

VENTURA REGIONAL SANITATION DISTRICT

1001 PARTRIDGE DRIVE, SUITE 150 • VENTURA, CA 93003-0704



August 23, 2011

Board of Directors
Ventura Regional Sanitation District
Ventura, California

VRSD CONTRACT NO. 11-024, LEASE AGREEMENT WITH CITY OF SANTA PAULA FOR VACTOR TRUCK

Summary

The Ventura Regional Sanitation District (District) currently provides sewer line cleaning services for many clients. The District currently has only one vehicle to cover all of its clients throughout the County. Based on recent regulatory changes, the District has seen an increase in the request for line cleaning services. Currently the existing District vactor truck is utilized approximately 75 percent of the time or roughly 15 out of 20 working days each month. The District has the opportunity to lease the City of Santa Paula's vactor truck with an option to buy. Staff is recommending proceeding with the lease of the Santa Paula vactor truck to determine if there is sustainable work in this area over the remainder of this fiscal year. The lease payments of \$2,500 per month are anticipated to be covered by the contract services that are currently requested by the District. If the work appears to be sustainable after the first year the District has reserved the right to purchase the vehicle at a predetermined value of \$210,000, less any lease payments already paid.

Background

The District provides sewer line cleaning for many of its customers. The line cleaning services provided by the District has increased over the last several years primarily due to the Sanitary Sewer Management Plans (SSMP) required by the State Water Resources Control Board. Imbedded in these plans is a requirement to prepare a maintenance plan for cleaning sewer line systems on a regular basis to minimize sewer overflows. The Regional Water Quality Control Boards are tasked with the monitoring and enforcement of these plans and maintenance. What the wastewater industry has seen in practice is that there are a number of active environmental groups that are paired with attorneys that search the State Board reporting web site for non-compliant districts. Any lawsuit brought forward as part of a citizen suit is a federal lawsuit under the EPA Clean Water Act. Such actions are handled in Federal court and require appropriate legal counsel.

Ventura County • **CITIES:** Camarillo • Fillmore • Ojai • Oxnard • Port Hueneme • San Buenaventura • Santa Paula • Thousand Oaks

SPECIAL DISTRICTS: Camarillo Sanitary • Camrosa Water • Channel Islands Beach Community Services • Montalvo Municipal Improvement • Ojai Valley Sanitary • Saticoy Sanitary • Triunfo Sanitation • Ventura County Waterworks Nos. 1 and 16

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Item 13-1

The District currently has one vehicle performing sewer line cleaning services. The existing vactor truck is a 2006 model and the typical life expectancy is ten years. The primary use of the District's existing vehicle is in the Southeast area of its service area. These areas primarily include the Triunfo Sanitation District (TSD) and the City of Thousand Oaks. The District has had several clients request additional line cleaning services and/or emergency spill response. Currently it is difficult to take on new work or commit to a response plan with only one vehicle that is primarily used in the Southeast area of the County. The logistics of moving the vehicle for short periods of time is not cost effective.

The District has been approached by the City of Santa Paula to purchase its vactor truck. The City of Santa Paula currently does not utilize this vehicle due to recent employee layoffs. The City is interested in selling this vehicle if possible or entering into a long term lease. The vehicle in question is approximately 18 months old and has additional upgrades that surpass the District's vehicle and most if not all vehicles of this type in the County. The vehicle was specified under the same conditions as the City of Los Angeles requires and has some superior features. The three superior features are:

1. Tier III motor which means that it is compliant with current air board permits and requires no carbon regeneration systems.
2. A bigger pump for increased line cleaning pressure 3500 psi vs. 2500 psi.
3. Ability to attach camera equipment directly.

Legal Counsel has reviewed and approved the lease agreement as to legal form. If you have any questions or need additional information, please contact me at 658-4600.

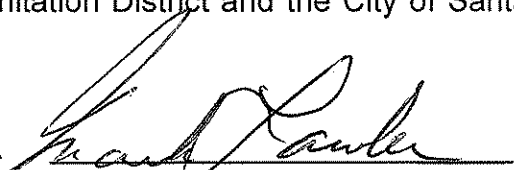
Financial Impact

The District will be committing to a lease for the remainder of the Fiscal Year 2011-12 for \$2,500 per month. This will be approximately \$25,000 if the lease is executed in early September. The District needs to utilize the vehicle at least five to six days each month in order to recover the cost of the lease. Based on the existing average use of 15 days each month for the current vactor truck and the customers' requests for service, staff believes that five days of billable use are available. The District currently has enough trained staff to support this activity, thus no additional staffing is necessary.

Recommendation

It is recommended the Board authorize staff to execute the vactor truck lease/option to buy agreement between the Ventura Regional Sanitation District and the City of Santa Paula.

APPROVED FOR SEPTEMBER 1, 2011 AGENDA



Mark Lawler – General Manager

Enc.

VRSD CONTRACT NO. 11-024

**LEASE OF VACTOR TRUCK
BETWEEN
THE CITY OF SANTA PAULA
AND
THE VENTURA REGIONAL SANITATION DISTRICT**

This AGREEMENT is entered into September 1, 2011, by and between the CITY OF SANTA PAULA, a general law city and municipal corporation ("CITY"), and VENTURA REGIONAL SANITATION DISTRICT, a California County Sanitation District ("VRSD").

1. **RECITALS.** This Agreement is made with reference to the following facts and objectives:
 - A. VRSD is authorized by law to acquire equipment convenient to the maintenance and operation of a sewerage system.
 - B. City has determined that VRSD is qualified to satisfactorily fulfill the terms and conditions of this Agreement.

2. **LEASE / CONSIDERATION.**
 - A. CITY agrees to lease its Vactor Vehicle, ID No. # _____ ("Vactor Truck"), to VRSD for Two Thousand Five Hundred Dollars (\$2,500.00) per month, payable by VRSD to CITY on the 10th day of each month during the term of this Agreement. ;
 - B. As additional consideration, VRSD and CITY agree to abide by the terms and conditions contained in this Agreement, including the terms contained in Exhibit A which is attached hereto and incorporated herein; and

3. **ADDITIONAL LEASE TERMS / OPTION TO PURCHASE. .**
 - A. VRSD shall comply with all obligations listed in the ADDITIONAL LEASE TERMS attached as Exhibit "A," which is incorporated by this reference. VRSD will cause to be furnished, in a professional manner, the labor, personnel and supplies, necessary for VRSD to perform its obligations under this Agreement.

- B. At any time during the term of this Agreement, VRSD may exercise its right to purchase the Vactor Truck, by written notice to CITY accompanied by immediately available funds payable to CITY in the amount equal to Two Hundred Ten Thousand Dollars (\$210,000.00) less the amount of all previously paid monthly lease payments ("Purchase Price"). Upon payment of the Purchase Price, CITY shall tender to VRSD all Vactor Truck title and registration documents.
4. **TAXPAYER IDENTIFICATION NUMBER.** VRSD will provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form V-9 (Rev. 12-87), as issued by the Internal Revenue Service.
5. **PERMITS AND LICENSES.**
- A. VRSD will obtain and maintain during the term of this Agreement all appropriate permits, licenses, and certificates that may be required in connection with the operation of the Vactor Truck under this Agreement.
- B. CITY will provide the initial "E" license plate. VRSD will be responsible for all subsequent renewals for the duration of the Agreement.
- C. VRSD will comply with all safety regulations.
6. **PROJECT COORDINATION AND SUPERVISION.** The CITY Manager, or designee, is designated as CITY's Representative and will monitor the progress and execution of this Agreement. VRSD's General Manager, or designee, is designated as VRSD's Representative and will provide supervision and have overall responsibility for the progress and execution of this Agreement.
7. **WAIVER.** CITY's acceptance of lease payments for, or approval of maintenance of the Vactor Truck by VRSD 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 VRSD's breach of its obligation hereunder. A waiver by any party of any breach of any term, covenants 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.
8. **TERM.** This Agreement shall be deemed made and effective on September 1, 2011; provided, that VRSD shall have the right to inspect the Vactor Truck prior to September 12, 2011, and, in the event the inspection reveals that the Vactor Truck is not in good condition and repair, then VRSD, at its sole discretion, may, by written notice to the CITY, delivered prior to September 14, 2011, immediately rescind this Agreement.

Unless otherwise determined by written amendment between the parties, this Agreement will terminate in the following instances:

- A. June 30, 2012. Upon mutual agreement between the parties, this Agreement may, however, be extended annually; or .
- B. Upon VRSD;s exercise of the option to purchase the Vactor Truck as provided for herein, subject to VRSD's satisfaction of all obligations stated herein; or
- C. Termination as stated in Section 10.

9. **VACTOR TRUCK.**

- A. Upon commencement of this agreement, CITY will deliver the Vactor Truck to VRSD in good condition and good running order. VRSD must return the Vactor Truck to CITY within five (5) days after this Agreement terminates. The Vactor Truck must be in a condition substantially the same as when delivered to VRSD, reasonable wear and tear excepted, and be in good running order.
- B. VRSD must compensate CITY for any damage to the Vactor Truck, including, without limitation, accidents, abuse, and vandalism. Should the Vactor Truck be damaged by a traffic collision, vandalism, or other, similar, type of cause, VRSD and/or its subcontractor will obtain a police report regarding the incident.
- C. VRSD must bring the Vactor Truck to CITY's garage for inspection at least once every three (3) months. CITY will certify to VRSD on such occasions whether CITY is satisfied with the condition of the Vactor Truck. Unless otherwise provided by written agreement, VRSD's subcontractor will repair, or cause to be repaired, any damage or other condition requiring repairs under this Agreement.

10. **TERMINATION.** VRSD or CITY may terminate this Agreement with or without cause. Should either party terminate without cause, it must provide the non-terminating party forty-five (45) days written termination notice. Notwithstanding the preceding sentence, VRSD may exercise its option to purchase the Vactor Truck provided for herein within the forty-five day notice time period.

11. **INDEMNIFICATION.**

- A. **VRSD indemnifies and holds CITY harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising out of this Agreement, or its performance, except for such loss or damage arising from CITY's sole negligence or willful**

misconduct. Should CITY be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, VRSD will defend CITY (at CITY's request and with counsel satisfactory to CITY) and will indemnify CITY for any judgment rendered against it or any sums paid out in settlement or otherwise.

- B. For purposes of this section "CITY" includes CITY's officers, officials, employees, agents, representatives, and certified volunteers.
 - C. It is expressly understood and agreed that the foregoing provisions will survive termination of this Agreement.
 - D. The requirements as to the types and limits of insurance coverage to be maintained by VRSD as required by this Agreement, and any approval of said insurance by CITY, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by VRSD pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.
12. **ASSIGNABILITY.** VRSD will not assign this Agreement without CITY's prior written approval. Any attempt to assign this Agreement without CITY's written approval is void.
13. **INDEPENDENT CONTRACTOR.** VRSD will act as an independent contractor and will have control of all work and the manner in which it is performed. VRSD will be free to contract for similar service to be performed for other employers while under contract with CITY. VRSD is not an agent or employee of CITY and is not entitled to participate in any pension plan, insurance, bonus or similar benefits CITY provides for its employees. Any provision in this Agreement that may appear to give CITY the right to direct VRSD as to the details of doing the work or to exercise a measure of control over the work means that VRSD will follow the direction of CITY as to end results of the work only.
14. **AUDIT OF RECORDS.** At any time during normal business hours and as often as may be deemed necessary VRSD and its subcontractor will make available to a representative of CITY for examination all records with respect to all matters covered by this Agreement and will permit CITY to audit, examine and/or reproduce such records. VRSD and subcontractor will retain such financial and program service records for at least three (3) years after termination or final payment under this Agreement.

15. **INSURANCE.** VRSD must procure and maintain insurance of the type, for the period, with the coverages and limits, and in accordance with the terms, conditions, and requirements that follow:
- A. VRSD will provide Commercial General Liability, Broad Form General Liability and Business Automobile Liability insurance that meet or exceed the requirement of ISO Forms GL0002, GL0404 and CA0001, Code 1, respectively, in the most current State of California approved forms, in connection with VRSD's performance in the amount of not less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage for each policy coverage.
 - B. Commercial General Liability, Broad Form General Liability and Business Automobile Liability policies required in this Lease will be endorsed to name CITY, its officials, volunteers, and employees as "additional insureds" under said insurance coverage, to state that such insurance will be deemed "primary" such that any other insurance that may be carried by CITY will be excess thereto, and to state that the policy(ies) will not be cancelable or subject to reduction except upon thirty (30) days prior written notice to CITY.
 - C. VRSD will furnish to CITY a certificate of insurance, in the standard form required by CITY, duly authenticated, evidencing maintenance of the insurance required under this Lease and such other evidence of insurance or copies of policies as may be reasonably required by CITY from time to time. Insurance must be placed with the California Sanitation Risk Management Authority, or insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A:VII."
 - D. Self Insured Retention/Deductibles. All policies required by this Agreement must allow CITY, as additional insured, to satisfy the self-insured retention ("SIR") and deductible of the policy in lieu of VRSD (as the named insured) should VRSD fail to pay the SIR or deductible requirements. The amount of the SIR or deductible is subject to the approval of the City Attorney and the Finance Director. VRSD understands and agrees that satisfaction of this requirement is an express condition precedent to the effectiveness of this LEASE. Failure by VRSD as primary insured to pay its SIR or deductible constitutes a material breach of this LEASE. Should CITY pay the SIR or deductible on VRSD's behalf upon VRSD's failure or refusal to do so in order to secure defense and indemnification as an additional insured under the policy, CITY may include such amounts as damages in any action against VRSD for breach of this Agreement in addition to any other damages incurred by CITY due to the breach.

16. **NOTICES.** All communications to either party by the other party will be deemed made when received by such party at its respective name and address, as follows:

CITY

City Manager
City of Santa Paula
P.O. Box 569
Santa Paula, CA 93061

VRSD

General Manager
Ventura Regional Sanitation District
1001 Partridge Drive, Suite 150
Ventura, CA 93003

Any such written communications by mail will be conclusively deemed to have been received by the addressee upon deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above. In all other instances, notices will 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 paragraph.

17. **COMPLIANCE WITH LAW.** VRSD must, at its sole cost and expense, comply with all of the requirements of all Municipal, State and Federal authorities now in force, or which may subsequently be in force, pertaining to this Agreement and will faithfully observe while performing this Agreement all Municipal ordinances and State and Federal statutes now in force or which may subsequently be in force.
18. **MODIFICATION.** No alteration, change or modification of the terms of the Agreement will be valid unless made in writing and signed by both Parties hereto and approved by appropriate action of CITY. The city manager may exercise this authority on behalf of CITY.
19. **FACSIMILE SIGNATURES FOR SUBSEQUENT AGREEMENTS.** The Parties agree that agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature will be treated in all respects as having the same effect as an original signature.
20. **INTERPRETATION.** This Agreement was drafted in, and will be construed in accordance with, the laws of the State of California and exclusive venue for any action involving this Agreement will be in Ventura County.
21. **ENTIRE AGREEMENT.** This Agreement, and its Attachments, sets forth the entire understanding of the parties. There are no other understandings, terms or other agreements expressed or implied, oral or written. There is one Attachment to this Agreement. This Agreement will bind and inure to the benefit of the parties to this Agreement and any subsequent successors and assigns.

- 22. **RULES OF CONSTRUCTION.** This Agreement has not been drafted or prepared by either party hereto, the same being a fully negotiated Agreement. Thus, the parties expressly agree that any rule of construction regarding interpretation in favor of one or the other party by reason of the party drafting the Agreement will not apply.
- 23. **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.
- 24. **TIME IS OF ESSENCE.** Time is of the essence for each and every provision of this Agreement.
- 25. **COUNTERPARTS.** This Agreement may be executed in any number or counterparts, each of which will be an original, but all of which together will constitute one instrument executed on the same date.

IN WITNESS WHEREOF the Parties hereto have executed this contract the day and year first hereinabove written.

CITY OF SANTA PAULA

VENTURA REGIONAL SANITATION DISTRICT

Jaime M. Fontes, City Manager

Mark Lawler, General Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Karl H. Berger, City Attorney

Mark Zirbel, Arnold Bleuel LaRochelle
Mathews & Zirbel, LLP, General Counsel

ATTEST:

ATTEST:

Judy Rice, City Clerk

Josie Guzmán, Clerk of the Board

EXHIBIT "A"

ADDITIONAL LEASE TERMS

1. LEASE OPERATION

VRSD will operate CITY's Vactor Truck solely within VRSD's jurisdictional boundary pursuant to the terms of this Agreement.

2. MAINTENANCE

- A. VRSD will maintain the Vactor Truck, at VRSD's expense, to provide a safe, functional, and reliable vehicle during operation.,.
- B. VRSD will perform a preventive maintenance at regular intervals, a minimum of every 5,000 miles or forty-five (45) days whichever comes first per California Highway Patrol (CHP) regulations. VRSD will forward quarterly maintenance records to CITY.
- C. Unscheduled maintenance and repairs will be performed, in accordance with the manufacturer's minimum recommendation, by master truck technicians. VRSD may request that CITY perform this work which CITY may, but is not required to, complete following written approval by CITY's Representative. VRSD will pay for CITY's direct costs should CITY perform maintenance.
- D. All maintenance records will be kept by VRSD, and will be made available to CITY upon request. Format for maintenance records will be mutually agreed upon. The Vactor Truck will be made available for CITY inspection upon advance notification and upon request.
- E. VRSD will bear the entire cost and expense of fuel, maintenance, upkeep, parts replacement and inspections of the Vactor Truck.
- F. CITY will approve any changes to the Vactor Truck, such as adding equipment, painting, and/or advertising. No changes or modifications will be made which would decrease the economic value or functional utility of the Vactor Truck.
- G. The exterior of the Vactor Truck will be regularly waxed and cleaned, not less than every four (4) months. The Vactor Truck will be kept in clean and sanitary condition, with the interiors cleaned thoroughly with suitable antiseptic solution whenever necessary. The windows and interior floors will be cleaned on a daily basis.

3. PERSONNEL

- A. VRSD is responsible for the hiring, supervision/support, and management of all personnel required to operate and maintain the Vactor Truck in a safe and efficient manner.
- B. VRSD will employ drivers licensed by the State of California to drive the Vactor Truck.
- C. Personnel driving hours will comply with the California Vehicle Codes and FLSA requirements.