

Written materials relating to an item on this agenda that are distributed to the legislative bodies within 72 hours before the item is to be considered at its regularly scheduled meeting will be made available for public inspection at the City Clerk's Office, 300 West Third Street 4th Floor during customary business hours. Agenda reports are also on the City of Oxnard web site at www.oxnard.org.



AGENDA
OXNARD CITY COUNCIL
PUBLIC WORKS AND TRANSPORTATION COMMITTEE
Council Chambers, 305 West Third Street
May 23, 2023
Regular Meeting - 8:30 to 10:00 PM

Zoom details to call-in for public comment during a meeting:

1. Dial Phone Number: (888) 475-4499
2. Enter Meeting ID: 834 1739 0306
3. Passcode: 547815

If you wish to speak during public comments or a particular item on the agenda, please sign-on by following the zoom call-in steps listed above. Once the presiding officer calls for public speakers, press *9 to raise your hand to inform the City Clerk you would like to speak during the public speaking section for that particular item on the agenda, while in the zoom waiting room. Press *6 when asked to unmute. Listen to the instructions provided virtually on the phone while on hold in the zoom waiting room. Please note that there is a slight time delay when viewing the meeting via television.

IN ACCORDANCE WITH ASSEMBLY BILL 2449, MEMBERS OF THE LEGISLATIVE BODY MAY MEET IN-PERSON OR REMOTELY. TO PARTICIPATE REMOTELY VISIT WWW.OXNARD.ORG.

To find out how you may provide public comment, please refer to the instructions below or at [www.https://www.oxnard.org/city-meetings/](https://www.oxnard.org/city-meetings/).

The public may view the meeting from home on Spectrum channel 10, Frontier channel 35, or YouTube at [Youtube.com/oxnardnews](https://www.youtube.com/oxnardnews). Video recordings of the meeting are typically available online following the meeting at the City's website at www.oxnard.org/city-meetings.

*Please see the link for the Measure M pre-recorded presentation video for each item listed on this agenda.

YOU MAY PARTICIPATE IN THE MEETING IN THE FOLLOWING WAYS:

1. ATTEND THE MEETING AT THE LOCATION LISTED ABOVE: Submit a speaker card to the City Clerk.
2. EMAIL COMMENTS OR SIGN UP TO SPEAK REMOTELY BEFORE THE MEETING
 - a. Submit a request to speak remotely by no later than 3 p.m. on the day of the meeting by using the form available at www.oxnard.org/citymeetings.
 - b. Submit an email to cityclerk@oxnard.org no later than 3 p.m. on the day of the meeting (indicate the agenda item number in the subject line). All email correspondence will be forwarded to the legislative body prior to the start of the meeting and made part of the legislative record.
 - c. Contact the City Clerk's Office at (805) 385-7803 to submit your request.
3. PROVIDING PUBLIC COMMENTS REMOTELY DURING THE MEETING

In compliance with the Americans with Disabilities Act, if you require special assistance to participate in a meeting, please contact the City Clerk's Office at 385-7803. Notice at least 72 hours prior to the meeting will enable the City to reasonably arrange for your accessibility to the meeting.

Agenda Item Time Estimates include: (Minutes for Presentation + Council Discussion + Public Comment)

- a. To provide public comment during the meeting dial (888) 475-4499 and enter the Meeting ID and Passcode listed above as the Zoom details for this meeting. When the presiding officer announces the particular item on the agenda you want to speak on, press *9 to raise your hand while in the zoom waiting room. Once called on, press *6 to unmute your phone.
- b. Public comments on agenda items will be taken following the announcement of the item. After the item is announced, members of the public may register or otherwise be recognized for the purpose of providing public comment.

Please review the Zoom instructions on the registration page to help ensure there are no technical difficulties during your comments and help you understand public comment procedures using Zoom. Detailed participation instructions can be found at www.oxnard.org/city-meetings.

In the event of a disruption which prevents a legislative body of the City of Oxnard from broadcasting a meeting using a call-in option or internet-based service option, or in the event of a disruption within the City's control which prevents members of the public from offering public comment using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on a meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. However, if any of the broadcast options are disrupted, but any of the other broadcast options is still available to the public, the legislative body may take further action on items appearing on a meeting agenda without waiting for the disrupted broadcast option(s) to be restored.

A. ROLL CALL, POSTING OF AGENDA, FLAG SALUTE

Consideration of Teleconference Participation pursuant to Assembly Bill 2449.

B. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

A person may address the legislative body only on matters not appearing on the agenda and within the subject matter jurisdiction of the legislative body. Speaker requests shall be submitted as set forth on the first page of this agenda. Speakers are limited to three minutes. After 30 minutes, if all speakers have not had the opportunity to speak, the remaining speakers will be given an opportunity to speak prior to adjournment of the meeting. The legislative body cannot enter into a detailed discussion or take action on any items presented during public comments at this time. Such items may only be referred to the City Manager/Executive Director/Secretary for administrative action or scheduled on a subsequent agenda for discussion. Persons wishing to speak on public hearing items should do so at the time of the hearing.

C. CONSENT AGENDA

1. City Clerk Department

SUBJECT: Approval of Minutes.

RECOMMENDATION: That the Public Works & Transportation Committee approve the minutes of the May 9, 2023 regular meeting as presented.

Contact: Rose Chaparro, (805) 385-7805

D. REPORTS

1. Public Works Department

SUBJECT: Fourth Amendment to Agreement A-8221 with Big Truck Rental, LLC for Short Term Rental of Refuse Collection Vehicles for the Environmental Resources Division. (10 minutes)

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute a Fourth Amendment to a Rental Agreement with Big Truck Rental, LLC in the amount of \$1,294,235 for a new total not to exceed \$4,463,035 for an additional period of 12 months for the rental of refuse collection vehicles.

Please click the following link to view the required Measure M pre-recorded presentation video: <https://youtu.be/nRQpxL4oAJs>

Contact: Michael Wolfe, (805) 385-8055

2. Public Works Department

SUBJECT: First Amendment to Agreement A-8368 with Toter, LLC for the Purchase of Residential Curbside Collection Containers and Parts. (10 minutes)

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute a First Amendment to Agreement No. A-8368 with Toter, LLC in the amount of \$775,000 for a new total not to exceed \$1,525,000 for an additional two-year term ending May 28, 2025, for the replenishment of curbside containers and parts.

Please click the following link to view the required Measure M pre-recorded presentation video: <https://youtu.be/3cq7tgDjxa0>

Contact: Michael Wolfe, (805) 385-8055

3. Public Works Department

SUBJECT: Professional Services Agreement 32400003 with Northern Digital, Inc. (NDI) for Supervisory Control and Data Acquisition Systems (SCADA) Support Services. (10 minutes)

RECOMMENDATION: That the Public Works and Transportation Committee recommend the City Council approve and authorize the Mayor to execute an agreement with Northern Digital, Inc. (NDI) for an amount not to exceed \$1,000,000 for a three year term for supervisory control and data acquisition (SCADA) support services for the water, wastewater, and recycled water systems.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/qzyhA6o_bCk

Contact: Michael Wolfe, (805) 385-8055

E. ITEMS FOR FUTURE AGENDAS

F. ADJOURNMENT



**PUBLIC WORKS AND TRANSPORTATION COMMITTEE
AGENDA REPORT**

**CONSENT AGENDA
AGENDA ITEM NO. C.1**

DATE: May 23, 2023

TO: Public Works and Transportation Committee

FROM: Rose Chaparro, City Clerk, (805) 385-7805, rose.chaparro@oxnard.org

SUBJECT: Approval of Minutes.

RECOMMENDATION

That the Public Works & Transportation Committee approve the minutes of the May 9, 2023 regular meeting as presented.

BACKGROUND

Approval of Minutes.

STRATEGIC PRIORITIES

This agenda item is a routine operational item.

FINANCIAL IMPACT

There is no financial impact.

Prepared by: Rose Chaparro, City Clerk

ATTACHMENTS

1. MINUTES 05 09 2023 Public Works & Transportation

MINUTES
OXNARD CITY COUNCIL
PUBLIC WORKS AND TRANSPORTATION COMMITTEE
Regular Meeting
May 9, 2023

A. ROLL CALL, POSTING OF AGENDA, FLAG SALUTE

At 8:30 p.m., Chair Bert E. Perello called to order the regular meeting of the Oxnard City Council Public Works & Transportation Committee in the City Hall Council Chambers at 305 W. Third Street, Oxnard, California. The City Clerk called the roll and announced the posting of the agenda. Chair Bert Perello, Member Arthur Valenzuela, and Member John C. Zaragoza were present in person.

Staff members present in person were Alexander Nguyen, City Manager; Michelle (Elle) McCarron, Assistant City Attorney; Michael Wolfe, Public Works Director; Joseph Marcinko, Assistant Public Works Director; and Rose Chaparro, City Clerk.

Consideration of Teleconference Participation pursuant to Assembly Bill 2449.

B. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

C. CONSENT AGENDA (None received.)

1. City Clerk Department

SUBJECT: Approval of Minutes.

RECOMMENDATION: That the Public Works & Transportation Committee approve the minutes of the April 25, 2023 regular meeting as presented.

It was moved by Member Zaragoza, seconded by Member Valenzuela, to approve the meeting minutes as presented. VOTE: Valenzuela and Zaragoza voted in favor, the motion carried 2-0-1. Chair Perello abstained due to being absent during the April 25, 2023 meeting.

D. REPORTS

1. Public Works Department

SUBJECT: Public Project Agreement 32300389 with Aquatech Services, Inc. for On-Call Backflow Assemblies Testing, Maintenance, Repair and Replacement Services, Specification No. PW 23-72R.

RECOMMENDATION: The Public Works and Transportation Committee recommend that the City Council approve and authorize an Agreement with Aquatech Services, Inc. for a total amount not to exceed \$500,000 for a three-year term for On-Call Backflow Assemblies Testing, Maintenance, Repair and Replacement Services.

Joseph Marcinko, Assistant Public Works Director presented and answered the Committee's questions. No public comments were received. Discussion ensued among the Committee and staff.

It was moved by Member Zaragoza, seconded by Member Valenzuela, to approve the recommended action as presented. VOTE: Perello, Valenzuela, and Zaragoza voted in favor; the motion carried 3-0.

2. Public Works Department

SUBJECT: Senate Bill 1 (SB1) Local Streets and Road Maintenance and Rehabilitation Account (RMRA) Project List for Fiscal Year 2023-24.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council adopt a resolution to:

1. Adopt the Fiscal Year 2023-24 project list of Senate Bill 1 (SB1) proposed projects that will be funded in part or solely with Road Maintenance and Rehabilitation Account revenues; and
2. Authorize the City Manager to take whatever actions are necessary and appropriate to carry out the purpose and intent of the resolution.

Michael Wolfe, Public Works Director presented and answered the Committee's questions. No public comments were received. Discussion ensued among the Committee and staff.

It was moved by Chair Perello, seconded by Member Valenzuela, to approve the recommended action as presented. VOTE: Perello, Valenzuela, and Zaragoza voted in favor; the motion carried 3-0.

E. ITEMS FOR FUTURE AGENDAS (No requests were made.)

F. ADJOURNMENT

There being no further business on the agenda, and without objection, Chair Perello adjourned the meeting at 8:58 p.m.

ROSE CHAPARRO

City Clerk

BERT E. PERELLO

Chair



**PUBLIC WORKS AND TRANSPORTATION COMMITTEE
AGENDA REPORT**

**REPORTS
AGENDA ITEM NO. D.1**

DATE: May 23, 2023

TO: Public Works and Transportation Committee

FROM: Michael Wolfe, Public Works Director, (805) 385-8055, michael.wolfe@oxnard.org

SUBJECT: Fourth Amendment to Agreement A-8221 with Big Truck Rental, LLC for Short Term Rental of Refuse Collection Vehicles for the Environmental Resources Division. (10 minutes)

RECOMMENDATION

That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute a Fourth Amendment to a Rental Agreement with Big Truck Rental, LLC in the amount of \$1,294,235 for a new total not to exceed \$4,463,035 for an additional period of 12 months for the rental of refuse collection vehicles.

Please click the following link to view the required Measure M pre-recorded presentation video: <https://youtu.be/nRQpxL4oAJs>

BACKGROUND

On June 30, 2020, Council approved Agreement A-8221 with Amrep U.S.A, Inc. (Amrep) in the amount of \$621,600 through June 30, 2021 for the rental of seven refuse collection vehicles for ER. On October 20, 2020, Amrep legally transferred Agreement A-8221 to Big Truck Rental, LLC (BTR). Below is the history of Agreement A-8221 and the amendments:

Table 1

Agreement A-8221	COUNCIL DATE	CUMULATIVE AMOUNT	TERM DATE
Original Agreement	June 30, 2020	\$621,600	June 30, 2021
First Amendment	June 15, 2021	\$1,243,200	June 30, 2022
Second Amendment	December 20, 2021	\$1,707,200	June 30, 2022
Third Amendment	June 21, 2021	\$3,168,8000	June 30, 2023
<i>Fourth Amendment</i>	<i>June 6, 2023*</i>	<i>\$4,463,035</i>	<i>June 30, 2024</i>

**Pending City Council action*

This Fourth Amendment allows for the continued use of rental collection vehicles to fill-in for unforeseen vehicle breakdowns and routine maintenance for existing fleet. Additionally, rental vehicles provide capacity

support in compliance with the State’s SB 1383 mandate to collect residential and commercial organic waste.

DISCUSSION

ER is requesting to amend the contract with BTR for an additional 12 months due to the aging fleet of refuse collection vehicles. This will allow for uninterrupted daily refuse collection services for residential and commercial customers. During the next 12 months, ER and Fleet Services staff will pursue alternative options such as purchase or lease purchase options of refuse collection vehicles to determine the best value for ER operations.

The intent of the original agreement for vehicle rentals was twofold. First, the agreement allowed the ability to rent vehicles while other ER vehicles are taken out of service for maintenance and repairs. Secondly, rental vehicles were needed while the Environmental Resources (ER) Division waited for the delivery of 26 new CNG refuse collection vehicles. The final delivery of the 26 new vehicles occurred in June 2022. However, these 26 vehicles do not make up the entire ER fleet of vehicles and as such, some older high-maintenance vehicles are still in use.

Currently, there are 23 refuse collection vehicles that have more than 100,000 miles and average over 18 years of in-service use. These 23 refuse collection vehicles were purchased for \$3,587,265 and to date, over \$10M has been spent on labor and parts to keep them operable. These vehicles are extremely complex, with several mechanical, electrical, and hydraulic systems requiring upkeep and repairs. These systems are used repetitively throughout the daily use of these vehicles, resulting in significant wear on the parts. The cost to maintain them typically becomes higher the older they get and the time it takes to repair them gets extended. As such, ER will potentially rent 5 to 10 vehicles per month depending on the status of operating refuse collection vehicles. The Amendment also allows the return of any of the refuse collection vehicles on an as-needed basis, and without monetary penalty from BTR.

STRATEGIC PRIORITIES

This agenda item is a routine operational item or does not relate to the five strategic priorities adopted by City Council on March 16, 2021.

FINANCIAL IMPACT

The cost for this Fourth Amendment to Agreement No. A-8221 with BTR is \$1,294,235 for a total new agreement value of \$4,463,035. The annual estimated spending plan is \$1,294,235 for the next fiscal year. Funding shall be requested in the Environmental Resources Fund (631) during the annual budget process.

Estimated Spending Plan		
ER Fund/Account	FY 2023-24	TOTAL
6313632-57000	\$776,541.00	\$776,541.00
6313633-57000	\$517,694.00	\$517,694.00
TOTAL	\$1,294,235	\$1,294,235

Prepared by: Brian Yanez, Assistant Public Works Director

ATTACHMENTS

1. Fourth Amendment to A-8221

2. A-8221 through 3rd Amendment
3. Assignment and Assumption to Agreement No. A-8221
4. Presentation

FOURTH AMENDMENT TO MASTER EQUIPMENT LEASE/RENTAL AGREEMENT

This Fourth Amendment ("Fourth Amendment") to the master equipment lease/rental ("Agreement") is made and entered into in the County of Ventura, State of California, this _____ day of June 2023, by and between the City of Oxnard, a municipal corporation ("City"), and Big Truck Rental, LLC ("BTR"). This Fourth Amendment amends the Agreement entered into on June 16, 2020, by City and Amrep Manufacturing Company, LLC. This agreement was assigned to BTR on October, 20, 2020. The Agreement previously has been amended on June 21, 2022, by a Third Amendment, on December 21, 2021, by a Second Amendment, and on June 15, 2021, by a First Amendment.

City and BTR agree as follows:

1. The reference to Exhibit "A" and Exhibit "B" everywhere they are listed in the Agreement are hereby amended to Exhibit "C". The Exhibits "A" and "B" are hereby disincorporated; instead, Exhibit "C" is attached hereto and incorporated herein by this reference.
2. The lease/rental terms set forth in Exhibit "C" of the Agreement are hereby extended on a month-to-month basis for an additional twelve (12) months for a maximum lease/rental term of forty-eight (48) months.
3. "A section 19 is added after section 18 in the agreement. Section 19 shall read:

Iran Contracting. In accordance with the Iran Contract Act of 2010 (Public Contract Code sections 2200-2208) the City requires that any SERVICE PROVIDER that submits a proposal or otherwise proposes to enter into or renew a contract with the City with respect to goods or services of one million dollars (\$1,000,000) or more, must certify, that the SERVICE PROVIDER is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

A SERVICE PROVIDER is ineligible to submit a proposal for any contract with the CITY for goods or services of one million dollars (\$1,000,000) or more if the SERVICE PROVIDER engages in investment activities in Iran. SERVICE PROVIDER must certify that it is not on the list of ineligible vendors prohibited from doing business with the State of California and shall complete the Iran Contract Act Certification attached as Exhibit F and must be submitted with their proposal. Failure to do so may deem the proposal non- responsive."
4. As so amended, the Agreement remains in full force and effect.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed the Amendment on the date first written above.

CITY OF OXNARD

BIG TRUCK RENTAL, LLC

☐ John C. Zaragoza, Mayor¹ Date
☐ Jennifer Yates, Purchasing Agent²

Scott Smith Date
Director of Municipal Sales

ATTEST:

Eric Voss Date
Vice President, Sales

Rose Chaparro, City Clerk Date
(only if Mayor signs)

APPROVED AS TO FORM:

Stephen M. Fischer, City Date
Attorney (always required)

¹ The City Council must authorize and the Mayor must execute any agreement over \$200,000.

² The Purchasing Agent may execute any authorized agreement up to \$200,000.

The City requires the following for any contract:

- For a corporation, the signatures of the Board President, CEO or Vice President and of the Board Secretary, Assistant Secretary, CFO or Assistant Treasurer;
- For an LLC, the signatures of at least two managers of the LLC (company directors, not lower-level managers); or
- For a partnership, the signature of a partner. If the partnership is a limited partnership, the signer must be a general partner.

If the company has a different structure, or if the above-listed persons are not the appropriate signers, please submit to the City Attorney legally-binding documentation stating who can sign and bind your company.

Exhibit - C
Front End Loader and Side Loader Refuse Trucks

BTR SUPPLEMENTAL AGREEMENT



Company Address	4221 W. Boy Scout Blvd Suite 400 Tampa, FL 33607	Created Date	5/5/2023
		Email	scotts@bigtruckrental.com
Prepared By	Scott Smith	Quote Number	00034696

CUSTOMER INFORMATION

Billing Customer	City of Oxnard	Rental Customer	City of Oxnard
Billing Contact	Brian Yanez	Shipping Contact	Jose Alvarez
Billing Address	111 S Del Norte Blvd Oxnard CA 93030	Shipping Address	1060 Pacific Avenue, Bldg. 2 Oxnard CA 93030 United States
Billing Email	brian.yanez@oxnard.org	Shipping Email	jose.alvarez@oxnard.org
Billing Phone	805-200-5412	Shipping Phone	805-814-2716
		Shipping Mobile	8052072125

Product Details

Asset Number	Year	Chassis Make	Chassis Model	Chassis Vin	Product Family	License Plate	Miles	Hours	Truck Location
2022059	2023	Mack	Terrapro 64R	1M2TE1GC0PM009672	FRONT LOADER	DB70FV	2,400	86	Oxnard, CA
2022056	2023	Mack	Terrapro 64R	1M2TE1GC3PM009665	FRONT LOADER	DB69FV	2,210	84	Oxnard, CA
4021113	2022	Mack	LR 64R	1M2LR2GC9NM005465	Side Loader	DB92FP	9,178	952	Oxnard, CA
4021114	2022	Mack	LR 64R	1M2LR2GC2NM005470	Side Loader	DB91FP	8,866	793	Oxnard, CA
4021122	2022	Peterbilt	520	3BPDLK0X6NF112327	Side Loader	DB17FR	5,226	523	Oxnard, CA
4021126	2022	Peterbilt	520	3BPDLK0X6NF112330	Side Loader	DB98FQ	7,561	621	Oxnard, CA
4021084	2022	Mack	LR 64R	1M2LR2GCXNM005393	Side Loader	DB12FP	18,446	1,653	Oxnard, CA
4021124	2022	Peterbilt	520	3BPDLK0X8NF112328	Side Loader	DB03FR	4,962	652	Oxnard, CA

Pricing Details

Asset Number	Quantity	Sales Price	Total Product Price
2022059	4.00	\$2,500.00	\$10,000.00
2022056	4.00	\$2,500.00	\$10,000.00
4021113	4.00	\$2,675.00	\$10,700.00
4021114	4.00	\$2,675.00	\$10,700.00
4021122	4.00	\$2,675.00	\$10,700.00
4021126	4.00	\$2,675.00	\$10,700.00
4021084	4.00	\$2,675.00	\$10,700.00
4021124	4.00	\$2,675.00	\$10,700.00

RENTAL CONTRACT PRICING SUMMARY

BTR SUPPLEMENTAL AGREEMENT



Order Subtotal	\$84,200.00	Total Amount Due	\$84,200.00
Total Security	\$0.00		
Deposit			
Total Transportation	\$0.00		
Cost			

NOTES/EXPLANATION OF ADDITIONAL COSTS:

Special Terms Pricing shown reflects the 4 week rental rate for trucks that are currently on rent with City of Oxnard and is based on OMNIA Partners national cooperative contract #2019000319. Pricing is based on 12 month extension starting July 1, 2023 through June 30, 2024 and trucks will be billed in 28 day increments throughout the contract

RENTAL REMINDERS

MASTER RENTAL AGREEMENT: This document supplements the Master Rental Agreement, which the Customer signed and is subject to all provisions therein.

INSURANCE: This Supplemental Rental Agreement utilizes the insurance information provided in the Master Rental Agreement. Customer is required to provide continued proof of insurance at the inception of this Supplemental Rental Agreement and through the duration of the same.

RENTAL RATE: Customer is to use the Vehicle for a maximum of one-shift, which is defined as not more than 50 hours per week. If Customer uses the Vehicle beyond one-shift, Customer agrees that it will pay an additional charge for such use. The additional charge shall be calculated in the following manner: (a) If the Customer uses the Vehicle more than 50 hours per week but less than 80 hours per week, then Customer shall pay an additional charge equal to one-half (½) times the Rental Rate; (b) If the Customer uses the Vehicle 80 or more hours per week, then Customer shall pay an additional charge equal to one (1) times the Rental Rate.

MAINTENANCE: Customer is responsible for all routine maintenance of the truck and body while it is in the care and control of the Customer. Refer to Section 8 of the Master Agreement for detailed responsibility.

DAMAGE: Customer will be back billed for any damage to the rented property which Big Truck Rental determines to be beyond normal wear and tear. In addition, if the damage to a rented vehicle prevents Big Truck Rental from reletting the vehicle resulting in additional downtime and lost rental revenue for Big Truck Rental, then this Supplemental Rental Agreement shall automatically extend and Customer shall be billed for a reasonable period of time with which to make the necessary repairs. The customer is responsible for collection of prepaid security deposit. Uncollected security deposits older than one year, will be forfeited.

TIRES: As a tire is a consumable item, Big Truck Rental documents the condition of the tires on its trucks at the inception of the rental and at the time that the truck is returned. It is the Customer's responsibility to assure that the tires are in substantially the same condition at the end of the rental as when the truck is received by the Customer. Tires worn substantially more at the time they are returned than at the rental inception shall be back billed. In addition, any Non-Steer Tires(s) replaced during the duration of the rental period shall be replaced with a recappable casing. All Steer Tires must be replaced with a virgin tire. No exceptions. If Customer fails to replace the tire(s) as outlined herein, Big Truck Rental shall back bill for the cost of replacing said tire(s). Any casing deemed un-recappable by our tire vendor will be back billed.

FUEL: Short-term rentals are not subject to IFTA, all fuel tax and the reporting thereof is the responsibility of the renter. Any violations or fines of that nature are the responsibility of the Customer.

GOVERNMENT: All trucks rented from Big Truck Rental are owned by Big Truck Rental. Customer shall not cover or remove any truck identification, other than DOT numbers. Big Truck Rental's vehicles are legally licensed on the federal highways of 48 states, however, any state or local permits for state or county road use and waste pick up and/or disposal are the sole and absolute responsibility of the Customer. Customer agrees Big Truck Rental is not the motor carrier operator and will display customer's DOT number as required by law.

By execution of this Rental Agreement, Customer acknowledges that the Vehicle described herein is rented to and in accordance with the terms, conditions, and provisions of the Master Rental Agreement and Rental Extension Agreement previously signed by the Customer and also those terms found in this Supplemental Rental Agreement. Customer evidences such knowledge by signing below.

MASTER EQUIPMENT LEASE/RENTAL AGREEMENT

This Master Equipment Lease/Rental Agreement ("Agreement"), dated as of June 16, 2020, is entered into between City of Oxnard ("Customer"), with offices at 111 S. Del Norte Blvd. and Amrep Manufacturing Company, LLC ("Amrep"), with offices at 1555 S. Cucamonga Ave., Ontario, CA 91761.

- 1) **LEASE/RENTAL OF EQUIPMENT; TITLE.** Amrep agrees to lease/rent to Customer, and Customer agrees to lease/rent from Amrep, the equipment as described more fully in attached Schedule(s), as amended and/or supplemented from time to time, executed by Customer and Amrep and made part of this Agreement (individually, an "item of Equipment" and collectively the "Equipment"). Customer acquires no ownership, title, property, right, equity or interest in the Equipment other than its leasehold interest under the terms and conditions of this Agreement. Amrep shall have the right to file UCC financing statements, including, without limitation, continuation statements, covering any item of Equipment and setting forth Amrep's interest therein.
- 2) **TERM OF AGREEMENT; DELIVERY OF EQUIPMENT.** The Agreement shall become effective with respect to each item of Equipment on the date such item of Equipment is delivered by Amrep to Customer, and shall continue for the term specified on the applicable attached Schedule(s) (each a "Term"), unless terminated earlier pursuant to the provisions hereof. Customer shall take delivery of each item of Equipment F.O.B. City of Oxnard Yard within ten (10) days of the last party to sign this Agreement.
- 3) **RENT.** Customer shall pay Amrep the sum of \$7,400.00 per month per item of Equipment ("Rent") for the right to possess and use each item of Equipment during the Term. The first month's lease/rent payment for each item of Equipment on the attached Schedule(s) is due upon signing this Agreement. Subsequent lease/rent payments are due by the 5th of each subsequent month of the Term. Any other amounts hereunder are due within 10 days of the date of the related Amrep invoice.
- 4) **ACCEPTANCE AND INSPECTION.** By accepting delivery of any Equipment, Customer acknowledges and accepts the warranty and limitations set forth in Section 5 and Section 6, respectively, and further acknowledges and represents that Customer has inspected each piece of Equipment and concluded this it is in proper operating or serviceable condition and that it has been selected by Customer as adequate and sufficient for Customer's intended uses. Customer is responsible to provide all O.S.H.A., federal, state and local required safety equipment. Customer assumes all responsibility for the care and use of each item of Equipment and agrees to pay Amrep, in addition to the Rent and all other amounts required to be paid to Amrep hereunder, an amount equal to all damages to and losses with respect to any item of Equipment.
- 5) **LIMITED WARRANTY.** Amrep leases/rents each item of Equipment to Customer pursuant to the Amrep Limited Warranty (attached hereto as Schedule B and incorporated herein). The remedies set forth therein are Customer's sole and exclusive remedies and Amrep's entire liability for any breach of the limited warranties set forth herein.
- 6) **LIMITATION OF LIABILITY.** Amrep's liability whether in contract or otherwise, with respect to this Agreement and/or any item of Equipment shall in no event exceed the amount received by Amrep from Customer under this Agreement attributable to such item of Equipment. Amrep shall not be liable for, and Customer waives and releases Amrep for any direct, indirect, incidental or consequential damages or losses resulting from the operation or use of any item of Equipment,



including, without limitation, damages for loss of business profits or business interruption, claims due to the non-performance of any item of Equipment, the inability of any item of Equipment to perform a task, repair time required for any item of Equipment and/or any other cause.

7) **AMREP'S REPRESENTATIONS and COVENANTS.** Provided Customer is not in default, Amrep shall not interfere with Customer's quiet enjoyment of the Equipment during the Term.

8) **CUSTOMER'S REPRESENTATIONS and COVENANTS.**

- a) **Permits.** All Permits required for Customer to lease/rent and/or use the Equipment shall be obtained by Customer and shall be valid and in full force and effect. All fees and charges with respect to any permits required to lease/rent and/or use the Equipment shall be paid in full. No event has, or shall occur that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any such permit.
- b) **Compliance with Laws.** Customer shall comply with all contractual obligations hereunder and applicable laws except to the extent that failure to comply therewith would not, in the aggregate, reasonably be expected to have a material adverse effect.
- c) **Liens.** Customer shall keep the Equipment free and clear of all Liens.
- d) **Subleases.** Customer shall not allow, nor enter into any sublease of the Equipment.
- e) **Taxes and Fees.** Customer acknowledges that the Rent payments are exclusive of any federal, state or local taxes and license and registration fees now in force or hereafter imposed, unless otherwise specified herein or on the attached Schedule(s). Customer shall pay all sales, use and other taxes and all fees and charges that are levied on any item of Equipment during the Term. Customer shall also pay all taxes (other than income taxes) that are charged to Amrep by reason of Amrep's interest in any item of Equipment. Further, Customer shall be responsible for other strictly usage-related fees, including but not limited to parking, storage, towing and tolls.
- f) **Accident Reporting.** Customer shall notify Amrep within twenty-four (24) hours of any accident or occurrence involving any item of Equipment in which a person or property is, or is claimed to be, injured or damaged.

9) **CUSTOMER'S USE OF THE EQUIPMENT.**

- a) **Customer's Possession.** Customer may not move the Equipment from California without Amrep's prior written consent.
- b) **Personal Property.** The parties intend that the Equipment remains at all times personal property and not a fixture under applicable law. Customer shall not affix or attach any insignia or markings to, or paint over any areas of the Equipment, or attach the Equipment to real property or any improvements without the prior written approval of Amrep.
- c) **Operation.** Customer shall operate the Equipment only for its intended purpose and exclusively in connection with Customer's business.
- d) **Inspection.** Customer shall permit Amrep (through any of its officers, employees, or agents) on reasonable notice to inspect the Equipment during regular business hours, and in compliance with Customer's reasonable security procedures.

10) **MAINTENANCE AND USE.** Subject to reasonable and normal wear and tear, unless otherwise stated in the attached Schedule(s), Customer shall keep each item of Equipment in good operating condition and repair and shall pay the costs of all repairs to each item of Equipment. Customer shall notify Amrep of any repair or maintenance due on each item of Equipment and shall have such repairs or maintenance done at an Amrep approved and authorized provider. Customer shall provide and pay for all gas, oil, anti-freeze fluid, lubrication and routine servicing for each item of Equipment. All service and repairs shall be done when needed and in compliance with Law, but in

any event no less often than as set forth in the Amrep owner's manual for such item of Equipment (receipt of which owner's manual is hereby acknowledged by Customer). Tread depth measurements of the Equipment's tires shall be made and documented immediately prior to the delivery of the Equipment. All tire repair and servicing shall be the responsibility of the Customer, unless otherwise stated on the attached Schedule(s). Customer shall provide to Amrep a record of all the foregoing maintenance and repair.

Customer agrees not to cause or permit Customer's drivers, employees or agents to make any repairs or adjustments to any item of Equipment or to tamper with the governors on any item of Equipment. Customer shall further abide by Amrep's directions concerning any emergency repair services. Amrep shall not be responsible for any repair of or service to any item of Equipment by a third party unless expressly authorized in advance by Amrep. Customer shall not subject any item of Equipment to misuse, abuse, negligence or excessive use.

- 11) **LOSS.** While the Equipment is leased/rented hereunder, Customer shall bear all risk of loss, damage, destruction, theft, condemnation, injury, cost, expense, claim or liability to, of or from such Equipment from any cause whatsoever ("Loss"). Customer shall notify Amrep in writing within 24 hours of any such Loss.
- 12) **INSURANCE.** Customer shall obtain and maintain at its expense on an occurrence basis the following minimum insurance coverages: (i) worker's compensation insurance as required by applicable law; (ii) employer's liability insurance in the minimum amount of \$1,000,000 per occurrence; (iii) commercial general liability insurance including products coverage, contractual liability in a minimum amount of \$2,000,000 per occurrence; (iv) comprehensive automobile liability insurance applicable to all owned and non-owned vehicles brought on site in a minimum amount of \$1,000,000 per occurrence; (v) excess of (ii), (iii) and (iv) above, liability insurance in the additional minimum amount of \$5,000,000 per occurrence. Furthermore, Customer shall be responsible to provide "all risk" property damage insurance to cover direct physical loss, damage or destruction to the Equipment based on replacement value with Amrep named as "Loss Payee." The insurance coverage may be written with deductible amounts acceptable to the Amrep. Lessor, its parents, subsidiaries and affiliates, and each of their respective directors, officers, employees, representatives and agents, shall be named as additional insured by endorsement on (iii) and (iv) above, including excess liability, and shall provide a certificate of insurance evidencing these coverages upon Lessor's request.
- 13) **USE, LOCATION AND MARKING OF EQUIPMENT.** Customer shall have the sole use, control and responsibility for each item of Equipment until it is returned to Amrep. Customer hereby affirms that it is leasing/renting each item of Equipment for a business or commercial purpose and that no item of Equipment shall be used for personal, family or household uses. Customer shall obey all federal, state and local Laws and regulations in using each item of Equipment and shall only allow any item of Equipment to be used by competent and qualified personnel. Customer shall use each item of Equipment only in California unless Amrep gives Customer written permission to use it in another state. In no event shall Customer transport or use any item of Equipment outside California without obtaining the prior written consent of Amrep, which consent may be granted or withheld in Amrep's sole and absolute discretion. Customer shall not modify any item of Equipment, tamper with or disable the odometer, or place any sign or mark on any item or Equipment without Amrep's consent and Customer shall pay the costs of repair and/or removing the modification or sign or markings and all needed repairs that are caused by such removal.

14) **TITLE AND OWNERSHIP.** The Equipment shall at all times remain the property of Amrep and Customer shall have no right or property interest therein during the Term of this Agreement. Amrep shall have the right to display notice of its ownership of the Equipment by affixing an identifying plate, stencil or other indicia of ownership on any item of Equipment. Upon Amrep's request, Customer shall execute and pay all filing costs of UCC financing statements, including, without limitation, continuation statements, deemed appropriate by Amrep, covering any item of Equipment and setting forth Amrep's interest therein. Customer shall not pledge, encumber or permit any lien to attach to any item of Equipment.

15) **TERMINATION and DEFAULT.**

- a) **Termination.** Except as otherwise set forth herein, this Agreement shall terminate with respect to each item of Equipment upon the occurrence of all of the following events with respect to each item of Equipment: (i) the end of the Term of this Agreement for such item of Equipment; (ii) the return of such item of Equipment to Amrep in the required conditions, and (iii) the payment by Customer of all amounts owed to Amrep under this Agreement. Notwithstanding the foregoing, Amrep may (x) immediately terminate this Agreement pursuant to Section 15(c) in the Event of Default and (y) terminate this Agreement upon giving 30 days' prior written notice to Customer, at Amrep's sole and absolute discretion.
- b) **Events of Default.** Time is of the essence of this Agreement. Each of the following events is an "Event of Default" under this Agreement: (i) Customer fails to pay on or before the due date the full amount of Rent or any other payment due hereunder; (ii) if Customer violates, neglects, defaults, neglects or fails in the observance or performance of any other term, covenant or condition of this Agreement and fails to remedy such default within 5 business days after notice of such default by Amrep to Customer; or (iii) Amrep reasonably deems any item of Equipment to be in danger of misuse, confiscation, damage or destruction.
- c) **Remedies.** If an Event of Default occurs and is continuing, Amrep may, in its sole discretion, exercise one or more of the following remedies, immediately and without legal proceedings or notice to Customer (and at Customer's expense) and without liability for any damages occasioned thereby (i) declare this Agreement in default; (ii) terminate this Agreement in whole or in part; (iii) take possession of, or render unusable, the Equipment wherever it may be located, without demand or notice, without any court order or other process of law and without liability to Customer for any damages occasioned by such action; (iv) require Customer to deliver the Equipment at a location designated by Amrep; (v) proceed by court action to recover all damages and expenses incurred by Amrep by reason of any Event of Default; or (vi) exercise any other right or remedy available to Amrep at law or in equity.

Customer hereby expressly waives any rights it may have to possession of any item of Equipment after default and all claims it may have for damages or injuries suffered through or loss caused by any repossession, sale or other disposition of any item of Equipment hereunder. Nothing herein contained shall require Amrep to re-lease, re-rent, sell or otherwise dispose of any item of Equipment.

Amrep's shall have all of the rights and remedies permitted at law and equity, and such rights and remedies are cumulative any may be exercised concurrently and repeatedly and the exercise of one remedy shall not be deemed an election of remedies. No waiver of a default is a waiver of any other default or subsequent breach of this Agreement by Customer. In addition to all other charges provided under this Agreement, Customer agrees to pay all removal, freight, storage, labor and other charges and costs insured by Amrep as a result of Customer's breach of this Agreement.

16) Hold Harmless, Defense and Indemnity.

- a) To the fullest extent permitted by law, Amrep shall immediately defend, indemnify, and hold harmless Customer, its legislative and advisory bodies, and the Customer's officials, directors, officers, employees, and agents (the "Indemnitees") from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with Amrep's performance of this Agreement or Amrep's failure to comply with any of its obligations contained in this Agreement. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Amrep's obligation to indemnify applies unless it is adjudicated that any of the liabilities covered by this Section 16 are the result of the sole active negligence or sole willful misconduct of any of the Indemnitees.
- b) The duty to defend is a separate and distinct obligation from Amrep's duty to indemnify. Amrep shall be obligated to defend in all legal, equitable, administrative, or special proceedings with counsel approved by the Customer Attorney immediately upon tender to Amrep of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of negligence or willful misconduct by any of the Indemnitees shall not relieve Amrep from its separate and distinct obligation to defend the Indemnitees. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes the obligation to provide independent defense counsel if Amrep asserts that liability is caused in whole or in part by the negligence or willful misconduct of the Indemnitees. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of any of the Indemnitees, Amrep may submit a claim to Customer for reimbursement of reasonable attorneys' fees and defense costs.
- c) The review, acceptance or approval of Amrep's work or work product by any of the Indemnitees shall not affect, relieve or reduce Amrep's indemnification or defense obligations. This Section 16 shall survive completion of the Services or termination of this Agreement. The provisions of this Section 16 shall not be restricted by and do not affect the provisions of this Agreement relating to insurance.
- d) Amrep warrants and represents that it has secured all necessary licenses, consents or approvals to use any instrumentality, thing or component as to which any intellectual property right exists, including computer software, used in the rendering of the Services and the production of all Documents and Materials, and that the Customer has full legal title to and the right to use, duplicate or disseminate the Documents and Materials. Amrep shall defend, indemnify and hold Indemnitees harmless from any loss, claim or liability in any way related to a claim that Customer's use of any of the Documents and Materials is violating federal, state or local laws, any contractual provisions, or any laws relating to trade names, licenses, franchises, copyrights, patents or other means of protecting intellectual property rights and/or interests in products or inventions. Amrep shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, equipment, devices or processes in connection with its provision of the services and Documents and Materials. In the event the use of any of the Documents and Materials by the Customer is held to constitute an infringement and the use of any of the same is enjoined, Amrep, at its own expense, shall: secure for Customer the right to continue using the Documents and Materials by suspension of any injunction, or by procuring a license or licenses for Customer; or modify the Documents and Materials so that they become non-infringing while remaining in compliance with the requirements of this Agreement.

- e) Amrep is and shall at all times remain, as to Customer, a wholly independent contractor. Neither Customer nor any of its employees or agents shall have control over the conduct of Amrep or any of its employees, except as stated in this Agreement. Amrep has and shall retain the right to exercise full control over the employment, direction, means of performance, location, compensation and discharge of all persons assisting Amrep, and it is free to dispose of all portions of its time which it is not obligated to devote to Customer in such a manner and to such persons, firms, or corporations as Amrep wishes except as expressly provided in this Agreement. This Agreement shall not be interpreted to prevent or preclude Amrep from rendering any services for Amrep's own account or to any other person or entity as Amrep in its sole discretion shall determine; provided, however, that performing such services shall not materially interfere with the Services Amrep shall perform for the Customer. Except as Customer's Project Manager specifies in writing, Amrep and its employees and agents have no authority, express or implied, to act on behalf of Customer in any capacity, to incur any debt, obligation or liability on behalf of Customer, bind Customer in any manner, or otherwise act on behalf of Customer as an agent. Amrep and its employees are not employees of Customer. Amrep and its employees are not entitled to receive from Customer any of the benefits or rights afforded employees of Customer, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, and health, life, dental, long-term disability and workers' compensation insurance benefits. Amrep shall not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of Customer. Amrep agrees to pay all required taxes on amounts paid to Amrep under this Agreement, and to indemnify and hold Customer harmless from any and all taxes, assessments, penalties, and interest asserted against Customer by reason of the independent contractor relationship created by this Agreement. Amrep shall be solely responsible for, and shall save Customer harmless from, all matters relating to the payment of Amrep's subcontractors, material suppliers, directors, officers, employees, agents and representatives, including compliance with social security requirements, federal and State income tax withholding, and all other regulations governing employer-employee relations, as applicable. Customer shall have the right to offset against the amount of any compensation due to Amrep under this Agreement any amount due to Customer from Amrep as a result of its failure to promptly pay to Customer any reimbursement or indemnification arising under this Section.
- f) Amrep shall not assign or transfer any interest in this Agreement or any part thereof, whether by assignment or novation, without City's prior written consent, which may be withheld for any reason or for no reason at all. Any purported assignment without written consent shall be null, void, and of no effect, and Amrep shall hold harmless, defend and indemnify Indemnitees regarding all Claims arising from or relating to any unauthorized assignment.

17) **RETURN OF EQUIPMENT.**

- a) **Obligation to Return Equipment.** Customer shall, at its expense, no later than the expiration of the Term or upon termination, whichever first occurs, return the Equipment to the Amrep at the address shown above or to such other place as Amrep may direct.
- b) **Condition of Equipment Upon Return.** Customer shall cause the Equipment returned under this Agreement to (i) be free and clear of all liens (other than Amrep liens, if any) and rights of third parties; and (ii) be in the same condition as when delivered to Customer, ordinary wear and tear excepted. If, upon completion of the Term, Amrep determines that any item of Equipment has been subject to excess wear and tear, Customer will be responsible and liable for the cost to restore the item of Equipment to the required condition.

18) **MISCELLANEOUS.**

- a) **Notices.** All formal notices required or permitted under this Agreement shall be in writing and either delivered in person or sent by recorded, certified, registered or recorded express mail service, return receipt requested, postage or courier fees prepaid, to the addresses of the Parties set forth above. Changes in the addresses to which such notices shall be delivered may be made by written notice given in accordance herewith. Routine communications related to this Agreement may be by letter, electronic mail, fax or telephone.
- b) **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- c) **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties to this Agreement shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- d) **Entire Agreement.** This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- e) **Amendment and Modification.** No amendment to or rescission, termination or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement and signed by an authorized representative of each party to this Agreement.
- f) **Waiver.** No provision of this Agreement shall be deemed waived without express written notice of waiver. Failure to demand strict performance in one instance shall not be deemed to waive either Party's right to insist on strict performance in any other instance.
- g) **Cumulative Remedies.** All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise.
- h) **Assignment.** Customer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Amrep, which consent Amrep shall not unreasonably withhold or delay. Any purported assignment in violation of this Section is null and void. No assignment relieves the assigning party of any of its obligations under this Agreement.
- i) **Successors and Assigns.** This Agreement is binding on and inures to the benefit of the parties to this Agreement and their respective permitted successors and permitted assigns.
- j) **No Third-party Beneficiaries.** This Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- k) **Governing Law.** Any disputes regarding this Agreement shall be determined in the Courts and governed by the laws of the state of California.
- l) **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- m) **Force Majeure.** Amrep shall not be liable or responsible to Customer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results

from acts beyond Amrep's reasonable control, including, without limitation: (i) acts of God; (ii) flood, fire, earthquake or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order or law; (v) actions, embargoes or blockades in effect on or after the date of this Agreement; (vi) action by any Governmental Authority; (vii) national or regional emergency; (viii) shortage of adequate power or transportation facilities; and (ix) plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions (each a "Force Majeure Event").

- n) **Relationship of Parties.** Nothing herein creates a joint venture or partnership between the parties to this Agreement or an employee/employer relationship. Customer is an independent contractor pursuant to this Agreement. Neither party to this Agreement has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party.
- o) **Attorney's Fees.** In the event Amrep engages an attorney to enforce any provision of this Agreement, Customer agrees to pay to Amrep upon demand an amount equal to Amrep's reasonable attorney's fees, costs and expenses.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be executed as of the date first written above by their duly authorized respective officers.

CUSTOMER: City of Oxnard

By: Tim Flynn

Name: Tim Flynn

Title: Mayor

Date: 6/16/20

AMREP MANUFACTURING COMPANY, LLC

By: _____

Name: Eric L. Mattson

Title: President

Date: _____

APPROVED AS TO FORM:

Stephen M. Fischer

Stephen M. Fischer
City Attorney

from acts beyond Amrep's reasonable control, including, without limitation: (i) acts of God; (ii) flood, fire, earthquake or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order or law; (v) actions, embargoes or blockades in effect on or after the date of this Agreement; (vi) action by any Governmental Authority; (vii) national or regional emergency; (viii) shortage of adequate power or transportation facilities; and (ix) plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions (each a "Force Majeure Event").

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IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be executed as of the date first written above by their duly authorized respective officers.

CUSTOMER: _____

By: _____

Name: _____

Title: _____

Date: _____

AMREP MANUFACTURING COMPANY, LLC

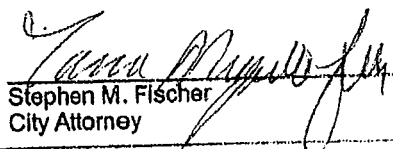
By: 

Name: Eric L. Mattson

Title: President

Date: 6/1/2020

APPROVED AS TO FORM:



Stephen M. Fischer
City Attorney

SCHEDULE A

AMREP FRONT LOADER REFUSE TRUCKS

EQUIPMENT DESCRIPTION:

- 1. EQUIPMENT DESCRIPTION (YEAR/MAKE/MODEL):**
EQUIPMENT VIN:
EQUIPMENT REPLACEMENT VALUE:
COMMENCEMENT DATE:
LEASE/RENT TERM: 6 months, with month-to-month term thereafter to a maximum of 12 continuous months; Customer shall provide 1-months' notice of any month-to-month termination, which will be effective the end of the month following such termination notice

- 2. EQUIPMENT DESCRIPTION (YEAR/MAKE/MODEL):**
EQUIPMENT VIN:
EQUIPMENT REPLACEMENT VALUE:
COMMENCEMENT DATE:
LEASE/RENT TERM: 6 months, with month-to-month term thereafter to a maximum of 12 continuous months; Customer shall provide 1-months' notice of any month-to-month termination, which will be effective the end of the month following such termination notice

- 3. EQUIPMENT DESCRIPTION (YEAR/MAKE/MODEL):**
EQUIPMENT VIN:
EQUIPMENT REPLACEMENT VALUE:
COMMENCEMENT DATE:
LEASE/RENT TERM: 6 months, with month-to-month term thereafter to a maximum of 12 continuous months; Customer shall provide 1-months' notice of any month-to-month termination, which will be effective the end of the month following such termination notice

CONTINUE FOR ADDITIONAL EQUIPMENT

SCHEDULE B

LIMITED WARRANTY

AMREP PRODUCT LIMITED WARRANTIES, DISCLAIMERS OF WARRANTIES, LIMITATION OF LIABILITIES AND REMEDIES, AND LIMITED WARRANTY PERIODS

Amrep warrants only Products of its manufacture, sold by Amrep, or by an Amrep authorized distributor, for normal and intended use and service and for specific periods against operational failure caused by proven defective material or workmanship. Amrep's obligations under this warranty are limited to the repair, replacement or credit, as hereinafter provided at its option, of such Product and/or parts and components thereof. For Products (including parts and/or components) manufactured or supplied by other parties (including but not limited to engines, motor vehicles, special equipment, accessories, tires and fittings), Amrep shall endeavor to provide such third-party manufacturer warranties, as applicable and to the extent such warranty is transferrable or assignable. All express or implied warranties are limited to those expressly provided herein; and Amrep makes no other warranty or other duty of its own on any Product, including those warranted by any such third party, and expressly disclaims and does not obligate itself to any warranty on any Product, unless it delivers to Customer a separate written certificate specifically warranting the Product. Customer must complete a Product Warranty Registration Form, where applicable (retaining a copy for Customer's records) and provide proof of purchase or ownership.

Specific warranty periods are listed herein. Repair or replacement does not extend the warranty beyond the original period and repaired or replaced parts are warranted for the balance of the original warranty period for the original part. Some states do not allow limitations on how long an implied warranty lasts, the exclusion or limitation of incidental or consequential damages, and any such limitations will conform these Amrep warranties thereto (Customers may also have other specific rights which vary from state to state).

Amrep does not warrant or make any representations concerning Product when the Product is not installed and/or used in strict accordance with good installation, service and maintenance practices or operating instructions. Amrep does not warrant Product that has been altered, disassembled or re-designed; improperly installed, serviced, maintained, handled or repaired; combined with unapproved non-Amrep products without Amrep authorization; contaminated with or exposed to oil, grease, water (including salination), chemicals or solvents; damaged or fails to perform as a result of accident, acts of God, lack of reasonable and proper protection during storage or use, overheating, negligence, misuse, vandalism, damage from wildlife, loading or exceeding the manufacturer's rated or recommended capacity; damage from automated grasper; in contravention of specifically excluded use or any other unauthorized use other than originally intended, authorized, instructed or beyond the control of Amrep. This warranty does not apply to normal operating costs and adjustments, including but not limited to adjusting pressure settings, limit switches, timers, relays, fuses, loss of hydraulic oil, cable or filter replacement or normal cosmetic or mechanical wear and tear. Amrep does not warrant any used Products, which are sold "as is" unless otherwise expressly noted by Amrep. Further, Amrep does not warrant any Products that have had serial numbers removed, altered or defaced. Amrep shall have no liability for any special, punitive, incidental, liquidated or consequential damages, including but not limited to loss of profits, damages to other parts or equipment, cost of capital or interest, any claim for authorized labor charges incurred in diagnosing or replacing a defective Product, towing charges, travel costs, meals, lodging, telephone charges, fuel, storage, loss of use, loss of hydraulic oil, unauthorized repairs, or injury to person or property, to the maximum extent allowable under applicable law. If Amrep, without separate compensation therefore, furnishes Customer, Customer's customer or end user with advice or other assistance concerning any Product or equipment in which the Product may be installed, the furnishing of such advice or assistance will not subject Amrep to any liability whether in contract, tort (including negligence and strict liability) or otherwise. If any sample, model or demonstration was shown to or provided Customer, such sample, model or demonstration merely illustrates the general type and quality of Product and is not to be construed as a representation. If Amrep authorizes any labor costs associated herewith, such will be solely in accordance with Amrep established labor rates.

Authorization for repairs or related work on Products other than at a Amrep facility or authorized service center must be through prior written consent by Amrep; failure to obtain such prior consent shall void this warranty. All claims for reimbursement must be filed with proper documentation no later than forty-five (45) days after occurrence. Travel time approved in advance by Amrep for authorized service work is limited to two (2) hours maximum per service call.

As the exclusive remedy, provided such Product is manufactured by Amrep and deemed by Amrep to be defective, Amrep shall, at its sole option (i) repair or replace the defective Product, parts or component(s) thereof at our factory or elsewhere (in our discretion); (ii) provide Customer with a credit on its account in an amount equal to the original purchase Price of the defective Product; and/or (iii) require that Customer tender any such claims to the third party manufacturer or supplier of the Product, as applicable, upon which Amrep may endeavor to assist Customer or Customer's customer in resolution. Amrep will accept warranty claims only from the Customer or in the event of Customer's resale, redistribution, installation or other similar action, unless otherwise noted, from Customer's customer, end user or third party that directly purchased the Product through a legitimate action. Amrep reserves the right to examine all Product to determine whether or not the warranted Product qualifies for the exclusive remedy set forth in these Amrep Terms. No benefits or remedies are available under this limited warranty while the Invoice for the Product remains outstanding.

In any action brought against Amrep, regardless of the form or forum, Amrep shall not be liable to Customer, end user, customer or any third party for special, consequential, incidental, liquidated or punitive damages and, under no circumstances shall any award against Amrep in favor of Customer, end user, customer or any third party exceed the amount paid to Amrep by Customer for the Product, to the extent allowed by law. Amrep shall not indemnify Customer, end user, customer or any third party from potential claims by or against a third-party manufacturer or supplier. Further, Amrep shall not indemnify Customer, Customer's customers, end users or any third party against any claims, including but not limited to product liability claims or workers compensation claims. The parties agree that the foregoing remedy is reasonable and does not cause the Amrep's Limited Warranty to fail of its essential purpose.

In the event of Customer's resale, redistribution, installation or other similar action of any of the Products sold hereunder, in whatever form unless otherwise expressly notified by Amrep, Customer shall merely and solely pass the applicable Amrep limited warranties herein on to Customer's customer, end user or third party, as applicable, but make no warranty on its own binding Amrep, third party manufacturer or supplier or any others, and shall notify such purchaser, customer, end user or third party of this disclaimer of any Amrep warranty, in writing or otherwise.

Customer and Customer's customers, end users or third parties assume all risk and liability for loss or damage resulting from the handling, use, storage, disposal or application of the Products delivered hereunder. Further, Customer and as applicable, Customer's customers, end users or third parties shall defend, indemnify and hold harmless Amrep (and Amrep's parent company, its subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees, individually and collectively "Indemnified Parties") against any and all claims, demands, judgments, loss, injury, death, damage, liability, deficiency, actions, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers arising out of or occurring in connection with the Products purchased from Amrep and involving Customer's and/or Customer's customers', end users', or third parties' acts, omissions, negligence, misconduct; or relating to a breach or non-fulfillment of any representation, warranty or covenant under this Agreement by Customer or Customer's personnel; or alleging or relating to any bodily injury, death of any person or damage to real or tangible personal property caused by the acts or omissions of Customer or its personnel and/or Customer's customers, end users, or third parties; or relating to a purchase of a Product by any person or entity purchasing directly or indirectly through Customer and not directly relating to a claim of Limited Warranty breach; or relating to any failure by Customer or its personnel and/or Customer's customers, end users, or third parties to comply with any applicable laws or regulations. The right of Indemnified Parties to be indemnified and held harmless under the foregoing shall not be exclusive but shall be in addition to any and all other rights and remedies to which Indemnified Parties may be entitled under this Agreement or otherwise.

Customer and/or Customer's customers, end users, or third parties agree to familiarize itself and keep informed (without reliance on Amrep) with regards to any hazards to persons and/or property involved in handling, use, storage, disposal or application of the Products. Customer and/or Customer's customers, end users, or third parties shall advise its employees, customers, independent contractors and others who handle, use, store, dispose or apply such Products of any such hazards. Customer and/or Customer's customers, end users, or third parties represent and warrant that the Products sold by Amrep will not be used in connection with any applications where failure or malfunction could create a situation in which personal injury or death is likely to, or could occur.

THESE LIMITED AND CONDITIONAL WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WRITTEN OR UNWRITTEN, EXPRESS OR IMPLIED REPRESENTATIONS, SPECIFICATIONS, WARRANTIES AND REMEDIES, HEREIN OR ELSEWHERE, OR WHICH MAY ARISE UNDER LAW OR EQUITY, OR PURSUANT TO ANY COURSE OF DEALING OR CUSTOM OR USAGE OF TRADE, AND AMREP EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR, SPECIFIED OR INTENDED PURPOSE OR USE OF THE PRODUCT, EXCEPT FOR WARRANTY OF TITLE. THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, WHICH EXTEND BEYOND THE SEPARATE WRITTEN WARRANTY REFERENCED ON THE FACE HEREOF. NON-PAYMENT SIXTY (60) DAYS PAST THE DATE OF AN INVOICE MAY VOID WARRANTY.

DETERMINATION OF THE SUITABILITY OF THE PRODUCT COVERED BY THIS AGREEMENT FOR THE USE CONTEMPLATED BY THE CUSTOMER OR CUSTOMER'S CUSTOMERS IS THE SOLE RESPONSIBILITY OF THE CUSTOMER IN CONNECTION THEREWITH; CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR LOSS, DAMAGE OR INJURY ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCIDENT TO THE USE OR POSSESSION OF THE PRODUCT FURNISHED UNDER THIS AGREEMENT, OR THE SUPPLYING OF PRODUCTS TO CUSTOMER OR ANY SERVICES PROVIDED TO CUSTOMER, ANY THIRD PARTY RIGHTS IN THE PRODUCTS OR ANY USE OF THE PRODUCTS OR THE RESULTS OR DECISIONS MADE OR OBTAINED BY USERS OF THE PRODUCTS, EVEN IF AMREP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

CUSTOMER'S AND/OR CUSTOMER'S CUSTOMERS', END USERS' OR THIRD PARTIES' SOLE AND EXCLUSIVE REMEDY AGAINST AMREP SHALL BE THE REMEDY OF DEFECT IN PRODUCT DELIVERED HEREUNDER AS PROVIDED BY, AND WITHIN THE TIME PERIOD SPECIFIED IN AMREP'S LIMITED WARRANTY SET FORTH HEREIN. AMREP'S LIMITED WARRANTY CONSTITUTES THE SOLE REMEDY OF CUSTOMER AND CUSTOMER'S CUSTOMERS, END USERS OR THIRD PARTIES, AS APPLICABLE WITH RESPECT TO OR ARISING OUT OF THE EQUIPMENT, PRODUCT OR SERVICES OF AMREP, WHETHER BASED ON CONTRACT, MANUFACTURER, SALE, ALTERATION, USE, REPAIR, REPLACEMENT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE. NOTWITHSTANDING ANY OTHER PROVISIONS HEREOF, IN NO EVENT SHALL AMREP BE LIABLE TO CUSTOMER, CUSTOMER'S CUSTOMER, END USER OR THIRD PARTY, OR MANUFACTURE, SALE, ALTERATION, USE, REPAIR, REPLACEMENT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY OR OTHERWISE), FOR LOSS OF ANTICIPATED PROFITS, LOST SALES, INJURY TO PERSONS OR PROPERTY, LOSS BY REASON OF PLANT SHUTDOWN, NON-OPERATION, FORCE MAJEURE OR INCREASED EXPENSE OF OPERATION, SERVICE INTERRUPTIONS, CLAIMS OF CUSTOMERS, END USERS OR THIRD PARTIES OF CUSTOMER AND CUSTOMER'S CUSTOMERS', END USERS' OR THIRD PARTY'S COST OF MONEY, LOSS OF USE OF CAPITAL OR REVENUE, OR FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND WHATSOEVER.

LIMITED WARRANTY PERIODS

The warranty period for all Amrep Manufacturing Company Products manufactured and provided by Amrep Manufacturing Company or an Amrep Manufacturing Company authorized dealer is for a period of one (1) year structural, parts and labor from the date of shipment from the Amrep Manufacturing Company designated shipping point, unless otherwise specifically indicated as follows:

- Aftermarket Parts – Six (6) months from the date of shipment from the Amrep shipping point
- Service – Six (6) months from the date of completion of service

FRIST AMENDMENT TO MASTER EQUIPMENT LEASE/RENTAL AGREEMENT

This First Amendment ("First Amendment") to the master equipment lease/rental agreement ("Agreement") is made and entered into in the County of Ventura, State of California, this 15th day of June, 2021 by and between the City of Oxnard, a municipal corporation ("City"), and Big Truck Rental, LLC ("BTR"). This First Amendment amends the Agreement entered into on June 16, 2020, by City and Amrep Manufacturing Company, LLC (Amrep).

WHEREAS, on October 20, 2020 Amrep assigned the Agreement to BTR and the City approved of such assignment.

NOW THEREFORE, City and BTR agree as follows:

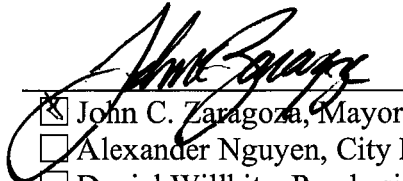
1. The lease/rental terms set forth in Exhibit "A" of the Agreement are hereby extended on a month to month basis for an additional twelve (12) months for a maximum lease/rental term of twenty four (24) months.
2. As so amended, the Agreement remains in full force and effect.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed the Amendment on the date first written above.

CITY OF OXNARD

BIG TRUCK RENTAL, LLC

 6-15-21
☒ John C. Zaragoza, Mayor 1 Date
☐ Alexander Nguyen, City Manager
☐ Daniel Willhite, Purchasing Manager
☐ _____, Buyer

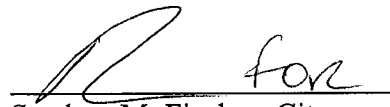
Scott Smith, Date
Director of Municipal Sales

Eric Voss, Date
Vice President, Sales

ATTEST:

 6/15/21
Rose Chaparro, City Clerk Date
(only if Mayor signs)

APPROVED AS TO FORM:

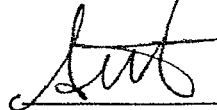
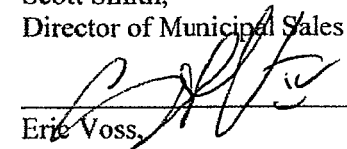
 for 3/24/21
Stephen M. Fischer, City Date
Attorney (always required)

IN WITNESS WHEREOF, the parties hereto have executed the Amendment on the date first written above.

CITY OF OXNARD

BIG TRUCK RENTAL, LLC

☒ John C. Zaragoza, Mayor¹ _____ Date _____
☐ Alexander Nguyen, City Manager _____
☐ Daniel Willhite, Purchasing Manager _____
☐ _____, Buyer _____

 _____ Date 3/19/21
Scott Smith,
Director of Municipal Sales
 _____ Date 3.23.21
Eric Voss,
Vice President, Sales

ATTEST:

Rose Chaparro, City Clerk _____ Date _____
(only if Mayor signs)

APPROVED AS TO FORM:

Stephen M. Fischer, City _____ Date _____
Attorney (always required)

¹ The City Council must authorize and the Mayor must sign the amendment if the original contract and all amendments collectively total over \$200,000 annually. The City Manager may authorize and sign the amendment if the original contract and all amendments collectively total over \$100,000 but up to \$200,000 annually. The Purchasing Manager may authorize and sign the amendment if the original contract and all amendments collectively total up to \$100,000 annually. A Buyer may authorize and sign the amendment if the original contract and all amendments collectively total up to \$25,000 annually.

SECOND AMENDMENT TO MASTER EQUIPMENT LEASE/RENTAL AGREEMENT

This Second Amendment ("Second Amendment") to the master equipment lease/rental ("Agreement") is made and entered into in the County of Ventura, State of California, this 21st day of December, 2021, by and between the City of Oxnard, a municipal corporation ("City"), and Big Truck Rental, LLC ("BTR"). This Second Amendment amends the Agreement entered into on June 16, 2020, by City and Amrep Manufacturing Company, LLC (Amrep). The Agreement previously has been amended on June 15, 2021, by a First Amendment.

WHEREAS, on October 20, 2020 Amrep assigned the Agreement to BTR and the City approved of such assignment.

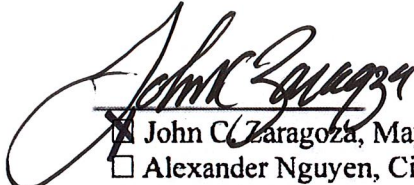
NOW THEREFORE, City and BTR agree as follows:

1. In Section 3 of the Agreement, the selected answer is hereby amended to state: "Customer shall pay BTR the sum of \$7,400.00 per month per item of front loader Equipment and the sum of \$8,750 per month per item of side loader Equipment ("Rent") for the right to possess and use each item of Equipment during the Term. The first month's lease/rent payment for each item of Equipment on the attached Schedule(s) is due upon signing this Agreement. Subsequent lease/rent payments are due by the 5th of each subsequent month of the Term. Any other amounts hereunder are due within 10 days of the date of the related BTR invoice."
2. The following is attached hereto and incorporated herein by this reference into the Agreement: Side Loader Refuse Trucks Exhibit - B
3. As so amended, the Agreement remains in full force and effect.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed the Amendment on the date first written above.

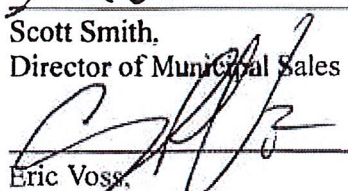
CITY OF OXNARD

 12-21-21
☒ John C. Zaragoza, Mayor¹ Date
☐ Alexander Nguyen, City Manager
☐ Daniel Willhite, Purchasing Manager
☐ _____, Buyer

ATTEST:

 12/21/21
Rose Chaparro, City Clerk Date
(only if Mayor signs)

BIG TRUCK RENTAL, LLC

 10/29/2021
Scott Smith, Date
Director of Municipal Sales
 11.1.21
Eric Voss, Date
Vice President, Sales

APPROVED AS TO FORM:

 11/8/21
Stephen M. Fischer, City Date
Attorney (always required)

Exhibit - B Side Loader Refuse Trucks

BTR SUPPLEMENTAL AGREEMENT



Company Address 5001 W. Lemon St.
Tampa, FL 33609
Prepared By Scott Smith

Created Date 10/19/2021
Email scotts@bigtruckrental.com
Quote Number 00022589

CUSTOMER INFORMATION

Billing Customer City of Oxnard
Billing Contact Jose Alvarez
Billing Address 111 S Del Norte Blvd
Oxnard CA 93030
Billing Email jose.alvarez@oxnard.org
Billing Phone 805-814-2716
Billing Mobile 8052072125

Rental Customer City of Oxnard
Shipping Contact Jose Alvarez
Shipping Address 111 South Del Norte Boulevard
Oxnard CA 93030
United States
Shipping Email jose.alvarez@oxnard.org
Shipping Phone 805-814-2716
Shipping Mobile 8052072125

Product Details

Asset Number	Year	Chassis Make	Chassis Model	Chassis VIN	Product Family	License Plate	Miles	Hours
4020074	2021	Peterbilt	520	3BPDLK0X8MF109931	SIDE LOADER	MB68AC	25,472	1,835
					SIDE LOADER		0	0
					SIDE LOADER		0	0
					SIDE LOADER		0	0
					SIDE LOADER		0	0
					SIDE LOADER		0	0
					SIDE LOADER		0	0
4020023	2021	Peterbilt	520	3BPDLK0XXMF108313	SIDE LOADER	MB15AI	18,335	1,206

Pricing Details

Quantity	Sales Price	Total Product Price	Transportation Cost
4.00	\$2,187.50	\$8,750.00	\$1,400.00
4.00	\$2,187.50	\$8,750.00	\$6,175.00
4.00	\$2,187.50	\$8,750.00	\$6,175.00
4.00	\$2,187.50	\$8,750.00	\$6,175.00
4.00	\$2,187.50	\$8,750.00	\$6,175.00
4.00	\$2,187.50	\$8,750.00	\$6,175.00
4.00	\$2,187.50	\$8,750.00	\$6,175.00
4.00	\$2,187.50	\$8,750.00	\$1,400.00

RENTAL CONTRACT PRICING SUMMARY

Order Subtotal	\$70,000.00	Total Amount Due	\$109,850.00
Total Security Deposit	\$0.00		

BTR SUPPLEMENTAL AGREEMENT



Total Transportation \$39,850.00
Cost

NOTES/EXPLANATION OF ADDITIONAL COSTS:

Special Terms Pricing is for the monthly (4 week) rental rate of
8 automated side loaders and is based on
OMNIA Partners national cooperative contract
#2019000319

Transportation cost is a one-time fee and is
based on location of trucks at time of rental.
Currently, 2 trucks are available at our Las
Vegas dealer location and quote has been
adjusted accordingly. The other 6 trucks include
estimated transport amounts - actual will be
determined at time of rental

RENTAL REMINDERS

MASTER RENTAL AGREEMENT: This document supplements the Master Rental Agreement, which the Customer signed and is subject to all provisions therein.

INSURANCE: This Supplemental Rental Agreement utilizes the insurance information provided in the Master Rental Agreement. Customer is required to provide continued proof of insurance at the inception of this Supplemental Rental Agreement and through the duration of the same.

RENTAL RATE: Customer is to use the Vehicle for a maximum of one-shift, which is defined as not more than 50 hours per week. If Customer uses the Vehicle beyond one-shift, Customer agrees that it will pay an additional charge for such use. The additional charge shall be calculated in the following manner: (a) If the Customer uses the Vehicle more than 50 hours per week but less than 80 hours per week, then Customer shall pay an additional charge equal to one-half (½) times the Rental Rate; (b) If the Customer uses the Vehicle 80 or more hours per week, then Customer shall pay an additional charge equal to one (1) times the Rental Rate.

MAINTENANCE: Customer is responsible for all routine maintenance of the truck and body while it is in the care and control of the Customer. Refer to Section 6 of the Master Agreement for detailed responsibility.

DAMAGE: Customer will be back billed for any damage to the rented property which Big Truck Rental determines to be beyond normal wear and tear. In addition, if the damage to a rented vehicle prevents Big Truck Rental from reletting the vehicle resulting in additional downtime and lost rental revenue for Big Truck Rental, then this Supplemental Rental Agreement shall automatically extend and Customer shall be billed for a reasonable period of time with which to make the necessary repairs. The customer is responsible for collection of prepaid security deposit. Uncollected security deposits older than one year, will be forfeited.

TIRES: As a tire is a consumable item, Big Truck Rental documents the condition of the tires on its trucks at the inception of the rental and at the time that the truck is returned. It is the Customer's responsibility to assure that the tires are in substantially the same condition at the end of the rental as when the truck is received by the Customer. Tires worn substantially more at the time they are returned than at the rental inception shall be back billed. In addition, any Non-Steer Tires(s) replaced during the duration of the rental period shall be replaced with a recappable casing. All Steer Tires must be replaced with a virgin tire. No exceptions. If Customer fails to replace the tire(s) as outlined herein, Big Truck Rental shall back bill for the cost of replacing said tire(s). Any casing deemed un-recappable by our tire vendor will be back billed.

FUEL: Short-term rentals are not subject to IFTA, all fuel tax and the reporting thereof is the responsibility of the renter. Any violations or fines of that nature are the responsibility of the Customer.

GOVERNMENT: All trucks rented from Big Truck Rental are owned by Big Truck Rental. Customer shall not cover or remove any truck identification, other than DOT numbers. Big Truck Rental's vehicles are legally licensed on the federal highways of 48 states, however, any state or local permits for state or county road use and waste pick up and/ or disposal are the sole and absolute responsibility of the Customer. Customer agrees Big Truck Rental is not the motor carrier operator and will display customer's DOT number as required by law.

By execution of this Rental Agreement, Customer acknowledges that the Vehicle described herein is rented to and in accordance with the terms, conditions, and provisions of the Master Rental Agreement and Rental Extension Agreement previously signed by the Customer and also those terms found in this Supplemental Rental Agreement. Customer evidences such knowledge by signing below.

THIRD AMENDMENT TO MASTER EQUIPMENT LEASE/RENTAL AGREEMENT

This Third Amendment ("Third Amendment") to the master equipment lease/rental ("Agreement") is made and entered into in the County of Ventura, State of California, this 21st day of June, 2022, by and between the City of Oxnard, a municipal corporation ("City"), and Big Truck Rental, LLC ("BTR"). This Third Amendment amends the Agreement entered into on June 16, 2020 by City and Amrep Manufacturing Company, LLC. The Agreement previously has been amended on December 21, 2021, by a Second Amendment, and on June 15, 2021, by a First Amendment.

WHEREAS, on October 20, 2020 Amrep assigned the Agreement to BTR and the City approved of such assignment.

NOW THEREFORE, City and BTR agree as follows:

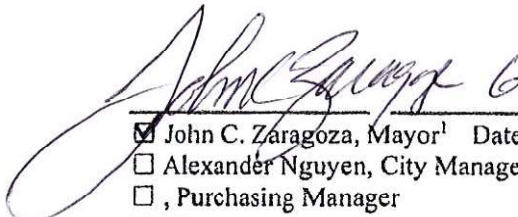
1. The lease/rental terms set forth in Exhibit "A" of the Agreement are hereby extended on a month to month basis for an additional twelve months for a maximum lease/rental term of thirty six (36) months.
2. The lease/rental terms set forth in Exhibit "B" of the Agreement are hereby extended on a month to month basis for an additional twelve months for a maximum lease/rental term of eighteen (18) months.
3. As so amended, the Agreement remains in full force and effect.

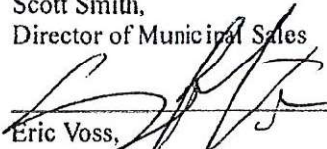
[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed the Amendment on the date first written above.

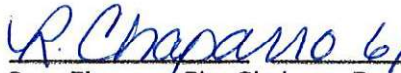
CITY OF OXNARD

BIG TRUCK RENTAL, LLC

 6-21-22
☒ John C. Zaragoza, Mayor¹ Date
☐ Alexander Nguyen, City Manager
☐ , Purchasing Manager
☐ , Buyer

 4/15/22
Scott Smith, Date
Director of Municipal Sales
 4/18/22
Eric Voss, Date
Vice President, Sales

ATTEST:

 6/21/22
Rose Chaparro, City Clerk Date
(only if Mayor signs)

APPROVED AS TO FORM:

 6-13-22
Stephen M. Fischer, City Date
Attorney (always required)

¹

Assignment and Assumption

This Assignment and Assumption of the Master Equipment Lease/Rental Agreement ("Assignment"), dated as of ~~September~~ October 20, 2020 (the "Effective Date"), is entered into among Amrep Manufacturing Company, LLC ("Amrep" or "Assignor") and Big Truck Rental, LLC ("BTR" or "Assignee") and the City of Oxnard ("Oxnard") (collectively, Assignor, Assignee and Oxnard are referred to as the "Parties").

WHEREAS, Oxnard and Assignor are parties to that certain Master Equipment Lease/Rental Agreement dated as of June 16, 2020 (the "Agreement"); and

WHEREAS, Assignor wishes to assign the Agreement to Assignee as of the Effective Date on the terms hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Capitalized terms used herein without definition shall have the definitions ascribed to them in the Agreement.
2. In accordance with Section 16.f. of the Agreement, Assignor hereby assigns the Agreement to Assignee, and Oxnard approves of such assignment. From and after the Effective Date, Assignee assumes all rights, duties and obligations of Assignor under the Agreement. Assignee agrees to be bound by and to perform the obligations under the Agreement. All references in the Agreement to Amrep shall be deemed to refer to Assignee.
3. Each of the Parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of any other party hereto, such further instruments of transfer and assignment and to take such other action as such other party may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Assignment.
4. Any notice to Assignee pursuant to Section 18.a of the Agreement shall be sent to at the following address:

Big Truck Rental
5001 W Lemon St.
Tampa, FL 33609
 Attention: Zach Martin

5. Other than terms contained herein, the Agreement shall remain in full force and effect.

6. This Assignment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
7. This Assignment may be executed in one or more counterparts by scanned or facsimile signature, all of which taken together shall be deemed to constitute one and the same instrument.
8. This Assignment and the obligations of the Parties hereunder will be governed by and construed in accordance with the laws of the State of California without giving effect to any choice of law principles that may require the application of any other laws.

[Signature Page Follows]

WITNESS, the Parties have caused their authorized representatives to execute this Assignment as of the date first above written.

CITY OF OXNARD

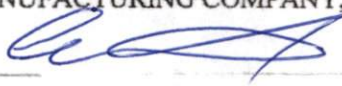
By: 
Name: Dan Willhite
Title: Purchasing Manager

Date: 10/20/2020

APPROVED AS TO FORM:

 10/15/20
Stephen M. Fischer, City Date
Attorney (always required)

AMREP MANUFACTURING COMPANY, LLC.¹

By: 
Name: Eric Mattson
Title: President

Date: 10/20/20

AMREP MANUFACTURING COMPANY, LLC.

By: 
Name: Richard S. Cooper
Title: General Counsel

Date: 10/20/20

¹ City of Oxnard agreement signature policy – For any Limited Liability Company (LLC), the signatures of two (2) LLC managers are required. These managers must be in the capacity of LLC owner/manager or company director. The signatures of middle and lower management are invalid.

BIG TRUCK RENTAL, LLC.²

By: [Signature]

Date: 10/20/2020

Name: Scott Smith
Title: Director of Municipal Sales

BIG TRUCK RENTAL, LLC

By: [Signature]

Date: 10.20.2020

Name: Eric Voss
Title: Vice President, Sales

² Ibid.

FOURTH AMENDMENT TO AGREEMENT A-8221 WITH BIG TRUCK RENTAL, LLC FOR RENTAL OF REFUSE COLLECTION TRUCKS

Public Works and Transportation Committee
May 23, 2023

City Council
June 20, 2023

Brian Yanez
Assistant Public Works Director

That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute a Fourth Amendment to a Rental Agreement with Big Truck Rental, LLC in the amount of \$1,294,235 for a new total not to exceed \$4,463,035 for an additional period of 12 months for the rental of refuse collection vehicles.

That the City Council approve and authorize the Mayor to execute a Fourth Amendment to a Rental Agreement with Big Truck Rental, LLC in the amount of \$1,294,235 for a new total not to exceed \$4,463,035 for an additional period of 12 months for the rental of refuse collection vehicles.

- June 30, 2020 - Council approved Agreement A-8221 with Amrep for rental of seven commercial refuse collection vehicles
- October 20, 2020 - Amrep legally transferred Agreement A-8221 to Big Truck Rental, LLC (BTR)

- Below is the history of Agreement A-8221 and the amendments:

AGREEMENT A-8221	COUNCIL DATE	CUMULATIVE AMOUNT	TERM DATE
Original Agreement	June 30, 2020	\$621,600	June 30, 2021
First Amendment	June 15, 2021	\$1,243,200	June 30, 2022
Second Amendment	December 20, 2021	\$1,707,200	June 30, 2022
Third Amendment	June 21, 2021	\$3,168,800	June 30, 2023
<i>Fourth Amendment</i>	<i>June 6, 2023*</i>	<i>\$4,463,035</i>	<i>June 30, 2024</i>

**Pending City Council action*

- ER Division is requesting to amend contract with BTR for an additional 12 months due to the aging fleet of refuse collection vehicles
- ER and Fleet Services staff will pursue alternative options such as purchase or lease purchase of refuse collection vehicles to determine the best value for ER operations
- The intent to rent refuse collection vehicles is as follows:
 - Maintenance and repairs
 - Unforeseen breakdowns
 - While waiting on purchases due to the long lead times

- This Fourth Amendment allows for uninterrupted daily refuse collection services for residential and commercial customers
- Additionally, rental vehicles provide capacity support in compliance with the State's SB 1383 mandate to collect residential and commercial organic waste

- 23 refuse collection vehicles that have an average of 100,000 miles and average up to 18 years in service
 - These 23 vehicles were purchased for \$3,587,265 and to date, over \$10M has been spent on labor and parts to keep them operable
- ER will potentially rent up 5 to 10 vehicles per month depending on the status of operating refuse collection vehicles
- The amendment allows the return of any of the refuse collection vehicles on an as-needed basis, and without monetary penalty from BTR

- The cost for this Fourth Amendment to Agreement No.A-8221 with BTR is \$1,294,235 for a total new agreement value of \$4,463,035
- Funding shall be requested in the Environmental Resources Fund (631) during the annual budget process

ESTIMATED SPENDING PLAN		
ER Account	FY 2023-24	TOTAL
6313632-57000	\$776,541.00	\$776,541.00
6313633-57000	\$517,694.00	\$517,694.00
TOTAL	\$1,294,235	\$1,294,235



QUESTIONS



PUBLIC WORKS AND TRANSPORTATION COMMITTEE AGENDA REPORT

REPORTS AGENDA ITEM NO. D.2

DATE: May 23, 2023

TO: Public Works and Transportation Committee

FROM: Michael Wolfe, Public Works Director, (805) 385-8055, michael.wolfe@oxnard.org

SUBJECT: First Amendment to Agreement A-8368 with Toter, LLC for the Purchase of Residential Curbside Collection Containers and Parts. (10 minutes)

RECOMMENDATION

That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute a First Amendment to Agreement No. A-8368 with Toter, LLC in the amount of \$775,000 for a new total not to exceed \$1,525,000 for an additional two-year term ending May 28, 2025, for the replenishment of curbside containers and parts.

Please click the following link to view the required Measure M pre-recorded presentation video: <https://youtu.be/3cq7tqDjxa0>

BACKGROUND

In order to provide uninterrupted, weekly collection of refuse, recyclables and green waste (organics) to approximately 37,000 residential customers in the City of Oxnard (City), the Environmental Resources Division (ER) must maintain a sufficient inventory of containers, lids and parts. Since 2011, the ER Division has standardized the use of Toter-manufactured for residential containers.

On November 16, 2021, Council approved Agreement A-8368 with Toter, LLC for the purchase of curbside containers and parts. In-lieu of issuing a formal request for bid, staff utilized the City of Oxnard's membership in Sourcewell, a National Intergovernmental Purchasing Alliance program that enables government agencies to simplify and accelerate their procurement processes through competitive, pre-negotiated contracts. The City acquired new residential containers and parts through Sourcewell contract #041521-TOT.

Toter, LLC meets all required City contractual provisions including possession of a City business tax certificate, insurance certificates and corporate filing with the California Secretary of State.

DISCUSSION

The ER Division is responsible for the maintenance and repairs of approximately 111,000 residential containers. These containers are being replaced or repaired due to normal wear and tear. This First Amendment allows the Environmental Resources Division to continue to fulfill customer work orders for the replacement and repairs of containers and lids. Unrepairable containers and lids are recycled and sold for scrap value.

STRATEGIC PRIORITIES

This agenda item is a routine operational item or does not relate to the five strategic priorities adopted by City Council on March 16, 2021.

FINANCIAL IMPACT

The cost of this First Amendment to Agreement No. A-8368 with Toter is \$775,000 for a total new agreement value of \$1,525,000. Funding shall be requested in the Environmental Resources Fund (6313632-52400) during the annual budget process for FY 2023-24. Funding for subsequent fiscal years will be requested in the annual budget process.

1st Amendment to Toter, LLC Agreement A-8368			
ER Division/Account	FY 2023-24	FY 2024-25	Total
6313632-52400	\$400,000	\$375,000	\$775,000

Prepared by: Brian Yanez, Assistant Public Works Director

ATTACHMENTS

1. A-8368 Original
2. 1st Amendment to A-8368
3. Presentation

**AGREEMENT FOR TRADE SERVICES
COVER PAGE**

- (1) Agreement Start Date: January 1, 2022
- (2) Vendor: Toter, LLC
- (3) Services: Vendor shall provide fully automated residential curbside containers and replacement parts as listed in Exhibit A - Sourcewell Contract No. 041521-TOT RFP # 041521 attached hereto and incorporated by this reference in full herein.
- (4) Schedule of Services: Vendor shall complete the services within the term of this Agreement.
- (5) Agreement Ending Date: December 31, 2024
- (6) Total Agreement Amount: \$750,000
- (7) City's Project Manager: Eric Okada, Environmental Resources Supervisor
- (8) Vendor's Project Manager: Kellie Clark, Contract Manager
- (9) Insurance Coverage: INS- I
- (10) What wages are required for this Project?

☐ Living wage but not prevailing wages, in which case: Section 20(a) through (d) and the Living Wage Policy Exhibit are incorporated and are required; but Section 20(e) and the Prevailing Wage Exhibit are not incorporated and are not required.

☐ Prevailing wages but not living wage, in which case: Section 20(e) and the Prevailing Wages Exhibit are incorporated and are required; but Section 20(a) through (d) and the Living Wage Policy Exhibit are not incorporated and are not required.

☐ Both living wage and prevailing wages, in which case Section 20, the Living Wage Policy Exhibit, and the Prevailing Wages Exhibit are incorporated and required.

☒ Neither living wage nor prevailing wages, in which case Section 20, the Living Wage Policy Exhibit, and the Prevailing Wages Exhibit are not incorporated and are not required.

- (11) Addresses for Notice:

FOR VENDOR:

FOR CITY:

Toter, LLC
841 Meacham Road
Statesville, North Carolina 28677
Attn: Kellie Clark, Contract Manager

City of Oxnard - Environmental Resources (ER) Division
111 South Del Norte Boulevard
Oxnard, CA 93030
Attn: Eric Okada, Environmental Resources Supervisor

- (12) Contact Emails:

VENDOR'S PROJECT MANAGER'S:

CITY'S PROJECT MANAGER:

Kellie Clark, kclark@toter.com
Maribel Ramos, mrmos@wastequip.com
CC: Rich Sedory, rsedory@wastequip.com

Eric Okada, eric.okada@oxnard.org

The Agreement for Trade Services is attached hereto and incorporated herein by this reference. The following exhibits are also attached hereto and incorporated herein by this reference into the Agreement:

- ☒ Scope of Services Exhibit
- ☒ Rates and Costs Exhibit
- ☐ Schedule of Services Exhibit
- ☒ Exhibit - A
- ☒ Living Wage Policy Exhibit
- ☒ Prevailing Wages Exhibit
- ☒ Insurance Exhibit (INS-I)



AGREEMENT FOR TRADE SERVICES

THIS AGREEMENT FOR TRADE SERVICES ("Agreement") is entered into in Ventura County, California, on the date that is written as "(1) Agreement Start Date" on the Cover Page, which is attached hereto and incorporated herein by this reference. This Agreement is entered by and between the City of Oxnard ("City") and the person or entity listed as "(2) Vendor" on the Cover Page, subject to the following terms and conditions:

1. Scope of Services. Vendor shall provide to City the services listed as "(3) Services" on the Cover Page (the "Services"). Vendor shall provide the Services during the term of this Agreement, as set forth below, according to the schedule written as "(4) Schedule of Services" on the Cover Page, and as further explained in the Scope of Services Exhibit, which is attached hereto and incorporated herein by this reference. In the event of any conflict between the terms of this Agreement and any incorporated document(s), the terms of this Agreement shall control.
2. Term. This Agreement shall begin on the date that is written as "(1) Agreement Start Date" on the Cover Page and shall end on the date that is written as "(5) Agreement Ending Date" on the Cover Page. Time is of the essence in this Agreement.
3. Compensation. For the Services performed during the term of this Agreement, City shall pay Vendor an amount not to exceed the amount that is listed as "(6) Total Agreement Amount" on the Cover Page, at the rates listed in the Rates and Costs Exhibit, attached hereto and incorporated herein by this reference. The rates in the Rates and Costs Exhibit shall be in effect through the end of this Agreement unless otherwise stated therein.
4. Invoices. Vendor shall submit a payment request to City by the end of each calendar month listing the Services provided, costs of those Services, and total amount due for the month. Each invoice must also list the current balance on the Agreement, including that invoice, as well as the months remaining on the term of the Agreement. Invoices may be emailed to: invoices@oxnard.org.
5. Most Favored Nation. Throughout the term of the Agreement, in the event Vendor provides the same Services, under similar quantities, delivery conditions and payment terms, pursuant to a Sourcewell Contract No. 041521-TOT RFP # 041521 ("Sourcewell Contract") related-agreement, having terms more favorable than this Agreement to any person or entity other than City, Vendor shall notify City within 10 calendar days of signing the other contract, or if there is no other contract, of finalizing that deal or providing any services, whichever occurs first in time. In that notice, Vendor shall offer City to amend this Agreement to reflect such more favorable terms into this Agreement without any contingency to amend any other provision of this Agreement.
6. Acceptance of Payment. Vendor's acceptance of final payment made pursuant to this Agreement shall constitute a release of City from all claims and liabilities for compensation to Vendor for anything completed, finished or relating to the Services. City's payment shall not constitute nor be deemed a release of the responsibility and liability of Vendor for the accuracy and competency of the information provided and/or the Services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the Services performed by Vendor and its employees, agents and subcontractors. Vendor shall provide City with a completed Request for Taxpayer Identification Number and Certification, as issued by the Internal Revenue Service. If any sales tax is due for the Services performed by Vendor or materials or products provided to City by Vendor, Vendor shall pay the sales tax. City shall not reimburse Vendor for sales taxes paid by Vendor.
7. Non-binding Terms. Any terms and conditions that are typed, printed, or otherwise included in any Vendor invoice rendered pursuant to this Agreement shall be deemed to be solely for the convenience of the parties. No such term or condition shall be binding upon City, and no action by City (including, without limitation, the payment of any such invoice in whole or in part) shall be construed as binding City with respect to any such term or condition, unless the specific term or condition has been previously agreed to by Vendor and City in this Agreement or in a binding amendment thereto.
8. Non-Appropriation of Funds. Payments to be made to Vendor by City for the Services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted and unencumbered appropriation of City. In the event City does not appropriate sufficient funds for payment of the Services beyond the

current fiscal year, this Agreement shall cover payment for the Services only up to the conclusion of the last fiscal year in which City appropriated sufficient funds and shall automatically terminate at that fiscal year's conclusion.

9. Coordination of Services. The Services shall be coordinated with the person in the position listed in "(7) City's Project Manager" on the Cover Page, subject to the direction of the City Manager or Department Director. Vendor hereby designates the person in the position listed in "(8) Vendor's Project Manager" on the Cover Page as the person responsible for the Services who shall coordinate with City's Project Manager in making binding decisions in line with this Agreement on behalf of Vendor.

10. Personnel. Vendor represents that it has or shall secure at its own expense all personnel required to perform the Services. Vendor shall make reasonable efforts to maintain the continuity of Vendor's staff who are assigned to perform the Services. Vendor may associate with or employ associates or subcontractors in the performance of the Services, but at all times shall Vendor be responsible for its associates and subcontractors' labor, advice or materials provided in furtherance of providing the Services. Should any of Vendor's employees, assigns or subcontractors not conduct him- or herself appropriately, as determined by the City's Project Manager, in the process of providing the Services or any portion thereof, the City's Project Manager may notify the Vendor's Project Manager, who shall immediately handle the problem, as determined appropriate by him or her, such that the problem does not persist.

11. Additional Work. City may request additional specified work under this Agreement. The City's Project Manager must authorize all such work in writing before commencement. Vendor shall perform such work, and City shall pay for such additional work, in accordance with the Rates and Costs Exhibit. Should the work not fall under any such listed rate or cost, Vendor shall submit a quote for all additional work, which the City's Project Manager must approve in writing by before any such work may commence. The City shall compensate Vendor for any work that does not fall under a rate or cost listed in the Rates and Costs Exhibit, and for which Vendor did not obtain the City's Project Manager's written approval before work commenced, as determined by the City's Project Manager in his or her sole discretion.

12. Advertising and Publicity. Vendor shall not use the name of or refer to City directly or indirectly in any advertisement, news release, or professional or trade publication without prior written approval from the City Manager. This Section shall survive the termination of this Agreement.

13. Audit. City shall have the option of inspecting, auditing and/or reproducing all records and other written materials: used by Vendor in preparing its billings to City as a condition precedent to any payment to Vendor; or for other purposes relating to the Agreement. Vendor will promptly furnish all documents requested by the City. Additionally, if this Agreement is in excess of \$10,000, the State Auditor may examine and audit Vendor for a period of 3 years after final payment under the Agreement. Regardless of whether a State audit is permitted, Vendor shall maintain and preserve all such records for a period of at least 3 years after final payment under the Agreement or until an audit has been completed and accepted by City, whichever occurs later. Audits by the City shall be limited to no more than once per year. Vendor shall maintain all such records. Vendor shall include a copy of this Section in all contracts with its subcontractors, and Vendor shall be responsible for immediately obtaining those records or other written material from its subcontractors upon a request by the State Auditor and/or City.

14. Termination. City may terminate this Agreement at any time, with or without cause and without penalty, upon 15 calendar days' prior written notice. Such termination shall be effective on the date specified in the notice, or if no date is specified, then 15 calendar days from the date of the notice. Vendor may terminate this Agreement at any time, with or without cause and without penalty, upon 30 calendar days' prior written notice. Such termination shall be effective on the date specified in the notice, or if no date is specified, then 30 calendar days from the date of notice and only if all assignments accepted by Vendor have been completed before the date of termination. In the event of termination of this Agreement by either party due to no fault or failure of performance by Vendor, City shall pay Vendor compensation for all Services satisfactorily completed in accordance with all of the terms and provisions of this Agreement, as determined by the City, before the effective date of termination; provided, in no event shall the Vendor receive an amount exceeding that which would have been paid to Vendor for the full performance of the Services. If City pays for any materials, City shall be entitled to the title and possession of such.

15. Hold Harmless, Defense and Indemnity.

To the fullest extent permitted by law, Vendor shall immediately defend, indemnify, and hold harmless City, its legislative and advisory bodies, and the City's officials, directors, officers, employees, and agents (the "Indemnitees") from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with Vendor's performance of this Agreement or Vendor's failure to comply with any of its obligations contained in this Agreement. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Vendor's obligation to indemnify applies unless it is adjudicated that any of the liabilities covered by this Section 15 are the result of the sole active negligence or sole willful misconduct of any of the Indemnitees.

a. The duty to defend is a separate and distinct obligation from Vendor's duty to indemnify. Vendor shall be obligated to defend in all legal, equitable, administrative, or special proceedings with counsel approved by the City Attorney immediately upon tender to Vendor of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of negligence or willful misconduct by any of the Indemnitees shall not relieve Vendor from its separate and distinct obligation to defend the Indemnitees. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes the obligation to provide independent defense counsel if Vendor asserts that liability is caused in whole or in part by the negligence or willful misconduct of the Indemnitees. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of any of the Indemnitees, Vendor may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

b. The review, acceptance or approval of Vendor's work or work product by any of the Indemnitees shall not affect, relieve or reduce Vendor's indemnification or defense obligations. This Section 15 shall survive completion of the Services or termination of this Agreement. The provisions of this Section 15 shall not be restricted by and do not affect the provisions of this Agreement relating to insurance.

16. Insurance. Vendor shall obtain and maintain during the performance of any services under this Agreement the insurance coverages listed within the insurance document stated in "(9) Insurance Coverage" on the Cover Page and in the Insurance Exhibit, which is attached hereto and incorporated herein by this reference, unless the Risk Manager waives, in writing, the requirement that Vendor obtain and maintain such insurance coverages. Such insurance must be issued by a company satisfactory to the Risk Manager. Vendor shall, before performance of any Services pursuant to this Agreement, file with the Risk Manager evidence of insurance coverage as specified in "(9) Insurance Coverage" on the Cover Page and in the Insurance Exhibit. Maintenance of insurance coverages by Vendor is a material element of this Agreement. Vendor's failure to maintain or renew insurance coverages or to provide renewal evidence may be considered a material breach of this Agreement.

17. Documents and Materials.

a. All final computations, exhibits, files, plans, correspondence, reports, drawings, designs, data, photographs, specifications, information, images, video files, media, or other deliverables prepared, created, drawn, calculated, photographed or developed by Vendor pursuant to this Agreement ("Documents and Materials") shall be the property without restriction or limitation upon its use, duplication or dissemination by the City. All Documents and Materials shall be considered "works made for hire," and all Documents and Materials and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of the City without restriction or limitation upon their use, duplication or dissemination by the City. Vendor shall not obtain or attempt to obtain copyright protection as to any Documents and Materials. Vendor hereby assigns to the City all ownership and any and all intellectual property rights to the Documents and Materials that are not otherwise vested in the City pursuant to this Section 17.

b. Vendor shall deliver all Documents and Materials to City's Project Manager upon completion of the Services or termination of this Agreement without additional cost or expense to the City. Additionally, anytime at City's request, City shall be entitled to possession of, and Vendor shall furnish to City's Project Manager within 10 calendar days, any or all of the Documents and Materials without additional cost or expense to the City. In both situations, if Vendor prepares Documents and Materials on a computer, Vendor shall provide City with said

Documents and Materials both in a printed format and in an electronic format that is acceptable to the City. Vendor may retain copies of these Documents and Materials but must request permission from the City before use, duplication or dissemination these Documents and Materials for any purpose other than for the Services provided to the City pursuant to this Agreement.

c. Any substantive modification of the Documents and Materials by City staff or any use of the completed Documents and Materials for other City projects, or any use of uncompleted Documents and Materials, without the written consent of Vendor, shall be at City's sole risk and without liability or legal exposure to Vendor.

d. Vendor warrants and represents that it has secured all necessary licenses, consents or approvals to use any instrumentality, thing or component as to which any intellectual property right exists, including computer software, used in the rendering of the Services and the production of all Documents and Materials, and that the City has full legal title to and the right to use, duplicate or disseminate the Documents and Materials. Vendor shall defend, indemnify and hold Indemnitees harmless from any loss, claim or liability in any way related to a claim that City's use of any of the Documents and Materials is violating federal, state or local laws, any contractual provisions, or any laws relating to trade names, licenses, franchises, copyrights, patents or other means of protecting intellectual property rights and/or interests in products or inventions. Vendor shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, equipment, devices or processes in connection with its provision of the services and Documents and Materials. In the event the use of any of the Documents and Materials by the City is held to constitute an infringement and the use of any of the same is enjoined, Vendor, at its own expense, shall: secure for City the right to continue using the Documents and Materials by suspension of any injunction, or by procuring a license or licenses for City; or modify the Documents and Materials so that they become non-infringing while remaining in compliance with the requirements of this Agreement.

e. This Section 17 shall survive the termination of this Agreement.

18. Confidentiality of Information.

a. For the purposes of this Agreement, "Confidential Information" means all information, in whatever form transmitted, relating to the past, present or future business affairs of the City, including without limitation, (i) technical information, including patent, copyright, trade secret, and other proprietary information, techniques, sketches, drawings, models, inventions, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulas; or (ii) non-technical information, including without limitation finances, financial and accounting data and information, suppliers, customers, customer lists, purchasing data and any other information belonging to the City or to a third party whose information is in the City's possession or control under obligations of confidentiality, and which is disclosed to Vendor or is developed by Vendor in whole or in part at the City's expense.

b. All Documents and Materials shall be considered Confidential Information and shall not be reproduced, transmitted, disclosed or used by the Vendor without the written consent of the City, except as may be necessary for Vendor to fulfill its obligations to the City.

c. Notwithstanding the above, these limitations shall not apply to information that (i) is already known to Vendor at the time of that information's disclosure or becomes publicly known through no wrongful act or omission of Vendor, (ii) is communicated to a third party with the express written consent of City and is not subject to restrictions on further use or disclosure, (iii) is independently developed by Vendor and has no relation to this Agreement, or (iv) is required by law, court order, court-issued subpoena or other legal process to be disclosed; provided, however, that before making such disclosure, Vendor shall immediately provide City with written notice and a reasonable opportunity for City to object to the disclosure or to take action to maintain the confidentiality of the information, unless such prior disclosure is legally impermissible.

d. Vendor shall use reasonable care to protect the Confidential Information. In the event of a breach or threatened breach of this Agreement, City shall be entitled to obtain an injunction prohibiting any such breach, the costs of which shall be paid by Vendor. Any relief granted shall be in addition to and not in lieu of any other legal or equitable relief, including money damages. The parties acknowledge that Confidential Information is valuable and

unique and that disclosure of the Confidential Information in breach of this Agreement may result in irreparable injury to the City.

e. Other than an obligation upon the City to deal in good faith, the City makes no warranties and shall bear no liability or responsibility for errors or omissions in any Confidential Information disclosed under this Agreement or for any business decisions made by Vendor in reliance on any Confidential Information disclosed under this Agreement.

f. This Section 18 shall survive the termination of this Agreement.

19. **Independent Contractor.** Vendor is and shall at all times remain, as to City, a wholly independent contractor. Neither City nor any of its employees or agents shall have control over the conduct of Vendor or any of its employees, except as stated in this Agreement. Vendor has and shall retain the right to exercise full control over the employment, direction, means of performance, location, compensation and discharge of all persons assisting Vendor, and it is free to dispose of all portions of its time which it is not obligated to devote to City in such a manner and to such persons, firms, or corporations as Vendor wishes except as expressly provided in this Agreement. This Agreement shall not be interpreted to prevent or preclude Vendor from rendering any services for Vendor's own account or to any other person or entity as Vendor in its sole discretion shall determine; provided, however, that performing such services shall not materially interfere with the Services Vendor shall perform for the City. Except as City's Project Manager specifies in writing, Vendor and its employees and agents have no authority, express or implied, to act on behalf of City in any capacity, to incur any debt, obligation or liability on behalf of City, bind City in any manner, or otherwise act on behalf of City as an agent. Vendor and its employees are not employees of City. Vendor and its employees are not entitled to receive from City any of the benefits or rights afforded employees of City, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, and health, life, dental, long-term disability and workers' compensation insurance benefits. Vendor shall not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Vendor agrees to pay all required taxes on amounts paid to Vendor under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Vendor shall be solely responsible for, and shall save City harmless from, all matters relating to the payment of Vendor's subcontractors, material suppliers, directors, officers, employees, agents and representatives, including compliance with social security requirements, federal and State income tax withholding, and all other regulations governing employer-employee relations, as applicable. City shall have the right to offset against the amount of any compensation due to Vendor under this Agreement any amount due to City from Vendor as a result of its failure to promptly pay to City any reimbursement or indemnification arising under this Section.

20. **Wages.** If the first option is selected in response to (10) on the Cover Page and, thus, the payment of living wage is required, only this paragraph and subsections (a) through (d) of this Section 20 shall apply. If the second option is selected in response to (10) on the Cover Page and, thus, the payment of prevailing wages (and related Labor Code provisions) is required, only this paragraph and subsection (e) of this Section 20 shall apply. If the third option is selected in response to (10) on the Cover Page and, thus, both the payment of living wage and prevailing wages (and related Labor Code provisions) is required, this paragraph and subsections (a) through (e) shall apply, meaning Vendor shall compensate all of its employees providing services to City in accordance with both the City's Living Wage Policy and State-required prevailing wages. In the event of a conflict between the City's Living Wage Policy and State-required prevailing wages, the higher of the two shall prevail. If the fourth option is selected in response to (10) on the Cover Page and, thus, neither the payment of living wage nor prevailing wages (and related Labor Code provisions) is required, no part of this Section 20 shall apply.

If either the first or third option is selected in response to (10) on the Cover Page, Vendor shall compensate any employee of Vendor who provides Services to the City under this Agreement in accordance with the Living Wage Policy Exhibit, which is attached hereto and incorporated herein by this reference. While this Agreement is in effect, Vendor shall pay such employee no less than \$16.89 per hour for each hour that such employee provides services under this Agreement. This hourly rate shall be adjusted on July 1, 2022, and each July 1 thereafter, according to the percentage change in the Consumer Price Index, all items, prepared by the Bureau of Labor Statistics for the Los Angeles area relating to all urban consumers (CPI-U), index base 1982-84=100,

comparing May of the previous year to May of the current year. In addition, while this Agreement is in effect, Vendor shall provide to such employee no less than 96 hours of paid leave per calendar year.

a. Vendor agrees to post, at a location readily accessible to those employees providing services to the City, a copy of the Living Wage Policy adopted by the Oxnard City Council on July 9, 2002, and effective October 1, 2002.

b. If Vendor fails to compensate such employee pursuant to the Living Wage Policy, the City Manager or designee shall terminate this Agreement on written notice to Vendor, effective immediately.

c. In addition, if Vendor fails to comply with the Living Wage Policy in any manner, Vendor shall pay to City a fine of \$500 and shall pay to any employee providing services under this Agreement a penalty of three times the amount or value of the compensation owed to such employee under the Living Wage Policy. Vendor shall pay such fine and penalty within 15 days after the City Manager or designee provides written notice to Vendor of the amount owed.

d. If either the second or third option is selected in response to (10) on the Cover Page, in accordance with Labor Code Section 1770 *et seq.*, the Project is a "public work." The Vendor shall pay wages in accordance with the determination of the Director of the Department of Industrial Relations ("DIR") regarding the prevailing rate of per diem wages. Copies of those rates are on file with the Public Works Director and are available to any interested party upon request. The Vendor shall post a copy of the DIR's determination of the prevailing rate of per diem wages at the job site. The Vendor shall comply with all provisions of the Prevailing Wage Exhibit, which is attached hereto and incorporated herein by this reference.

21. Nondiscriminatory Employment. Vendor shall not unlawfully discriminate against any individual based on race, color, religion or religious creed, national origin, ancestry, ethnic group identification, primary language, physical disability, mental disability, medical condition, genetic information, marital status, gender, gender identity, gender expression, sex, sexual orientation, age, immigration status, citizenship or military and veteran status. Vendor understands and agrees that it is bound by and will comply with all legal nondiscrimination mandates. For every subcontractor who will perform Services, Vendor shall be responsible for such subcontractor's compliance with this Section.

22. Vendor's Representations. Vendor represents, covenants and guarantees that: a) Vendor is licensed, qualified, and capable of furnishing the labor, materials, and expertise necessary to perform the Services in accordance with the terms and conditions set forth in this Agreement; b) there are no obligations, commitments, or impediments of any kind that will limit or prevent Vendor's full performance under this Agreement; c) to the extent required by the standard of practice, Vendor has investigated and considered the scope of Services performed, has carefully considered how the Services should be performed, and understands the facilities, difficulties and restrictions attending performance of the Services under this Agreement.

23. Compliance with Laws. In performing the Services under this Agreement, Vendor shall comply with all applicable laws, ordinances and regulations. Before performing the Services under this Agreement, Vendor shall obtain all required licenses and permits, including a City business tax certificate.

24. Conflict of Interest. If, in performing the Services set forth in this Agreement, Vendor makes, or participates in, a "governmental decision" as described in Title 2, Section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for City that would otherwise be performed by a City employee holding a position specified in City's conflict of interest code, Vendor shall be subject to City's conflict of interest code, the requirements of which include the filing of one or more statements of economic interests disclosing the relevant financial interests of Vendor's personnel providing the Services set forth in this Agreement. Furthermore, Vendor shall not to accept any employment or representation during the term of this Agreement or within 12 months after completion of the Services which is or may likely make Vendor "financially interested," as provided in California Government Code Sections 1090 and 87100, in any decisions made by City on any matter in connection with which Vendor has been retained pursuant to this Agreement.

25. Fictitious Name. If Vendor has a fictitious name, Vendor shall submit to City a new Fictitious Business Name Statement approved by any California county before Vendor's prior Fictitious Business Name Statement expires if such expiration may occur during the term of this Agreement, including any term amendment.
26. Non-Assignability. Vendor shall not assign or transfer any interest in this Agreement or any part thereof, whether by assignment or novation, without City's prior written consent, which may be withheld for any reason or for no reason at all. Any purported assignment without written consent shall be null, void, and of no effect, and Vendor shall hold harmless, defend and indemnify Indemnitees regarding all Claims arising from or relating to any unauthorized assignment.
27. Protection of Services. Vendor shall continuously maintain adequate protection of all of Vendor's work from damage and shall protect the City's property from any and all injury or loss arising in connection with this Agreement. Vendor shall take all necessary precaution for the safety of employees on the job and shall comply with all applicable provisions of federal, State and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to any premises where the Services are being performed.
28. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Vendor.
29. Applicable Law: Venue. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, excluding California's choice of law rules. Venue for any such action relating to the Agreement shall be in the Ventura County Superior Court.
30. Titles. The titles used in this Agreement are for convenience only and shall in no way define, limit or describe the scope or intent of this Agreement or any part of it.
31. Force Majeure. Neither City nor Vendor shall be responsible for delays or failures in performance resulting from acts beyond the control of either party. Such acts shall include but are not be limited to acts of God, riots, acts of war, epidemics, pandemics, local disease outbreaks, public health emergencies, government imposed quarantines, the unavailability of labor or materials to the extent beyond the control of the party affected, fire, earthquakes, or other disasters.
32. Authority. Any person executing this Agreement on behalf of Vendor warrants and represents that s/he has the authority to execute this Agreement on behalf of Vendor and to bind it to the performance of these obligations.
33. Binding Agreement. The parties do not intend this Agreement to be binding upon them and shall not be held liable to its terms until it is fully executed by all required signers.
34. Cumulative Remedies. All rights and remedies of City herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance for the enforcement of this Agreement, and temporary and permanent injunctive relief.
35. Integration; Amendment. This Agreement, including any other documents incorporated herein by specific reference, constitutes the entire and integrated agreement of City and Vendor regarding the subject matter described herein. This Agreement supersedes all prior oral or written communications, negotiations, representations, agreements and promises. This Agreement may not be modified or amended, nor any provision or breach waived, except in a writing, signed by both parties, that expressly refers to this Agreement.
36. Construction. In the event of any asserted ambiguity in or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of construction providing for interpretation against the party who causes the uncertainty to exist or who drafted the Agreement in whole or in part.
37. No Waiver. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Vendor constitute or be construed as a waiver by City of any breach of covenant,

or any default that may then exist on the part of Vendor, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

38. Attorneys' Fees. The prevailing party shall be entitled to recover reasonable costs, attorneys' fees (including the reasonable value of the services rendered by the City Attorney's Office) and expenses, including investigation fees and expert witness fees, in addition to any other relieve to which that party may be entitled, in any legal action or other proceeding, including an action for declaratory relief, for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement.

39. Notice. Except as otherwise required by law, a notice or communication authorized or required by this Agreement shall be in writing and shall be deemed received—on (a) the day of delivery if delivered by hand or overnight courier service during City's regular business hours or (b) on the third business day following deposit in the United States mail, postage prepaid—to the addresses listed as "(11) Addresses for Notice" on the Cover Page or to such other address as one party may notify the other in writing.

40. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement. A signed copy of this Agreement transmitted by email to either of City or Vendor's Project Managers' emails listed in "(12) Contact Emails" on the Cover Page or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

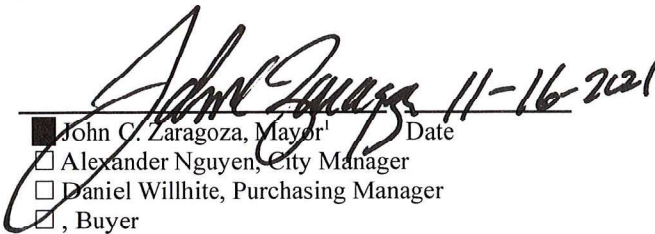
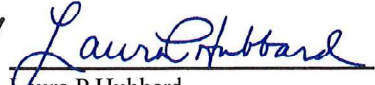
41. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

[Signatures on next page]

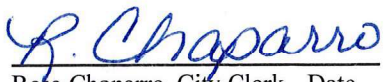
IN WITNESS WHEREOF, the parties hereto have executed the Agreement on the date that is written as “(1) Agreement Start Date” on the Cover Page.

CITY OF OXNARD

TOTER, LLC

 11-16-2021  August 19, 2021
☒ John C. Zaragoza, Mayor¹ Date
☐ Alexander Nguyen, City Manager
☐ Daniel Willhite, Purchasing Manager
☐ , Buyer
Laura P Hubbard
Director of Municipal Sales
Date

ATTEST:

 _____
Rose Chaparro, City Clerk Date
(only if Mayor signs)

APPROVED AS TO FORM:

 8/24/21
Stephen M. Fischer, City Attorney (always required) Date

¹ The City Council must authorize and the Mayor must sign any agreement over \$200,000 annually. The City Manager may authorize and sign any agreement over \$100,000 but up to \$200,000 annually. The Purchasing Manager may authorize and sign any agreement up to \$100,000 annually. A Buyer may authorize and sign any agreement up to \$25,000 annually.

SCOPE OF SERVICES EXHIBIT

EQUIPMENT, PRODUCTS, OR SERVICES

1. Vendor shall provide the equipment, products, or services as stated in Exhibit A - Sourcewell Contract No. 041521-TOT

WARRANTY

1. The applicable warranty can be found in Section 2.B. of the Sourcewell Agreement referenced above.

RATES AND COSTS EXHIBIT

PRICING

1. Vendor shall provide pricing as stated in Exhibit A - Sourcewell Contract No. 041521-TOT
2. Vendor shall provide a line item pricing model that is comparable to other cooperative contracts
3. Quarterly price reviews shall be conducted based on current market resin costs, lowering when necessary to match the market.
4. Vendor shall provide incremental volume discounts in the pricing structure allowing flexibility with larger quantity discounts.

SHIPPING AND SHIPPING COSTS.

1. Vendor shall deliver equipment properly packaged and free from any damage. The City reserves the right to reject damaged equipment and products.
2. Vendor shall allow the equipment and products to be returned within a reasonable time at no cost to the City. If the damage is not readily apparent at the time of delivery, Vendor must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition

EXHIBIT- A

Sourcewell Cooperative Agreement No. 041521-TOT

Solicitation Number:RFP #041521 CONTRACT

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Toter, LLC, 841 Meacham Road, Statesville, NC 28677 (Vendor).

Sourcewell is a State of Minnesota local government agency and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Plastic Refuse and Recycling Containers with Related Technology Solutions from which Vendor was awarded a contract.

Vendor desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

TERM OF CONTRACT

EFFECTIVE DATE. This Contract is effective upon the date of the final signature below.

EXPIRATION DATE AND EXTENSION. This Contract expires May 28, 2025, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended up to one additional one-year period upon request of Sourcewell and with written agreement by Vendor.

SURVIVAL OF TERMS. Articles 11 through 14 survive the expiration or cancellation of this Contract.

EQUIPMENT, PRODUCTS, OR SERVICES

EQUIPMENT, PRODUCTS, OR SERVICES. Vendor will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above. Vendor's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract

PRICING

All Equipment, Products, or Services under this Contract will be priced as stated in Vendor's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

SHIPPING AND SHIPPING COSTS. All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Vendor must permit the Equipment and Products to be returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery.

Vendor must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Vendor in breach of this Contract if the Vendor intentionally delivers substandard or inferior Equipment or Products. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Vendor as soon as possible and the Vendor will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

SALES TAX. Each Participating Entity is responsible for supplying the Vendor with valid tax- exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax- exempt entity.

HOT LIST PRICING. At any time during this Contract, Vendor may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Vendor determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

PRODUCT AND PRICING CHANGE REQUESTS

Vendor may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Contract Administrator. This form is available from the assigned Sourcewell Contract Administrator. At a minimum, the request must

Identify the applicable Sourcewell contract number;

Clearly specify the requested change;

Provide sufficient detail to justify the requested change;

Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and

Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and be incorporated by reference

PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Vendor understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source. Vendor is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract

PUBLIC FACILITIES. Vendor's employees may be required to perform work at government- owned facilities, including schools. Vendor's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

PARTICIPATING ENTITY USE AND PURCHASING

ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Vendor that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Vendor. Typically, a Participating Entity will issue an order directly to Vendor. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell contract number. All Participating Entity orders under this Contract must be issued prior to expiration of this Contract; however, Vendor performance, Participating Entity payment, and any applicable warranty periods or other Vendor or Participating Entity obligations may extend beyond the term of this Contract.

Vendor's acceptable forms of payment are included in Attachment A. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Vendor, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be worked out directly between the Participating Entity and the Vendor. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements) not addressed in this Contract, the Participating Entity and the Vendor may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Vendor in the event of any of the following events:

The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the goods to be purchased;
Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements; or

Vendor commits any material breach of this Contract or the additional terms agreed to between the Vendor and a Participating Entity.

GOVERNING LAW AND VENUE. The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

CUSTOMER SERVICE

PRIMARY ACCOUNT REPRESENTATIVE. Vendor will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

Maintenance and management of this Contract;

Timely response to all Sourcewell and Participating Entity inquiries; and

Business reviews to Sourcewell and Participating Entities, if applicable.

BUSINESS REVIEWS. Vendor must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, supply issues, customer issues, and any other necessary information

REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Vendor must provide a contract sales activity report (Report) to the Sourcewell Contract Administrator assigned to this Contract. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Vendor must submit a report indicating no sales were made).

The Report must contain the following fields:

Customer Name (e.g., City of Staples Highway Department);

Customer Physical Street Address;

Customer City;

Customer State/Province;

Customer Zip Code;

Customer Contact Name;

Customer Contact Email Address;

Customer Contact Telephone Number;

Sourcewell Assigned Entity/Participating Entity Number;

Item Purchased Description;

Item Purchased Price;

Sourcewell Administrative Fee Applied; and

Date Purchase was invoiced/sale was recognized as revenue by Vendor.

ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcewell, the Vendor will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Vendor may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Vendor will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased by Participating Entities under this Contract during each calendar quarter. Payments should note the Vendor's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Vendor agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Vendor is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Vendor in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date

AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Vendor's Authorized Representative is the person named in the Vendor's Proposal. If Vendor's Authorized Representative changes at any time during this Contract, Vendor must promptly notify Sourcewell in writing.

AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

AUDIT. Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant this Agreement are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

ASSIGNMENT. Neither the Vendor nor Sourcewell may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed assignment agreement. Such consent will not be unreasonably withheld.

AMENDMENTS. Any amendment to this Contract must be in writing and will not be effective until it has been fully executed by the parties.

WAIVER. If either party fails to enforce any provision of this Contract, that failure does not waive the provision or the right to enforce it.

CONTRACT COMPLETE. This Contract contains all negotiations and agreements between Sourcewell and Vendor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22, the terms of Articles 1-22 will govern.

RELATIONSHIP OF THE PARTIES. The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

LIABILITY

Vendor must indemnify, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees, arising out of the performance of this Contract by the Vendor or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. In no event will Vendor be liable for any loss of use, revenue, or profit, or for any consequential, incidental, indirect, or exemplary damages, whether arising out of breach of contract, tort (including negligence), or otherwise, regardless of whether such damage was foreseeable and whether or not the indemnitee was advised of the possibility of such damages.

GOVERNMENT DATA PRACTICES

Vendor and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract.

If the Vendor receives a request to release the data referred to in this article, the Vendor must immediately notify Sourcewell and Sourcewell will assist with how the Vendor should respond to the request.

INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

INTELLECTUAL PROPERTY

Grant of License. During the term of this Contract:

Sourcewell grants to Vendor a royalty-free, worldwide, non-exclusive right and license to use the Trademark(s) provided to Vendor by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Vendor. Vendor grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Vendor's Trademarks in advertising and promotional materials for the purpose of marketing Vendor's relationship with Sourcewell.

Limited Right of Sublicense. The right and license granted herein includes a limited right of each party to grant sublicenses to its and their respective distributors, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article.

Each party will be responsible for any breach of this Article by any of their respective sublicensees.

Use; Quality Control. Sourcewell must not alter Vendor's Trademarks from the form provided by Vendor and must comply with Vendor's removal requests as to specific uses of its trademarks or logos.

Vendor must not alter Sourcewell's Trademarks from the form provided by Sourcewell and must comply with Sourcewell's removal requests as to specific uses of its trademarks or logos.

Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's Trademarks only in good faith and in a dignified manner consistent with such party's use of the Trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

As applicable, Vendor agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Vendor in violation of applicable patent or copyright laws.

Termination. Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of vendors which may be used until the next printing). Vendor must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

PUBLICITY. Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

MARKETING. Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Materials should be sent to the Sourcewell Contract Administrator assigned to this Contract.

ENDORSEMENT. The Vendor must not claim that Sourcewell endorses its Equipment, Products, or Services.

GOVERNING LAW, JURISDICTION, AND VENUE

Minnesota law governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state court in Todd County or federal court in Fergus Falls, Minnesota.

FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

SEVERABILITY

If any provision of this Contract is found to be illegal, unenforceable, or void then both Sourcewell and Vendor will be relieved of all obligations arising under such provisions. If the remainder of this Contract is capable of performance, it will not be affected by such declaration or finding and must be fully performed

PERFORMANCE, DEFAULT, AND REMEDIES

PERFORMANCE. During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

Notification. The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Vendor will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.

Escalation. If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Vendor may escalate the resolution of the issue to a higher level of management. The Vendor will have 30 calendar days to cure an outstanding issue.

Performance while Dispute is Pending. Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed will be borne by the Vendor.

DEFAULT AND REMEDIES. Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

Nonperformance of contractual requirements, or A material breach of any term or condition of this Contract

Written notice of default and a reasonable opportunity to cure must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

Exercise any remedy provided by law or equity, or Terminate the Contract or any portion thereof, including any orders issued against the Contract

INSURANCE

REQUIREMENTS. At its own expense, Vendor must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

Workers' Compensation and Employer's Liability.

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below: Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

Commercial General Liability Insurance. Vendor will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for Products-Completed operations

\$2,000,000 general aggregate

Commercial Automobile Liability Insurance. During the term of this Contract, Vendor will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

Umbrella Insurance. During the term of this Contract, Vendor will maintain umbrella coverage over Workers' Compensation, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

Network Security and Privacy Liability Insurance. During the term of this Contract, Vendor will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Vendor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

Failure of Vendor to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Vendor must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Contract Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Vendor to provide certificates of insurance, in no way limits or relieves Vendor of its duties and responsibilities in this Contract.

ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Vendor agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Vendor's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Vendor, and products and completed operations of Vendor. The policy provisions or endorsements must further provide that coverage primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

WAIVER OF SUBROGATION. Vendor waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Vendor or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Vendor or its subcontractors. Where permitted by law, Vendor must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION. The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

COMPLIANCE

LAWS AND REGULATIONS. All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

LICENSES. Vendor must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Vendor conducts with Sourcewell and Participating Entities.

BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Vendor certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Vendor declares bankruptcy, Vendor must immediately notify Sourcewell in writing.

Vendor certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Vendor further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may also require additional requirements based on specific funding specifications. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Vendor’s Equipment, Products, or Services with United States federal funds.

EQUAL EMPLOYMENT OPPORTUNITY. Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-

1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 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 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148). 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 C.F.R. § 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 C.F.R. § 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. Vendor must be in compliance with all applicable Davis-Bacon Act provisions.

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 C.F.R. § 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. This provision is hereby incorporated by reference into this Contract. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 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 C.F.R. § 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. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

CLEAN AIR ACT (42 U.S.C. § 7401-7671q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require 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). Vendor certifies that during the term of this Contract will comply with applicable requirements as referenced above.

DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 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 C.F.R.

§180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 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. Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Vendors must file any required certifications. Vendors must not have 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. Vendors must 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. Vendors must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

RECORD RETENTION REQUIREMENTS. To the extent applicable, Vendor must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Vendor further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Vendor must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Vendor must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

ACCESS TO RECORDS (2 C.F.R. § 200.336). Vendor agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

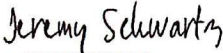
The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase 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.

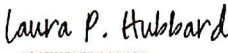
CANCELLATION

Sourcewell or Vendor may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Vendor's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

Toter, LLC

DocuSigned by:

C0FD2A139D06489...

DocuSigned by:

834FF567BB0940B...

By: Jeremy Schwartz

By: Laura P. Hubbard

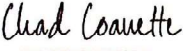
Title: Chief Procurement Officer

Title: Director of Municipal Sales

Date: 5/24/2021 I 7:43 PM CDT

Date: 5/25/2021 I 10:46 AM CDT

Approved:

DocuSigned by:

7E42BBF817A64CC...

By: Chad Coquette

Title: Executive Director/CEO

Date: 5/25/2021 I 10:47 AM CDT

RFP 041521 - Plastic Refuse and Recycling Containers with Related Technology Solutions

Vendor Details

Company Name:	Toter, LLC
Address:	
841 Meacham Road	
Statesville, North Carolina 28677	
Contact:	Kellie Clark
Email:	toterbids@toter.com
Phone:	800-424-0422 09584
Fax:	833-930-1124
HST#:	56-1362422

Submission Details

Created On:	Thursday February 25, 2021 07:42:29
Submitted On:	Thursday April 15, 2021 13:38:28
Submitted By:	Kellie Clark
Email:	toterbids@toter.com
Transaction #:	e18be8d7-0c74-4464-b735-48eb35840831
Submitter's IP Address:	173.92.230.77

Toter #041521-TOT

Pricing for contract #041521-TOT offers Sourcewell participating agencies the following discounts.

- Toter residential does not have set list pricing, therefore we are offering a line-item ceiling pricing model that is comparable to other cooperative contracts
- Toter Pro – 30% off list price

INSURANCE EXHIBIT

Exhibit INS-I

INSURANCE REQUIREMENTS FOR VENDORS (WHO DELIVER, INSTALL OR MAINTAIN PRODUCTS)

1. Vendor shall obtain and maintain during the performance of any services under this Agreement the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the sale and delivery, installation or maintenance of products by vendor, its agents, representatives, or employees.

a. Commercial General Liability Insurance, including Contractual Liability, in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for general liability with coverage equivalent to Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001). If a general aggregate limit is used, that limit shall apply separately to the project or shall be twice the occurrence amount;

b. Business Automobile Liability Insurance in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability with coverage equivalent to Insurance Services Office Automobile Liability Coverage (Occurrence Form CA0001) covering Code No. 1, "any auto;"

c. Workers' Compensation Insurance in compliance with the laws of the State of California, and Employer's Liability Insurance in an amount not less than \$1,000,000 per claimant. Additionally, the workers' compensation policy shall include a waiver of all rights of subrogation which the insurer may have against the City.

2. Vendor shall, prior to performance of any services, file with the Risk Manager certificates of insurance with original endorsements effecting coverage required by this Exhibit INS-I. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on the attached forms or on other forms approved by the Risk Manager. All certificates and endorsements are to be received and approved by the Risk Manager before work commences. City reserves the right to require complete certified copies of all required insurance policies at any time. The certificates of insurance and endorsements shall be sent via email (or fax if necessary) to the Risk Manager, addressed as follows (do not send hard copies):

City of Oxnard
Insurance Compliance
Reference No. _____
P.O. Box 100085 – OX
Duluth, GA 30096
Via Email: cityofoxnard@ebix.com
Via Fax: 678-259-1007

3. Vendor agrees that all insurance coverages shall be provided by a California admitted insurance carrier with an A.M. Best rating of A:VII or better and shall be endorsed to state that coverage may not be suspended, voided, canceled by either party, or reduced in coverage or limits without 30 days' prior written notice to the Risk Manager. The Risk Manager shall not approve or accept any endorsement if the endorsement contains "best effort" modifiers or if the insurer is relieved from the responsibility to give such notice.

4. Vendor agrees that the Commercial General Liability and Business Automobile Liability Insurance policies shall be endorsed to name City, its City Council, officers, employees and volunteers as additional insureds as respects: liability arising out of activities performed by or on behalf of vendor; products and completed operations of vendor; premises owned, occupied or used by vendor; or automobiles owned, leased, hired or borrowed by vendor. The coverage shall contain no special limitations on the scope of protection afforded to City, its City Council, officers, employees and volunteers. **The General Liability Special Endorsement Form and Automobile Liability Special Endorsement Form attached to this Exhibit INS-I or substitute forms containing the same information and acceptable to the Risk Manager shall be used to provide the endorsements (ISO form CG 2010 11/85 or if not available, CG 2010 with an edition date prior to 01/04 and CG 2037).**

5. The coverages provided to City shall be primary and not contributing to or in excess of any existing City insurance coverages (**this must be endorsed**). Additionally, the workers' compensation policy shall include a waiver of all rights of subrogation which the insurer may have against the City. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its City Council, officers, employees and volunteers. The insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. Any deductibles or self-insured retentions must be declared to and approved by the Risk Manager. At the option of the Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its City Council, officers, employees and volunteers, or the vendor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

2/18

INSTRUCTION FOR SUBMITTING INSURANCE CERTIFICATES AND ENDORSEMENT FORMS

Certificates of Insurance

The sample accord form on the following page is provided to facilitate your preparation and submission of certificates of insurance. You may use this or any industry form that shows coverage as broad as that shown on the attached sample. **Please note the certificate holder address must be as shown on the attached sample accord form with the contract number and insurance exhibit identification information completed.** Improperly addressed certificates may delay the contract start-up date because the City's practice is to return unidentifiable insurance certificates to the insured for clarification as to the contract number. **Cancellation provisions must be endorsed to the policy. Modifying the certificate does not change coverage or obligate the carrier to provide notice of cancellation.**

Endorsement Forms

Original endorsements are required for commercial general liability and business automobile liability insurance policies and must be attached to the applicable certificate of insurance. City preference is that you use the endorsement forms which are attached. Substitute forms will be accepted, however, as long as they include provisions comparable to the attached.

INS-I.doc

ACORD CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

CODE SUB-CODE

COMPANIES AFFORDING INSURANCE COVERAGE

INSURED

COMPANY
LETTER A SPECIFY COMPANY NAMES IN THIS SPACE

COMPANY
LETTER B

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY [x] COMMERCIAL GENERAL LIABILITY [x] CLAIMS MADE [x] OCCUR [x] OWNER'S & CONTRACTOR'S PROT.				GENERAL AGGREGATE \$1,000,000 PRODUCTS COMP/OP AGG. \$1,000,000 PERSONAL & ADV. INJURY \$1,000,000 EACH OCCURRENCE \$1,000,000 FIRE DAMAGE (Any one fire) \$ MED. EXPENSE (Any one person) \$
A	AUTOMOBILE LIABILITY [x] ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY				COMBINED SINGLE LIMIT \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
A	EXCESS LIABILITY UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY LIMITS EACH ACCIDENT \$1,000,000 DISEASE-POLICY LIMIT \$1,000,000 DISEASE-EACH EMPLOYEE \$1,000,000
A	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

CERTIFICATE HOLDER

CITY OF OXNARD
Attn: Insurance Compliance
Reference No. _____
P.O. Box 100085 - OX
Duluth, GA 30096
Via Email: cityofoxnard@ebix.com
Via Fax: 678-259-1007

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

GENERAL LIABILITY SPECIAL ENDORSEMENT FOR THE CITY OF OXNARD (the "City")

SUBMIT IN DUPLICATE

ENDORSEMENT NO.

ISSUE DATE (MM/DD/YY)

PRODUCER

Telephone:

POLICY INFORMATION

Insurance Company:

Policy No.:

Policy Period: (from)

LOSS ADJUSTMENT EXPENSE

(to)

Included in Limits

In Addition to Limits

NAMED INSURED

☐ Deductible ☐ Self-Insured Retention (check which) of \$ _____
with an Aggregate of \$ _____ applies to _____
coverage. ☐ Per Occurrence ☐ Per Claim (which)

APPLICABILITY This insurance pertains to the operations, products and/or tenancy of the named insured under all written agreements and permits in force with the City unless checked here ☐ in which case only the following specific agreements and permits with the City are covered:

CITY AGREEMENTS/PERMITS

TYPE OF INSURANCE

GENERAL LIABILITY

☐ COMMERCIAL GENERAL LIABILITY

☐ COMPREHENSIVE GENERAL LIABILITY

☐ OWNERS & CONTRACTORS PROTECTIVE

☐ Claims Made

Retroactive Date _____

☐ Occurrence

OTHER PROVISIONS

COVERAGES

LIABILITY LIMITS IN THOUSANDS \$

EACH OCCURRENCE

AGGREGATE

☐ GENERAL

☐ PRODUCTS/COMPLETED OPERATIONS

☐ PERSONAL & ADVERTISING INJURY

☐ FIRE DAMAGE

☐

☐

Underwriter=s representative for claims pursuant to this insurance.

CLAIMS:

Name: _____

Address: _____

Telephone: () _____

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, insurance company agrees as follows:

- INSURED.** The City, its officers, agents, employees and volunteers are included as insureds with regard to liability and defense of suits arising from the operations, products and activities performed by or on behalf of the named insured.
 - CONTRIBUTION NOT REQUIRED.** As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its officers, agents, employees or volunteers; or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its officers, agents, employees or volunteers shall be in excess of this insurance and shall not contribute with it.
 - SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
 - CANCELLATION NOTICE.** With respect to the interests of the City, this insurance shall not be canceled, or materially reduced in coverage or limits except after thirty (30) days prior written notice by receipted delivery has been given to the City.
 - PROVISIONS REGARDING THE INSURED'S DUTIES.** Any failure to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the City, its officers, agents, employees or volunteers.
 - SCOPE OF COVERAGE.** This policy, if primary, affords coverage at least as broad as:
 - Insurance Services Office Commercial General Liability Coverage, "occurrence" form CG0001; or
 - If excess, affords coverage which is at least as broad as the primary insurance form CG0001.
- Except as stated above nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

ENDORSEMENT HOLDER

CITY OF OXNARD

Attn: Insurance Compliance

Reference No. _____

P.O. Box 100085 – OX

Duluth, GA 30096

Via Email: cityofoxnard@ebix.com

Via Fax: 678-259-1007

AUTHORIZED REPRESENTATIVE

☐ Broker/Agent ☐ Underwriter ☐ _____

I _____ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.

Signature _____
(original signature required)

Telephone: () _____ Date Signed _____

AUTOMOBILE LIABILITY SPECIAL ENDORSEMENT FOR THE CITY OF OXNARD (the "City")

SUBMIT IN DUPLICATE

ENDORSEMENT NO. _____

ISSUE DATE
(MM/DD/YY) _____

PRODUCER

Telephone: _____

NAMED INSURED

POLICY INFORMATION:

Insurance Company: _____
Policy No.: _____
Policy Period: (from) _____ (to) _____
LOSS ADJUSTMENT EXPENSE ☐ Included in Limits
☐ In Addition to Limits

☐ Deductible ☐ Self-Insured Retention (check which) of \$ _____
with an Aggregate of \$ _____ applies to _____
coverage. ☐ Per Occurrence ☐ Per Claim (which) _____

APPLICABILITY. This insurance pertains to the operations, products and/or tenancy of the named insured under all written agreements and permits in force with the City unless checked here ☐ in which case only the following specific agreements and permits with the City are covered:

CITY AGREEMENTS/PERMITS _____

TYPE OF INSURANCE

- ☐ COMMERCIAL AUTO POLICY
☐ BUSINESS AUTO POLICY
☐ OTHER _____

LIMIT OF LIABILITY

\$ _____ per accident, for bodily injury and property damage.

OTHER PROVISIONS

CLAIMS: Underwriter's representative for claims pursuant to this insurance.

Name: _____

Address: _____

Telephone: () _____

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, insurance company agrees as follows:

1. **INSURED.** The City, its officers, agents, volunteers and employees are included as insureds with regard to liability and defense of suits arising from the operations, products and activities performed by or on behalf of the named insured.
2. **CONTRIBUTION NOT REQUIRED.** As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its officers, agents, employees or volunteers; or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its officers, agents, employees or volunteers shall be in excess of this insurance and shall not contribute with it.
3. **SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
4. **CANCELLATION NOTICE.** With respect to the interests of the City, this insurance shall not be canceled, or materially reduced in coverage or limits except after thirty (30) days prior written notice by receipted delivery has been given to the City.
5. **PROVISIONS REGARDING THE INSURED'S DUTIES.** Any failure to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the City, its officers, agents, employees or volunteers.
6. **SCOPE OF COVERAGE.** This policy, if primary, affords coverage at least as broad as:
 - a. Insurance Services Office Automobile Liability Coverage, "occurrence" form CA0001, code ("any auto"); or
 - b. If excess, affords coverage which is at least as broad as the primary insurance form referenced in the preceding section (1).

Except as stated above nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

ENDORSEMENT HOLDER

CITY OF OXNARD
Attn: Insurance Compliance
Reference No. _____
P.O. Box 100085 – OX
Duluth, GA 30096
Via Email: cityofoxnard@ebix.com
Via Fax: 678-259-1007

AUTHORIZED REPRESENTATIVE

☐ Broker/Agent ☐ Underwriter ☐ _____

I _____ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.

Signature _____
(original signature required)

Telephone: () _____ Date Signed _____

LIVING WAGE POLICY EXHIBIT

The Living Wage Policy of the City of Oxnard is hereby adopted by the City Council on July 9, 2002 to be effective October 1, 2002.

1. Pursuant to this Living Wage Policy, Vendor shall pay those employees who provide services to the City under contract:
 - (a) Effective October 1, 2002, at least \$9.00 an hour for the time during which the employee is providing services to the City;
 - (b) Effective July 1, 2003, at least \$9.25 an hour for the time during which the employee is providing services to the City and 32 hours of paid leave per every calendar year in which an employee provides services to the City;
 - (c) Effective July 1, 2004, at least \$10.59 an hour for the time during which the employee is providing services to the City and 64 hours of paid leave per every calendar year in which an employee provides services to the City; and
 - (d) Effective July 1, 2005, at least \$12.22 an hour for the time during which the employee is providing services to the City and 96 hours of paid leave per every calendar year in which an employee provides services to the City.
2. The hourly rates established in Section 1 shall be adjusted July 1, 2006 and, each July 1 thereafter, according to the percentage change since July 1, 2005 in the Consumer Price Index prepared by the Bureau of Labor Statistics for the Los Angeles area relating to all urban consumers.
3. A service contractor executing a service contract with the City for which the City will pay the contractor \$25,000 or more during the contract term shall be subject to the Living Wage Policy.
4. A service contractor executing more than one service contract with the City, and the combined monetary total of the payments by the City pursuant to such contracts is \$25,000 or more for the combined contract terms shall be subject to the Living Wage Policy.
5. This Living Wage Policy shall not govern the following types of contracts for: (a) the purchase, rental or lease of goods, products, equipment, supplies or other personal property; (b) public works projects as defined in State or local law; and (c) professional services.
6. This Living Wage Policy shall not govern the following service contractors: (a) nonprofit entities organized under IRS Code section 501(c)(3); (b) public entities such as cities, counties, special districts, states and the federal government; and (c) businesses employing fewer than five persons.
7. The City Attorney is directed to include in all standard trade services contracts and all contracts involving unique trade services, the language set forth in Exhibit 1 attached hereto and incorporated herein by this reference.
8. If Vendor fails to comply with this Living Wage Policy, the City Manager is directed to terminate the subject service contract immediately and to impose appropriate fines and penalties as set forth in the service contract.
9. The City Manager and the City Attorney are responsible for the administration and enforcement, respectively, of the Living Wage Policy. If an employee of a service contractor governed by the Living Wage Policy concludes that he/she has been retaliated against for the exercise of rights under the Living Wage Policy, the employee should contact the City Manager at 385-7430.
10. The City Manager shall reasonably cooperate with representatives of the Ventura County Living Wage Coalition to ensure the effective administration and enforcement of the Living Wage Policy.
11. This Living Wage Policy may be changed only by City Council and only after a duly noticed public hearing.
12. The City Manager is directed to ensure that the City Council will review the Living Wage Policy as part of the FY 2003-2004/05 budget process.

Exhibit 1

Living Wage Policy

Pursuant to the Living Wage Policy adopted July 9, 2002 by the City Council and effective October 1, 2002, the City Manager and City Attorney are directed to include the following language in all standard trade services contracts and all unique trade services contracts governed by the Living Wage Policy.

A. Vendor shall compensate any employee of Vendor who provides services under this Agreement in accordance with the Living Wage Policy, attached hereto and incorporated herein by reference as the Living Wage Policy Exhibit. While this Agreement is in effect, Vendor shall pay such employee no less than \$16.89 per hour for each hour that such employee provides services under this Agreement. In addition, while this Agreement is in effect, Vendor shall provide to such employee no less than 96 hours of paid leave per calendar year.

B. Vendor agrees to post, at a location readily accessible to those employees providing services to the City, a copy of the Living Wage Policy adopted by City Council on July 9, 2002 and effective October 1, 2002.

C. If Vendor fails to compensate such employee pursuant to the Living Wage Policy, the City Manager or designee shall terminate this Agreement on written notice to Vendor, effective immediately.

D. In addition, if Vendor fails to comply with the Living Wage Policy in any manner, Vendor shall pay to City a fine of \$500 and shall pay to any employee providing services under this Agreement a penalty of three times the amount or value of the compensation owed to such employee under the Living Wage Policy. Vendor shall pay such fine and penalty within 15 days after the City Manager or designee provides written notice to Vendor of the amount owed.

**CITY OF OXNARD LIVING WAGE REQUIREMENTS
EFFECTIVE JULY 1, 2021**

42. Vendor shall compensate any employee of Vendor who provides services under this Agreement in accordance with the Living Wage Policy, attached hereto and incorporated herein by reference as Exhibit 1. While this Agreement is in effect, Vendor shall pay such employee no less than **\$16.89 per hour** for each hour that such employee provides services under this Agreement. **This hourly rate shall be adjusted on July 1, 2022, and each July 1 thereafter, according to the percentage change in the Consumer Price Index**, all items, prepared by the Bureau of Labor Statistics for the Los Angeles area relating to all urban consumers (CPI-U), index base 1982-84=100, comparing May of the previous year to May of the current year. In addition, while this Agreement is in effect, Vendor shall provide to such employee no less than 96 hours of paid leave per calendar year.

a. Vendor agrees to post, at a location readily accessible to those employees providing services to the City, a copy of the Living Wage Policy adopted by the Oxnard City Council on July 9, 2002 and effective October 1, 2002.

b. If Vendor fails to compensate such employee pursuant to the Living Wage Policy, the City Manager or designee shall terminate this Agreement on written notice to Vendor, effective immediately.

c. In addition, if Vendor fails to comply with the Living Wage Policy in any manner, Vendor shall pay to City a fine of \$500 and shall pay to any employee providing services under this Agreement a penalty of three times the amount or value of the compensation owed to such employee under the Living Wage Policy. Vendor shall pay such fine and penalty within 15 days after the City Manager or designee provides written notice to Vendor of the amount owed.

d. The foregoing requirements are restated on page 5 of the Agreement for Trade Services.

PREVAILING WAGES EXHIBIT

1. Vendor acknowledges that the Project defined in the Agreement between Vendor and City is a “public work” as defined in Division 2, Part 7, Chapter 1 of the California Labor Code (“Chapter 1”), and that this Agreement is subject to Chapter 1 and the rules and regulations established by the Director of Industrial Relations (“DIR”) implementing such statutes. Vendor shall perform the Project as a public work. Vendor shall comply with and be bound by all the terms, rules and regulations described in Chapter 1 and the DIR’s rules and regulations as though set forth in full herein.
2. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Agreement are on file at City Hall and will be made available to any interested party on request. Vendor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Vendor shall post such rates at each job site covered by this Agreement.
3. Vendor is required to post job site notices, as prescribed by regulation. See Labor Code Section 1771.4(a)(2).
4. Vendor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. Vendor shall, as a penalty to City, forfeit not more than \$200 for each calendar day or portion thereof for each worker paid less than the DIR’s determined prevailing rates for the work or craft in which the worker is employed pursuant to this Agreement by Vendor or any subcontractor. The Labor Commissioner shall determine the amount of the penalty as described in Section 1775.
5. Vendor shall comply with Labor Code Section 1776, which requires Vendor and each subcontractor to (1) keep accurate payroll records and verify such records in writing under penalty of perjury, (2) certify and make such payroll records available for inspection, and (3) inform City of the location of the records.
6. Vendor shall comply with Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects for all apprenticeable occupations. Before commencing work under this Agreement, Vendor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within 60 days after concluding the Project, Vendor and each of its subcontractors shall submit to City a verified statement of the journeyman and apprentice hours performed under this Agreement.
7. Vendor may not be debarred or suspended throughout the Agreement Term pursuant to Labor Code Section 1777.1 or 1777.7. If he, she or it becomes debarred or suspended in the Agreement Term, Vendor must immediately notify City.
8. Vendor is not qualified to bid on, be listed in a Bid proposal, or engage in the performance of any contract for public work, as defined in Labor Code Sections 1720 through 1861, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Vendor shall continue without interruption to stay registered and qualified to perform public work pursuant to Section 1725.5 for the duration of the term of this Agreement. This provision does not apply to construction, alteration, demolition, installation or repair work of \$25,000 or less or to maintenance work of \$15,000 or less.
9. Vendor acknowledges that 8 hours labor constitutes a legal day’s work. Vendor shall comply with and be bound by Labor Code Section 1810.
10. Vendor shall comply with and be bound by Labor Code Section 1813 concerning penalties for workers who work excess hours. Vendor shall, as a penalty to City, forfeit \$25 for each worker employed in the performance of this Agreement by Vendor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code Section 1815, work performed by Vendor’s employees in excess of 8 hours per day and 40 hours per week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 ½ times the basic rate of pay.
11. The Project listed in the Agreement is subject to compliance monitoring and enforcement by the DIR.
12. Vendor shall be responsible for each and every one of its subcontractors’ compliance with Chapter 1, the DIR’s rules and regulations, and Labor Code Sections 1860 and 3700. Vendor shall include in the written contract between it and each subcontractor a copy of, and a requirement that each subcontractor shall comply with, those statutory provisions. Vendor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractors’ compliance, including without limitation, conducting a periodic review of the certified payroll records of each subcontractor, and upon becoming aware of the failure of the subcontractor to pay its workers the specified prevailing rate of wages, Vendor shall diligently take corrective action to halt or rectify any failure.
13. To the maximum extent, Vendor shall hold harmless, defend (with counsel approved by the City Attorney) and indemnify City, its legislative bodies, and its officials, officers, employees and agents from any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Vendor, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Agreement, including without limitation the payment of all attorneys’ fees and other related costs. All duties of Vendor under this Section shall survive Agreement termination.

FIRST AMENDMENT TO TRADE SERVICES

This First Amendment ("First Amendment") to the trade services agreement ("Agreement") is made and entered into in the County of Ventura, State of California, this _____ day of June 2023, by and between the City of Oxnard, a municipal corporation ("City"), and Toter, LLC ("Vendor"). This First Amendment amends the Agreement entered into on November 6, 2021, by City and vendor.

City and Toter, LLC agree as follows:

1. The date "December 31, 2024" in section (5) of the Cover Page of the Agreement is hereby amended to state: "May 28, 2025"
2. The total agreement amount "\$775,000" in section (6) of the Cover Page of the Agreement is hereby amended to state: "Not to exceed \$1,525,000".
3. "A section 42 is added after section 41 in the agreement. Section 42 shall read:

Iran Contracting. In accordance with the Iran Contract Act of 2010 (Public Contract Code sections 2200-2208) the City requires that any SERVICE PROVIDER that submits a proposal or otherwise proposes to enter into or renew a contract with the City with respect to goods or services of one million dollars (\$1,000,000) or more, must certify, that the SERVICE PROVIDER is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

A SERVICE PROVIDER is ineligible to submit a proposal for any contract with the CITY for goods or services of one million dollars (\$1,000,000) or more if the SERVICE PROVIDER engages in investment activities in Iran. SERVICE PROVIDER must certify that it is not on the list of ineligible vendors prohibited from doing business with the State of California and shall complete the Iran Contract Act Certification attached as Exhibit F and must be submitted with their proposal. Failure to do so may deem the proposal non- responsive."

4. As so amended, the Agreement remains in full force and effect.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed the Amendment on the date first written above.

CITY OF OXNARD

TOTER, LLC

☐ John C. Zaragoza, Mayor¹ Date
☐ Jennifer Yates, Purchasing Agent²

Laura P Hubbard Date
Director of Municipal Sales

ATTEST:

Brittani Whitman Date
Vice President, Finance

Rose Chaparro, City Clerk Date
(only if Mayor signs)

APPROVED AS TO FORM:

Stephen M. Fischer, City Date
Attorney (always required)

¹ The City Council must authorize and the Mayor must execute any agreement over \$200,000.

² The Purchasing Agent may execute any authorized agreement up to \$200,000.

The City requires the following for any contract:

- For a corporation, the signatures of the Board President, CEO or Vice President and of the Board Secretary, Assistant Secretary, CFO or Assistant Treasurer;
- For an LLC, the signatures of at least two managers of the LLC (company directors, not lower-level managers); or
- For a partnership, the signature of a partner. If the partnership is a limited partnership, the signer must be a general partner.

If the company has a different structure, or if the above-listed persons are not the appropriate signers, please submit to the City Attorney legally-binding documentation stating who can sign and bind your company.

FIRST AMENDMENT TO TRADE SERVICES AGREEMENT

FIRST AMENDMENT TO AGREEMENT A-8368 WITH TOTER, LLC FOR REPLENISHMENT OF CURBSIDE CONTAINERS AND PARTS

Public Works and Transportation Committee
May 23, 2023

City Council
June 29, 2023

Brian Yanez
Assistant Public Works Director

Recommendation

That the Public Works and Transportation Committee recommend the City Council approve and authorize the Mayor to execute a First Amendment to Agreement A-8368 with Toter, LLC in the amount of \$775,000 for a new total not to exceed \$1,525,000 for an additional two year term ending May 28, 2025

Recommendation

That the City Council approve and authorize the Mayor to execute a First Amendment to Agreement A-8368 with Toter, LLC in the amount of \$775,000 for a new total not to exceed \$1,525,000 for an additional two year term ending May 28, 2025

Background

- In order to provide uninterrupted, weekly collection of refuse, recyclables and green waste (organic) to approximately 37,000 residential customers in the City of Oxnard (City), the Environmental Resources Division (ER) must maintain a sufficient inventory of containers, lids and parts
- On November 16, 2021 Council approved Agreement A-8368 with Toter, LLC for the purchase of curbside containers and parts

Background

- Staff utilized the City of Oxnard's membership in Sourcewell, a National Intergovernmental Purchasing Alliance for new residential containers and parts through contract #041521-TOT
- Toter, LLC meets all required City contractual provisions including possession of a City business tax certificate, insurance certificates and corporate filing with the California Secretary of State

Discussion

- ER Division is responsible for the maintenance and repairs of approximately 111,000 residential containers
- This First Amendment allows the ER Division to continue to fulfill customer work orders for the replacement and repairs of containers and lids



FINANCIAL IMPACT

- Cost for this First Amendment with Toter is \$775,000 with a total not to exceed \$1,525,000
- Funding shall be requested during the FY 2023-24 budget process for the Environmental Resources Fund (631)

1st Amendment to Toter, LLC Agreement A-8368			
ER Division/Account	FY 2023-24	FY 2024-25	Total
6313632-52400	\$400,000	\$375,000	\$775,000

- Funding for subsequent fiscal years will be requested in the annual budget process

Questions?



PUBLIC WORKS AND TRANSPORTATION COMMITTEE AGENDA REPORT

REPORTS AGENDA ITEM NO. D.3

DATE: May 23, 2023

TO: Public Works and Transportation Committee

FROM: Michael Wolfe, Public Works Director, (805) 385-8055, michael.wolfe@oxnard.org

SUBJECT: Professional Services Agreement 32400003 with Northern Digital, Inc. (NDI) for Supervisory Control and Data Acquisition Systems (SCADA) Support Services. (10 minutes)

RECOMMENDATION

That the Public Works and Transportation Committee recommend the City Council approve and authorize the Mayor to execute an agreement with Northern Digital, Inc. (NDI) for an amount not to exceed \$1,000,000 for a three year term for supervisory control and data acquisition (SCADA) support services for the water, wastewater, and recycled water systems.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/qzyhA6o_bCk

BACKGROUND

SCADA systems are complex communication and control systems. They include the integration of hardware, software, and firmware and are critically essential to the operation of Oxnard's water, wastewater, and recycled water systems. SCADA systems are used by staff to monitor and control critical components such as valves, pumps, and motors. They also act as the notification mechanism for alarms in case of system failures or emergencies that require immediate attention.

Troubleshooting, upgrading, and maintaining the utilities SCADA systems requires a very specialized expertise, obtained from qualified persons or outside contractors. Historically, the Water and Wastewater Divisions relied on specialized resources obtained by outside contractors. Wastewater does not have a SCADA position in the Council-approved position control roster and as such uses an outside contractor for this critical work. Water has a position, but it has been mostly vacant until December of last year. For Water, now that the internal SCADA position is filled, NDI's support services will be used for complex integration and programming and when the SCADA needs cannot be performed by internal staff due to complexity or the volume of work.

Outside support is critical to have for on-call and emergency SCADA issues for the water, wastewater, and recycled water systems. The support includes diagnostic testing, programming, software, hardware, instruments, radio and computer network communications, electrical, computer repair and replacement and cyber security.

The following systems and components are monitored through each SCADA system:

Water System Components:

- Desalter treatment plant
- Drinking water wells
- Chemical systems
- Blending and Remote stations

Wastewater System Components:

- Oxnard Wastewater Treatment Plant
- Sewage pumping stations

Recycled Water System Components:

- Advanced Water Purification Facility (AWPF)
- Recycled water pipeline

DISCUSSION

The Request for Proposal (RFP) #PW 23-83 was published on February 10, 2023, for SCADA system support services and had a bid closure date of March 14, 2023. The SCADA services are for the water, wastewater, and recycled water systems. The City received a total of one responsive bid. A panel consisting of the Wastewater Maintenance Manager, Water Division Manager, and Water Operations Manager reviewed the submitted bid and determined Northern Digital, Inc. (NDI) to be a qualified proposer based on their experience and expertise.

NDI was deemed responsive to the City's RFP. Following this determination, procurement staff reviewed all documentation received from NDI. Procurement staff verified possession of required valid licenses, reviewed the federal Occupational Safety and Health Administration (OSHA) website for safety violations, and verified their registration with the California Department of Industrial Relations (DIR). Based upon the available information and research performed to date, staff believes that NDI is capable of satisfactorily completing the services listed in this Agreement. Therefore, staff recommends that the City Council award this Agreement to NDI.

The RFP was posted on Public Purchase. Despite receiving only one responsive bid, staff recommends awarding the contract because these services are essential to maintaining the water, wastewater, and recycled water SCADA systems. In addition, vendors providing SCADA support in the local area are extremely limited.

STRATEGIC PRIORITIES

This agenda item is a routine operational item or does not relate to the five strategic priorities adopted by City Council on March 16, 2021.

FINANCIAL IMPACT

The total cost for the contract with Northern Digital Inc. is \$1,000,000 over the three-year term. Services will commence in Fiscal Year 2023-24 with an estimated annual spending plan of \$325,000 for the first two fiscal years and \$350,000 for the third fiscal year. Funding has been requested in the proposed annual budget for FY 2023-24 from the Water Operating and Wastewater Operating funds. Below is a table outlining the proportions

of the funding split between the three different Operating Accounts. Funding for subsequent fiscal years will be requested in the annual budget process.

ESTIMATED SPENDING PLAN					
DIVISION	ACCOUNT	FY-24	FY-25	FY-26	TOTAL
WASTEWATER	6113615-53200	\$50,000	\$50,000	\$50,000	\$150,000
WATER	6013600-53200	\$260,000	\$260,000	\$285,000	\$805,000
AWPF	6013605-53200	\$15,000	\$15,000	\$15,000	\$45,000
TOTAL		\$325,000	\$325,000	\$350,000	\$1,000,000

Prepared by: Omar Castro, Water Division Manager, Joseph Marcinko, Assistant Public Works Director

ATTACHMENTS

1. Agreement 32400003
2. Presentation

**CONSULTANT/PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF OXNARD AND NORTHERN DIGITAL, INC.**

By This Consultant/Professional Services Agreement ("Agreement"), the CITY of Oxnard ("CITY") agrees to engage the services of Northern Digital, Inc. ("CONSULTANT"), and CONSULTANT agrees to perform the services for CITY as herein described, for the compensation, during the term, and otherwise subject to the covenants and conditions herein set forth. CITY and CONSULTANT may be individually referred to as "Party" or collectively as the "Parties."

- 1. SUMMARY DESCRIPTION OF SERVICES.** On-Call Supervisory Control & Data Acquisition (SCADA) Integration, Instrumentation, PLC Programming, Network Support and Cyber Security

[FOR ON CALL OR AS NEEDED AGREEMENTS INCLUDE THE FOLLOWING

LANGUAGE: This Agreement is for "on call" or "as needed" services as identified in Exhibit A-Scope of Services. The City does not guarantee that any services will be requested under this agreement or that any services requested under this agreement will reach the agreement amount listed in section 4. All "on call" or "as needed" services requested by the City shall be paid at the rates identified in Exhibit B-Rate and Cost Sheet.]

2. PARTIES.

CITY of Oxnard ("CITY"), a general law and municipal corporation of the State of California, located at 300 West Third Street, Oxnard California 93030

Northern Digital, Inc. ("CONSULTANT"), a corporation of the State of California, located at 4701 Corporate Ct. Bakersfield, California 93311

- 3. TERM OF AGREEMENT:** From (Date): July 1, 2023, To (Date): June 30, 2024

3.1 Time is of the essence in this Agreement.

3.2 Any Optional Extension (initial term, plus any option to extend) shall not exceed a total of three (3) years. The CITY in its sole discretion may exercise the optional extension upon 60 days written notice to the CONSULTANT in accordance with Section 11 of this Agreement. CONSULTANT shall issue its written consent to the CITY's exercise of the option extension within 10 days of receipt of notice from the CITY. All Notices shall comply with section 20 of this Agreement.

3.3 The CITY shall have the option for (2) consecutive (1) one-year extensions, in accordance with the scope of work and general terms and conditions of the CONSULTANT/Professional Services Agreement. Any price increases or decreases shall be negotiated at time of contract extension.

3.4 All services required of CONSULTANT under this Agreement shall be completed on or before the end of the term of the Agreement.

4. AGREEMENT AMOUNT NOT TO EXCEED: \$1,000,000

5. AGREEMENT EXHIBITS.

The following documents memorialized below are the only exhibits to this and are incorporated by reference as though fully set forth herein. In the event of a conflict between the Exhibits and this Agreement, the Agreement controls.

Exhibit A: Scope of Services
Exhibit B: Schedule of Compensation
Exhibit C: Insurance Requirements
Exhibit D: Living Wage Policy
Exhibit E: Prevailing Wage Policy

6. DESIGNATED REPRESENTATIVES.

The Designated Representatives listed below shall be authorized to act on behalf of the named Party, be responsible for negotiations and contractual matters, and coordinate with each other to perform the services under this Agreement. Additionally, CONSULTANT's services shall be performed or immediately supervised by the CONSULTANT's Representative:

CITY Designated Representative:	CONSULTANT Designated Representative:
Name: Paul Lancaster	Name: Joseph Marcus
Title: SCADA Programs Supervisor	Title: Manager, Business Development
Phone: 805-385-3901	Phone: 661-322-6044
Email: paul.lancaster@oxnard.org	Email: joseph.marcus@ndi.us
Mailing Address (if differs from above):	Mailing Address (if differs from above):
251 South Hayes Ave.	
Oxnard, California 93030	

7. CONTRACTUAL PREREQUISITES.

7.1 This Agreement must first be executed by the CONSULTANT, after which the Agreement shall be approved as to form by the CITY Attorney, then executed by the Mayor, or an authorized person on behalf of the CITY, and if executed by the Mayor shall also be executed by the CITY Clerk.

7.2 CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on CITY until the AGREEMENT is fully executed and approved by CITY.

7.3 A request for modification of the terms, prior to execution of the Agreement, must be made in writing and presented to the Designated Representative of the CITY prior to the time this Agreement is executed.

7.4 All proof of business license, insurance, and W-9 forms is required prior to execution of this Agreement.

7.5 CONSULTANT shall not perform any work under this Agreement until a proof of insurance has been provided to the City as required under Section 24 of this Agreement.

8. CONSULTANT'S SERVICES.

8.1 CONSULTANT shall perform the tasks, obligations, and services set forth in the "Scope of Services," attached to and incorporated into this Agreement as "Exhibit A." Once this Agreement is executed, the Scope of Services may only be modified by written Amendment pursuant to Section 12 of this Agreement.

8.2 The Services shall be coordinated with the designated City Project Manager set forth in Exhibit A subject to the direction of the City Manager or Department Director. CONSULTANT hereby designates its Project Manager as set forth in "Exhibit A" as the person responsible for the Services who shall coordinate with City's Project Manager in executing the scope of services under this Agreement.

9. COMPENSATION.

CITY shall pay CONSULTANT for the services performed pursuant to the terms of this Agreement in the time and manner set forth in the "Schedule of Compensation," attached to and incorporated into this Agreement as "Exhibit B." CITY shall pay SERVICE PROVIDER an amount not to exceed the amount is listed in Section 4 of this Agreement. Once this Agreement is executed, the Schedule of Compensation may only be modified by written Amendment pursuant to Section 12 of this Agreement, and may be subject to approval by the City Council.

10. PAYMENT & INVOICES.

The CITY shall pay all undisputed portions of any applicable invoice within forty-five (45) days after receipt of an invoice. In the event the CITY disputes one or more items in an invoice, the CITY shall, within forty-five (45) days after receipt of such invoice, notify the CONSULTANT of the item(s) being disputed and the reason(s) therefore. The CITY may withhold payment for such disputed items until resolution of the dispute.

10.1 Payment Request. CONSULTANT shall submit a payment request to CITY by the end of each calendar month listing the Services provided, costs of those Services, and total amount due for the month. Invoices may be emailed to: pwinvoices@oxnard.org.

10.2 Non-Appropriation of Funds. Payments to be made to CONSULTANT by CITY for the Services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted and unencumbered appropriation of CITY. In the event CITY does not appropriate sufficient funds for payment of the Services beyond the current fiscal year, this Agreement shall cover payment for the Services only up to the conclusion of the last fiscal year in which CITY appropriated sufficient funds and shall automatically terminate at that fiscal year's conclusion.

10.3 CONSULTANT's acceptance of final payment made pursuant to this Agreement shall constitute a release of CITY from all claims and liabilities for compensation to CONSULTANT for anything completed, finished or relating to the Services. CITY's payment shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT for the accuracy and competency of the information provided and/or the Services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by CITY for any defect or error in the Services performed by CONSULTANT and its employees, agents and Subcontracted CONSULTANTS.

10.4 CONSULTANT shall provide CITY with a completed Request for Taxpayer Identification Number and Certification, as issued by the Internal Revenue Service. If any sales tax is due for the Services performed by CONSULTANT or materials or products provided to CITY by CONSULTANT, CONSULTANT shall pay the sales tax. CITY shall not reimburse CONSULTANT for sales taxes paid by CONSULTANT.

11. OPTION TO EXTEND AGREEMENT.

When in the CITY's best interest, this Agreement may only be extended, if the City in its discretion exercises the option to extend pursuant to Section 3.2 and 3.3 of the Agreement. The initial term, plus any option to extend, shall not exceed a total of five (5) years. **If no option to extend the Agreement appears in sections 3.2 and 3.3, this Agreement shall not be extended.**

12. MODIFICATION OF AGREEMENT.

This Agreement may be amended, modified, or otherwise altered, or its provisions waived, only upon mutual consent of the Parties by written amendment, and as authorized by the Oxnard Municipal Code, Article IV, Sections 4-59 and 4-60.

13. TERMINATION OF AGREEMENT.

CITY may terminate this Agreement at any time, with or without cause and without penalty, upon fifteen (15) calendar days' prior written notice pursuant to Section 31 of this agreement. Such termination shall be effective on the date specified in the notice, or if no date is specified, then fifteen (15) calendar days from the date of the notice. CITY shall be liable to CONSULTANT only for work done by CONSULTANT up to and including the date of termination of this Agreement unless the termination is for cause, in which event CONSULTANT need be compensated only to the extent required by law. CONSULTANT may terminate this Agreement at any time during the term of the Agreement by giving the CITY sixty (60) calendar days' prior written notice.

14. INDEPENDENT CONTRACTOR

CONSULTANT is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its employees or agents shall have control over the conduct of CONSULTANT or any of its employees, except as stated in this Agreement. CONSULTANT has and shall retain the right to exercise full control over the employment, direction, means of performance, location, compensation and discharge of all persons assisting CONSULTANT. This Agreement shall not be interpreted to prevent or preclude CONSULTANT from rendering any services for CONSULTANT's own account or to any other person or entity as CONSULTANT in its sole discretion shall determine; provided, however, that performing such services shall not materially interfere with the Services the CONSULTANT shall perform for the CITY. The CITY retains the right to provide general instructions to and observe the CONSULTANT in the performance of all services done on behalf of the CITY.

CONSULTANT and its employees and agents have no authority, express or implied, to act on behalf of CITY in any capacity, to incur any debt, obligation or liability on behalf of CITY, bind CITY in any manner, or otherwise act on behalf of CITY as an agent. CONSULTANT and its employees are not employees of CITY. CONSULTANT and its employees are not entitled to receive from CITY any of the benefits or rights afforded employees of CITY, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, and health, life, dental, long-term disability and workers' compensation insurance benefits. CONSULTANT shall not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

15. LAWFUL PERFORMANCE.

CONSULTANT shall abide by all Federal, State, and Local Laws and Regulations as may be related to the performance of duties under this Agreement. CONSULTANT, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

16. SAFETY REQUIREMENTS.

CONSULTANT shall not perform any services for the CITY when the CONSULTANT is impaired by alcohol or a controlled substance. When there is reasonable cause to believe that any person has violated this provision, that person shall be immediately removed from the premises and be subject to any applicable civil and/or criminal penalties under the CITY's Code and/or under state law. All work performed under this Agreement shall be performed in such a manner as to provide safety to the public. The CITY reserves the right to issue restraining or cease and desist orders to CONSULTANT when unsafe or harmful acts are observed or reported relative to the performance of the work under this Agreement. The acceptance of CONSULTANT's work by CITY shall not operate as a release of the CONSULTANT from such standard of care and workmanship.

17. OWNERSHIP OF CONSULTANT'S WORK PRODUCT, CONFIDENTIALITY & DISCLOSURE.

CITY shall be the owner of any and all technical documents and records, including, computations, plans, correspondence, and/or other pertinent data and information, both hard copy and electronic, gathered or prepared by CONSULTANT in performance of this Agreement and shall be entitled to immediate possession of the same upon completion of the work under this Agreement, or at any earlier or later time when the same may be requested by CITY.

17.1. Records and Inspections. The CONSULTANT shall maintain full and accurate records, with respect to all services and matters covered under this Agreement. The CITY shall have free access at all reasonable times to such records, both hard copy and electronic, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all program data, documents, proceedings, and activities.

17.2. Deliverables. CONSULTANT shall deliver to the CITY the studies, plans, specifications, or other documents as are identified in the Scope of Services; and CONSULTANT shall, upon completion of all work or termination of this Agreement, submit to the CITY all information developed in the course of the CONSULTANT's services. CONSULTANT shall, in such time and in such form as the CITY may require, furnish reports concerning the status of services required under this Agreement. CONSULTANT shall, upon request by CITY and upon completion or termination of this Agreement, deliver to the CITY all material furnished to CONSULTANT by the CITY.

17.3. Ownership – Generally. All inventions, discoveries, enhancements, changes, or improvements of computer programs developed pursuant to this Agreement shall be the property of the CITY, and all patents or copyrights shall be assigned to the CITY, unless otherwise agreed. CONSULTANT agrees that CITY may make modifications to computer software furnished by CONSULTANT without

infringing CONSULTANT's copyright or any license granted to CITY, unless otherwise agreed.

17.4. Ownership of Documents. Every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONSULTANT pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

17.5. Confidentiality. Information that is exempt from disclosure to the public is confidential. This includes information relating to the past, present, or future affairs of the CITY or information belonging to a third party whose information is in the CITY's possession or control under obligations of confidentiality. CONSULTANT may be granted access to information that is exempt from disclosure to the public (Government Code Section 6254 and 6254.16) and may contain "trade secrets" (see Government Code Section 6254.7(d)) when it is necessary for CONSULTANT to perform its obligations pursuant to this Agreement. If CONSULTANT is granted such access to confidential information, CONSULTANT shall not be considered to be a member of the public as that term is used in Government Code Section 6254.5.

17.6. Disclosure of Information. CONSULTANT shall not disclose, publish, or authorize others to disclose or publish, design data, drawings, specifications, reports, or other information pertaining to the projects assigned to CONSULTANT by the CITY or other information to which the CONSULTANT has had access during the term of this Agreement without the prior written approval of the CITY's Designated Representative during the term of this Agreement and for a period of two (2) years after the termination of this Agreement.

17.7. No Warranty. Other than an obligation upon the CITY to deal in good faith, the CITY makes no warranties and shall bear no liability or responsibility for errors or omissions in any Confidential Information disclosed under this Agreement or for any business decisions made by CONSULTANT in reliance on any Confidential Information disclosed under this Agreement.

18. ASSIGNMENT.

This Agreement is for the professional services of CONSULTANT. Any attempt by CONSULTANT to assign the benefits or burdens of this Agreement without the prior written approval of CITY shall be prohibited and shall be null and void. CONSULTANT's services pursuant to this Agreement shall be provided by the CONSULTANT's Designated Representative or directly under his/her supervision, and CONSULTANT shall not assign another to supervise the CONSULTANT's performance of this Agreement without the prior written approval of CITY, by and through the CITY's Designated Representative.

19. NOTICE OF BREACH AND OPPORTUNITY TO CURE.

Neither Party will be in breach of this Agreement where the breach is capable of being cured, or until written notice of the breach is received from the non-breaching Party. The Party charged with breach will have fifteen (15) calendar days from the date of receiving such notice in which to cure the breach or otherwise respond. If the circumstances leading to the charge that the Agreement was breached have not been cured or explained to the satisfaction of the other Party within fifteen (15) days from the date on which the breaching Party received notice of breach, the non-breaching Party may terminate this Agreement.

20. NOTICE.

All notices given or required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by first-class mail. Notice sent by mail shall be addressed to each Party's Designated Representative as set forth above in Section 6. When addressed in accordance with this Section, such notice shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this Section.

21. COVENANTS AND CONDITIONS.

Each term and each provision of this Agreement to be performed by CONSULTANT shall be construed to be both a covenant and a condition.

22. WAIVER.

CITY's review or acceptance of, or payment for, work product prepared by CONSULTANT under this Agreement will not be construed to operate as a waiver of any rights CITY may have under this Agreement or of any cause of action arising from CONSULTANT's performance. A waiver by CITY of any breach of any term, covenant, or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement, whether of the same or different character.

23. INDEMNIFICATION, HOLD HARMLESS & DEFENSE.

23.1 As a separate and independent covenant from CONSULTANT's obligations under this section, CONSULTANT shall to the fullest extent permitted by law, immediately defend, indemnify, and hold harmless CITY, its legislative and advisory bodies, and the CITY's officials, directors, officers, employees, and agents (the "Indemnitees") from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with CONSULTANT's performance of this Agreement or CONSULTANT's failure to comply with any of its obligations contained in this Agreement. Liabilities subject to the duties to

defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. CONSULTANT's obligation to indemnify applies unless it is adjudicated that any of the liabilities covered by this Section are the result of the sole active negligence or sole willful misconduct of any of the Indemnitees.

23.2 The duty to defend is a separate and distinct obligation from CONSULTANT's duty to indemnify. CONSULTANT shall be obligated to defend in all legal, equitable, administrative, or special proceedings, with counsel approved by the CITY Attorney, immediately upon tender to CONSULTANT of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of negligence or willful misconduct by any of the Indemnitees shall not relieve CONSULTANT from its separate and distinct obligation to defend the Indemnitees. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes the obligation to provide independent defense counsel if CONSULTANT asserts that liability is caused in whole or in part by the negligence or willful misconduct of the Indemnitees. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of any of the Indemnitees, CONSULTANT may submit a claim to CITY for reimbursement of reasonable attorneys' fees and defense costs.

23.3 The provisions of this Subsection 23.3 apply only in the event that CONSULTANT is a design professional within the meaning of California Civil Code section 2782.8 ("Design Professional"). The term Design Professional, as defined in said section, is limited to licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors, and the business entities that offer such services in accordance with the applicable provisions of the California Business and Professions Code.

23.3.1 Notwithstanding the provisions of Subsections 23.1 and 23.2 above, to the extent that the services to be provided under this Agreement are those of a Design Professional, CONSULTANT's duty to indemnify, hold harmless, and defend the Indemnitees shall be limited to the extent that any claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, its officers, agents, employees or subconsultants in the performance of the services described in this Agreement.

23.3.2 In no event shall the costs of defense charged to CONSULTANT exceed the CONSULTANT's proportionate percentage of fault, except as otherwise set forth in said Civil Code section 2782.8, the provisions of which are incorporated into this Agreement by this reference. Nothing in this Subsection 23.3 shall be construed to require CONSULTANT to provide indemnification for claims caused by the active negligence or willful misconduct of the Indemnitees.

23.4 The review, acceptance or approval of CONSULTANT's work or work product by any of the Indemnitees shall not affect, relieve or reduce CONSULTANT's indemnification or defense obligations. CONSULTANT waives any right of contribution against CITY or any of CITY's officers, employees, agents, or volunteers arising out of such failure to inspect, review, monitor, or supervise the work performed by CONSULTANT pursuant to this Agreement. The provisions of this Section shall not be restricted by and do not affect the provisions of this Agreement relating to Section 24. The CONSULTANT's obligations under this Section of the Agreement shall survive the termination of the Agreement.

23.5 CONSULTANT agrees to pay all required taxes on amounts paid to CONSULTANT under this Agreement, and to indemnify and hold CITY harmless from any and all taxes, assessments, penalties, and interest asserted against CITY by reason of the independent contractor relationship created by this Agreement. CONSULTANT shall be solely responsible for, and shall save CITY harmless from, all matters relating to the payment of CONSULTANT's subcontractors, material suppliers, directors, officers, employees, agents and representatives, including compliance with social security requirements, federal and State income tax withholding, and all other regulations governing employer-employee relations, as applicable. CITY shall have the right to offset against the amount of any compensation due to CONSULTANT under this Agreement any amount due to CITY from CONSULTANT as a result of its failure to promptly pay to CITY any reimbursement or indemnification arising under this Section.

24. INSURANCE.

CONSULTANT shall obtain and maintain during the performance of any services under this Agreement the insurance coverages listed within "Exhibit C", which is attached hereto and incorporated herein by this reference, unless the Risk Manager waives, in writing, the requirement that CONSULTANT obtain and maintain such insurance coverages. Such insurance must be issued by a company satisfactory to the Risk Manager. CONSULTANT shall, before performance of any services pursuant to this Agreement, file with the Risk Manager evidence of insurance coverage as specified in "Exhibit C". Maintenance of insurance coverages by CONSULTANT is a material element of this Agreement. CONSULTANT'S failure to maintain or renew insurance coverages or to provide renewal evidence shall be considered a material breach of this Agreement.

25. LIVING WAGE REQUIREMENTS.

During the term of this Agreement, CONSULTANT understands and agrees that if Living Wages are applicable subject to the 2002 Oxnard City Council Living Wage Policy, attached as "Exhibit D" to this Agreement, CONSULTANT will pay and/or provide the wages and/or benefits required therein to all of its employees engaged in whole or in part in performing the services provided for by this Agreement. The duty to pay the correct wage is the responsibility of the CONSULTANT.

26. PREVAILING WAGE REQUIREMENTS.

26.1. Application. The payment of State prevailing wages as designated for Ventura County shall apply to public works projects. However, this section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work; or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work. Prevailing wages are required to be paid to all workers, including subcontracted employees.

26.2. Compliance with California Department of Industrial Relations (DIR). To determine if this Agreement is subject to compliance monitoring and enforcement, go to:

<https://www.dir.ca.gov/Public-Works/PublicWorksSB854FAQ.html>

26.3. Contract Splitting. It is unlawful to split, or separate into small portions, work orders, projects, purchases, or public works projects for the purpose of evading these prevailing wage requirements.

26.4. Use of Prevailing Wages vs. Living Wages. In the event that there is a difference between the amount of wages to be paid under the CITY of Oxnard's local Living Wage requirements and the requirements of this provision, the wage rate that is the higher of the two shall be applicable to this Agreement. The duty to pay the correct wage is the responsibility of the CONSULTANT.

27. IRAN CONTRACTING ACT

28. CONFLICT OF INTEREST

CONSULTANT covenants that it does not have any interest, nor shall it acquire any interest, directly or indirectly, which would conflict in any manner with the performance of CONSULTANT's services under this Agreement. CONSULTANT further covenants that in the performance of services under this Agreement, no officer, employee or agent of CONSULTANT having such interest shall be employed by it. In the event the CITY determines that CONSULTANT must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, CONSULTANT shall file such Form 700 with the CITY Clerk's Office pursuant to the written instructions provided by the CITY Clerk. Acquisition or maintenance of a conflicting interest by CONSULTANT may result in termination of this Agreement by the CITY.

29. [RESERVED] -

30. DISPUTES.

Except as otherwise provided in these provisions, any dispute concerning a question of fact arising under this Agreement, shall be decided by the CITY's Designated Representative, who shall reduce this decision to writing and mail a copy to the CONSULTANT. The decision of the CITY's Designated Representative shall be final and conclusive unless CONSULTANT requests mediation within ten (10) calendar days. Pending final decision of a dispute, the CONSULTANT shall proceed diligently with the performance of the Agreement and in accordance with the decision of the CITY's Designated Representative.

31. DISPUTE RESOLUTION.

Should an unresolved dispute arise out of this Agreement, any Party may request that it be submitted to mediation. The Parties shall meet in mediation within a reasonable time not to exceed forty five (45) days of a request. The mediator shall be agreed to by the mediating Parties. In the absence of an agreement on a mediator, the Parties shall each submit one name from mediators listed by the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a "blindfold" process. The cost of mediation shall be borne equally by both Parties. Neither Party shall be deemed the prevailing Party. No Party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the Parties but not more than sixty (60) calendar days, unless the maximum time is extended in writing by both Parties.

32. AUDIT.

CITY shall have the option of inspecting, auditing and/or reproducing all records and other written materials: used by CONSULTANT in preparing its billings to CITY as a condition precedent to any payment to CONSULTANT; or for other purposes relating to the Agreement. CONSULTANT will promptly furnish all documents requested by CITY. Additionally, if this Agreement is in excess of \$10,000, the State Auditor may examine and audit CONSULTANT for a period of 3 years after final payment under the Agreement. Regardless of whether a State audit is permitted, CONSULTANT shall maintain and preserve all such records for a period of at least 3 years after final payment under the Agreement or until an audit has been completed and accepted by CITY, whichever occurs later. CONSULTANT shall maintain all such records in CITY or to promptly reimburse CITY for all reasonable costs incurred in conducting the audit at a location other than in CITY, including but not limited to expenses for personnel, salaries, private auditor, travel, lodging, meals and overhead. CONSULTANT shall include a copy of this Section in all contracts with its subcontractors, and CONSULTANT shall be responsible for immediately obtaining those records or other written material from its subcontractors upon a request by the State Auditor and/or CITY.

33. ADVERTISING AND PUBLICITY

CONSULTANT shall not use the name of or refer to CITY directly or indirectly in any advertisement, news release, or professional or trade publication without prior written approval from the CITY Manager. This Section shall survive the termination of this Agreement.

34. NONDISCRIMINATORY EMPLOYMENT.

CONSULTANT shall not unlawfully discriminate against any individual based on race, color, religion or religious creed, national origin, ancestry, ethnic group identification, primary language, physical disability, mental disability, medical condition, genetic information, marital status, gender, gender identity, gender expression, sex, sexual orientation, age, immigration status, citizenship or military and veteran status. CONSULTANT understands and agrees that it is bound by and will comply with all legal nondiscrimination mandates. For every subcontractor who will perform Services, CONSULTANT shall be responsible for such subcontractor's compliance with this Section.

35. FORCE MAJEURE.

Neither the CONSULTANT nor the CITY shall be responsible for any delay caused by any contingency beyond their control, including, but not limited to, war or insurrection, walkouts by the Party's own employees, fires, natural calamities, riots, or demands or requirements of governmental agencies other than the CITY.

36. GOVERNING LAW.

The terms of this Agreement shall be interpreted according to the laws of the State of California. Should litigation occur, venue shall be in the Superior Court of California, County of Ventura.

37. SEVERABILITY.

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect and be enforceable.

38. INTEGRATED AGREEMENT.

This Agreement and the attached exhibits referenced herein to this Agreement represent the entire understanding between the Parties. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement shall

bind and inure to the benefit of the Parties to this Agreement and any subsequent successors and assigns.

39. NO THIRD-PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third-party or parties, and no third party or parties shall have any claim or right of action under this Agreement.

40. AUTHORITY TO EXECUTE.

Each Party hereto expressly warrants and represents that through its Designated Representative it has the authority to execute this Agreement on behalf of its corporation, partnership, business entity, or governmental entity, and warrants and represents that the Designated Representative has the authority to bind each Party to the performance of its obligations hereunder.

41. EXECUTION – COUNTERPARTS.

This Agreement may be executed in any number of counterparts and each such duplicate counterpart shall constitute an original, but they shall not be effective nor enforceable unless and until it is executed with the handwritten signature of an authorized representative of each of the relevant Parties. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other Party to this Agreement is in the physical possession of the Party seeking enforcement thereof.

42. INCONSISTENT OR CONFLICTING TERMS.

In the event of any contradictions or inconsistencies between any attached documents or exhibits incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control. Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the CITY are not binding upon the CITY's Designated Representative unless specifically agreed to in writing, and initiated by CITY's Designated Representative, as to each additional contractual term or condition.

43. CAPTIONS AND HEADINGS.

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content, scope, or intent of the provisions described under the respective caption or heading.

44. ACKNOWLEDGEMENT.

By signing below, CONSULTANT acknowledges that it has reviewed the CITY's CONSULTANT/Professional Services Agreement terms and conditions and insurance requirements and that CONSULTANT hereby agrees to full compliance.

[Signatures on next page]

In witness whereof, the Parties have entered into this Agreement on the date as written in section 3 and upon signature of all Parties.

CITY OF OXNARD

NORTHERN DIGITAL, INC.

☒ John C. Zaragoza, Mayor¹ Date
☐ Jennifer Yates, Purchasing Manager²

Martin Obermire, Date
Executive Vice President

Monica Hummel Date
Corporate Secretary³

ATTEST:

Rose Chaparro, CITY Clerk Date
(only if Mayor authorizes)

APPROVED AS TO FORM:

Stephen M. Fischer, CITY Date
Attorney (always required)

¹ The City Council must authorize and the Mayor must execute any agreement over \$200,000.

² The Purchasing Agent may execute any authorized agreement up to \$200,000.

³ The City requires the following for any contract:

- For a corporation, the signatures of the Board President, CEO or Vice President and of the Board Secretary, Assistant Secretary, CFO or Assistant Treasurer;
- For an LLC, the signatures of at least two managers of the LLC (company directors, not lower-level managers); or
- For a partnership, the signature of a partner. If the partnership is a limited partnership, the signer must be a general partner.

If the company has a different structure, or if the above-listed persons are not the appropriate signers, please submit to the City Attorney legally-binding documentation stating who can sign and bind your company.

EXHIBIT A

CONSULTANT/PROFESSIONAL SERVICE AGREEMENT (CITY of Oxnard and Northern Digital, Inc.)

SCOPE OF SERVICES

SCADA SYSTEM SUPPORT

Consultant shall provide on-call and/or emergency SCADA Integration, Instrumentation, PLC Programming services, network support, including troubleshooting, Cyber Security Insurance, develop SCADA Architecture, develop Security platform, Flow Meter Calibration Certification, programming, report generation, report writing, support, and modifications for water treatment plant, water blending stations, wastewater treatment plant, wastewater lift stations, AWWPF and recycled water distribution SCADA systems.

On an on-call and/or emergency basis, Consultant shall provide software, hardware, instrumentation, radio, computer network communications, electrical, and computer repair or replacement services. The Consultant shall be available year-round and available on a 24-hour/7-day basis. For emergency services, a 30-minute maximum call-back response time with a 2-hour maximum on-site response is required. For on-call services, services shall be scheduled to occur within five (5) calendar days. Consultant shall provide best management practices in protecting the SCADA system when using non-City computers or peripherals.

Consultant shall design, install and integrate SCADA systems for recycled water at River Ridge Golf Club, Blending Station 7, and the distribution pipeline. Consultant will test, troubleshoot and optimize the SCADA systems. Consultant will also coordinate with Pleasant Valley County Water District and River Ridge Golf Club to synchronize operations and ensure that the recycled water system does not interfere with normal operations.

Consultant shall upgrade the Water and Recycled Water SCADA systems to the most current version as well as test, troubleshoot and optimize the systems to ensure full interoperability and security.

Services shall include maintenance services for all components of the SCADA system including hardware, software, and communications for a period of one (1) year following system acceptance.

SCADA INTEGRATION SERVICES

Consultant will provide Supervisory Control and Data Acquisition (SCADA) integration services, including troubleshooting, programming, report generation, report writing, support, and modifications for water treatment plant, water blending stations, wastewater treatment plant, wastewater lift stations, Advanced Water Purification Facility (AWPF) on an on call and/or emergency basis.

Services shall include, but are not limited to:

Water System

System-Wide

- Calibrate/replace controls and instrumentation, sensors and switches (pressure, flow, level and temperature)
- Calibrate/refurbish/replace chemical (pH, conductivity, chlorine, ammonia and chloramines) analyzers
- Refurbish/replace Uninterruptible Power Supplies (UPSs)
- Work with City Information Systems Department and Verizon to isolate and remove sources of SCADA network dropouts
- Analyze power monitor data for real-time efficiency and time-of-use (TOU) evaluation
- Calibrate water system instrumentation
- Evaluate and repair communication network – coordinate with Verizon and City Information Systems regarding upgrading network switches
- Help evaluate and maintain remote access devices for SCADA operations
- Maintain software installed on (SCADA) server for local and state reporting
- Evaluate opportunities to extend City's fiber backbone to remote sites (blending stations, flow monitoring, pressure monitoring, etc.

Water Campus – 251 South Hayes Avenue, Oxnard, CA 93030

- Evaluate and repair communication network – coordinate with Verizon and City Information Systems regarding upgrading network switches
- Integrate well #23 with PLC control for automated use

Blending Station No. 1 Desalter - 251 South Hayes Avenue, Oxnard, CA 93030

- Isolate reverse osmosis (RO) skids Flex Input/Output (I/O) from SCADA local area network (LAN)
- Solve ControlNet module lockups
- Refurbish/replace flow control valves

Blending Station No. 2 – 1061 Richmond Avenue, Oxnard, CA 93030

- Upgrade PLC
- Calibrate water system instrumentation
- Develop communication

Blending Station No. 3 – 1700 Solar Drive, Oxnard, CA, 93030

- Calibrate water system instrumentation

Blending Station No. 4 – 3637 North Rose Avenue, Oxnard, CA, 93036

- Calibrate water system instrumentation

Blending Station No. 5 - 980 East Pleasant Valley Road, Oxnard, CA 93033

- Clean up analog and digital control wiring
- Integrate pressure and conductivity data into Calleguas Municipal Water District (CMWD) back feed control loop
- Develop BS No. 6 automated bypass scheme for backup CMWD supply to BS No. 1

Wellfield #2

- Clean up analog and digital control wiring
- Integrate pressure and conductivity data into Calleguas Municipal Water District (CMWD) back feed control loop

Communication/Radios

- Develop loop system for radio communication

Wastewater System

Wastewater Treatment Plant – 6001 Perkins Road, Oxnard CA 93033

- Calibrate/replace instrumentation, sensors and switches (pressure, flow, level and temperature)
- Identify program tags that cause errors and repair
- Calibrate/refurbish/replace chemical (pH, ORP, TSS, Solids, and residual chlorine) analyzers
- Evaluate and repair communication network – coordinate with Frontier/Verizon/AT&T and Wastewater staff regarding upgrading network switches
- Help evaluate and maintain remote access devices for SCADA operations
 - Maintain software installed on (SCADA) server for local and state reporting

EXHIBIT B

**CONSULTANT/PROFESSIONAL SERVICE AGREEMENT
(CITY of Oxnard and Northern Digital, Inc.)**

SCHEDULE OF COMPENSATION

ENGINEERING, PROGRAMMING, TROUBLESHOOTING, AND FIELD LABOR INCLUDING TRAVEL	
SCHEDULED WORK – 24-HOUR NOTICE (STANDARD – NORMAL HOURS)	
MONDAY – FRIDAY 7:00 am – 4:00 pm	
POSITION	HOURLY RATE
FIELD ENGINEER	\$150
DESIGN ENGINEER	\$180
CONSULTANT ENGINEER	\$200
UNSCHEDULED URGENT WORK – TWO-HOUR NOTICE (NON-STANDARD)	
MONDAY – FRIDAY 7:00 am – 4:00 pm	
POSITION	HOURLY RATE
FIELD ENGINEER	\$185
DESIGN ENGINEER	\$225
CONSULTANT ENGINEER	\$250
MONDAY – FRIDAY 4:01 pm – 6:59 am	
POSITION	HOURLY RATE TIME AND A HALF
FIELD ENGINEER	\$225
DESIGN ENGINEER	\$270
CONSULTANT ENGINEER	\$300
SATURDAY, SUNDAY, AND HOLIDAYS	
POSITION	HOURLY RATE DOUBLE-TIME
FIELD ENGINEER	\$300
DESIGN ENGINEER	\$360
CONSULTANT ENGINEER	\$400
Other	
Travel time (from Consultant location to Oxnard)	Two Hours
Material Markup (%) Cost + Markup (not to exceed 15%)	15%

EXHIBIT C

CONSULTANT/PROFESSIONAL SERVICES AGREEMENT (CITY of Oxnard and Northern Digital, Inc.)

INSURANCE REQUIREMENTS

Prior to contract approval, CONSULTANT/SERVICE PROVIDER/SELLER/BIDDER (hereafter referred to as "CONSULTANT") must procure, agree to maintain and supply evidence of insurance at the levels listed and in accordance with the other provisions listed in this document.

Exhibit INS-A

INSURANCE REQUIREMENTS FOR CONSULTANTS (WITH ERRORS AND OMISSIONS REQUIREMENT)

1. Consultant shall obtain and maintain during the performance of any services under this Agreement the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of services hereunder by Consultant, its agents, representatives, employees or subconsultants.

a. Commercial General Liability Insurance, including Contractual Liability, in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for general liability with coverage equivalent to Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001). If a general aggregate limit is used, that limit shall apply separately to the project or shall be twice the occurrence amount;

b. Business automobile liability insurance in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability with coverage equivalent to Insurance Services Office automobile liability coverage (Occurrence Form CA0001) covering Code No. 1, "any auto;"

c. Professional liability/errors and omissions insurance appropriate to Consultant's profession to a minimum coverage of \$1,000,000, with neither Consultant nor listed subconsultants having less than \$500,000 individually. The professional liability/errors and omissions insurance must be project specific with at least a one year extended reporting period, or longer upon request.

d. Workers' compensation insurance in compliance with the laws of the State of California, and employer's liability insurance in an amount not less than \$1,000,000 per claimant. Additionally, the workers' compensation policy shall include a waiver of all rights of subrogation which the insurer may have against the City.

2. Consultant shall, prior to performance of any services, file with the Risk Manager certificates of insurance with original endorsements effecting coverage required by this Exhibit INS-A. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on the attached forms or on other forms approved by the Risk Manager. All certificates and endorsements are to be received and approved by the Risk Manager before commencement of services. City reserves the right to require complete certified copies of all required insurance policies at any time. The certificates of insurance and endorsements shall be sent via email. If you have not received your request or are having difficulty with electronic upload, contact insurance@oxnard.org

3. Consultant agrees that all insurance coverages shall be provided by a California admitted insurance carrier with an A.M. Best rating of A:VII or better and shall be endorsed to state that coverage may not be suspended, voided, canceled, or reduced in coverage or limits without 30 days' prior written notice to the Risk Manager. The Risk Manager shall not approve or accept any endorsement if the endorsement contains "best effort" modifiers or if the insurer is relieved from the responsibility to give such notice.

4. Consultant agrees that the commercial general liability and business automobile liability insurance policies shall be endorsed to name City, its City Council, officers, employees, agents and volunteers as additional insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its City Council, officers, employees, agents and volunteers. **The General Liability Special Endorsement Form and Automobile Liability Special Endorsement Form attached to this Exhibit INS-A or substitute forms containing**

the same information and acceptable to the Risk Manager shall be used to provide the endorsements (ISO form CG 2010 11/85 or if not available, CG 2010 with an edition date prior to 01/04 and CG 2037).

5. The coverages provided to City shall be primary and not contributing to or in excess of any existing City insurance or self-insurance coverages (**this must be endorsed**). Additionally, the workers' compensation policy shall include a waiver of all rights of subrogation which the insurer may have against the City. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its City Council, officers, employees and volunteers. The insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. The insurer shall declare any deductibles or self-insured retentions to and be approved by the Risk Manager. At the option of the Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its City Council, officers, employees and volunteers, or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

7. All insurance standards applicable to Consultant shall also be applicable to Consultant's subconsultants. Consultant agrees to maintain appropriate agreements with subconsultants and to provide proper evidence of coverage upon receipt of a written request from the Risk Manager.

4/23

INSTRUCTION FOR SUBMITTING INSURANCE CERTIFICATES AND ENDORSEMENT FORMS

Certificates of Insurance

The sample accord form on the following page is provided to facilitate your preparation and submission of certificates of insurance. You may use this or any industry form that shows coverage as broad as that shown on the attached sample. **Please note the certificate holder address must be as shown on the attached sample accord form with the contract number and insurance exhibit identification information completed.** Improperly addressed certificates may delay the contract start-up date because the City's practice is to return unidentifiable insurance certificates to the insured for clarification as to the contract number. **Cancellation provisions must be endorsed to the policy. Modifying the certificate does not change coverage or obligate the carrier to provide notice of cancellation.**

Endorsement Forms

Original endorsements are required for commercial general liability and business automobile liability insurance policies and must be attached to the applicable certificate of insurance. City preference is that the Consultant/insurer use the endorsement forms which are attached. Substitute forms will be accepted, however, as long as they include provisions comparable to the sample accord form.

INS-A.doc

ACORD CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

CODE SUB-CODE

COMPANIES AFFORDING INSURANCE COVERAGE

INSURED

COMPANY
LETTER A SPECIFY COMPANY NAMES IN THIS SPACE

COMPANY
LETTER B

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY [x] COMMERCIAL GENERAL LIABILITY [] CLAIMS MADE [x] OCCUR. [x] OWNER'S & CONTRACTOR'S PROT.				GENERAL AGGREGATE \$1,000,000 PRODUCTS COMP/OP AGG. \$1,000,000 PERSONAL & ADV. INJURY \$1,000,000 EACH OCCURRENCE \$1,000,000 FIRE DAMAGE (Any one fire) \$ MED. EXPENSE (Any one person) \$
A	AUTOMOBILE LIABILITY [x] ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY				COMBINED SINGLE \$1,000,000 LIMIT BODILY INJURY \$ (Per person) BODILY INJURY \$ (Per accident) PROPERTY DAMAGE \$
A	EXCESS LIABILITY UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY LIMITS EACH ACCIDENT \$1,000,000 DISEASE-POLICY LIMIT \$1,000,000 DISEASE-EACH EMPLOYEE \$1,000,000
A	OTHER Errors and omissions insurance or malpractice insurance available for the insured's profession				Minimum coverage \$1,000,000 Each consultant/ & listed sub-consultant \$500,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

CERTIFICATE HOLDER

CITY OF OXNARD % Evident ID, Inc.
8520 Allison Pointe Blvd. Ste 223
PMB 5210
Indianapolis, Indiana 46250-4299 US

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

[illegible]

[illegible]

EXHIBIT D

CONSULTANT/PROFESSIONAL SERVICES AGREEMENT (CITY of Oxnard and Northern Digital, Inc.)

LIVING WAGE POLICY

Pursuant to the Living Wage Policy adopted July 9, 2002 by the City Council and effective October 1, 2002, the City Manager and City Attorney are directed to include the following language in all standard CONSULTANT/Professional services contracts and all unique trade services contracts governed by the Living Wage Policy.

A. CONSULTANT shall compensate any employee of CONSULTANT who provides services under this Agreement in accordance with the Living Wage Policy, attached hereto and incorporated herein by reference as the Living Wage Policy Exhibit. While this Agreement is in effect, CONSULTANT shall pay such employee no less than \$18.22 per hour for each hour that such employee provides services under this Agreement. In addition, while this Agreement is in effect, CONSULTANT shall provide to such employee no less than 96 hours of paid leave per calendar year.

B. CONSULTANT agrees to post, at a location readily accessible to those employees providing services to the CITY, a copy of the Living Wage Policy adopted by City Council on July 9, 2002 and effective October 1, 2002.

C. If CONSULTANT fails to compensate such employee pursuant to the Living Wage Policy, the City Manager or designee shall terminate this Agreement on written notice to CONSULTANT, effective immediately.

D. In addition, if CONSULTANT fails to comply with the Living Wage Policy in any manner, CONSULTANT shall pay to CITY a fine of \$500 and shall pay to any employee providing services under this Agreement a penalty of three times the amount or value of the compensation owed to such employee under the Living Wage Policy. CONSULTANT shall pay such fine and penalty within fifteen (15) calendar days after the City Manager or designee provides written notice to CONSULTANT of the amount owed.

**CITY OF OXNARD LIVING WAGE REQUIREMENTS
EFFECTIVE JULY 1, 2022**

CONSULTANT shall compensate any employee of CONSULTANT who provides services under this Agreement in accordance with the Living Wage Policy, attached hereto and incorporated herein by reference as Exhibit D. While this Agreement is in effect, CONSULTANT shall pay such employee no less than \$18.22 per hour for each hour that such employee provides services under this Agreement. This hourly rate shall be adjusted on July 1, 2023, and each July 1 thereafter, according to the percentage change in the Consumer Price Index, all items, prepared by the Bureau of Labor Statistics for the Los Angeles area relating to all urban consumers (CPI-U), index base 1982-84=100, comparing May of the previous year to May of the current year. In addition, while this Agreement is in effect, CONSULTANT shall provide to such employee no less than 96 hours of paid leave per calendar year.

a. CONSULTANT agrees to post, at a location readily accessible to those employees providing services to the CITY, a copy of the Living Wage Policy adopted by the Oxnard City Council on July 9, 2002 and effective October 1, 2002.

b. If CONSULTANT fails to compensate such employee pursuant to the Living Wage Policy, the City Manager or designee shall terminate this Agreement on written notice to CONSULTANT, effective immediately.

c. In addition, if CONSULTANT fails to comply with the Living Wage Policy in any manner, CONSULTANT shall pay to CITY a fine of \$500 and shall pay to any employee providing services under this Agreement a penalty of three times the amount or value of the compensation owed to such employee under the Living Wage Policy. CONSULTANT shall pay such fine and penalty within fifteen (15) calendar days after the City Manager or designee provides written notice to CONSULTANT of the amount owed.

EXHIBIT E

CONSULTANT/PROFESSIONAL SERVICES AGREEMENT (CITY of Oxnard and Northern Digital, Inc.)

PREVAILING WAGE

1. CONSULTANT acknowledges that the Project defined in the Agreement between CONSULTANT and CITY is a “public work” as defined in Division 2, Part 7, Chapter 1 of the California Labor Code (“Chapter 1”), and that this Agreement is subject to Chapter 1 and the rules and regulations established by the Director of Industrial Relations (“DIR”) implementing such statutes. CONSULTANT shall perform the Project as a public work. CONSULTANT shall comply with and be bound by all the terms, rules and regulations described in Chapter 1 and the DIR’s rules and regulations as though set forth in full herein.
2. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Agreement are on file at City Hall and will be made available to any interested party on request. CONSULTANT acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and CONSULTANT shall post such rates at each job site covered by this Agreement.
3. CONSULTANT is required to post job site notices, as prescribed by regulation. See Labor Code Section 1771.4(a)(2).
4. CONSULTANT shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. CONSULTANT shall, as a penalty to CITY, forfeit not more than \$200 for each calendar day or portion thereof for each worker paid less than the DIR’s determined prevailing rates for the work or craft in which the worker is employed pursuant to this Agreement by CONSULTANT or any subcontractor. The Labor Commissioner shall determine the amount of the penalty as described in Section 1775.
5. CONSULTANT shall comply with Labor Code Section 1776, which requires CONSULTANT and each subcontractor to (1) keep accurate payroll records and verify such records in writing under penalty of perjury, (2) certify and make such payroll records available for inspection, and (3) inform CITY of the location of the records.
6. CONSULTANT shall comply with Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code Title 8, Section 200 et seq. concerning the employment of apprentices on public works projects for all apprenticeable occupations. Before commencing work under this Agreement, CONSULTANT shall provide CITY with a copy of the information submitted to any applicable apprenticeship program. Within 60 days after concluding the Project, CONSULTANT and each of its subcontractors shall submit to CITY a verified statement of the journeyman and apprentice hours performed under this Agreement.

7. CONSULTANT may not be debarred or suspended throughout the Agreement Term pursuant to Labor Code Section 1777.1 or 1777.7. If he, she or it becomes debarred or suspended in the Agreement Term, CONSULTANT must immediately notify CITY.

8. CONSULTANT is not qualified to bid on, be listed in a Bid proposal, or engage in the performance of any contract for public work, as defined in Labor Code Sections 1720 through 1861, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. CONSULTANT shall continue without interruption to stay registered and qualified to perform public work pursuant to Section 1725.5 for the duration of the term of this Agreement. This provision does not apply to construction, alteration, demolition, installation or repair work of \$25,000 or less or to maintenance work of \$15,000 or less.

9. CONSULTANT acknowledges that 8 hours labor constitutes a legal day's work. CONSULTANT shall comply with and be bound by Labor Code Section 1810.

10. CONSULTANT shall comply with and be bound by Labor Code Section 1813 concerning penalties for workers who work excess hours. CONSULTANT shall, as a penalty to CITY, forfeit \$25 for each worker employed in the performance of this Agreement by CONSULTANT or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code Section 1815, work performed by CONSULTANT's employees in excess of 8 hours per day and 40 hours per week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 ½ times the basic rate of pay.

11. The Project listed in the Agreement is subject to compliance monitoring and enforcement by the DIR.

12. CONSULTANT shall be responsible for each and every one of its subcontractors' compliance with Chapter 1, the DIR's rules and regulations, and Labor Code Sections 1860 and 3700. CONSULTANT shall include in the written contract between it and each subcontractor a copy of, and a requirement that each subcontractor shall comply with, those statutory provisions. CONSULTANT shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractors' compliance, including without limitation, conducting a periodic review of the certified payroll records of each subcontractor, and upon becoming aware of the failure of the subcontractor to pay its workers the specified prevailing rate of wages, CONSULTANT shall diligently take corrective action to halt or rectify any failure.

13. To the maximum extent, CONSULTANT shall hold harmless, defend (with counsel approved by the City Attorney) and indemnify CITY, its legislative bodies, and its officials, officers, employees and agents from any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including CONSULTANT, its subcontractors, and each of their officials, officers, employees and agents) in connection

with any work undertaken or in connection with the Agreement, including without limitation the payment of all attorneys' fees and other related costs. All duties of CONSULTANT under this Section shall survive Agreement termination.

Professional Services Agreement 324000003 with Northern Digital, Inc. (NDI) for Supervisory Control and Data Acquisition (SCADA) Systems Support Services

Public Works and Transportation Committee
May 23, 2023

City Council Meeting
June 20, 2023

Joseph Marcinko
Assistant Public Works Director

RECOMMENDATION

That the Public Works and Transportation Committee recommend the City Council approve and authorize the Mayor to execute an agreement with Northern Digital, Inc. for SCADA Support Services in amount not to exceed \$1,000,000 for a three year term.

RECOMMENDATION

That the City Council approve and authorize the Mayor to execute an agreement with Northern Digital, Inc. for SCADA Support Services in amount not to exceed \$1,000,000 for a three year term.

BACKGROUND

- SCADA systems- complex communication and control systems
- Critically essential to operation of Oxnard's Water Utilities.
- Water, Wastewater, and Recycled water use SCADA systems
- Wastewater does not have a dedicated SCADA position
- Water has a dedicated SCADA position: filled in December
- SCADA systems:
 - Integrate hardware, software, and firmware
 - Monitor various functions of the operations
 - Control critical components like valves, pumps, and motors
 - Notify city staff of emergencies or system failures

- SCADA Support Services involve:
 - Programming
 - Software
 - Hardware
 - Instruments
 - Radio
 - Network communications
 - Electrical
 - Repair and Replacement
 - Cyber Security
- SCADA Support Services are critical for:
 - Emergencies
 - Diagnostic Testing

SCADA Monitoring:

Water System Components:

- Desalter treatment plant
- Drinking water wells
- Chemical feed systems
- Blending & Remote stations

Wastewater System Components:

- Oxnard Wastewater Treatment Plant (OWTP)
- Sewage pumping stations

Recycled Water System Components:

- Advanced Water Purification Facility (AWPF)
- Recycled water pipeline

DISCUSSION

- February 10,23:Advertisement of Request for Proposal (RFP)
- March 14, 2023: One bid received, opened and reviewed
- Northern Digital Inc. was deemed a responsive bidder
- Verified possession of valid licenses
- Reviewed the federal Occupational Safety and Health Administration (OSHA) website for safety violations
- Checked that the City business license is current
- Verified registration with the CA Department of Industrial Relations (DIR)
- Recommend to award from qualifications and operational need

FINANCIAL IMPACT

- Total cost shall not exceed \$1,000,000 over three years
- Annual spending commencing in July 2023 for FY 23-24
- Estimated annual spending for FY 24 and FY 25 is \$325,000
- Estimated annual spending for FY 26 is \$350,000
- Funded from Water and Wastewater Operations
- FY 23-24 funding in the proposed annual budget
- Subsequent year funding will be in the annual budget process

FINANCIAL IMPACT

ESTIMATED SPENDING PLAN					
DIVISION	ACCOUNT	FY-24	FY-25	FY-26	TOTAL
WASTEWATER	6113615-53200	\$50,000	\$50,000	\$50,000	\$150,000
WATER	6013600-53200	\$260,000	\$260,000	\$285,000	\$805,000
AWPF	6013605-53200	\$15,000	\$15,000	\$15,000	\$45,000
TOTAL		\$325,000	\$325,000	\$350,000	\$1,000,000

Questions?