to CONTRACTOR, such cancellation to be effective upon the date specified in CITY's written notice to CONTRACTOR, and all contractual fees due hereunder plus any and all charges and interest will be payable to such date, and CONTRACTOR will have no further rights hereunder. Immediately upon the specified date in such final notice CONTRACTOR must cease any further performance under this Agreement.

19.03. Effective Date of Termination. In the event of any the events specified above, and except as otherwise provided in such subsections, termination will be effective upon the date specified in CITY's written notice to CONTRACTOR and upon such date this Agreement will be deemed immediately terminated and upon such termination all liability of CITY under this Agreement to CONTRACTOR will cease, and CITY will have the draw down on the Letter of Credit and will be free to negotiate with other contractors for the operation of interim and long-term Collection Services. CONTRACTOR must reimburse CITY for all direct and indirect costs of providing any interim Collection Services as a result of CONTRACTOR's default in this Agreement.

19.04. Immediate Termination. CITY may terminate this Agreement immediately upon written notice to CONTRACTOR in the event CONTRACTOR: (a) fails to provide and maintain Letter of Credit as required by this Agreement; (b) fails to obtain or maintain insurance policies endorsements as required by this Agreement; (c) fails to provide the proof of insurance as required by this Agreement; or (d) offers or gives any gift to a CITY official or employee prohibited by CITY's Municipal Code.

19.05. Termination Cumulative. CITY's right to terminate this Agreement is cumulative to any other rights and remedies provided by law or by this Agreement.

19.06. Alternative Service. Should CONTRACTOR, for any reason, except the occurrence or existence of any of the events or conditions set forth in Section 14.06, refuse or be unable for a period of more than forty-eight (48) hours, to Collect a material portion or all of the Solid Waste which it is obligated under this Agreement to Collect, and as a result, Solid Waste should accumulate in CITY to such an extent, in such a manner, or for such a time that the City Manager, in the reasonable exercise of the City Manager's discretion, should find that such accumulation endangers or menaces the public health, safety or welfare, then CITY will have the right to contract with another Solid Waste enterprise to Collect any or all Solid Waste which CONTRACTOR is obligated to Collect pursuant to this AGREEMENT. CITY must provide twenty-four (24) hours prior written notice to CONTRACTOR during the period of such emergency, before contracting with another Solid Waste enterprise to Collect any or all Solid Waste which CONTRACTOR would otherwise collect pursuant to this Agreement for the duration of period during which CONTRACTOR is unable to provide such services. In such event, CONTRACTOR must undertake commercially reasonable efforts to identify sources from which such substitute Solid Waste services are immediately available, and must reimburse CITY for all of its expenses for such substitute services during the period in which CONTRACTOR is unable to provide Collection services required by this Agreement.

19.07. Survival of Certain Contractor Obligation. Notwithstanding the termination of this Agreement by CONTRACTOR or CITY, CONTRACTOR's obligation to indemnify, defend, and hold CITY and CITY Indemnitees harmless as provided in ARTICLE 17 shall survive termination for five (5) years from the date of termination. Notwithstanding the termination of this Agreement by CONTRACTOR or CITY, such act shall not automatically invalidate or cancel any insurance policy, letter of credit, performance bond or similar instruments provided by CONTRACTOR under this Agreement and such policies, letters of credit, performance bonds and other instruments shall remain in full force and effect for one full year after

termination.

19.08. CONTRACTOR's Remedies; Claims. CONTRACTOR shall be entitled to all available remedies in law or equity for CITY's breach of this Agreement; provided, however, CONTRACTOR shall not file or otherwise commence any action against CITY, in law or equity.

19.09. Actions for Damages. As a prerequisite to the filing and maintenance of any action for damages by CONTRACTOR against CITY arising out of this Agreement, CONTRACTOR shall present a claim to CITY, as required by Government Code Section 910 et seq., within 30 days of the date of the occurrence giving rise to the claim for damages. CONTRACTOR shall have no right to assert a claim for damages related to CITY's failure to approve or delay in considering a rate adjustment. In such cases, CONTRACTOR may file a petition for writ of mandate. CITY retains full rights to seek damages and/or injunctive relief.

ARTICLE 20. Modifications to the Agreement

20.01. City-Directed Change. CITY has the power to make changes in this Agreement as the result of changes in law, changes in the City of Atwater Municipal Code, or both, to impose new rules and regulations on CONTRACTOR under this Agreement relative to the scope and methods of providing Collection Services as may from time-to-time be necessary and desirable for the public welfare. CITY will give the CONTRACTOR notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing Collection Services as referenced herein will be liberally construed to include procedures, operations and obligations, financial or otherwise, of CONTRACTOR. When such modifications are made to this Agreement, CITY and CONTRACTOR will negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of CONTRACTOR due to any modification in the Agreement under this Article. CITY and CONTRACTOR will not unreasonably withhold agreement to such compensation adjustment.

20.01.1. Change in Law. CITY and CONTRACTOR understand and agree that the California Legislature has the authority to make comprehensive changes in Solid Waste Collection legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. CONTRACTOR agrees that the terms and provisions of the City of Atwater Municipal Code, as it now exists or as it may be amended in the future, will apply to all of the provisions of this Agreement and the Service Recipients of CONTRACTOR located within the Service Area. In the event any future change in federal law or regulations, state or local law of regulation, or the City Code materially alters the obligations of CONTRACTOR, then the affected service rates, as established in **Exhibit 1** of this Agreement will be adjusted in accordance with Section 18.06. Nothing contained in this Agreement will require any party to perform any act or function contrary to law. CITY and CONTRACTOR agree to enter into good faith negotiations regarding modifications to this Agreement which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Agreement, CITY and CONTRACTOR will negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of CONTRACTOR due to any change in law or modification in the Agreement under this Article. CITY and CONTRACTOR will not unreasonably withhold agreement to such compensation adjustment.

Article 21 Legal Representation

21.01. Acknowledgement. It is acknowledged that each Party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that an Agreement will be interpreted strictly against the party preparing the same will not apply due to the joint contributions of both Parties.

ARTICLE 22. Financial Interest

22.01. Representation. CONTRACTOR warrants and represents that no elected official, officer, agent, or employee of CITY has a financial interest, directly or indirectly, in this Agreement or the compensation to be paid under it and, further, that no CITY employee who acts in the CITY as a “purchasing agent” as defined in the CITY’s Municipal Code, nor any elected or appointed officer of CITY, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material financial interest in CONTRACTOR or this Agreement under Applicable Law.

ARTICLE 23. Contractor's Personnel

23.01. Personnel Requirements. CONTRACTOR must employ and assign qualified personnel to perform all services required under this Agreement. CONTRACTOR is responsible for ensuring that its employees comply with all Applicable Laws related to their employment and position.

23.01.1. CITY may request the transfer of any employee of CONTRACTOR who materially violates any provision of this Agreement, or who is wanton, negligent, or discourteous in the performance of his or her duties under this Agreement.

23.01.2. CONTRACTOR’s field operations personnel are required to wear a clean uniform shirt bearing CONTRACTOR’s name. CONTRACTOR’s employees, who normally come into direct contact with the public, including drivers, must bear some means of individual photographic identification such as a name tag or identification card.

23.01.3. Each driver of a Collection vehicle must at all times carry a valid California driver's license and all other required licenses for the type of vehicle that is being operated.

23.01.4. Each driver of a Collection vehicle must at all times comply with all applicable state and federal laws, regulations and requirements.

23.01.5. CONTRACTOR’s employees, officers, and agents may not identify themselves or in any way represent themselves as being employees or officials of CITY.

23.01.6. CONTRACTOR's name and the Customer Service telephone number must be properly displayed on all Collection vehicles.

23.01.7. CONTRACTOR warrants that it has complied and shall continue to comply with the provisions of Labor Code section 1072 as a “bidder” defined in that section. CONTRACTOR

acknowledges that it received all information from CITY and its prior service provider necessary to comply with such section.

ARTICLE 24. Exempt Waste

24.01. CONTRACTOR is not required to Collect or dispose of Exempt Waste, but may offer such services. All such Collection and disposal of Exempt Waste is not regulated under this Agreement, but if provided by CONTRACTOR must be in strict compliance with all Applicable Laws.

ARTICLE 25. Independent Contractor

25.01. In the performance of services pursuant to this Agreement, CONTRACTOR is an independent contractor and not an officer, agent, servant or employee of CITY. CONTRACTOR will have exclusive control of the details of the services and work performed and over all persons performing such services and work. CONTRACTOR is solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors or subcontractors will obtain any right to retirement benefits, Workers Compensation benefits, or any other benefits which accrued to CITY employees and CONTRACTOR expressly waives any claim to such benefits.

25.02. Subcontractors. CONTRACTOR will require all subcontractors performing work in the CITY to enter into an agreement containing the provisions set forth in Section 25.01, in which agreement the subcontractor agrees that CONTRACTOR and subcontractor are independent contractors and have no other agency relationship with CITY.

ARTICLE 26. Laws to Govern

26.01. The law of the State of California governs the rights, obligations, duties, and liabilities of CITY and CONTRACTOR under this Agreement and govern the interpretation of this Agreement.

ARTICLE 27. Consent to Jurisdiction

27.01. The Parties agree that any litigation between CITY and CONTRACTOR concerning or arising out of this Agreement must be filed and maintained exclusively in the Superior Courts of Merced County, State of California, or in the United States District Court for the Eastern District of California to the fullest extent permissible by law. CONTRACTOR hereby waives any right to remove any such action from Merced County as is otherwise allowed by California Code of Civil Procedure section 394. Each Party consents to service of process in any manner authorized by California law.

ARTICLE 28. Assignment

28.01. No assignment of this Agreement or any right occurring under this Agreement may be made in whole or in part by CONTRACTOR without the express prior written consent of CITY. CITY will have full discretion to approve or deny, with or without cause, any proposed or actual assignment by CONTRACTOR. Any assignment of this Agreement made by CONTRACTOR without the express written consent of CITY will be null and void and will be grounds for CITY to declare a default of this Agreement and immediately terminate this Agreement by giving written notice to CONTRACTOR, and upon the date set forth in such notice this Agreement will be deemed terminated, and upon such termination all liability of

CITY under this Agreement to CONTRACTOR will cease, and CITY will have the right to call the Performance Bond provided pursuant to Article 15 and will be free to negotiate with other contractors, for the services that are the subject of this Agreement. In the event of any assignment approved by CITY, the assignee must fully assume all the liabilities of CONTRACTOR by way of an assignment and assumption agreement. Notwithstanding the above, an assignment to an Affiliate of CONTRACTOR may be undertaken upon notice to CITY, but without the requirement for its approval.

28.02. In the event that the CITY agrees to assignment of this Agreement to a qualified service provider, CONTRACTOR must pay the City its costs incurred for staff time, consultant fees, and attorneys' fees incurred to evaluate the suitability of any proposed assignee, and to review, draft, and finalize any documentation required to approve and implement any assignment. To be considered, assignment applications must include an assignment fee in the amount of **five hundred thousand dollars (\$500,000)** to pay for any and all costs incurred, including the cost of staff time and consultant fees, related to the assignment application and CITY's analysis of the assignment application. Any amount remaining in the assignment fee upon completion of CITY's assignment analysis, after deduction of all costs incurred by the CITY related to the assignment, will be credited to the CONTRACTOR. CONTRACTOR payments for assignment costs are in addition to and not in lieu of any other fees, charges, or amounts CONTRACTOR is required to pay the CITY pursuant to the Agreement.

28.03. CONTRACTOR shall furnish the CITY with audited financial statements of the proposed assignee's operations for the immediately preceding five (5) operating years.

28.04. CONTRACTOR must furnish the CITY with satisfactory proof that the proposed assignee has the demonstrated technical capability to perform all franchised services and any other information required by CITY to ensure the proposed assignee can fulfill the terms of the Agreement in a timely, safe, and effective manner.

28.05. The use of a subcontractor to perform services under this Agreement will not constitute delegation of CONTRACTOR's duties provided that CONTRACTOR has received prior written authorization from the Agreement Administrator to subcontract such services and the Agreement Administrator has approved a subcontractor who will perform such services. CONTRACTOR will be responsible for directing the work of CONTRACTOR's subcontractors and any compensation due or payable to CONTRACTOR's subcontractor will be the sole responsibility of CONTRACTOR. The Agreement Administrator will have the right to require the removal of any approved subcontractor for reasonable cause. The subcontractors listed in **Exhibit 5**, if any, are hereby approved by CITY.

ARTICLE 29. Compliance with Laws

29.01. In the performance of this Agreement, CITY and CONTRACTOR must comply with all Applicable Laws, including without limitation the Atwater Municipal Code.

29.02. CITY must provide written notice to CONTRACTOR of any planned amendment of the Atwater Municipal Code that would substantially affect the performance of CONTRACTOR's services pursuant to this Agreement. Such notice must be provided at least thirty (30) calendar days prior to the City Council's approval of such an amendment.

ARTICLE 30. Permits and Licenses

30.01. CONTRACTOR must obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this Agreement. CONTRACTOR must provide proof of such permits, licenses or approvals and must demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the Agreement Administrator.

ARTICLE 31. Ownership of Written Materials

31.01. CONTRACTOR hereby grants CITY a non-exclusive license as to all reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by CONTRACTOR at the request of CITY or as required under this Agreement, without limitation or restrictions on the use of such materials by CITY. CONTRACTOR may not use such materials that specifically reference CITY for other purposes without the prior written consent of the Agreement Administrator. This Article 31 does not apply to ideas or concepts described in such materials and does not apply to the format of such materials.

ARTICLE 32. Waiver

32.01. Waiver by CITY or CONTRACTOR of any breach for violation of any term covenant or condition of this Agreement will not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other monies which may become due from CONTRACTOR to CITY will not be deemed to be a waiver by CITY of any breach for violation of any term, covenant or condition of this Agreement.

ARTICLE 33. Restrictions on Gifts to Public Officials

33.01. CONTRACTOR represents that CONTRACTOR is familiar with CITY's which guides CITY's elected officials in limiting the acceptance of gifts or favors where it might reasonably be inferred that the gifts or favors were intended or expected to influence an official's objectivity as an advisor or decision maker, and agrees that it will not offer any CITY officer or designated employee any gifts prohibited by the CITY.

ARTICLE 34. Point of Contact

34.01. The day-to-day dealings between CONTRACTOR and CITY will be between CONTRACTOR Representative and the Agreement Administrator.

ARTICLE 35. Notices

35.01. Except as provided in this Agreement, whenever either Party desires to give notice to the other, it must be given by written notice addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this Section. For the present, the Parties designate the following as the respective persons and places for giving of notice:

As to the CITY:

City of Atwater Public Works
Attn: Justin Vinson
470 Aviator Dr
Atwater, CA 95301
209-357-6370

As to the CONTRACTOR:

Mid Valley Disposal LLC
Attn: Joseph Kalpakoff
15300 W Jensen Ave
Kerman, CA 93630
559-237-9425

35.02. Notices will be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made by written notice. Facsimile or e-mail transmission is acceptable notice, effective when received, however, facsimile transmissions received (i.e. printed) or mail transmissions received after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of items that are transmitted by facsimile equipment or by email must also be mailed as required herein.

35.03. Notice by CITY to CONTRACTOR of a Collection or other Service Recipient problem or complaint may be given to CONTRACTOR orally by telephone at CONTRACTOR's local office with confirmation sent to CONTRACTOR through the Customer Service System by the end of the Work Day.

ARTICLE 36. Transition to Next Contractor

36.01. In the event CONTRACTOR is not awarded a new Agreement to continue to provide Collection Services following the expiration or early termination of this Agreement, CONTRACTOR will cooperate fully with CITY and any subsequent contractors to assure a smooth transition of services described in this Agreement. Such cooperation will include but not be limited to transfer of computer data, files and tapes; providing routing information, route maps, vehicle fleet information, and a current list of Service Recipients (complete with addresses for Collection Services and billing); providing a complete inventory of all Carts, Bins and Roll-Off Containers; providing adequate labor and equipment to complete performance of all Collection Services required under this Agreement; taking reasonable actions necessary to transfer ownership of Carts, Bins, and Roll-Off Containers, as appropriate, to CITY; including transporting such containers to a location designated by the Agreement Administrator; coordinating Collection of materials set out in new containers if new containers are provided for a subsequent Agreement; and providing other reports and data required by this Agreement.

ARTICLE 37. Contractor's Records

37.01. CONTRACTOR must maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents described in Article 12 for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

37.02. CONTRACTOR must maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

37.03. Any records or documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by the Agreement Administrator, the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Unless an alternative site is mutually agreed upon, the records will be available at CONTRACTOR's address indicated for receipt of notices in this Agreement.

37.03.1. CONTRACTOR acknowledges that CITY is legally obligated to comply with the California Public Records Act ("CPRA"). CITY acknowledges that CONTRACTOR may consider certain records, reports, or information contained therein, ("Records") which CONTRACTOR is required to provide to CITY under this AGREEMENT, to be of a proprietary or confidential nature. In such instances, CONTRACTOR will inform CITY in writing of which records are considered propriety or confidential and shall identify the statutory exceptions to disclosure provided under the CPRA that legally permit non-disclosure of the Records. At such time as CITY receives a request for records under the CPRA or the Federal Freedom of Information Act ("FOIA") or a subpoena or other court order requesting disclosure of the Records, CITY will notify CONTRACTOR of the request, subpoena or order and of CITY's obligation and intent to provide a response within ten (10) calendar days. CONTRACTOR shall within five (5) calendar days either: (i) consent in writing to the disclosure of the Records; (ii) demand that CITY assert the CONTRACTOR identified exceptions to disclosure under the CPRA and agree in writing to indemnify, defend and hold CITY harmless from any litigation, orders or judgments arising from the non-disclosure; or (iii) seek and obtain, at CONTRACTOR's sole cost and expense, the order of a court of competent jurisdiction staying or enjoining the disclosure of the Records. If CONTRACTOR fails to timely respond, then CITY may proceed to disclose the Records in which event CONTRACTOR agrees that it waives and releases CITY of any liability for the disclosure of the Records.

37.04. Where CITY has reason to believe that such Records or documents may be lost or discarded due to the dissolution, disbandment or termination of CONTRACTOR's business, CITY may, by written request or demand of any of the above named officers, require that custody of the Records be given to CITY and that the Records and documents be maintained in City Hall. Access to such Records and documents will be granted to any party authorized by CONTRACTOR, CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest.

ARTICLE 38. Entire Agreement

38.01. This Agreement and the attached Exhibits constitute the entire Agreement and understanding between the Parties, and the Agreement will not be considered modified, altered, changed, or amended in any respect unless in writing and signed by the Parties.

ARTICLE 39. Severability

39.01. If any provision of this Agreement or the application of it to any person or situation is to any extent held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement and the application of such provisions to persons or situations other than those as to which it is

held invalid or unenforceable, will not be affected, will continue in full force and effect, and will be enforced to the fullest extent permitted by law.

ARTICLE 40. Right to Require Performance

40.01. The failure of CITY at any time to require performance by CONTRACTOR of any provision of this Agreement will in no way affect the right of CITY thereafter to enforce same. Nor will waiver by CITY of any breach of any provision of this Agreement be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

ARTICLE 41. All Prior Agreements Superseded

41.01. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement will be predicated upon any prior representations or agreements, whether oral or written.

ARTICLE 42. Headings

42.01. Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

ARTICLE 43. Exhibits

43.01. Each Exhibit referred to in this Agreement forms an essential part of this Agreement. Each such Exhibit is a part of this Agreement and each is incorporated by this reference.

ARTICLE 44. Attorney's Fees

44.01. In the event that litigation is brought by a party in connection with this Agreement, the prevailing party will be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies under this Agreement or the enforcement of any of the terms, conditions, or provisions of this Agreement.

ARTICLE 45. Effective Date

45.01. This Agreement will become effective at such time as it is properly executed by CITY and CONTRACTOR and CONTRACTOR will begin Services under this Agreement as of July 1, 2023.

ARTICLE 46. Guarantee of CONTRACTOR's Performance

46.01. [REDACTED], a [REDACTED] corporation, shall guaranty CONTRACTOR's performance of this Agreement, including any insurance obligation required under the Agreement that CONTRACTOR fulfills by means of self-insured retention. The guaranty, in substantially the form attached as **Exhibit 8**, will be provided within ten (10) business days of the effective date of this Agreement.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement on the respective date(s) below each signature.

CITY OF ATWATER
A General Law City

Mid Valley Disposal LLC

By: _____
Mike Nelson
City Mayor

By: _____
Joseph Kalpakoff
President

ATTEST: _____
Kory J. Billings
City Clerk

By: _____
Jonathan Kalpakoff
Vice President

APPROVED AS TO FORM

By: _____
Joe Heisdorf
CFO

By: _____
Frank Splendorio
City Attorney

EXHIBIT 1
Maximum Service Rates

EXHIBIT 2
City Sponsored Events

1. Spring Clean Up
2. Fall Clean Up
3. Fourth of July Festival
4. [NAME]
5. [NAME]
6. [NAME]
7. [NAME]
8. [NAME]
9. [NAME]
10. [NAME]
11. [NAME]
12. [NAME]
13. [NAME]
14. [NAME]
15. [NAME]

EXHIBIT 3
List of City Properties

Building Name	Address
PD	750 Bellevue Rd
Corp Yard	470 Aviator Dr
Community Center	760 E Bellevue Rd
City Administration Office	1160 5 th Street
Fire Station 41	699 Broadway Ave
Fire Station 42	2006 Avenue Two
Wastewater Treatment Plant	6235 S Bert Crane
City Hall (Future)	1350 Broadway Ave
Youth Center	In Veterans Park
Chamber of Commerce	1120 Third St
Bloss Mansion	Second Street and Broadway Ave
Industry Sewer Lift Station	Industry
Prison Sewer Lift Station	Federal Way
Heller Park	Herman Street and Heller Ave
Orchard Park	Nonpareil Dr and Mission
Manuel Barios Park	Lakeview Dr and Shoreline Dr
E.L Walters Park	Linden St and Oak Ave
Ralston Park	Third St and Grove Ave
Old Water Tower Park	Elm St and Winton Way
Memorial Park	Packers St and Cedar Ave
Osborn Park	E Bellevue Rd
Veterans Park	Buhach Rd and E Bellevue Rd
Joan Faul Park	Bridgewater St and Arrowwood Lane
Albani Park	E Grove Ave
Neves Park	Miramonte Dr and Faxon Dr
Bloss Park	Second St and Cedar Ave

EXHIBIT 4

Cart and Bin Specifications

1. Cart Specifications.

- 1.1. Carts must be new at the start of this Agreement.
- 1.2. Carts must be designed and manufactured with heavy plastic in accordance with standard industry specifications approved by CITY. Samples must be approved by Agreement Administrator prior to purchase and distribution.
- 1.3. Carts must be constructed with material that resists deterioration from ultraviolet radiation, and be incapable of penetration by household pets or small wildlife when lids are fully closed.
- 1.4. Carts must include wheels and handles that accommodate ease of movement by able-bodied persons.
- 1.5. Carts must include lids that continuously overlap the Cart body so as to prevent the intrusion of rainwater and minimize odors. The lids would be of a design and weight so as to prevent the Cart body from tilting backward when flipping the lid open fully and not stop when vertical.
- 1.6. Carts must be capable of being lifted into the collection vehicle without damage or distortion under normal usage.
- 1.7. Carts must be labeled using hot stamp or labels, and at a minimum will include CONTRACTOR's name and graphics indicating what materials may and may not be placed in each Cart type.

2. Bin Specifications.

- 2.1. Bins must be new at the start of this Agreement
- 2.2. Bins must be constructed of heavy metal or heavy plastic, and must be watertight and well painted.
- 2.3. Wheels, forklift slots, and other appurtenances, which are designed for movement, loading, or unloading of the container, must be maintained in good repair.
- 2.4. Locking bins can be provided to customers at an additional charge.
- 2.5. Bins must have the name and phone number of CONTRACTOR on the exterior so as to be visible when the Bin is placed for use.

- 2.6. Each Bin must be labeled with a listing of materials that may and may not be placed in a particular Bin type, and each Bin must include a conspicuous warning: "Not to be used for the disposal of hazardous, electronic, or universal waste."
- 2.7. Bin lids must be constructed of metal or heavy plastic, so as to minimize the intrusion of rainwater and minimize odors.
- 2.8. Bins must be capable of being lifted into the collection vehicle without damage under normal usage.

EXHIBIT 5
List of Approved Subcontractors

EXHIBIT 6
Sustainability Plan

EXHIBIT 7
Diversion Plan

EXHIBIT 8
Corporate Guaranty

EXHIBIT 9

Detailed Rate Review Methodology

1. Detailed Rate Review Methodology

In the event that a Detailed Rate Review is requested by CITY, CITY shall notify CONTRACTOR of such request on or before the September 1 preceding the July 1 for which Service Recipient Rates are to be adjusted. CONTRACTOR shall submit its rate application on or before November 1. CITY shall complete its review (including any required CITY Council approval) and Service Recipient Rates shall be finalized by May 31.

The Detailed Rate Review will be based on CONTRACTOR's rate application, which shall contain financial statements (together with a management representation letter as to such statements) for services provided under this Agreement for the most recently completed fiscal year preceding the given November 1 rate application due date.

As part of its rate application, CONTRACTOR shall assemble and submit its forecasts of: Service Recipient Rates, revenue given such rates, annual cost of operations, pass-through costs, and profit, for the year for which Service Recipient Rates are being adjusted, together with the method used to produce such forecasts, and such information as is necessary to support the assumptions made with regard to such forecasts (such as projected population growth or migration, service or operational changes, projected changes in tonnages, known or reasonably expected cost increases, etc.). CONTRACTOR shall provide all financial information and supporting documentation required by this review in a format acceptable to CITY (or CITY's designated consultant) in a timely manner. CONTRACTOR shall not require CITY (or CITY's designated consultant) to review any such documents at CONTRACTOR's worksite, but shall instead allow for all required information and supporting documentation to be provided to CITY (or its designated consultant) via physical mail, e-mail, or any other delivery method approved by CITY.

Service Recipient Rates shall be adjusted as part of this Detailed Rate Review so as to generate sufficient Gross Revenues to CONTRACTOR to cover the sum of the forecasted annual cost of operations, profit on such forecasted annual cost of operations, and forecasted Pass-Through Costs, reviewed or calculated as set forth below.

- a. Forecasted annual cost of operations. The forecasted annual cost of operations shall consist of the sum of:
 - Forecasted labor-related costs
 - Forecasted vehicle-related costs
 - Forecasted other costs
 - Forecasted lease expense

Each of these sums shall be reviewed based on the following:

- i. **Determination of actual costs.** CONTRACTOR's financial statements will be reviewed to determine CONTRACTOR's costs for each of the foregoing categories during the

EXHIBIT 9

Detailed Rate Review Methodology

fiscal year involved. CITY will use the financial statements to determine that costs have actually been incurred and have been assigned to the appropriate category.

- ii. **Adjustment of actual costs.** CITY may adjust the actual costs in two ways: (1) to exclude any non-allowable costs, set out below, and (2) to exclude and/or reduce any costs that were not reasonably and necessarily incurred in the performance of the services or other obligations of CONTRACTOR under this Agreement. All costs incurred by CONTRACTOR in the performance of this Agreement not excluded under the preceding sentence shall be deemed allowable costs. The “other” cost category includes all allowable costs besides labor-related, vehicle-related and lease costs, including without limitation processing and tip fees.

Costs that are deemed non-allowable consist of the following:

- i. Corporate and technical services costs in excess of four percent (4%) of Gross Revenues. Corporate and technical services costs consist of the following corporate headquarters costs allocated to CONTRACTOR by CONTRACTOR's parent: corporate administration, environmental compliance, sustainability, corporate finance, human resources, and information technology.
- ii. Promotional, entertainment, and travel expenses in excess of \$5,000 per year, unless authorized in advance by CITY.
- iii. Fines or penalties of any nature.
- iv. Administrative Charges assessed under Section 14.04 of this Agreement.
- v. Federal or state income taxes.
- vi. Charitable or political donations.
- vii. Attorneys' fees and other expenses incurred by CONTRACTOR in any court proceeding in which CITY and CONTRACTOR are adverse parties, unless CONTRACTOR is the prevailing party in said proceedings.
- viii. Attorneys' fees and other expenses incurred by CONTRACTOR in any court proceeding in which CONTRACTOR's own negligence, violation of law or regulation, or other wrongdoing, is in issue and occasions part of the attorneys' fees and expenses claimed, provided, however, such attorneys' fees will be allowed to the extent CONTRACTOR can demonstrate they were reasonable and necessary and a cost of doing business, and were not the result of any intentional or willful misconduct by CONTRACTOR or its employees; and attorneys' fees and expenses incurred by CONTRACTOR in a court proceeding in which the legal theory or statute providing a basis of liability against CONTRACTOR also provides for separate strict liability for CITY arising from the action of its citizens or ratepayers (such as in a CERCLA lawsuit).
- ix. Payments to related party entities for products or services (other than lease expense, calculated as provided below), in excess of the fair market value for those products or services. For purposes of this Agreement, related party expenses are those resulting from transactions between CONTRACTOR and another company (companies) that has (have) common ownership or management control.

EXHIBIT 9

Detailed Rate Review Methodology

- b. Forecasted Costs. Allowed costs of operations for CONTRACTOR's prior fiscal year will be used as the starting point to evaluate the forecasted cost for the year for which Service Recipient Rates are being adjusted. The review will evaluate forecasted labor-related costs, vehicle-related costs, other costs, and lease expense (described in additional detail below).
- c. Labor-Related Costs. Labor-related costs will be forecasted based on projected head count and the increases provided for in CONTRACTOR's collective bargaining agreements.
- d. Lease Expense. Lease expense will be calculated using the actual purchase price of the asset, the number of years in the useful life of the asset, and the prime interest rate on the date of acquisition, assuming full amortization over the useful life of the asset. The result is the forecasted lease expense for the asset for the rate year. Useful lives are: office equipment 5 years; vehicles 10 years; Carts/Bins/Roll-off Containers 10 years; buildings and leasehold improvements 20 years.
- e. Corporate Costs. The following corporate headquarters costs allocated to CONTRACTOR by CONTRACTOR's parent shall be allowable costs: insurance, workers' compensation, pension costs, health and welfare, and regional charges. Such costs are not included in the corporate and technical services category referred to in paragraph (i) of non-allowable costs above.
- f. Pass-Through Costs. Pass-through costs will be included as allowable costs, but will not be subject to the calculation of profit as set forth below. Pass-through costs comprise:
 - i. All costs for disposal (i.e., landfill), recycling and organic and processing tipping fees; and
 - ii. All payments to CITY described in Article 18 of this Agreement.

Forecasted pass-through costs shall reflect scheduled increases in amounts payable to CITY.

- g. Profit. Profit or return to CONTRACTOR shall be determined by CITY applying an operating ratio so as to provide for an adequate rate of return to CONTRACTOR. For purposes of this Agreement, the CITY-determined operating ratio shall be ninety percent (90%). For purposes of determining the amount of profit, this operating ratio shall be applied to CONTRACTOR's total forecasted allowable expenses, which shall not include expenses that are identified as non-allowable expenses or as pass-through expenses (as described above). The formula for applying the operating ratio is as follows:
operating ratio = (allowable expenses) / (allowable expenses + profit).

Additional Diversion Expense. Without limiting the foregoing, if CONTRACTOR undertakes activities to increase its overall diversion level that are not specifically required to be performed by CONTRACTOR under the strict terms of this Agreement, and such activities are reasonably necessary in order to achieve the diversion requirement set forth in Article 8, then for purposes of the Detailed Rate Review such activities shall be deemed to be undertaken in the performance of the Agreement, and the costs of such activities shall be deemed to be allowable expenses.

EXHIBIT 10
Recyclable Materials Specifications

Recyclable Materials must be dry, loose (not bagged), unshredded, empty, and include ONLY the following:

<p>Aluminum cans</p> <p>PET bottles with the symbol # 1 (with screw tops only)</p> <p>HDPE plastic bottles with the symbol #2 (milk, water bottles detergent, and shampoo bottles, etc.)</p> <p>PP plastic bottles and tubs with symbol # 5 – empty</p> <p>Steel and tin cans</p> <p>Glass food and beverage containers – brown, clear, or green – empty*</p>	<p>Newspaper</p> <p>Mail</p> <p>Uncoated paperboard (ex. cereal boxes; food and snack boxes)</p> <p>Uncoated printing, writing and office paper</p> <p>Old corrugated containers/cardboard (uncoated)</p> <p>Magazines, glossy inserts and pamphlets</p>
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Non-Recyclable Materials include, but are not limited to the following:

<p>Plastic bags and bagged materials (even if containing Recyclables)</p> <p>Porcelain and ceramics</p> <p>Light bulbs</p> <p>Soiled paper, including paper plates, cups and pizza boxes</p> <p>Expanded polystyrene</p> <p>Glass and metal cookware/bakeware</p>	<p>Microwavable trays</p> <p>Mirrors, window or auto glass</p> <p>Coated cardboard</p> <p>Plastics not listed above including but not limited to those with symbols #3*, #4*, #6*, #7* and unnumbered plastics, including utensils</p> <p>Coat hangers</p> <p>Household appliances and electronics</p>
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EXHIBIT 10
Recyclable Materials Specifications

Recyclable Materials must be dry, loose (not bagged), unshredded, empty, and include ONLY the following:

Hoses, cords, wires	Yard waste, construction debris, and wood
Flexible plastic or film packaging and multi-laminated materials	Needles, syringes, IV bags or other medical supplies
Food waste and liquids, containers containing such items	Textiles, cloth, or any fabric (bedding, pillows, sheets, etc.)
Exempt Waste or containers which contain Exempt Waste	Napkins, paper towels, tissue, paper plates, and paper cups
Any paper Recyclable materials or pieces of paper Recyclables less than 4" in size in any dimension	Propane tanks, batteries
Cartons*	Aseptic Containers*

*These materials may be deemed Recyclable Materials upon written consent of CONTRACTOR, which may be withdrawn upon notice to CITY if there is no commercially viable market.



**CITY COUNCIL
OF THE
CITY OF ATWATER**

RESOLUTION NO. 3382-23

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF ATWATER APPROVING COLLECTION
SERVICES AGREEMENT AND FRANCHISE TO
MID VALLEY DISPOSAL FOR THE PROVISION
OF RESIDENTIAL AND COMMERCIAL GARBAGE,
RECYCLABLE MATERIAL AND ORGANIC WASTE
COLLECTION SERVICES**

WHEREAS, the current Solid Waste Collection Agreement between the City of Atwater and the current contractor will terminate on June 30, 2023; and

WHEREAS, the City of Atwater released a Request for Proposals (RFP) for Residential and Commercial Garbage, Recyclable Material and Organic Waste Collection Services on September 7, 2022; and

WHEREAS, the City of Atwater received proposals from four companies of which all four were considered responsive to the RFP; and

WHEREAS, the four companies were invited to interviews that took place on December 6, 2022 and December 8, 2022; and

WHEREAS, the four companies were given follow up questions and responses were received January 6, 2023; and

WHEREAS, the City of Atwater Interview Panel unanimously ranked Mid Valley Disposal the top-ranked company based on their proposal, interview, and follow up responses; and

WHEREAS, on March 13, 2023 the City Council of the City of Atwater considered the recommendation of Staff and adopted Resolution No. 3374-23 directing City of Atwater Staff to begin negotiations with Mid Valley Disposal to finalize a Franchise Agreement for the Residential and Commercial Garbage, Recyclable Material and Organic Waste Collection Service Contract; and

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

1. The above recitals are true and correct.
2. An exclusive Collection Service Agreement and Franchise is proposed to be established within the City pursuant to the Atwater Municipal Code.
3. The City Council hereby awards a Franchise to Mid Valley Disposal and approves the proposed Collection Services Agreement and Franchise for the provisions of Residential and Commercial Garbage, Recyclable Material, and Organic Waste Collection Services in the form presented herein.
4. They City hereby authorizes the Mayor to execute the Agreement on behalf of the City, substantially in the form presented herein.

The foregoing resolution is hereby adopted the 27th day of March 2023.

AYES:
NOES:
ABSENT:

APPROVED:

MIKE NELSON, MAYOR

ATTEST:

KORY J. BILLINGS, CITY CLERK



OFFICE OF THE CITY COUNCIL
1160 FIFTH STREET
ATWATER, CA 95301
(209) 357-6300

March 27, 2023

The Honorable Reginald Jones-Sawyer
Chair, Assembly Public Safety Committee
Legislative Office Building
1020 N Street, Room 111
Sacramento, CA 95814

**RE: AB 1708 (Muratsuchi) Theft.
Notice of SUPPORT (As Amended 3/9/23)**

Dear Assembly Member Jones-Sawyer,

The City of Atwater is pleased to support AB 1708 (Muratsuchi). This measure would increase accountability for repeat theft offenders and offer pathways for pre-plea diversion programming. If passed, the bill would send the issue to the voters for approval at the next statewide general election.

This strategy is one of many supported by cities to address crime and its underlying causes. We remain committed to improving California's carceral systems, interrupting and ending cycles of recidivism, and building a community-based system of care that appropriately meets the needs of all community members.

Proposition 47 of 2014 made promises of safe neighborhoods, but the unintended consequences that followed have provided anything but. According to a February 2023 study conducted by the Public Policy Institute of California, a strong majority of Californians worry they or a family member will be a victim of a crime (21% very, 44% somewhat). This is the sentiment being felt by residents of cities throughout the state.

AB 1708 will provide the City of Atwater a tool to protect our major retailers from the detrimental effects of both organized retail theft and retail theft repeat offenders.

Our communities deserve better, and cities are more than ready to find solutions that fix Proposition 47.

The City of Atwater is keenly interested in exploring additional strategies to address the impacts of crime in our communities. This includes resources to improve community safety through prevention and early intervention programming, as well as improved re-entry service provision for our formerly incarcerated community members. While these provisions have historically been the responsibility of state and county departments, cities are interested in increased collaboration to meet these urgent needs.

For these reasons, the City of Atwater requests your support on AB 1708.

Sincerely,

Mike Nelson
Mayor

MN/sd

cc: The Honorable Al Muratsuchi (via email:
assemblymember.muratsuchi@assembly.ca.gov)
Assemblywoman Soria (via email: Gilbert.Felix@asm.ca.gov)
Senator Caballero (via e-mail: Jennifer.Hidalgo@sen.ca.gov)
Cal Cities Regional Public Affairs Manager (via email: squalls@calcities.org)
League of California Cities (via email: cityletters@calcities.org)



GOVERNING BOARD MEETING SUMMARY

March 16, 2023

Directors Present: Chair Matt Serratto, Vice Chair-Director Josh Pedrozo, Director Rodrigo Espinoza, Director April Hogue, Director Paul Llanez, Director Daron McDaniel, Director Jose Moran, Director Lloyd Pareira, Director Scott Silveira, Director Pat Nagy, Director Mike Nelson

Directors Absent: None

ACTION ITEMS

The MCAG Governing Board:

- Adopted the 2023 One Voice policy platform to include priorities in the following categories: transportation, community facilities, public safety, water and homelessness. The One Voice trip to Washington D.C. is scheduled for May 9-12, 2023.
- Adopted an amendment to the 2022 Regional Transportation Plan and the 2023 Federal Transportation Improvement Program which added several new projects in order to be eligible for federal funding.
- Adopted the Regional Early Action Planning Grant Program (REAP) 2.0 scoring criteria which will be used to determine how REAP 2.0 grant program funds will be spent. 75% (\$2.7m) will be made available for a Regional Competitive Grant program, and 25% (\$905k) will be made available for a local suballocation grant program. The criteria prioritizes the following:
 - Accelerate infill development
 - Affirmatively further fair housing
 - Reduce vehicle miles traveled (VMT)

The Local Suballocation Grant Program formula utilizes a base allocation of \$100,000 and an additional allocation based on the share of each jurisdiction’s Sixth Cycle RHNA.

Jurisdiction	Sixth Cycle RHNA Allocation	Share of RHNA	Base Allocation	Allocation based off share of RHNA	Total Formula
City of Dos Palos	261	1%	\$100,000	\$2,370	\$102,370
City of Gustine	346	2%	\$100,000	\$3,142	\$103,142
City of Livingston	1,097	5%	\$100,000	\$9,961	\$109,961
City of Atwater	3,017	13%	\$100,000	\$27,394	\$127,394

City of Los Banos	3,132	14%	\$100,000	\$28,438	\$128,438
City of Merced	10,517	46%	\$100,000	\$95,493	\$195,493
County of Merced	4,250	19%	\$100,000	\$38,589	\$138,589
Total	22,620	100%	\$700,000	\$205,386	\$905,386

The RWA Governing Board:

- The board participated in a second workshop (March 16 at 2pm) to discuss the proposed tipping fee increase and structure options and continued the discussion during the regular meeting. By majority vote, staff was directed to bring an action item in April to adopt a fee increase schedule that normalizes rates across all jurisdictions over a nine-year period beginning July 1, 2024.

DISCUSSION ITEMS

The MCAG Governing Board:

- Discussed the draft Overall Work Program summary for Fiscal Year 2023-24 which is the annual budget for transportation planning, and the administration of Measure V and the Transportation Development Act (TDA). The total OWP budget for FY 23-24 as submitted to Caltrans is \$4,579,297 and includes funding for the following specific studies:
 - Transit consolidation study with UC Merced
 - Countywide Electric Vehicle Readiness Plan
 - Countywide Regional Active Transportation Plan
 - Multijurisdictional Local Road Safety Plan
 - Multijurisdictional Housing Element

OTHER NOTABLE REPORTS

- Congressman John Duarte attended as a guest speaker. He expressed his commitment to serving Merced County and eagerness to meet with the One Voice delegation in Washington DC.
- Caltrans District 10 provided updates for areas impacted by recent flooding, specifically the closure of Hwy 59 south of the City of Merced. They are working on and will provide future updates regarding both short and long-term solutions. Other Caltrans announcements included:
 - Clean California Community Days run from March 17th through March 27th. Information is available on the Caltrans website.
 - For real time road conditions, the QuickMaps app is available.
- A community clean-up in Planada is scheduled for March 25, 2023. Contact Chair Matt Serratto or Director Espinoza for details to participate.