


TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL 
DATE: SEPT. 19, 2008

AGENDA ITEM
E-5
SEPT. 24, 2008

TERMINATE STREET SWEEPING AGREEMENT

ITEM

Terminate street sweeping agreement based on provision of service by SLO County [RECOMMEND APPROVAL OR PROVIDE POLICY GUIDANCE].

BACKGROUND

NCSD retained SP Maintenance in June 2006 to sweep streets within NCSD's boundaries. In 2007, the County initiated a monthly sweeping program for Nipomo Streets within the Urban Reserve Line and the Village Reserve Line. The County Public Works Department has requested that NCSD cancel its program so as to eliminate the duplication of service. The County is willing to continue its program even if NCSD cancels its street sweeping; however, the County is not willing to sweep areas outside of the Urban/Village Reserve Line.

NCSD's agreement with SP Maintenance (attached) does provide for NCSD termination of service based on a 10 day notice. Staff believes that SP Maintenance has done a good job and is not recommending termination of the agreement for any failure on SP Maintenance's part.

Termination of the agreement would save NCSD approximately \$22,000 per year.

RECOMMENDATION

Staff recommends that the Board terminate the agreement with SP Maintenance and provide notice to SP Maintenance along with a thank you for service rendered.

ATTACHMENTS

- Agreement with SP Maintenance

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Nipomo Community Services District
P.O. Box 326
Nipomo, CA 93444

**CONTRACT AGREEMENT BETWEEN
NIPOMO COMMUNITY SERVICES DISTRICT AND
S.P. MAINTENANCE SERVICES, INC.**

Exhibit "A" – Special Provisions

Exhibit "B" – Street Sweeping Schedule

THIS AGREEMENT (hereinafter referred to as "Agreement") is made by and between the Nipomo Community Services District, a Community Services District duly existing and operating pursuant to the provisions of Government Code Section 61000 et seq. (hereinafter referred to as "NCSD" or "District") and S. P. Maintenance Services, Inc., a California Corporation (herein referred to as "Contractor"), with reference to the following Recitals:

RECITALS

A. NCSD desires to retain professional contractor to perform street sweeping services within the District ("Services") as identified in this Agreement.

B. NCSD desires to engage Contractor to provide the Services by reason of its proposal, qualifications and experience in performing such Services, and Contractor has offered to provide the Services on the terms, conditions and in the manner set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DESIGNATED REPRESENTATIVES. Bruce Buel, Special Project Manager, at telephone number (805) 929-1133 is the representative of NCSD and will administer this Agreement for and on behalf of NCSD. Sean St. Dennis at telephone number (805)-343-9999 is the authorized representative for Contractor. Changes in designated representatives shall be made only after advance written notices to the other party.

2. NOTICES. Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first-class mail, postage prepaid, or otherwise delivered as follows:

NCSD: Nipomo Community Services District
P.O. Box 326
Nipomo, CA 93444

Attn: Bruce Buel
Facsimile: (805) 929-1133

CONTRACTOR: S.P. Maintenance Services, Inc.
734 Ralcoa Way
Arroyo Grande, CS 93420
Attn: Sean St. Dennis
Facsimile: (805) 343-9989

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. ATTACHMENTS. Attached to this Agreement are the following Exhibits that are incorporated into this Agreement by reference.

- A. **Exhibit "A"** – Special Provisions
- B. **Exhibit "B"** – Street Sweeping Schedule

4. SERVICES.

A. Contractor agrees to provide the Services in accordance with this Agreement.

B. No claim, potential claim, dispute or controversy, except non-payment by NCSD of undisputed amounts, shall interfere with the progress and performance of the Services or any changes thereto, including any disputed Services, or any changes thereto and any failure of Contractor to proceed shall be deemed a material breach of this Agreement entitling NCSD to all available remedies without further notice pursuant to this Agreement and/or applicable law. Except as provided elsewhere in this Agreement, NCSD shall continue to make payments in accordance with the Agreement.

5. COMMENCEMENT OF SERVICES. Contractor shall commence performance within five (5) days of District's Notice to Proceed.

6. COMPENSATION OF CONTRACTOR.

A. Contractor shall be paid \$20 per curb mile actually swept in accordance with the standards set forth in Exhibit "A" and the schedule set forth in Exhibit "B".

B. Contractor shall submit invoices no more often than monthly for Services performed.

C. NCSD shall review each invoice submitted by Contractor to determine whether it accurately reflects the Services performed in compliance with the provisions of this Agreement. In the event no charges or expenses are disputed, the invoice shall

be approved and paid within forty five (45) days of receipt of the invoice. In the event NCSD disputes any charge or expenses, it shall return the original invoice to Contractor for correction and resubmission, however, the undisputed amount shall be paid as indicated above.

D. Payment to Contractor shall be full compensation for all personnel, materials, supplies, and equipment used in carrying out the Services.

E. Payment of an invoice by NCSD shall not constitute acceptance of defective Services, and NCSD's failure to discover or object to any unsatisfactory Services or billing prior to payment will not constitute a waiver of NCSD's right to:

1. Require Contractor to correct such work or billings; or
2. Seek any other legal remedy.

F. NCSD may withhold, or on account of subsequently discovered evidence nullify, the whole or a part of any payment to such extent as may be necessary to protect NCSD from loss, including costs and attorneys' fees, on account of (1) defective or deficient Services not remedied; (2) subsequently discovered errors in invoices previously paid; (3) claims filed or reasonable evidence indicating probable filing of a claim or claims; (4) failure of Contractor to make payments properly to its employees or sub-Contractors; or (5) Contractor's failure to adhere to the Schedules or to achieve sufficient progress with the Services such that Contractor is unlikely to achieve timely compliance.

7. STATUS OF CONTRACTOR.

A. Contractor is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of NCSD. Contractor shall have no authority to bind NCSD in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against NCSD, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by NCSD.

B. The personnel performing the Services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither NCSD, nor any elected or appointed boards, officers, officials, employees or agents of NCSD, shall have control over the conduct of Contractor or any of Contractor's officers, employees or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, subcontractors, or agents are in any manner officials, officers, employees or agents of NCSD.

C. Neither Contractor, nor any of Contractor's officers, employees, subcontractors, or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to NCSD's employees. Contractor expressly waives any claim Contractor may have to any such rights.

8. PERFORMANCE STANDARDS.

A. Compliance with laws.

Contractor shall, at its sole cost and expense:

(1) Procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incidental to the due and lawful prosecution of the Services to be performed by Contractor under this Agreement;

(2) Keep itself fully informed of all existing and proposed federal, state and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this Agreement, any materials used in Contractor's performance under this Agreement, or the conduct of the Services under this Agreement;

(3) At all times observe and comply with, and cause all of its employees and subcontractors to observe and comply with all of said laws, ordinances, regulations, orders, and decrees mentioned above;

(4) Immediately report to the NCSD's Contract Manager in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications, or provisions of this Agreement.

B. Standard of Performance. Contractor represents that it has the skills, expertise, equipment and licenses necessary to perform the Services required under this Agreement.

C. The NCSD, and its officers, agents and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this Section.

9. FAMILIARITY WITH SERVICES TO BE PERFORMED. By executing this Agreement, Contractor represents that Contractor (a) has thoroughly investigated and considered the Services to be performed; (b) has carefully considered how the Services should be performed; (c) fully understands the difficulties and restrictions attending performance of the Services under this Agreement; and (d) that the compensation referenced in Exhibit "B" is adequate for the Services to be performed by Contractor.

10. TAXES. Contractor shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the Services to be performed by Contractor.

11. CONFLICT OF INTEREST. Contractor covenants that neither it, nor any officer or principal of its firm, or subcontractors retained by Contractor has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of NCSD or which would in any way hinder Contractor's performance of Services under this Agreement. Contractor further covenants that in the performance of the Services, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the prior express written consent of the NCSD Manager. Contractor agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the NCSD in the performance of the Services.

12. RESPONSIBILITIES OF NCSD. NCSD shall provide all information reasonably necessary by Contractor in performing the Services provided herein.

13. OWNERSHIP OF DOCUMENTS.

(a) Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by NCSD that relate to the performance of Services under this Agreement. Contractor shall maintain adequate records of Services provided in sufficient detail to permit an evaluation of Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of NCSD or its designees at reasonable times to such books and records; shall give NCSD the right to examine and audit said books and records; shall permit NCSD to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, maps, notes, and other documents prepared in the course of providing the Services to be performed pursuant to this Agreement shall become the sole property of the NCSD and may be used, reused, or otherwise disposed of by the NCSD without the permission of the Contractor. With respect to computer files, Contractor shall make available to the NCSD, at the Contractor's office and upon reasonable written request by the NCSD, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

14. INDEMNIFICATION.

A. Contractor shall indemnify, defend, and hold harmless NCSD, the NCSD Board of Directors, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses of any kind, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, breach of professional responsibility, bodily injury, death, personal injury, property damage, loss of use, or property loss

however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of Contractor, its officers, employees, agents, subcontractors, or vendors in performing Services pursuant to this Agreement. It is further agreed, Contractor's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of NCSD, the NCSD Board of Directors, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of NCSD, its officers, employees or agents. Payment by NCSD is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Contractor and NCSD, as to whether liability arises from the sole negligence of the NCSD or its officers, employees, agents, subcontractors or vendors, Contractor will be obligated to pay for NCSD's defense until such time as a final judgment has been entered adjudicating the NCSD as solely negligent.

B. The above indemnification provisions of subsection A, above, shall specifically extend to the liability of claims, suits and actions under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended from time to time (CERCLA).

C. The indemnification provisions of subsection A, above, shall specifically extend to actions filed in State Court, Federal Court, arbitration, administrative proceedings and regulatory proceedings.

D. Neither termination or expiration of this Agreement shall release Contractor from its obligations referenced in subsection A, above, as to any claims, so long as the event upon which such claims are predicated shall have occurred prior to the effective date of such termination or expiration and arose out of or was in any way connected with performance or operations under this Agreement by Contractor, its employees, agents or subcontractors, or the employee, agent or Contractor of any one of them.

E. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in the Agreement does not relieve Contractor from liability referenced in this Section. The obligations of this Section shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages, claims, liabilities or expenses, or claims for damages, liabilities or expenses.

15. INSURANCE.

Contractor and its subcontractors shall procure and maintain insurance with companies authorized to do business in the State of California as referenced in Exhibit "A".

16. PERSONNEL.

A. The Contractor represents that it has, or will secure at its own expense, all personnel, sub-Contractors and/or subcontractors required in performing the Services under this Agreement. All of the Services required hereunder will be performed by the Contractor or under Contractor's supervision, and all personnel engaged in the Services shall be qualified to perform such Services.

B. Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's employees, associates and subcontractors assigned to perform the Services required under this Agreement.

17. TERMINATION.

A. If Contractor at any time refuses or neglects to perform the Services in a timely fashion or in accordance with the Schedules referenced in the Exhibits, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without NCSD's written consent, or fails to make prompt payment to persons furnishing labor, equipment, or materials, or fails in any respect to properly and diligently prosecute the Services, or otherwise fails to perform fully any and all of the Agreements herein contained, Contractor shall be in default.

B. If Contractor fails to cure the default within seven (7) calendar days after written notice thereof, NCSD may, at its sole option, take possession of any documents, files, and (a) provide any such Services, labor, or materials as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Contractor under this Agreement; or (b) immediately terminate Contractor's right to proceed with the Services.

C. In addition to the foregoing right to terminate for default, NCSD reserves the absolute right to terminate the Services authorized by this Agreement without cause ("Terminate for Convenience"), upon ten (10) calendar days written notice to Contractor. In the event this Agreement is terminated pursuant to this Section, NCSD shall pay to Contractor the actual value of the work performed up to the time of termination, provided that the work performed is of value to the NCSD. Upon termination of the Agreement pursuant to this Section, the Contractor will submit an invoice to the NCSD pursuant to Section 6.

D. If this Agreement is terminated by NCSD for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a Termination for Convenience under Section C, above, and Contractor shall be entitled to receive only the amounts payable hereunder in the event of a Termination for Convenience.

E. Should NCSD fail to pay Contractor undisputed payments set forth in Section 6 above, Contractor may, at Contractor's option, suspend its Services if such

failure is not remedied by NCSD within thirty (30) days of written notice to NCSD of such late payment.

18. NCSD NOT OBLIGATED TO THIRD PARTIES. NCSD shall not be obligated or liable for payment hereunder to any party other than the Contractor.

19. NON-DISCRIMINATION. Contractor shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with, or related to, the performance of this Agreement.

20. UNAUTHORIZED ALIENS. Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or Services covered by this Agreement, and should the any liability or sanctions be imposed against NCSD for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse NCSD for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by NCSD. Contractor shall comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein.

21. PREVAILING WAGE. Contractor shall keep informed and take all measures necessary to ensure compliance with Labor Code requirements, including, but not limited to Section 1720 *et seq.* of the Labor Code regarding public works, limitations on use of volunteer labor (Labor Code Section 1720.4) and payment of prevailing wages to workers and professionals for work done under this Agreement, as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code Part 7, Chapter 1, Article 2. Copies of prevailing wage determinations are on file at NCSD offices or otherwise available on the Web at www.cslp.ca.gov.

22. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

A. All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than NCSD without prior written authorization from the District Manager, except as may be required by law.

B. Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the District Manager or unless requested by the District Legal Counsel of NCSD, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the

work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives NCSD notice of such court order or subpoena.

C. If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then NCSD shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

D. Contractor shall promptly notify NCSD should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there-under. NCSD retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with NCSD and to provide NCSD with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by NCSD to control, direct, or rewrite said response.

23. ASSIGNMENT. The expertise and experience of Contractor are material considerations for this Agreement. NCSD has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Contractor under this Agreement. In recognition of that interest, Contractor shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Contractor's duties or obligations under this Agreement without the prior written consent of the District Board of Directors. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling NCSD to any and all remedies at law or in equity, including summary termination of this Agreement. NCSD acknowledges, however, that Contractor, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

24. COSTS AND ATTORNEY'S FEES. Except for disputes that are resolved by non-binding mediation, the prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

25. SECTION HEADINGS. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

26. SEVERABILITY. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such

provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

27. REMEDIES NOT EXCLUSIVE. Except for disputes related solely to the payment for Services performed by Contractor, no remedy herein conferred upon or reserved to the Parties is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

28. ASSIGNMENT. Contractor shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of NCSD and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

29. NON-LIABILITY OF DISTRICT OFFICERS AND EMPLOYEES. No officer or employee of NCSD will be personally liable to Contractor, in the event of any default or breach by the NCSD or for any amount that may become due to Contractor.

30. INTERPRETATION OF THIS AGREEMENT. The parties acknowledge that each party and its attorney had the opportunity to review, negotiate and revise this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the obligations contemplated by this Agreement.

31. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement and each covenant and term is a condition herein.

32. NO WAIVER OF DEFAULT. No delay or omission of NCSD to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to NCSD shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of NCSD.

33. ENTIRE AGREEMENT AND AGREEMENT. In conjunction with the matters considered herein, this Agreement contains the entire understanding and Agreement of the parties and there have been no promises, representations, Agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert

that this Agreement was modified, canceled, superseded, or changed by any oral Agreements, course of conduct, waiver or estoppel.

34. SUCCESSORS AND ASSIGNS. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

35. CALIFORNIA LAW: This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of San Luis Obispo, if in state court, or in the federal court nearest to San Luis Obispo County, if in federal court.

36. EXECUTION OF COUNTERPARTS. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

37. RECITALS. Recitals A through B are incorporated herein by reference as though set forth at length.

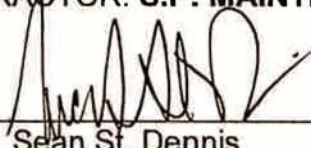
38. AUTHORITY TO EXECUTE. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or Agreement to which Contractor is obligated, which breach would have a material effect hereon.

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IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by the NCSD.

CONTRACTOR: S.P. MAINTENANCE SERVICES, INC.

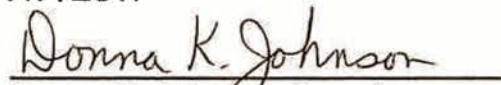
By: 
Name: Sean St. Dennis
Title: President
Date: 4/27/06

NIPOMO COMMUNITY SERVICES DISTRICT


Larry Vierkeilig, President
Nipomo Community Service District
Board of Directors

Date: 6-28-06

ATTEST:


Donna K. Johnson, Secretary
to the Board of Directors

Date: 6-28-06

SPECIAL PROVISIONS

SECTION I

Purpose of the Street Sweeping Contract:

To provide a street sweeping service to the NCSD on a regularly scheduled basis, by removing litter, leaves, dirt, and debris from public paved streets. This program shall leave the streets with a presentable appearance and free from dust created by traffic.

It shall be the contractor's responsibility to furnish at his own expense all tools, equipment, labor, material and services necessary for the satisfactory performance of the work set forth in these specifications.

SECTION II

Contract Period:

Any contract entered into shall be for a period of 36 months commencing on the 1st day of July 2006 and ending on the 1st day of July 2009, unless sooner terminated. The NCSD reserved the right to terminate or suspend this contract at any time as stipulated in Section XIV.

SECTION III

Standards of Service:

- A. The contractor agrees to comply with all applicable provisions of federal, state and/or local laws governing the duties and obligation of businesses And employers.
- B. The standards of performance which the contractor is obligated to perform hereunder are standards considered by the NCSD to be good street sweeping practices. Reference: Street Cleaning Practice, Third Edition. By American Public Works Association.
- C. Street sweepers will operate at suggested manufacturers sweeping speeds in accordance with local conditions and desired results. At no time may the street sweeper speed exceed 6 miles per hour.
- D. The contractor shall so conduct his operations as to cause the least possible obstruction and inconvenience to public traffic.

- E. Sweeping will be done during daylight hours in all residential areas. Downtown and other commercial areas will be swept in morning hours.
- F. The intersections (cross gutter area) along all scheduled streets are to be swept. All debris (including debris following inclement weather) along regularly scheduled routes, no matter what quantity, is to be removed.

SECTION IV

Work Performance:

- A. The NCSD will monitor the work performance of the contractor by randomly choosing ten (10) streets of a regular scheduled route to spot check upon completion of that route. It is understood that if three (3) of the streets do not meet acceptable NCSD standards, the contractor will be required to sweep the entire route again within 48 hours at no cost to the NCSD.
- B. If a spot check determines a single street has not met the standards the operator shall resweep within 24 hours at no cost to the NCSD.
- C. All potable water used for dust control will be provided, at no cost to the contractor through fire hydrants. The NCSD will provide a Fire Hydrant Water Meter that is to be used every time the street sweeping vehicle fills up.
- D. The contractor shall provide to the NCSD, immediately following award of contract, the manufacturers gallons per minute (GPM) rating, for dust control, on each street sweeping unit. The contractor shall record the daily quantity of water used by any or all street sweeping equipment used to clean the regularly scheduled route. The daily totals will then be compared against the monthly metered potable water total to assist in verifying, dust control compliance. If the daily recorded water usage does not meet or exceed the monthly metered potable water total, the NCSD considers this a loss of value and reserves the right to reduce the curb mile rate by 50% for that month.
- E. NCSD staff which observe the sweeping of regularly scheduled routes w/o the use of water for dust control will result in a 50% reduction of the curb mile rate for that day.
- F. Regularly scheduled routes that are not completely swept on the assigned day for any reason except for provisions in Sections VII & VIII will require notification of NCSD residents. The contractor will immediately place and pay for a Notice of Street Sweeping Rescheduling in the Five Cities Times

Press Recorder. A 1/16" size advertisement stating the reason for rescheduling and the contractors name and phone number shall be included in the notification. The NCS D reserves the right to add or modify the content of the Notice of Street Sweeping Rescheduling. A final draft of the notification must be approved by the General Manager or his designee prior to placement

- G. Failure to sweep one or more streets, on a regularly scheduled route, may result in the NCS D contracting for the clean up of these streets. All contract and administrative costs incurred as a result of this failure to perform will be deducted from the regular monthly street sweeping invoice.
- H. The determination of acceptable NCS D standards will be made by the General Manager and/or his Designee.

SECTION V

Equipment:

- A. All equipment used for the performance of this contract shall be standard heavy-duty mechanical broom sweeping or air/vacuum equipment necessary to properly clean streets and alleys of litter, dirt, rocks, leaves and other debris. Equipment shall be properly maintained both as to condition and appearance so as to insure a high level of street sweeping services.
- B. Sweeping equipment as well as disposal trucks shall be equipped with adequate warning devices and lights for safe operation and shall meet all vehicle operation requirements of the State of California Department of Motor Vehicles and the California Highway Patrol.
- C. Machines must be maintained both mechanically and visually throughout the term of this agreement with capability to insure scheduled routine maintenance and proper adjustment for sweepers.
- D. Machines must be equipped with an adequate water spray system for dust control.
- E. All units shall be clearly and prominently marked with the contractor's name and unit number.
- F. Contractor must keep a sufficient supply of spare brooms and parts to insure continuous operation. Worn brushes and brooms shall be replaced and adjusted to insure maximum efficiency.

- G. All equipment must be properly registered and insured in accordance with state and local laws. Contractor must show proof of ownership or a signed lease for sufficient machinery to adequately perform services as specified in this agreement
- H. All units shall have the capability of being contacted by their main office with radio or paging equipment
- I. Contractor shall have the ability to provide two (2) sweepers to the NCSD within four (4) hours notice.
- J. Contractor shall have the ability to provide a mechanical broom type sweeper and an air/vacuum type sweeper within four (4) hours" notice.
- K. Contractor shall clearly display placards rear and side with the following signs in letter size 4" or larger – "Sweeping Provided Courtesy of NCSD".

SECTION VI

Work to be Performed:

During the term of any agreement entered into, contractor shall sweep all designated public streets and curbs and gutters, alleys, street medians, parking lots, center lanes and intersections within the NCSD limits with the frequency as listed in the contract.

The contractor will adhere to the "Street Sweeping Schedule" provided to him by the NCSD. The NCSD reserves the right to modify the "Street Sweeping Schedule" from time to time during the period of the contract. Additions or deletions to this schedule shall be made in accordance with unit prices as shown on the contract proposal, or at the NCSD's sole discretion, as otherwise mutually agreed upon by the contractor and the NCSD.

SECTION VII

Holidays:

The NCSD will not require sweeping service on the following seven (7) holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and Christmas Day. In the event that a scheduled sweeping shift is missed due to the aforementioned holidays, the contractor shall arrange for sweeping on another day within a five working day period as described in Section III.

SECTION VIII

Inclement Weather:

In the event that a scheduled sweeping shift is not possible due to weather conditions, equipment failure, or other unforeseen occurrences, contractor shall notify the NCSD at the earliest possible time and arrange for sweeping on another day within a five working day period. It is understood that the contractor will make up the missed sweeping shift on the first available day within the five working day limitation, or forfeit any and all compensation for that particular shift.

SECTION IX

Addition Work:

- A. In the event the NCSD desires to extend the street sweeping program to include newly constructed streets or alleys, or streets or alleys procured through annexations, or existing streets not listed or referenced in Section VI, "work to be performed" after the effective date of this agreement, then any additional which is required of the contractor shall be paid for at the applicable price per curb mile as specified in the contractors proposal.
- B. The contractor shall provide additional miscellaneous street sweeping services for work not otherwise specified, in these specifications, at the current hourly rate as specified in the bid proposal when requested to do so by the NCSD.
- C. Contractor from time to time may be requested to provide street sweeping services immediately following parades, community celebrations, and other activities involving NCSD streets, alley or parking. Compensation for this work will be paid at the hourly rate as specified in the bid proposal.
- D. In the event the NCSD desires to increase the frequency of sweeping on specific streets for short durations (1 to 2 months), the contractor shall be paid at the applicable price per curb mile as specified in the contractor's proposal.
- E. All sweeping as identified in this section, paragraphs B, C, and D, shall be performed as not to interfere with the proper completion of the regular street sweeping schedule.

SECTION X

Disposal of Sweeping Debris:

The contractor shall dispose of all refuse and debris collected by his sweeping operation by hauling to the Santa Maria Transfer station or another properly established area for disposal of sweeping debris.

SECTION XI

Compensation:

- A. For all services which the contractor is obligated to perform under the terms of this proposal, the NCSD shall pay to the contractor an amount based on cost per Curb mile of street cleaned in monthly installments payable on or before the 15th day of each month succeeding the month during which the service was performed.
- 8. Failure to sweep shall be deducted from payment; per curb mile, unless made up as stipulated in Sections VII and VIII.

SECTION XII

Insurance Requirements:

The contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder, by the contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the contractor's bid.

- A. Minimum Scope of Insurance: Coverage shall be at least as broad as:
 - 1. Insurance Services Office Form Number GL-0002 (Ed. 1/73), covering comprehensive general liability and insurance services; office form number GL, covering broad form comprehensive general liability, or, Insurance Services Office Commercial General Liability coverage ("Occurrence" Form CG-0001).
 - 2. Insurance Services Office Form Number CA-0001 (Ed. 1/78), covering automobile liability, Code 1, "Any Auto", and endorsement CA-0025.
 - 3. Workers' Compensation Insurance, as required by the Labor Code of the State of California, and Employers' Liability Insurance.
- B. Minimum limits of Insurance: The contractor shall maintain limits no less than:

1. Comprehensive general liability: One million dollars (\$1,000,000.00) combined single-limit per occurrence for bodily injury, personal injury and property damage.
 2. Automobile Liability: One million dollars (\$1,000,000.00) combined single-limit per accident for bodily injury and property damage.
 3. Workers' Compensation and Employers' Liability: Workers' compensation limits as required by the Labor Code of the State of California, and Employers' liability limits of one million dollars (\$1,000,000.00) per accident
- C. Deductibles and Self-Insured Retentions: Any deductibles of self-insured retentions must be declared to and be approved by the NCSD. At the option of the NCSD, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as affects the NCSD, its officials, agents and employees, or the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- D. Other Insurance Provisions: The policies are to contain the following provisions:
1. General Liability and Automobile Liability Coverages:
 - a. The NCSD, its officials, agents, employees and volunteers are to be covered as primary insureds as respects liability arising out of activities performed by or on behalf of the contractor, or products and completed operations of the contractor, or premises owned, leased or used by the contractor, or automobiles owned, leased, hired or borrowed by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to the NCSD, its officials, agents, employees or volunteers.
 - b. The contractor's insurance coverage shall be primary insurance as respects the NCSD, its officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the NCSD, its officials, agents, employees or volunteers shall be in excess of the contractor's insurance, and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the NCSD, its officials,

agents, employees or volunteers.

- d. Coverage shall state that the contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers' Liability Coverage:

- a. The insurer shall agree to waive all rights of subrogation against the NCSD, its officials, agents, employees and ~~volunteers for losses arising from work performed by the contractor for the NCSD.~~

3. All Coverages:

- a. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days prior to written notice by certified mail, return receipt requested, has been given to the NCSD.

- E. Acceptability of Insurers: Insurance is to be placed with insurers with a best rating of no less than A:XIII.
- F. Verification of Coverage: Contractor shall furnish the NCSD with certificates of insurance and with original endorsements affecting coverage required by this clause (actual policy). The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the NCSD before work commences. If so required by the NCSD, the contractor shall furnish to the NCSD a duplicate original policy.
- G. Subcontractors: The contractor shall include all subcontractors as insureds under his policies, or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

SECTION XIII

Assignment of Contract:

Contractor shall under no circumstances assign this contract or any part thereof to another party without prior written consent from the NCSD.

SECTION XIV

Termination of Contract:

Upon the determination of the NCSD that the quality of workmanship being performed by the contractor does not meet the standards set by the NCSD as outlined in these specifications, and/or for non-compliance of other provisions of any contract entered into, the NCSD may terminate this agreement upon thirty (30) days written notice to contractor.

SECTION XV

Responsibility for Damage:

The NCSD and any of their employees and agents shall not be answerable or accountable in any manner for any loss or damage that may happen to the work or any part thereof; or for any material or equipment used in performing the work; for any injury or damage to any person or persons, either workmen or the public; for damage to adjoining property from any cause whatsoever during the progress of work.

SECTION XVI

Complaints:

All complaints shall first be directed to the General Manager or his Designee, then to the contractor. It shall be the contractor's obligation to resolve all complaints within 24 hours.

SECTION XVII

Independent Contractor Status:

It is expressly understood that the contractor named in any agreement entered into is acting as an independent contractor, not as an agent or employee of the NCSD.

EXHIBIT B – 2006-2009 NCSD STREET SWEEPING SCHEDULE

SP Maintenance will sweep paved streets inside NCSD in compliance with the Special Provisions set forth in Exhibit A on the following schedule from July 1, 2006 through June 30, 2009:

Weekly Sweeping (Once per week)

Tefft Street: From Nipomo Library, just east of Orchard Street, east to Thompson (2.6 Curb Miles)

Thompson Avenue: From Knotts Street, north to Mehlschau Road (3.2 Curb Miles)

Orchard Road: From Tefft Street, south to Story Street (1.8 Curb Miles)

Division Street: From Orchard Road, east to South Frontage Road (1.8 Curb Miles)

South Frontage: From Tefft Street, south to Southland Street (2.4 Curb Miles)

Monthly Sweeping (Once per Month)

Pomeroy Road: From Tefft, north west to Willow Road (5.0 Curb Miles)

Willow Road: From Pomeroy, west to via Concha Road (3.0 Curb Miles)

North Frontage: From Juniper, north to end of North Frontage (1.2 Curb Miles)

Mary Ave: From Tefft, north to Juniper (.6 Curb Miles)

Quarterly sweeping (Once Every Three Months)

All paved streets within District Boundary not listed above (103.6 Curb Miles)