



**City of San Buenaventura
Request for Proposal No. P-130000664
Tuesday February 1, 2022**

Notice is hereby given that sealed proposals will be received at the Purchasing and Contracts Division for a **Fuel and Lubricants Supplier**.

Closing Time and Date

Bids shall be submitted ELECTRONICALLY prior to:

Thursday, February 24, 2022, at 4:00 PM

For questions concerning this RFP contact by email:

Nicole Supan, Senior Buyer

nsupan@cityofventura.ca.gov

**Request for Proposal No. P-130000664 Fuel and Lubricants Supplier
Table of Contents**

Cover Page	1
Table of Contents	2
Proposal Requirements	3
Proposal Format	3
Electronic Bid Submission Instructions	4
City of San Buenaventura General Provisions for Standard Form Contracts	6
Scope of Services	12
Pricing Requirements	14
Cost/Price Proposal	15
Evaluation Criteria	18
Financial Data	19
References	24
Bidder's Statement of Subcontractors	25
Bidder's Statement of Past Contract Disqualifications	26
Proposal Authorization Sheet	27
Attachment "A" - Small Local Business Certification (if applicable)	28
Attachment "B" - General Services Agreement	29
Exhibit "C" - Insurance Requirements	41

Request for Proposal No. P-13000664 Fuel and Lubricants Supplier Proposal Requirements

Proposal Submission:

Submission of a Proposal indicates that the Responder has read and understands this entire RFP and agrees that all requirements of this RFP have been satisfied. All Proposals and materials submitted become the property of the City. Proposals received after the scheduled submittal deadline will not be considered.

Mandatory Pre-Proposal Meeting and Job Walk

A **mandatory** pre-proposal meeting will be held at the Ventura Maintenance Yard at 336 Sanjon Rd., Ventura, CA 93001 on **Tuesday February 8, 2022, at 10:00 AM**. Attendance of this Pre-Proposal Walk-through is mandatory in order to submit a Bid. Proposer's must participate in the walk-through inspection and familiarize themselves with any conditions that may affect performance and proposal prices. Bids submitted on which the walk-through meeting has not been attended will be considered non-responsive and rejected. Masks / face coverings and social distancing are required.

Question and Answer Period:

All questions regarding this Request for Proposal (RFP) shall be submitted via email to Nicole Supan, Senior Buyer in the Purchasing and Contracts Division at nsupan@cityofventura.ca.gov PRIOR to **Tuesday February 15, 2022 at 2:00 PM**. Questions will be answered in the form of an addendum. Any questions submitted after the deadline shall be rejected.

Anticipated RFP Timeline

Issuance of RFP Documents	Tuesday February 1, 2022
Mandatory Pre-Proposal Meeting and Job Walk	10:00 a.m. PST, Tuesday February 8, 2022
Deadline for RFP Questions and Comments	2:00 p.m. PST, Tuesday February 15, 2022
Responses to Questions Available (Addendum)	Thursday February 17, 2022
Deadline for Proposal Submission	4:00 p.m. PST, Thursday February 24, 2022

Proposal Format:

Proposals must be submitted in the format described in this section. Proposals are to be prepared in such a way as to provide a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on a conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content. Proposals must be complete in all respects as required in this Section. A proposal may not be considered if it is conditional or incomplete.

Each Proposal must contain the following in the order listed:

1. Cover/Transmittal Letter:
A cover letter will be signed by individual(s) who is/are authorized to bind vendor contractually. The signature(s) must indicate the classification or position that the individual(s) hold in the firm. The cover letter will designate a person or persons who may be contacted during the period of evaluation with questions or contract issues. Include name(s), title, address, telephone number, and email address. Cover letter must acknowledge receipt of any and all addenda (if applicable).
2. Emergency/Disaster Preparedness Plan
3. Designated Tank Operator Services
4. Cost/Price Proposal
5. References
6. Bidders Statement of Past Contract Disqualification
7. Financial Data Questionnaire
8. Proposal Authorization Sheet

9. Exceptions and Deviations to the Request for Proposal or General Services Agreement: Proposer must provide a section entitled "Exceptions" in which you either state your firm has no exceptions or deviations for this RFP, "General Services Agreement", or Insurance, or in which you state your exceptions and deviations (regardless if the information is presented elsewhere in this proposal).

The following is required upon successful award of bid:

1. Exhibit C: Insurance Requirements
Insurance meeting the requirements outlined in Exhibit C Pages 41-45
2. City of Ventura Business License
3. Contractor's W-9

Term of Agreement:

The term of this Agreement shall be July 1, 2022, or the date both parties execute this Agreement (the "Effective Date") and ending June 30, 2023.

Option to Extend for Good Performance: The City may, at its option, and with the approval of the Contractor, extend the period of the agreement for one (1) year periods, for a period of up to four (4) years in accordance with the scope of work and general terms and conditions of the General Services Agreement. Any price increases or decreases shall be negotiated at time of contract extension.

Insurance Requirements:

Successful firm shall provide insurance as noted in Exhibit "C" Insurance Requirements of the "General Services Agreement", page 41.

Agreement Prices:

At any time during the course of this anticipated contract the City may alter the Scope of Work, making changes to the assignments and times indicated, and/or adding or deleting assignments as deemed necessary. The City and firm will negotiate changes to the contract pricing accordingly.

Contract

A copy of the City of Ventura "General Services Agreement," Attachment "B" is included herein, as it will be the document executed into a final contract between the City and the Contractor. You do not have to return Attachment B; the sample General Services Agreement is provided for reference only and does not have to be returned with the bid.

Any exceptions to this Request for Proposal, including General Provisions for Standard Form Contracts, or Attachment A "Standard Form General Service Agreement" must be submitted on a separate page with your bid package.

Electronic Bid Submission Instructions

City Hall located at 501 Poli Street, Ventura, CA 93001 has been closed to the public until further notice due to the COVID-19 pandemic. City Hall is **NOT** accepting deliveries. Please refer to the instructions below for submitting your proposal to the City Website's Form Center.

1. Go to <https://www.cityofventura.ca.gov/FormCenter/Purchasing-13/Bid-Opportunity-93>
2. Enter all the fields listed. "Bid Number" is the only **required** field but we are asking bidders to fill in all the fields.

Bid Opportunity

Save Progress

Name		Email Address	
<input type="text"/>		<input type="text"/>	
Address			
<input type="text"/>			
City	State	Zip Code	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
Phone Number		Fax Number	
<input type="text"/>		<input type="text"/>	
Bid Number*			
<input type="text"/>			

Submit your file here

No file chosen

Will you be submitting more than 1 file?

Receive an email copy of this form.

* indicates a required field



3. Select "Browse..." to upload your bid/proposal. **NOTE: Each file size cannot exceed 20 MB.**

Communication with City Staff:

Any communication with City staff, except for the Purchasing and Contracts Division, regarding this RFP is prohibited. Disregard of this provision could result in rejection of the proposal.

Copies of the proposal package and subsequent addenda may be obtained at www.cityofventura.ca.gov/bids.

**CITY OF SAN BUENAVENTURA
GENERAL PROVISIONS FOR STANDARD FORM CONTRACTS**

Please Read Carefully

These provisions are part of your Bid/Proposal/Quotation and any resultant Contract

Definitions:

- A. "Bidder" or "Contractor" is any individual, partnership, or corporation that submits a bid, proposal, or quotation.
- B. "Bid," "Proposal," or "Quotation" shall hereafter be referred to as "Bid."
- C. "Assistant Finance Director" shall mean the Assistant Finance Director or designee.

The Bidder agrees that:

- A. Bidder has carefully examined the specifications, and all provisions relating to the item(s) to be furnished or the work to be done;
- B. Bidder understands the meaning, intent, and requirements of the items to be furnished or work to be done; and,
- C. Bidder will enter into a written contract and furnish the item(s) or complete the work required in the time specified, in strict conformity with the specifications of the City of San Buenaventura ("City") for the prices quoted.

1. Federal Funding:

Check this box if the contract is funded by a federal grant or cooperative agreement program, either directly or indirectly. If checked, Attachment "C" must be included with and applies to these Provisions. (*Indirect funding is when the City of San Buenaventura receives federal funding through a source other than the federal government. E.g. the federal government provides funding to the State of California and the State then passes the funding through to a local government entity such as the City of San Buenaventura.*) In the event of any contradictions or inconsistencies between Attachment "C" and these provisions, the terms of Attachment "C" shall control.

2. Prices:

All prices and notations must be in ink or typewritten. Mistakes may be crossed out and corrections typed or written in with ink adjacent to the error. The person signing the bid must initial corrections in ink.

Bids shall indicate the unit price extended to show the total price for each item bid. Any difference between the unit price extended and the total price shown for all items bid shall be resolved in favor of the unit prices.

3. Bidder's Security: NOT REQUIRED

A bid deposit in an amount equal to at least 10% of the bid may be required as a bid security by the City. The bid security may only be in cash, a cashier's check, a certified check made payable to the City, or a bid bond. If the bid security is a bond, it shall be executed by an insurer authorized to issue surety bonds in the State of California. The bid security must be executed by the Bidder and enclosed with the bid in the sealed bid envelope.

4. Faithful Performance Bond: NOT REQUIRED

If required, the Bidder will furnish the City with a surety bond conditioned upon the faithful performance of the contract. This may take the form of a bond executed by a surety company authorized to do business in the State of California and approved by the City, an endorsed Certificate of Deposit, or a money order or a certified check drawn on a solvent bank. The bond shall be in a sum equal to one hundred percent (100%) of the amount of the contract price. Such bond or deposit shall be forfeited to the City in the event that bidder receiving the contract shall fail or refuse to fulfill the requirements and all terms and conditions of the contract.

5. Items Offered:

If the item offered has a trade name, brand, and/or catalog number, such shall be stated in the bid. If the Bidder proposes to furnish an item of a manufacturer or bidder other than that mentioned on the face hereof, Bidder must specify maker, brand, quality, catalog number, or other trade designation. Unless such is noted on the bid form, it will be deemed that the item offered is that designated even though the bid may state "or equal."

6. Brand Names:

Whenever reference to a specific brand name is made, it is intended to describe a component that has been determined to best meet operational, performance, or reliability standards of the City, thereby incorporating these standards by reference within the specifications. These specifications are not meant to limit the Bidder. They are guidelines to minimum qualifications. The Bidder

shall indicate their compliance or non-compliance for each line of the specification. Any deviations from the specifications, or where submitted literature does not fully support the meaning of the specifications, must be clearly cited in writing by the Bidder.

An equivalent ("or equal") may be offered by the Bidder, subject to evaluation and acceptance by the City. It is the Bidder's responsibility to provide, at Bidder's expense, samples, test data, or other documentation the City may require to fully evaluate and determine acceptability of an offered substitute. The City reserves the right to reject a substituted component that will not meet or exceed City specifications.

7. Samples:

Samples may be required for bid evaluation and testing purposes. Bidders agree to provide samples within forty-eight (48) hours upon request and at no additional cost to the City.

8. Verification of Quotations:

Prices must be verified prior to bid submittal, as withdrawal or correction may not be permitted after the bid has been opened.

9. Firm Prices:

Prices on bid shall be firm prices not subject to escalation. In the event the specifications provide for escalation, the maximum limit shall be shown, or the bid shall not be considered. In the event of a decline in market price below a price bid, the City shall receive the benefit of such decline.

10. Alternative Bids:

To be responsive, Bidder must submit a bid that meets all specific bid requirements. Once Bidder has proposed a product which is responsive to the specification, Bidder may include with the bid any additional bids or alternative products that Bidder believes can meet or exceed the City's requirements and that may offer additional advantages, benefits, or cost savings. The City reserves the right to evaluate, and accept or reject, such alternatives as though they were part of the original specifications without advertising for further bids, when in the best interests of the City. Any awards so made will be based on operational and cost analysis considerations that would result in the optimum economic advantage to the City.

11. Confidential Information:

Any information deemed confidential or proprietary should be clearly identified by the Bidder as such. It may then be protected and treated with confidentiality only to the extent permitted by law. Otherwise the information shall be considered a public record. Information or data submitted with a bid will not be returned.

12. Quality:

Unless otherwise required in the specifications, Bidder shall assume that all goods furnished shall be new and unused.

13. Tropical Hardwoods:

Bidder shall not provide any tropical hardwood items to the City.

14. Modification or Withdrawal of Bids:

Bids may be modified or withdrawn by written notice sent by regular U.S. mail or email and received by the Purchasing and Contracts Section of the City's Finance & Technology Department prior to the exact hour and date specified for receipt of bid. A bid may also be withdrawn in person by a bidder, or bidder's authorized representative, prior to the exact hour and date set for receipt of bids. Telephone withdrawals are not permitted.

15. Late Bids:

Bids received after the exact time and date specified for receipt will not be considered.

16. Mistake in Bid:

(a) If the Bidder discovers a mistake in the bid prior to the hour and date specified for receipt of bid, Bidder may correct the mistake by modifying or withdrawing the bid in accordance with Section 14 above.

(b) If prior to the issuance of a purchase order or a contract, the apparent low bidder discovers a mistake in the bid of a serious and significant nature which is unfavorable to Bidder, Bidder may request consideration be given to modify the bid if it remains the lowest, responsive, and responsible bid. The right is reserved by the City to reject any and all requests for correction of mistakes in bids received after the hour and date of the bid closing. The decision of the Assistant Finance Director is final with regard to acceptance or rejection of requests for correction of bids.

17. Signature:

All bids shall be signed and the title and firm name indicated. A bid by a corporation shall be signed by an authorized officer, employee, or agent, and indicate his or her title.

18. Litigation Warranty:

The Bidder warrants that Bidder is not currently involved in litigation or arbitration concerning the materials or performance relative to the same or similar material or service to be supplied pursuant to this bid. Bidder further warrants that no judgments or awards have been made against Bidder on this basis. Disclosure to the City in the bid or failure to disclose to the City in the bid of pending litigation, arbitration, judgment, or award involving the same or similar material or service as to be supplied herein may disqualify the Bidder. The City reserves the right to consider the facts surrounding such disclosure and, in the event the bid is awarded to Bidder, to require Bidder to furnish the City with a surety bond pursuant to Section 3, above.

19. Royalties, Licenses and Patents:

Unless otherwise specified, the Bidder shall pay all royalties, license fees, and patent fees. The Bidder warrants that the materials to be supplied do not infringe any patent, trademark, or copyright, and further agrees to defend any and all suits, actions, and claims for infringement that are brought against the City and City's officers, employees, agents, and volunteers (collectively "City Parties"), and to defend, indemnify, and hold harmless City Parties from all loss or damages, whether general, exemplary or punitive, as a result of any actual or claimed infringement asserted against City Parties, the Bidder, or those furnishing materials to Bidder to meet the bid specifications.

20. Performance Standards:

Performance of work and acceptability of equipment or materials supplied pursuant to any contract or award shall be to the satisfaction of the City.

21. Warranties:

(a) All material, labor, or equipment provided under the contract shall be warranted by Bidder and/or manufacturer for at least twelve (12) months after acceptance by City. Greater warranty protection will be accepted. Lesser warranty protection must be indicated by Bidder on the bid as an exception.

(b) Bidder shall be considered primarily responsible to the City for all warranty service, parts, and labor applicable to the goods or equipment provided by Bidder under this bid, regardless of whether Bidder is an agent, broker, fabricator, or manufacturer's dealer. Bidder shall be responsible for ensuring that warranty work is performed at a local agency or facility convenient to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines.

22. Addenda:

Before submitting a bid, each bidder shall ascertain whether any addenda have been issued. Failure to cover in this bid any such addenda issued may render the bid non-responsive and result in its rejection.

23. Taxes:

The City is exempt from Federal Excise Tax. The City is liable for State, City, and County Sales Taxes.

24. Living Wage Requirements:

Bidder understands and agrees that if Living Wages are applicable subject to the provisions of Chapter 2.525 of the San Buenaventura Municipal Code (the "Code") entitled, "Living Wages and Benefits for City Services" (a copy of which is available upon request), Bidder 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 required pursuant to the solicitation.

Moreover, Bidder will require any of its successors, assigns, and subcontractors who receive any compensation or other emoluments arising out of the performance of the services required to similarly pay and/or provide such wages and/or benefits to all of their employees engaged in whole or in part in performing such services.

25. Prevailing Wage Requirements:

Effective January 1, 2015, the payment of State prevailing rates of wages as designated for Ventura County for on-site work and delivery of materials shall apply to projects for alteration, demolition, repair, or maintenance work over \$15,000. Prevailing wages are required to be paid to all workers, including subcontracted employees.

For information, go to:

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

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'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 the contract. **PLEASE NOTE, with respect to Federal contracts, other requirements may apply, in which case, the highest of the federal Prevailing Wage, state Prevailing Wage and local Living Wage prevails.**

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. Conflict of Interest:

No City employee or elected or appointed member of City government, or member of the employee or elected or member's immediate family, may participate directly or indirectly in the procurement process pertaining to this bid if they:

(a) Have a financial interest or other personal interest that is incompatible with the proper discharge of their official duties in the public interest or would tend to impair their independence, judgment, or action in the performance of their official duties.

(b) Are negotiating for or have an arrangement concerning prospective employment with Bidder. The Bidder warrants to the best of his knowledge that the submission of the bid will not create such conflict of interest. In the event such a conflict occurs, the Bidder is to report it immediately to the Assistant Finance Director. For breach or violation of this warranty, the City shall have the right to annul this contract without liability at its discretion, and Bidder may be subject to damages and/or debarment or suspension.

27. Gratuities:

The City may rescind the right of the Bidder to proceed under this Contract if it is found that gratuities in the form of entertainment, gifts, or otherwise are offered or given by the Bidder, or any agent or representative of the Bidder, to any officer or employee of the City with the intent of influencing award of this Contract or securing favorable treatment with respect to performance of this Contract.

28. Insurance:

Prior to commencement of the services required by this bid, the Bidder shall procure and maintain in full force and effect all of the insurance required by Exhibit "C," attached hereto and incorporated herein by this reference.

29. Indemnification:

As a separate and independent covenant from Bidder's obligations under Section 28 hereof, Bidder shall indemnify, protect, defend with counsel acceptable to the City, and hold City and City's officers, employees, agents, and volunteers harmless and free from any and all claims, liabilities, or expenses, including attorney's fees, arising out of or relating to any negligent act, negligent omission, or wrongful conduct related in any way to Bidder's performance of its services pursuant to this Contract. In the event City and/or any of City's officers, employees, agents, or volunteers are named in any lawsuit, or should any claim be made against it or any of them by lawsuit or otherwise arising out of or relating to such negligent act, negligent omission, or wrongful conduct, Bidder shall indemnify them for any judgment rendered against them for such negligent act, negligent omission, or wrongful act, any sums paid out in settlement or otherwise, and all costs incurred by them in their defense, including but not limited to attorney's fees.

Bidder also understands and agrees that it is being employed to perform the services provided for by this Contract because of Bidder's professed expertise and experience in performing such services. In addition, Bidder understands and agrees that while City or City's officers, employees, agents, or volunteers may elect to do so, they have no duty to review, inspect, monitor, or supervise the work performed by Bidder pursuant to this Contract except as otherwise expressly provided for by this Contract. As a consequence, Bidder 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 Bidder pursuant to this Contract.

The Bidder's obligations under this Section of the Contract shall survive the termination of the Contract.

30. Award of Contract:

(a) Bids will be analyzed and award will be made to the lowest, responsive, and responsible bidder whose bid conforms to the solicitation and whose bid is considered to be most advantageous to the City.

(b) The City reserves the right to reject any item or items.

(c) The City reserves the right to award one or more contracts on the bids submitted, either by award of all items to one bidder or by award of separate items or groups of items to various bidders as the interests of the City may require, unless the bidder clearly specifies otherwise in his/her/its bid.

Upon acceptance by the City, the solicitation, bid, price quotation, and a purchase order issued to the successful bidder shall be deemed to result in a binding contract incorporating those terms and these General Provisions.

31. Request for Proposal (RFP) Submittals:

The documents submitted by prospective bidders are competitive sealed proposals and not competitive sealed bids. When proposals are opened, prices and other information will not be made public until the proposal is awarded. There will be no disclosure of any bidder's information to competing bidders prior to the award of the proposal. At that time, the executed contract and proposals will become public information.

32. Protests:

Protests by unsuccessful bidders to the selection for award shall be submitted in writing to the Assistant Finance Director no later than ten (10) calendar days from the date of the letter of notice. Failure to submit a timely written protest to the Assistant Finance Director shall bar consideration of such protest. The Assistant Finance Director shall consider the merits of the protest and make a determination that shall be immediately communicated to the protesting bidder. Any appeal concerning the determination of the Assistant Finance Director shall be submitted in writing to the Finance & Technology Director no later than five (5) calendar days after the original determination is communicated to the Bidder. The Finance & Technology Director shall hear the documented arguments of the protest and a written determination will be made and returned to the affected bidder(s). Determinations by the Finance & Technology Director concerning protests are final.

33. Documentation:

Due to the time constraints that affect contract performance, all required documents, certificates of insurance, and bonds shall be provided to the City within ten (10) calendar days following award or date of request by City, whichever is later. Any failure to comply may result in the bid being declared non-responsive and rejected, and at City's option, if a bid bond was required, it may be attached for damages suffered.

34. Document Ownership:

(a) All technical documents and records originated or prepared pursuant to this solicitation, including papers, reports, charts, and computer programs, shall be delivered to and become the exclusive property of the City and may be copyrighted by the City. Bidder assigns all copyrights to City by undertaking this Contract.

(b) All inventions, discoveries, enhancements, changes, or improvements of computer programs developed pursuant to this solicitation shall be the property of the City, and all patents or copyrights shall be assigned to City, unless otherwise agreed. Bidder agrees that City may make modifications to computer software furnished by Bidder without infringing Bidder's copyright or any license granted to City.

35. Advertisements, Product Endorsements:

City employees and agencies or organizations funded by the City are prohibited from making endorsements, either implied or direct, of their company, commercial products, or services, without prior written approval of the City Manager.

36. Optional Cooperative Purchase Agreement

It is intended that any other public agency (i.e., city, district, public agency, municipality, or state agency) located within California shall have the option to participate in any award made as a result of this bid. The City shall incur no financial responsibility in connection with purchase orders or contracts made by the Bidder with another public agency resulting from this bid. The public agency shall accept sole responsibility for placing orders and making applicable payments to the Bidder. The option shall not be considered in the bid evaluation.

37. City Provisions to Prevail:

The City's General Provisions shall govern any contract award. Any standard terms and conditions submitted by Bidder may result in the rejection of the bid. To the extent not otherwise provided for by the contract documents, the California Commercial Code shall apply.

38. Invalid Provisions:

In the event that any one or more of the provisions of this bid shall be found to be invalid, illegal, or unenforceable, the remaining provisions shall remain in effect and be enforceable.

39. Lawful Performance:

Bidder shall abide by all Federal, State and Local Laws, Ordinances, Regulations, and Statutes as may be related to the performance of duties under this solicitation. In addition, all applicable permits and licenses required shall be obtained by the Bidder, at Bidder's sole expense.

40. Venue:

This Contract shall be governed by and interpreted according to the laws of the State of California, and venue for any proceeding shall be in the Superior Court of California, County of Ventura.

41. Small Local Business Purchasing Preference:

In determining the lowest responsible bidder for any city purchase of goods or public works construction contract that is for \$250,000 or less, and when responsibility and quality are equal, a credit of five percent (5%) of the bid submitted by the lowest responsible bidder meeting specifications shall be given to a bidder that meets the definition of a "Small Local Business," as defined in Attachment "A."

Certification: Should Bidder meet the requirements of a Small Local Business, Attachment "A" must be completed and returned with a valid and authorized quotation.

APPROVED AS TO FORM
PER SBMC, SECTION 4.600.050
Gregory G. Diaz, City Attorney

Request for Proposal No. P-130000664 Fuel and Lubricants Supplier Scope of Services

INTRODUCTION

The City of Ventura is located approximately 30 miles south of Santa Barbara and 60 miles northwest of Los Angeles. The City operates under its own charter with the Council-Manager form of government. Ventura is a full-services city providing police and fire services, parks and recreation, public works, and community development in addition to water treatment and distribution, storm water processing, and wastewater management. Information regarding the City and its organization, such as governmental structure, services provided, the Current Operating and Capital Budgets, Annual Financial Reports, and the most recent Master Fee Schedule, is available on the City website at www.cityofventura.ca.gov.

This RFP contains the information and documents necessary to prepare and submit a responsive proposal. Proposers are responsible for complying with all requirements identified herein. By submitting a finished proposal packet, the Proposer represents that it has thoroughly examined and become familiar with the work required within this proposal and that it is capable of performing quality work to achieve the City's objectives. The City reserves the right to accept or reject any Proposal, or portions thereof, or to waive any informalities or irregularities within the proposals.

The successful Contractor will be expected to enter into the attached General Services Agreement. General services shall be performed to the satisfaction of the City of Ventura designated representatives. Failure to perform the services in accordance with this proposal and to the satisfaction of the City of Ventura designated representatives shall be grounds for cancellation by the City of Ventura.

The City of Ventura assumes that the selected contractor will take great care in the designation of a lead coordinator of the service for the City. The lead coordinator will provide service to the City at the times deemed necessary by the City.

SCOPE OF WORK

Contractor shall provide all fuel, diesel exhaust fluid, lubricants, transportation, labor, equipment and incidentals associated with the provision of fuel to the City of Ventura.

Contractor shall provide an oil analysis program for all lubricants sold and a cost.

FUEL SPECIFICATIONS

All gasoline and diesel delivered under this contract shall meet the latest requirements of the California Air Resources Board (CARB), Federal and local governments as well as fuel industries laws, codes, requirements, standards and guidelines currently in force and any of those put in force during this contract. Particular attention shall be paid to the American Society of Testing and Materials (ASTM) laws, regulations and standards.

DELIVERY REQUIREMENTS

Contractor shall operate a 24/7/365 fuel supply operation. Deliveries shall be made, as requested, by the City of Ventura Fleet Services within a maximum of 48 hours from notice during weekly/regular hours, between the hours of 7am to 5pm Monday through Friday, except alternate Fridays at the Maintenance Yard, unless otherwise requested delivery. Current delivery sites are shown in Exhibit A. The City reserves the right to add or delete sites within the City as needed during the course of the contract. Contractor shall designate the Customer Service Representative for the City of Ventura contract for coordination of fuel ordering and deliveries.

Contractor shall make no unauthorized deliveries. Contractor shall be financially responsible for any unauthorized fuel deliveries and shall be considered poor performance.

Contractor Drivers shall be HAZMAT trained and certified and DOT compliant. Drivers shall be familiar with

City of Ventura fueling sites, tanks, equipment, and type of fuel, location of delivery sites, safety protocols and ingress/egress accessibility. Contractor shall have identification and wear a uniform for identification and security.

Contractor's fleet delivery vehicles shall be environmentally safe, clean and comply with all Federal, State and local emission requirements to promote a clean fleet. All delivery vehicles shall be clearly marked with the selected fuel supplier company name/logo.

EMERGENCY/DISASTER PREPAREDNESS PLAN

In the event of a natural, or man-made disaster, operations for the City and the Contractor may be impacted.

Contractor shall submit with their proposal information supporting their ability to continue operations, and service/product delivery, in the event of an unforeseen emergency.

The Emergency Preparedness Plan shall explain how your firm will provide assistance to the City under allocation or limited supply conditions whether, or not, they are due to an unforeseen emergency. State the priority level, criteria for delivery, and timeframe (assuming roads are accessible) to the City public services and local agencies. List the location, quantity and type of fuel storage available to supply fuel in the event of an emergency. The plan shall include the location of refineries available to the Contractor in the Southern California Los Angeles area and alternative locations in the Central or Northern California areas.

OPTION - DESIGNATED TANK OPERATOR SERVICES

As an option, the Contractor may be requested to provide Designated Tank Operator Services on a monthly basis to perform monthly inspections of the fuel sites per APCD and in compliance with the City's Permit to Operate.

SECURITY ACCESS

Prior to the execution of a contract, Contractor and assigned employees entering City of Ventura property shall be required to pass a Background check with the City of Ventura Police Department.

**Request for Proposal No. P-13000664 Fuel and Lubricants Supplier
Pricing Requirements**

The price of all Red dye diesel, renewable diesel, gasoline fuel, diesel exhaust fluid and lubricants delivered shall be determined daily by the **OPIS EARLY DAY "LOS ANGELES AVERAGE"**, in accordance with the following procedures:

- a. OPIS as used herein refers to the Oil Price Information Services newsletter published weekly by United Communications Group. Bethesda, Md.
- b. The average posted price listed under the following column headings in the OPIS table titled, "PAD 4/5 report" shall be used in determining the daily-adjusted price.

Column Headings

Location	Red Dye Diesel ULS	Reg Unleaded	Renewable Diesel
Los Angeles, Ca.	Average	Average	Average

- c. The Following definitions shall apply to the terms used in the price adjustment calculation.

- (1) OPIS Average: The Term is the LA Average posted price as listed in the issue of OPIS.
- (2) OPIS at Delivery: This term is the average posted price as listed in the issue of OPIS published daily during which deliveries are made.

The index for adjusting the prices shall be the OPIS Los Angeles average price for all refineries listed in Los Angeles (PAD 4/5) for Red dye diesel No.2 (or alternative renewable diesel) and regular unleaded gasoline. The OPIS price shall be adjusted in accordance with the plus/minus cents per gallon as bid hereunder. This adjustment shall be firm for the life of any resultant agreement(s) to this Request for Proposal and shall not be subject to change.

If the OPIS price is not reported for any day, the most recent price previously reported shall be utilized as the base price.

If the marketing publication is canceled, or modified, the City reserves the right to re-establish the pricing mechanism or cancel all or part of the contract.

The price for "delivery charge" quoted shall be firm for the initial period of contract.

Contractor's Customer Service Representative shall monitor the daily pricing and advise the City Fleet Services of potential price increases or decreases so the best possible price is offered when the City needs to order fuel deliveries.

**Request for Proposal No. P-130000664 Fuel and Lubricants Supplier
Cost/Price Proposal**

City of Ventura Fueling Site	Location	Estimated Annual Gallons	Tank Size
Maintenance Yard	336 Sanjon Road	80,000	20,000 UST Regular Unleaded Gasoline
Maintenance Yard	336 Sanjon Road	35,450	8,000 UST Red-Dye Diesel No. 2 ULS
Maintenance Yard	336 Sanjon Road	330	Diesel Exhaust Fluid
Police/Fire Headquarters	1425 Dowell Drive	95,000	20,000 UST Regular Unleaded Gasoline
Police/Fire Headquarters Emergency Generator	1425 Dowell Drive	500	2,000 Gallon AST Red-Dye Diesel No. 2 ULS
Fire Station # 6	10797 Darling Road	4,000	1,500 Gallon AST Red-Dye Diesel No. 2 ULS
City Hall Emergency Generator	501 Poli Street	50	400 Gallon AST Red-Dye Diesel No. 2 ULS
Ventura Water Emergency Generators	Various locations	15,000 estimated	Various AST Red-Dye Diesel No. 2 ULS
		230,330 approx.	

Proposals shall be based on the A.M. posting of the OPIS LA Average Early Day average price for Los Angeles (PAD 4/5) on or about February 24, 2022 plus the quoted delivery charge.

Description	Unit Cost/Gal
1. 87 Unleaded Regular Gasoline (Truck/Trailer Delivery) 5,000 Gal or More State Brand(s) Quoting:	
AM OPIS LA Average Price	\$
Discount/Increase From OPIS (enter - or +)	\$
Delivery Charge (City of Ventura)	\$
Total	\$
2. 87 Unleaded Regular Gasoline (Tank Wagon Delivery) 500-4,999 Gal State Brand(s) Quoting:	
AM OPIS LA Average Price	\$
Discount/Increase From OPIS (enter - or +)	\$
Delivery Charge (City of Ventura)	\$
Total	\$
3. 87 Unleaded Regular Gasoline (Less Than Tank Wagon Delivery) <500 Gal State Brand(s) Quoting:	
AM OPIS LA Average Price	\$
Discount/Increase From OPIS (enter - or +)	\$
Delivery Charge (City of Ventura)	\$
Total	\$

Description	Unit Cost/Gal
4. Diesel NO. 2 (ULS) Red Dye (Truck/Trailer Delivery) 5,000 Gal or more State Brand(s) Quoting:	
AM OPIS LA Average Price	\$
Discount/Increase From OPIS (enter - or +)	\$
Delivery Charge (City of Ventura)	\$
Total	\$
5. Diesel NO. 2 (ULS) Red Dye (Tank Wagon Delivery) 500-4999 Gal State Brand(s) Quoting:	
AM OPIS LA Average Price	\$
Discount/Increase From OPIS (enter - or +)	\$
Delivery Charge (City of Ventura)	\$
Total	\$
6. Diesel NO. 2 (ULS) Red Dye (Less Than Tank Wagon Delivery) <500 Gal State Brand(s) Quoting:	
AM OPIS LA Average Price	\$
Discount/Increase From OPIS (enter " " or +)	\$
Delivery Charge (City of Ventura)	\$
Total	\$
7. Renewable Diesel No. 2 (Truck/Trailer Delivery) 5,000 Gal or more State Brand(s) Quoting:	
AM OPIS LA Average Price	\$
Discount/Increase From OPIS (enter - or +)	\$
Delivery Charge (City of Ventura)	\$
Total	
8. Diesel Exhaust Fluid (Less than Tank Wagon Delivery) 330 Gal State Brand (s) Quoting:	
AM OPIS LA Average Price	\$
Discount/Increase From OPIS (enter - or +)	\$
Delivery Charge (City of Ventura)	\$
Total	
9. Oils and Lubricants	
REO 10W30 GF-5/ SN (Bulk)	\$
REO 40wt (55 Gal Drum)	\$
REO 15W40 CJ-4 (Bulk)	\$
REO HYD 68 (Bulk)	\$
PERFORMANCE 500 HIVIS MVP ATF (Bulk)	\$
CHEVRON ULTRA DUTY EP 2 (Master Pack/40 Tubes)	\$
CHEVRON DELO 400 30WT/40WT (Cases 3/1 Gal)	\$
CHEVRON TURBINE GST 100 (5 Gal Pails)	\$
CHEVRON TURBINE GST 100 (55 Gal Drum)	\$

Description	Unit Cost/Gal
CHEVRON MEROPA 320 (35 lb Pail)	\$
CHEVRON GEO HDAX LFG 40WT (55 Gal Drum)	\$
REO AW ISO 46 Hydraulic Oil. Product Code GPR 500046 (Bulk)	\$
500 REO Premium UTF Hydraulic Oil Product Code GPR 226606 (Bulk)	\$
REO Motor Oil SAE 40W Product Code GPR 50040 (Bulk)	\$
295 Allison Synthetic Transmission Fluid (Bulk)	\$
Diesel Exhaust Fluid (Bulk)	\$
Alternative Proposal	
Designated Tank Operator Services	
Maintenance Yard – Yearly Fee	\$
Police/Fire Headquarters – Yearly Fee	\$
Hourly Rate	

**Request for Proposal No. P-130000664 Fuel and Lubricants Supplier
Evaluation Criteria**

Proposals submitted will be subject to the City's evaluation procedures. Accordingly, final selection will be based upon overall capability to perform services, and not exclusively upon cost of services.

The City of Ventura reserves the right to reject any or all proposals, in part or in their entirety. In addition, the City will award any resulting contract in a manner consistent with the City Purchasing and Contracts ordinance.

A selection panel will evaluate proposals that satisfactorily meet the evaluation criteria. These proposals will be evaluated in the following areas:

Firm Name: _____

Contact Person: _____

EVALUATION CRITERIA	Weight	Score (0.0-10.0)	Weighted Scored
1. Service Delivery:	3.0		
2. Emergency Preparedness:	2.0		
3. Pricing:	7.5		
4. Financial Stability of Firm:	1.0		
5. Operation Plan	1.5		
TOTAL	15		
Evaluator		Date:	
Additional Comments:			

**Request for Proposal No. P-13000664 Fuel and Lubricants Supplier
Financial Data**

This proposal shall NOT be complete unless all the information requested in this questionnaire is provided by the proposer and is submitted with the proposal. Statements MUST be complete and accurate. Omission, inaccuracy, or misstatement may be cause for rejection of a proposal.

By submission of a proposal, the proposer acknowledges and agrees that the City has the right to make any inquiry or investigation it deems appropriate to substantiate or supplement information contained in this questionnaire and authorizes the release to City of any and all information sought in such inquiry or investigation.

PROPOSER

- 1) Name of Proposer _____
- 2) Address of Proposer _____

- 3) Proposer intends to operate the business with which this proposal is concerned as a Sole Proprietorship ; Partnership ; Corporation ; Joint Venture ; or _____
_____ Explain:

COMPANY NAME

NAME AND TITLE OF AUTHORIZED COMPANY OFFICIAL

SIGNATURE

DATE

SOLE PROPRIEORSHIP STATEMENT

If a Sole Proprietorship, furnish the following:

1. Name in full _____
2. Address _____
3. Birth date _____ Place of Birth _____
4. Social Security No. _____
5. State Driver's License No: _____

PARTNERSHIP STATEMENT

If a Partnership, answer the following:

1. Date of organization _____

2. General Partnership
Limited Partnership

3. Statement of Partnership recorded: Yes No

Date Book Page County

4. Certificate of limited Partnership recorded: Yes No

Date Book Page County

5. Has the partnership done business in Ventura County?
Yes No Explain: _____

6. Name, address, and partnership share of each general partner:

Name of Partner	Address	Share

7. Furnish the birth date, place of birth, Social Security No., and State driver's license number of each person shown above.

8. Attach a complete copy of Partnership Agreement.

9. Is the partnership now involved, or has it been involved, in any business enterprise whatsoever?

If so, give full details:

CORPORATION STATEMENT

If a corporation, answer the following:

1. When incorporated? _____

2. Where incorporated? _____

3. Is the corporation authorized to do business in California?

Yes No If so, as of what date? _____

4. The corporation is held: Publicly Privately

5. If privately held, provide the following:

Name of Partner	Address	% of Stock Owned

6. If publicly held, how and where is the stock traded:

7. List the following:

	Authorized	Issued	Outstanding
Number of voting shares			
Number of non-voting shares			
Number of shareholders			

	Par	Book	Market
Value of share of Common Stock	\$	\$	\$

8. Furnish the name, title, address, and the number of voting and non-voting shares of stock held by each officer, director, and any person holding more than 10% of the outstanding stock.

9. Furnish the birth date, place of birth, Social Security No. and State driver's license number for each person shown under Item No. 5 above.

10. Is the corporation now involved, or has it ever been involved, in any business enterprise whatsoever? If so, attach full details.

JOINT VENTURE STATEMENT

If a Joint Venture, answer the following:

1. Date of organization _____

2. Joint Venture Agreement or Statement recorded? Yes No

Date Book Page County

3. Has the Joint Venture done business in Ventura County?
Yes No When? _____

4. Name and address of each joint Venturer:

Name	Address

If a Joint Venturer is a Partnership or Corporation, complete pages 22 or 23 as applicable.

5. Furnish the birth date, place of birth; Social Security No. & State driver's license number for each person, shown under Item No. 4 above.

6. Attach a complete copy of the Joint Venture Agreement.

7. Is the Joint Venture now involved, or has it ever been involved, in any business enterprise whatsoever?

If so, give full details:

**Request for Proposal No. P-130000664 Fuel and Lubricants Supplier
References**

List three (3) persons or companies with whom you have performed similar services during the past five years.

REFERENCE NO. 1

Firm: _____

Name: _____ Title: _____

Address: _____

Telephone: _____

Email: _____

Description: _____

REFERENCE NO. 2

Firm: _____

Name: _____ Title: _____

Address: _____

Telephone: _____

Email: _____

Description: _____

REFERENCE NO. 3

Firm: _____

Name: _____ Title: _____

Address: _____

Telephone: _____

Email: _____

Description: _____

**Request for Proposal No. P-13000664 Fuel and Lubricants Supplier
Bidders Statement of Subcontractors**

The undersigned submits herewith a list of subcontractors whom he proposes to employ on the work with the proper firm name and business address of each.

Name under which specified Contractor is Licensed	License Number and DIR Number	Address and Phone	Description of Subcontract

Company Name Signature of Bidder

**Request for Proposal No. P-130000664 Fuel and Lubricants Supplier
Authorization Sheet**

1. Department of Industrial Relations No. _____
2. Hazardous Substance Removal Certification License No. _____
3. Price, terms and any other conditions quoted shall remain valid and in effect ____ days from bid opening date (minimum of 60 days).
4. Discount for payment of invoice within 30 days of receipt is ____%.
5. This is to certify that I have carefully reviewed the City of San Buenaventura's **Request for Proposal No. P-130000664** including all attachments, exhibits, schedules, and addenda (as applicable) and agree to full compliance with the terms and conditions included therein unless otherwise clearly indicated in writing on a separate document any exception my firm is making to these specifications. Therefore, I, the undersigned, hereby agree to the proposal complete as specified, if awarded this bid, within the time specified and at the price quoted therein and without any additional charges to the City of San Buenaventura.

COMPANY NAME

PHONE NUMBER

FAX NUMBER

COMPLETE MAILING ADDRESS

EMAIL ADDRESS

NAME AND TITLE OF AUTHORIZED COMPANY OFFICIAL

SIGNATURE

DATE

Attachment "A"

SMALL LOCAL BUSINESS PURCHASING PREFERENCE CERTIFICATION

The City of San Buenaventura's ("City") Small Local Business Purchasing Preference policy is applicable to this Request for Proposal/Bid (ITB/RFP).

Qualified bidders that desire consideration as a small local business for purposes of this ITB/RFP must complete this Certification and submit it as a part of their bid. Late submittals of the "Statement of Small Local Business Certification" will not be considered.

**STATEMENT OF SMALL LOCAL BUSINESS CERTIFICATION
CITY OF SAN BUENAVENTURA**

I _____,
(Individual submitting bid) (Title)

Of/for _____, Certify under penalty of perjury that _____
(Company Name) (Company Name)

Is a City of Ventura small local business as defined under Article 40 of these General Provisions and therefore qualifies for the Small Local Business purchasing preference.

(Signature) (Date)

GENERAL SERVICES AGREEMENT

CITY OF SAN BUENAVENTURA AND _____
AGREEMENT NO. _____

By this General Services Agreement ("Agreement"), the City of San Buenaventura ("CITY") agrees to engage the services of CONTRACTOR (identified below), and CONTRACTOR 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 CONTRACTOR may be individually referred to as "Party" or collectively as the "Parties."

1. FEDERAL FUNDING.

- Check this box if the Agreement is funded by a federal grant or cooperative agreement program, either directly or indirectly. If checked, Exhibit D must be included with and applies to this Agreement. *(Indirect funding is when the City of San Buenaventura receives federal funding through a source other than the federal government. E.g. the federal government provides funding to the State of California and the State then passes the funding through to a local government entity such as the City of San Buenaventura.)* In the event of any contradictions or inconsistencies between Exhibit D and the provisions of the Agreement itself, the terms of Exhibit D shall control.
- Not Applicable.

2. SUMMARY DESCRIPTION OF SERVICES. _____

3. PARTIES.

CITY OF SAN BUENAVENTURA ("CITY"), a charter city and municipal corporation of the State of California, located at 501 Poli Street, Ventura, CA 93002

_____, ("CONTRACTOR"), [capacity] _____
_____, located at _____

4. TERM OF AGREEMENT: From (Date): _____ ("Effective Date") To (Date): _____

Optional Extension (initial term, plus any option to extend, shall not exceed a total of five (5) years): _____

5. AGREEMENT AMOUNT: \$ _____

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, CONTRACTOR's services shall be performed or immediately supervised by the CONTRACTOR's Representative:

CITY Designated Representative:
Name:
Title:
Phone:

CONSULTANT Designated Representative:
Name:
Title:
Phone:

Email:
Mailing Address (if differs from above):

Email:
Mailing Address (if differs from above):

7. CONTRACTUAL PREREQUISITES.

7.1. This Agreement must first be approved as to form by the City Attorney, then executed by the CONTRACTOR, after which the Agreement may be executed by an authorized person on behalf of the CITY.

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

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

8. CONTRACTOR'S SERVICES.

CONTRACTOR shall perform/agrees to 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 18 of this Agreement.

9. COMPENSATION.

CITY shall pay CONTRACTOR 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." Once this Agreement is executed, the Schedule of Compensation may only be modified by written Amendment pursuant to Section 18 of this Agreement.

10. PAYMENT.

The CITY shall pay all undisputed portions of any applicable invoice within thirty (30) days after receipt of an invoice. In the event the CITY disputes one or more items in an invoice, the CITY shall, within thirty (30) days after receipt of such invoice, notify the CONTRACTOR 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.

11. COMMENCEMENT OF PERFORMANCE.

CONTRACTOR shall not perform any work under this Agreement until: (i) CONTRACTOR furnishes proof of insurance as required under Section 21 of this Agreement, and (ii) CITY provides CONTRACTOR a signed General Services Agreement, which shall serve as a Notice to Proceed. All services required of CONTRACTOR under this Agreement shall be completed on or before the end of the term of the Agreement.

12. STATUS OF CONTRACTOR.

The Parties agree that CONTRACTOR (and any subcontractors), in performing the services herein specified, shall act as an independent contractor and shall have control of all work for which CONTRACTOR is responsible, and the manner in which it is performed. CONTRACTOR shall be free to contract for similar service to be performed for other employers while under contract with CITY, provided that such work does not create a conflict of interest. CONTRACTOR shall have no right or power to bind the CITY to any contracts or agreements with third parties. CONTRACTOR is not an agent or employee of the CITY and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits CITY provides for its employees. However, the CITY retains the right to provide general instructions to and observe the CONTRACTOR in the performance of all services done on behalf of the CITY.

In the event CONTRACTOR or an employee, agent, or subcontractor of CONTRACTOR providing services under this Agreement is determined by a court of competent jurisdiction with the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the CITY, CONTRACTOR shall indemnify, protect, defend, and hold harmless the CITY for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONTRACTOR or their employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which might otherwise be deemed the responsibility of the CITY.

13. LAWFUL PERFORMANCE.

CONTRACTOR shall abide by all Federal, State, and Local Laws and Regulations as may be related to the performance of duties under this Agreement. CONTRACTOR, 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.

14. SAFETY REQUIREMENTS.

CONTRACTOR shall not perform any services for the CITY when the CONTRACTOR 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 CONTRACTOR when unsafe or harmful acts are observed or reported relative to the performance of the work under this Agreement. The acceptance of CONTRACTOR's work by CITY shall not operate as a release of the CONTRACTOR from such standard of care and workmanship.

15. OWNERSHIP OF CONTRACTOR'S WORK PRODUCT.

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 CONTRACTOR 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.

15.1. Records and Inspections. The CONTRACTOR 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.

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

15.3. 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. CONTRACTOR agrees that CITY may make modifications to computer software furnished by CONTRACTOR without infringing CONTRACTOR's copyright or any license granted to CITY, unless otherwise agreed.

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

15.5. Confidentiality. CONTRACTOR 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) when it is necessary for CONTRACTOR to perform its obligations pursuant to this Agreement. If CONTRACTOR is granted such access to confidential information, CONTRACTOR shall not be considered to be a member of the public as that term is used in Government Code Section 6254.5.

15.6. Disclosure of Information. CONTRACTOR 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 CONTRACTOR by the CITY or other information to which the CONTRACTOR 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.

16. NON-APPROPRIATION OF FUNDS.

Payments due and payable to CONTRACTOR for current services are within the current budget and within an available, unexhausted, and unencumbered appropriation of the CITY. In the event the CITY has not appropriated sufficient funds for payment of CONTRACTOR's services beyond the current fiscal year, and if no funds are legally available from other sources to lawfully make the payments, this Agreement may be terminated at the end of the original term or renewal term and the CITY shall not be obligated to make further payments beyond the current original or renewal term. The CITY will provide notice of its inability to continue the Agreement at such time as the CITY's Designated Representative is aware of the non-appropriation of funds. However, failure to notify does not renew the term of the contract.

17. TERMINATION OF AGREEMENT.

At any time, with or without cause, the CITY shall have the right, in its sole discretion, to terminate this Agreement by giving written notice to CONTRACTOR pursuant to Section 31 of this Agreement, and such termination shall be effective immediately upon giving notice. There shall be no period of grace after giving the notice of termination. Upon termination, CITY shall be liable to CONTRACTOR only for work done by CONTRACTOR up to and including the date of termination of this Agreement unless the termination is for cause, in which event CONTRACTOR need be compensated only to the extent required by law. CONTRACTOR may terminate this Agreement at any time during the term of the Agreement by giving the CITY sixty (60) days' written notice.

17. OPTION TO EXTEND AGREEMENT.

When in the CITY's best interest, this Agreement may be extended on a daily, month-to-month, annual, or other basis by modification pursuant to Section 18 of this Agreement. The initial term, plus any option to extend, shall not exceed a total of five (5) years.

18. 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 San Buenaventura Municipal Code, sections 4.600.190 and 4.600.200.

19. ASSIGNMENT.

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

20. INDEMNIFICATION & HOLD HARMLESS.

As a separate and independent covenant from CONTRACTOR's obligations under Section 21 hereof, CONTRACTOR shall indemnify, protect, defend with counsel acceptable to the CITY, and hold CITY and CITY's officers, employees, agents, and volunteers harmless and free from any and all claims, liabilities, or expenses, including attorney's fees, arising out of or relating to any negligent act, negligent omission, or wrongful conduct, or any loss, damage, or injury, including death, that is

sustained from any communicable disease (including, but not limited to any form of the coronavirus, or anything emanating from or related to a coronavirus), related in any way to CONTRACTOR's performance of its services pursuant to this Agreement. In the event CITY and/or any of CITY's officers, employees, agents, or volunteers are named in any lawsuit, or should any claim be made against it or any of them by lawsuit or otherwise arising out of or relating to such negligent act, negligent omission, wrongful conduct, or any loss, damage, or injury, including death, that is sustained from any communicable disease (including, but not limited to any form of the coronavirus, or anything emanating from or related to a coronavirus), CONTRACTOR shall indemnify them for any judgment rendered against them for such negligent act, negligent omission, wrongful act, or any loss, damage, or injury, including death, that is sustained from any communicable disease (including, but not limited to any form of the coronavirus, or anything emanating from or related to a coronavirus), any sums paid out in settlement or otherwise, and all costs incurred by them in their defense, including but not limited to attorney's fees.

CONTRACTOR also understands and agrees that it is being employed to perform the services provided for by this Agreement because of CONTRACTOR's professed expertise and experience in performing such services. In addition, CONTRACTOR understands and agrees that while CITY or CITY's officers, employees, agents, or volunteers may elect to do so, they have no duty to review, inspect, monitor, or supervise the work performed by CONTRACTOR pursuant to this Agreement except as otherwise expressly provided for by this Agreement. As a consequence, CONTRACTOR 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 CONTRACTOR pursuant to this Agreement.

The CONTRACTOR's obligations under this Section of the Agreement shall survive the termination of the Agreement.

21. INSURANCE.

Prior to commencing the services required by this Agreement, and at all other times this Agreement remains in effect, the CONTRACTOR shall procure and maintain in full force and effect all of the insurance required by Exhibit "C," attached hereto and incorporated herein by this reference.

22. LIVING WAGE REQUIREMENTS.

During the term of this Agreement, CONTRACTOR understands and agrees that if Living Wages are applicable subject to the provisions of Chapter 2.525 of the San Buenaventura Municipal Code (the "Code") entitled, "Living Wages and Benefits for City Services" (a copy of which is available upon request), CONTRACTOR 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.

23. PREVAILING WAGE REQUIREMENTS.

23.1. Application. The payment of State prevailing rates of wages as designated for Ventura County for on-site work and delivery of materials shall apply to public works construction projects over \$25,000 and projects for alteration, demolition, repair, or maintenance work over \$15,000. Prevailing wages are required to be paid to all workers, including subcontracted employees.

23.2. 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>

23.3. 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.

23.4. 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 Ventura'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. **PLEASE NOTE, with respect to Federal contracts, other requirements may apply, in which case, the highest of the federal Prevailing Wage, state Prevailing Wage and local Living Wage prevails.**

24. COVENANTS AND CONDITIONS.

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

25. NOTICE OF BREACH AND OPPORTUNITY TO CURE.

Neither Party will be deemed to be in breach of this Agreement based on a breach that is capable of being cured until it has received written notice of the breach from the other Party. The Party charged with breach will have fifteen (15) 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 Party received notice of breach, the non-breaching Party may terminate this Agreement.

26. WAIVER.

CITY's review or acceptance of, or payment for, work product prepared by CONTRACTOR 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 CONTRACTOR'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.

27. 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 CONTRACTOR. The decision of the CITY's Designated Representative shall be final and conclusive unless CONTRACTOR requests mediation within ten (10) calendar days. Pending final decision of a dispute, the CONTRACTOR shall proceed diligently with the performance of the Agreement and in accordance with the decision of the CITY's Designated Representative.

28. 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) days, unless the maximum time is extended in writing by both Parties.

29. TAXPAYER IDENTIFICATION NUMBER.

CONTRACTOR shall provide CITY with a complete Request for Taxpayer Identification Number and Certification as issued by the Internal Revenue Service.

30. USE OF THE TERM "CITY."

Reference to "CITY" in this Agreement includes the CITY, its City Manager, or any authorized representative acting on behalf of the CITY.

31. NOTICES.

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.

32. FORCE MAJEURE.

Neither the CONTRACTOR 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.

33. 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.

34. 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.

35. INTEGRATED AGREEMENT.

This Agreement and the attached exhibits 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. ACKNOWLEDGEMENT.

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

Signatures Follow

In witness whereof, the Parties have entered this Agreement on the date last signed below ("Effective Date").

CITY OF SAN BUENAVENTURA

[CONTRACTOR NAME]

Name:
Title:

Name:
Title:

Date

Date

Name:
Title:

Date

Tax Identification Number

APPROVED AS TO FORM
GREGORY G. DIAZ, CITY ATTORNEY
PER SBMC, SECTION 4.600.050

Any modification to this pre-approved
Standard Form requires further
review and approval by the City Attorney.

EXHIBIT A

**GENERAL SERVICE AGREEMENT
(City of San Buenaventura and ___)**

SCOPE OF SERVICES

EXHIBIT B

**GENERAL SERVICE AGREEMENT
(City of San Buenaventura and ___)**

SCHEDULE OF COMPENSATION

EXHIBIT C

GENERAL SERVICES AGREEMENT (City of San Buenaventura and ___)

INSURANCE REQUIREMENTS

Prior to contract approval, **CONSULTANT/CONTRACTOR/SELLER/BIDDER** (hereafter referred to as “Contractor”) 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.

1. Coverage Types and Limits

a) Commercial General Liability (ISO CGL CG 00 01) - including coverage for bodily injury, property damage, products & completed operations, and personal injury arising from the contractor's activities. Commercial General Liability (CGL) per Occurrence Commercial General Liability Aggregate or Combined Single Limit (CSL) Coverage must include Pollution Liability via Policy or Endorsement	\$5 million \$10 million
b) Auto Liability for owned, hired, and non-owned vehicles per Occurrence or Combined Single Limit. Coverage must include Pollution Liability via Policy or Endorsement	\$5 million
c) Worker's Compensation <i>with a Waiver of Subrogation in favor of the City</i> Employer's Liability	Statutory Limits \$500,000

2. Insurance Policy Provisions, Endorsements, and other Requirements

Contractor agrees to comply with the following additional requirements with respect to the insurance:

- a) Liability Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any officer, employee, agent, or volunteer of City. As such, a Primary and Non-Contributory Endorsement (with coverage at least as broad as ISO CG 2001 04 13) is required on all liability policies.
- b) Contractor waives its right of subrogation against the City. As such, a Waiver of Subrogation Endorsement is required on the Contractor's Worker's Compensation policy.
- c) A "Blanket" Additional Insured Endorsement (a/k/a "automatic additional insured endorsement"), attached to the Commercial General Liability policy covering premises liability, ongoing operations, product liability, and completed operations is required. If a

"Blanket" endorsement is not available, Contractor may submit a combination of the following endorsements:

An Additional Insured Endorsement covering Premises and Ongoing Operations CG 20 10 04 13 or its equivalent (CG 20 26, CG 20 33, or CG 20 38) AND an Additional Insured Endorsement covering Completed Operations CG 20 37 04 13.

d) Insurance Policies must be issued by an insurance company licensed to do business in the State of California with an *AM Best* rating of not less than A:VII.

e) Each insurance policy required above shall provide that coverage shall not be canceled except with 30 days' notice to the City.

f) The Description section of the Certificate must include the following language:

The City of San Buenaventura, its officers, officials, agents, employees and volunteers shall be named as an additional insured under the General Liability and Auto Liability policies. All Liability policies are primary and Non-Contributory. Waiver of Subrogation applies to the Worker's Compensation policy. 30-day notice of cancellation will be provided to the Certificate Holder.

g) A Certificate of Insurance must include the following language in the Certificate Holder section:

*City of San Buenaventura, its officers, officials, agents, employees and volunteers
501 Poli Street
Ventura, CA 93002*

h) Contractor will provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be submitted to the City within 10 days of renewal.

i) Contractor shall provide evidence of the insurance required herein, satisfactory to City, consisting of certificate(s) of insurance and any required endorsements evidencing all of the coverages required. Any failure on the part of City or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of City or any other additional insured in this or any other regard.

j) Contractor shall ensure that coverage provided to meet these requirements is applicable separately to each insured, and that there will be no cross-liability exclusions that preclude coverage for any legal action between Contractor and City, between Contractor and any other named insureds or additional insureds under the insurance policy, or between City and any party associated with City or City's officers, officials, employees, agents, or volunteers.

k) Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. There shall be no cross-liability exclusion and no Contractor limitation endorsement. In addition, there shall be no endorsement or modification limiting the scope of

coverage for liability arising from pollution, explosion, collapse, underground property damage, or employment-related practices, except for a provision or endorsement limiting liability arising from pollution to liability caused by sudden or accidental pollution.

l) Any umbrella liability insurance over primary insurance provided to meet primary limits shall apply to bodily injury, personal injury, and property damage, at a minimum. Coverage shall be as broad as any required underlying primary coverage, and shall include a "drop down" provision providing primary coverage for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be provided with defense costs payable in addition to policy limits. Coverage shall have starting and ending dates concurrent with the underlying coverage.

m) Coverage shall be written on an "occurrence basis" if such coverage is available, or on a "claims made" basis if not available. When coverage is provided on a "claims made" basis, Contractor shall continue to maintain the insurance in effect for a period of three (3) years after this Agreement expires or is terminated. Such insurance shall have the same coverage and limits as the policy that was in effect during the term of this Agreement, and shall cover Contractor for all claims made by City arising out of any errors or omissions of Contractor, or the officers, employees or agents of Contractor during the time this Agreement was in effect.

n) Contractor shall require all sub-contractors or other parties hired by Contractor to perform any part of the services required by this Agreement to purchase and maintain all of the insurance specified above and submit evidence of all such insurance. Contractor shall obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required herein.

o) No contract used by any Contractor, or contracts Contractor enters into on behalf of City, will reserve the right to charge back to City the cost of insurance required by this Agreement. When requested, Contractor shall provide City with all agreements with sub-Contractors or others with whom Contractor contracts on behalf of City, and with all certificates of insurance obtained in compliance with this paragraph. Failure of City to request copies of such documents will not impose any liability on City, or its employees.

p) In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, City has the right, but not the duty, to obtain the insurance it deems necessary to meet the requirements of this Agreement, and any premium paid by City for such insurance will be promptly reimbursed by Contractor, or, if not promptly reimbursed, deducted from any compensation to be paid by City to Contractor pursuant to this Agreement.

q) Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. Coverage shall not be limited to the

specific location, individual, or entity designated as the address of the project or services provided for by this Agreement. Insurance coverage limits are subject to change based on the unique liability associated with each project over and above standard coverage limits at the discretion of the City's Risk Manager or their designee.

r) Contractor shall provide immediate notice to City of any claim against Contractor or any loss involving Contractor that could result in City or any of City's officers, employees, agents, or volunteers being named as a defendant in any litigation arising out of such claim or loss. City shall not incur any obligation or liability by reason of the receipt of such notice. However, City shall have the right, but not the duty, to monitor the handling of any such claim or loss that is likely to involve City.

s) In the event of any loss that is not insured due to the failure of Contractor to comply with these requirements, Contractor will be personally responsible for any and all losses, claims, suits, damages, defense obligations, and liability of any kind attributed to City, or City's officers, employees, agents, or volunteers as a result of such failure.

Please note:

t) Automobile Liability insurance is not required if the Vendor and its employees does NO traveling in providing services for completion of the Agreement (e.g. telecommuting). If the Vendor has employees but no vehicles registered to the business (personal vehicles only), the non-owned and hired automobile liability coverage should be included in the Vendor's Commercial Auto Liability policy

u) Workers Compensation insurance is not required if the Contractor is a sole proprietor/partner/corporate officer with no employees. Otherwise, Worker's Compensation is required under CA Labor Code Section 3700. A Workers Compensation Insurance Waiver is required stating Contractor is a sole proprietor/partner/corporate officer with no employees. This waiver is to be included with the other submitted documents.

Exhibit D Federally Funded Contracts

Provisions 1 through 3 are applicable to all contracts or orders funded by a federal grant or cooperative agreement program, regardless of dollar amount and type. Please review and check the appropriate boxes to determine the applicability of provisions 4 through 17 to the federally funded contract or order. In the event of any contradictions or inconsistencies between these provisions and the provisions of the Agreement itself, the terms of this Exhibit shall control.

1. Compliance with the Copeland "Anti-Kickback" Act.
 - a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
 - b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the Federal Emergency Management Agency ("FEMA") may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
 - c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

2. Procurement of Recovered Materials.
 - a. For all items where the purchase price of the item exceeds \$10,000 or the value of the quantity during the preceding fiscal year exceeded \$10,000, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii. Meeting contract performance requirements; or
 - iii. At a reasonable price.
 - b. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designated items is available at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products>.

3. Equal Employment Opportunity.

During the performance of this contract, the Contractor agrees as follows:

 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
 - c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this Provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - d. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in

Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The contract is funded through a FEMA grant or cooperative agreement. If checked, Provisions 4 through 8 apply.

4. Access to Records.

- a. The Contractor agrees to provide the City of San Buenaventura, the primary recipient of the federal funding, if any, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

5. DHS Seal, Logo, and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

6. Compliance with Federal Law, Regulations, and Executive Orders.

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

7. No Obligation by the Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

8. Fraud and False or Fraudulent Statements or Related Acts.

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

The contract exceeds \$10,000. If checked, Provision 9 applies.

9. Termination for Cause and Convenience.

- a. Termination for cause. The City reserves the right to cancel this contract if goods or services are not delivered as directed within the time specified. In case of default by Contractor, the City may procure the articles or services from other sources and may deduct from any monies due, or that may thereafter become due to the Contractor, the difference between the price named in the Bid and actual cost thereof to the City shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Assistant Finance Director.

- b. Termination for convenience. At any time, with or without cause, the City shall have the right, in its sole discretion, to terminate this contract by giving written notice to Contractor. There shall be no period of grace after giving the notice of termination. Termination shall become effective immediately upon the giving of notice by personal delivery or mail. The City shall pay Contractor as full compensation for performance up to the date of such termination: (1) the unit or pro rata bid price for the delivered and accepted portion of goods or work completed up to the point of termination; and (2) a reasonable amount, not otherwise recoverable from other sources by Contractor as approved by the City, with respect to the undelivered or unaccepted portion of this contract; provided compensation hereunder shall in no event exceed the total Bid price.

The contract exceeds \$25,000. If checked, Provision 10 applies.

10. Suspension and Debarment.

- a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by the City of San Buenaventura. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the primary recipient and the City of San Buenaventura, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d. The Bidder agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The contract exceeds \$100,000. If checked, Provision 11 applies.

11. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification, provided in Exhibit E. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

The contract exceeds \$150,000. If checked, Provisions 12 through 14 apply.

12. Clean Air Act.

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*
- b. The Contractor agrees to report each violation to the City of San Buenaventura and understands and agrees that the City of San Buenaventura will, in turn, report each violation as required to assure notification to the primary recipient, FEMA, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

13. Federal Water Pollution Control Act.

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*
- b. The Contractor agrees to report each violation to the City of San Buenaventura and understands and agrees that the City of San Buenaventura will, in turn, report each violation as required to assure

notification to the primary recipient, FEMA, and the appropriate Environmental Protection Agency Regional Office.

- c. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

14. Remedies.

In the event the Contractor breaches any part of the contract, the City may procure the articles or services from other sources and the Contractor must compensate the City for the difference between the price named in the Bid and actual cost thereof to the City shall be considered the prevailing market price at the time such procurement is made. Such payment may be deducted from any monies due, or that may thereafter become due to the Contractor. The exercise by the City of this 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.

The contract will involve the use of mechanics and/or laborers and exceeds \$100,000. If checked, Provision 15 applies.

15. Compliance with the Contract Work Hours and Safety Standards Act.

- a. Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this Provision, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this Provision, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this Provision.
- c. Withholding for unpaid wages and liquidated damages. The City of San Buenaventura shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this Provision.
- d. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this Provision and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this Provision.

The contract is a prime construction contract that exceeds \$2,000. If checked, Provision 16 applies.

16. Compliance with the Davis-Bacon Act.

a. Minimum wages.

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at

time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - (B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - (C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- b. Withholding. The City of San Buenaventura shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the City may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- c. Payrolls and basic records.
- (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii) (A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City of San Buenaventura if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the City. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the City of San Buenaventura if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the City of San Buenaventura, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner). (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate

information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (c)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

- (iii) The Contractor or subcontractor shall make the records required under paragraph (c)(i) of this section available for inspection, copying, or transcription by authorized representatives of the City of San Buenaventura or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

d. Apprentices and trainees.

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- e. Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- f. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the City of San Buenaventura may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- g. Contract termination/debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- h. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- i. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- j. Certification of eligibility.
 - (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

The contract is with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work. If checked, Provision 17 applies.

- 17. Rights to Inventions Made by Nonprofit Organizations and Small Business Firms.
 - a. Definitions

- (i) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321et seq.).
 - (ii) Subject invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.
 - (iii) Practical Application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
 - (iv) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
 - (v) Small Business Firm means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
 - (vi) Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
 - (vii) The term statutory period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.
 - (viii) The term contractor means any person, small business firm or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.
- b. Allocation of Principal Rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.
- c. Invention Disclosure, Election of Title and Filing of Patent Application by Contractor.
- (i) The Contractor will disclose each subject invention to the Federal Agency within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor.
 - (ii) The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.
 - (iii) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. If the Contractor files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The Contractor will file patent applications in additional countries or

- international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- (iv) For any subject invention with Federal agency and contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the Contractor, may file such application at its own expense, provided that the Contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).
 - (v) Requests for extension of the time for disclosure, election, and filing under paragraphs (i), (ii), and (iii) of this clause may, at the discretion of the Federal agency, be granted. When a contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the contractor within 60 days of receiving the request.
- d. Conditions When the Government May Obtain Title. The Contractor will convey to the Federal agency, upon written request, title to any subject invention -
- (i) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title.
 - (ii) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.
 - (iii) In any country in which the Contractor decides not to continue the prosecution of any non-provisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.
- e. Minimum Rights to Contractor and Protection of the Contractor Right to File.
- (i) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in (c), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.
 - (ii) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
 - (iii) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.
- f. Contractor Action to Protect the Government's Interest.
- (i) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.
 - (ii) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible

for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the contractor can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the contractor the entire right, title and interest in and to each subject invention made under contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(i) of this clause. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

- (iii) For each subject invention, the Contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, inter parties review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental examination.
- (iv) The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

g. Subcontracts.

- (i) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
- (ii) The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by the Federal Acquisition Regulations, subpart 27.
- (iii) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

h. Reporting on Utilization of Subject Inventions. The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the Contractor.

i. Preference for United States Industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. March-in Rights. The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and

any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

- (i) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- (ii) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;
- (iii) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or
- (iv) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

k. Special Provisions for Contracts with Nonprofit Organizations. If the Contractor is a nonprofit organization, it agrees that:

- (i) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;
- (ii) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
- (iii) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
- (iv) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Federal agency may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Federal agency when the Federal agency's review discloses that the Contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(iv). In accordance with 37 CFR 401.7, the Federal agency or the Contractor may request that the Secretary review the Contractor's licensing program and decisions regarding small business applicants.

l. Communication

Communications on matters relating to this clause should be directed to:

Assistant Finance Director
City of San Buenaventura
501 Poli St.
Ventura, CA 93001

Exhibit E

APPENDIX A. 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned Contractor certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, *et seq.*, apply to this certification and disclosure, if any.

Name and Title of Contractor's Authorized Official

Signature of Contractor's Authorized Official

_____ Date

