



Meeting Date: 10/25/2011

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Anthony Emmert, Water Resources Manager Agenda Item No. **I-9**

Reviewed By: City Manager City Attorney Finance Public Works

DATE: October 17, 2011

TO: City Council

FROM: Rob Roshanian, Interim Public Works Director  
Public Works

SUBJECT: **Agreement A-7443 with Southwest Environmental, Inc. to Implement a Residential High Efficiency Toilet Exchange Program**

**RECOMMENDATION**

That City Council approve and authorize the Mayor to execute an agreement with Southwest Environmental, Inc. in the amount not-to-exceed \$411,090 to implement a Residential High Efficiency Toilet (HET) Exchange Program for single-family water customers.

**DISCUSSION**

The City is required by both State Law and the California Urban Water Conservation Council to demonstrate measurable reductions in its water use. The HET Exchange Program is one of nine water conservation programs included in the Water Conservation Master Plan, adopted by the City Council (February 1, 2011 Council Resolution No. 13,949). In addition, on July 26, 2011, Council adopted Resolution 14,106 authorizing agreements, amendments and documents necessary to secure reimbursements from Metropolitan Water District of Southern California (MWD) and Calleguas Municipal Water District (CMWD) to implement three of the nine water conservation programs:

- A High Efficiency Toilet Exchange Program for single-family water customers;
- A High Efficiency Toilet Installation program for multi-family water customers;
- A High Efficiency Sprinkler Nozzle Distribution program.

On July 18, 2011, the City sent out a competitive Request for Proposals (RFP) for Consulting Services for the implementation of the High Efficiency Toilet (HET) Exchange Program for single-family water customers. Three firms responded with proposals. After reviewing the proposals, staff found Southwest Environmental, Inc. to be the most qualified firm to perform the services, due to their extensive prior experience implementing HET Exchange Programs, proven system for pre-screening customers to ensure they were qualified for the program, Spanish-speaking customer service representatives, and their proximity to Oxnard.

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**FINANCIAL IMPACT**

On July 26, 2011, Council approved a Special Budget Appropriation in the amount of \$483,400 consisting of \$207,750 reimbursable funds from MWD and CMWD and \$275,650 from Water Fund Balance to cover the cost of this agreement.

AAE:DK:js

Attachment #1 - Agreement No. A-7443

**AGREEMENT FOR CONSULTING SERVICES**

This Agreement for Consulting Services ("Agreement") is made and entered into in the County of Ventura, State of California, this 25th day of October, 2011, by and between the City of Oxnard, a municipal corporation ("City"), and Southwest Environmental, Inc. ("Consultant").

WHEREAS, City desires to hire Consultant to perform certain consulting services specified herein; and

WHEREAS, Consultant represents that Consultant and/or Consultant's personnel have the qualifications and experience to properly perform such services:

NOW, THEREFORE, City and Consultant hereby agree as follows:

1. Scope of Services

Consultant shall furnish City with professional consulting services as more particularly set forth in Exhibit A attached hereto and incorporated by this reference in full herein.

2. Method of Performing Services

Subject to the terms and conditions of this Agreement, Consultant may determine the method, details, and means of performing the services described herein.

3. Standard of Performance

Consultant agrees to undertake and complete these services to conclusion, using that standard of care, skill, and diligence normally provided by a professional person in performance of similar consulting services.

4. Nonexclusive Services

This Agreement shall not be interpreted to prevent or preclude Consultant from rendering any services for Consultant's own account or to any other person or entity as Consultant in its sole discretion shall determine. Consultant agrees that performing such services will not materially interfere with services to be performed for the City.

5. Coordination of Services

All services are to be coordinated with the Water Conservation Outreach Coordinator, subject to the direction of the City Manager or Department Manager.

6. Place of Work

Consultant shall perform the services provided for in this Agreement at any place or location and at such times as the Consultant shall determine.

7. Correction of Errors

Consultant agrees to correct, at its expense, all errors which may be disclosed during review of Consultant's services. Should Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be paid by Consultant.

8. Time for Performance

All services performed under this Agreement shall be completed pursuant to the schedule provided in Exhibit B attached hereto and incorporated by this reference in full herein. City agrees to amend the performance termination date whenever Consultant is delayed by action or inaction of City and Consultant promptly notifies Manager of such delays.

9. Principal in Charge

Consultant hereby designates John Weber as its principal-in-charge and person responsible for necessary coordination with Manager.

10. Permits, Licenses, Certificates

Consultant, at Consultant's sole expense, shall obtain and maintain during the term of this Agreement, all permits, licenses, and certificates required in connection with the performance of services under this Agreement, including a City business license.

11. City's Responsibility

City shall cooperate with Consultant as may be reasonably necessary for Consultant to perform its services. Manager agrees to provide direction to Consultant as requested regarding particular project requirements.

12. Term of Agreement

This Agreement shall begin on October 25, 2011, and expire on October 25, 2014.

13. Termination

a. This Agreement may be terminated by City if Manager notifies Consultant, in writing, of Manager's desire to terminate the Agreement. Such termination shall be effective ten calendar days from the date of delivery or mailing of such notice. City agrees to pay Consultant in full for all amounts due Consultant as of the effective date of termination, including any expenditures incurred on City's behalf, whether for the employment of third parties or otherwise.

b. This Agreement may be terminated by Consultant if Consultant notifies Manager, in writing, of Consultant's desire to terminate the Agreement. Such termination shall be effective ten calendar days from the date of delivery or mailing of such notice and only if all assignments accepted by Consultant have been completed prior to the date of termination.

#### 14. Compensation

a. City agrees to pay Consultant in an amount not to exceed \$411,090 for services provided under this Agreement at rates provided in Exhibit C attached hereto and incorporated by this reference in full herein.

b. The acceptance by Consultant of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for anything completed, finished or relating to Consultant's services.

c. Consultant agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant or its employees, subcontractors, agents and subconsultants for the accuracy and competency of the information provided and/or services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the services performed by Consultant, its employees, subcontractors, agents and subconsultants.

d. Consultant shall provide Manager with a completed Request for Taxpayer Identification Number and Certification, as issued by the Internal Revenue Service.

e. If any sales tax is due for services performed by Consultant or materials or products provided to City by Consultant, Consultant shall pay the sales tax. City shall not reimburse Consultant for sales taxes paid by Consultant.

#### 15. Method of Payment

a. City agrees to pay Consultant monthly upon satisfactory completion of the services and upon submission by Consultant of an invoice delineating the services performed, in a form satisfactory to Manager. The invoice shall identify services by project as specified by Manager.

b. Consultant agrees to maintain current monthly records, books, documents, papers, accounts and other evidence pertaining to the services performed and costs incurred. Such items shall be adequate to reflect the time involved and cost of performing the services. Consultant shall provide Manager with copies of payroll distribution, receipted bills and other documents requested for justification of the invoice.

#### 16. Responsibility for Expenses

Except as otherwise expressly provided in this Agreement, City shall not be responsible for expenses incurred by Consultant in performing services under this Agreement. All expenses incident to the performance of services under this Agreement shall be borne by the Consultant, including, but not limited to rent, vehicle, and travel, entertainment and promotion,

general liability and health insurance, workers' compensation insurance, and all compensation and benefits of employees or agents engaged by Consultant. Consultant shall, at its own cost and expense, supply all personal property necessary or appropriate to perform the services provided for under this Agreement, including, but not limited to any personal property used by employees and agents of Consultant in the performance of such services.

#### 17. Non-Appropriation of Funds

Payments to be made to Consultant by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted and unencumbered appropriation of City. In the event City does not appropriate sufficient funds for payment of Consultant's services beyond the current fiscal year, this Agreement shall cover payment for Consultant's services only up to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

#### 18. Records

a. Consultant agrees that all final computations, exhibits, files, plans, correspondence, reports, drawings, designs, data and photographs expressly required to be prepared by Consultant as part of the scope of services ("documents and materials") shall be the property of City and shall, upon completion of the services or termination of this Agreement, be delivered to Manager.

b. At City's request, City shall be entitled to immediate possession of, and Consultant shall furnish to Manager within ten days, all of the documents and materials. Consultant may retain copies of these documents and materials.

c. Any substantive modification of the documents and materials by City staff or any use of the completed documents and materials for other City projects, or any use of uncompleted documents and materials, without the written consent of Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant. City agrees to hold Consultant harmless from all damages, claims, expenses and losses arising out of any reuse of the documents and materials for purposes other than those described in this Agreement, unless Consultant consents in writing to such reuse.

#### 19. Maintenance and Inspection of Records

Consultant agrees that City or its auditors shall have access to and the right to audit and reproduce any of Consultant's relevant records to ensure that City is receiving all services to which City is entitled under this Agreement or for other purposes relating to the Agreement. Consultant shall maintain and preserve all such records for a period of at least three years after the expiration of this Agreement, or until an audit has been completed and accepted by City. Consultant agrees to maintain all such records in City or to promptly reimburse City for all reasonable costs incurred in conducting the audit at a location other than in City, including but not limited to expenses for personnel, salaries, private auditor, travel, lodging, meals and overhead.

## 20. Confidentiality of Information

Any documents and materials given to or prepared or assembled by Consultant under this Agreement shall be confidential and shall not be made available to any third person or organization by Consultant without prior written approval of the Manager.

## 21. Indemnity

Consultant agrees to indemnify, hold harmless and defend City, its City Council, and each member thereof, and every officer, employee, representative or agent of City, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by Consultant or its agents, employees, subconsultants, subcontractors, consultants and other persons acting on Consultant's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, or acts for which Consultant or its agents, employees, subconsultants, subcontractors, consultants and other persons acting on Consultant's behalf would be held strictly liable.

## 22. Insurance

a. Consultant shall obtain and maintain during the performance of any services under this Agreement the insurance coverages as specified in Exhibit INS-B, attached hereto and incorporated herein by this reference, issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Consultant obtain and maintain such insurance coverages.

b. Consultant shall, prior to performance of any services, file with the Risk Manager evidence of insurance coverage as specified in Exhibit INS-B. Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed as specified in Exhibit INS-B.

c. Maintenance of proper insurance coverages by Consultant is a material element of this Agreement. Consultant's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

## 23. Independent Contractor

a. City and Consultant agree that in the performance of the services, Consultant shall be, and is, an independent contractor, and that Consultant and its employees are not employees of City. Consultant has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant.

b. Consultant shall be solely responsible for, and shall save City harmless from, all matters relating to the payment of Consultant's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and State income tax withholding and all other regulations governing employer-employee relations.

c. Consultant acknowledges that Consultant and Consultant's employees are not entitled to receive from City any of the benefits or rights afforded employees of City, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, or health, life, dental, long-term disability and workers' compensation insurance benefits.

#### 24. Consultant Not Agent

Except as Manager may specify in writing, Consultant, and its agents, employees, subcontractors and subconsultants shall have no authority, expressed or implied, to act on behalf of City in any capacity, as agents or otherwise, or to bind City to any obligation.

#### 25. Conflict of Interest

Consultant shall promptly inform Manager of any contract, agreement, arrangement, or interest that Consultant may enter into or have during the performance of this Agreement that may conflict with City's interests. This requirement includes contracts, agreements and arrangements with manufacturers, suppliers, contractors or other clients whose interests might be served by the services performed under this Agreement and Consultant's or Consultant's clients' interest in land that might be affected by the services. Consultant shall take such measures as are necessary in the performance of this Agreement to prevent actual or appearances of conflicts of interest.

#### 26. Assignability of Agreement

Consultant agrees that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's personnel's unique competence, experience and specialized personal knowledge. Assignments of any or all rights, duties, or obligations of Consultant under this Agreement will be permitted only with the express written consent of Manager, which consent may be withheld for any reason.

#### 27. Successors and Assigns

Consultant and City agree that this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Consultant and City.

#### 28. Fair Employment Practices

a. Consultant agrees that all persons employed by Consultant shall be treated equally by Consultant without regard to or because of race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law, and in compliance with all antidiscrimination laws of the United States of America, the State of California, and City.

b. Consultant agrees that, during the performance of this Agreement, Consultant and any other parties with whom Consultant may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not

discriminated against because of their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

c. Consultant agrees to state in all of its solicitations or advertisements for applicants for employment that all qualified applicants shall receive consideration for employment without regard to their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

d. Consultant shall provide City staff with access to and, upon request by Manager, provide copies to Manager of all of Consultant's records pertaining or relating to Consultant's employment practices, to the extent such records are not confidential or privileged under State or federal law.

### 29. Force Majeure

Consultant and City agree that neither City nor Consultant shall be responsible for delays or failures in performance resulting from acts beyond the control of either party. Such acts shall include, but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after this Agreement was executed, fire, communication line failures, earthquakes, or other disasters.

### 30. Time of Essence

Consultant and City agree that time is of the essence in regard to performance of any of the terms and conditions of this Agreement.

### 31. Covenants and Conditions

Consultant and City agree that each term and each provision of this Agreement to be performed by Consultant shall be construed to be both a covenant and a condition.

### 32. Governing Law

City and Consultant agree that the construction and interpretation of this Agreement and the rights and duties of City and Consultant hereunder shall be governed by the laws of the State of California.

### 33. Compliance with Laws

Consultant agrees to comply with all City, State, and federal laws, rules, and regulations, now or hereafter in force, pertaining to the services performed by Consultant pursuant to this Agreement.

### 34. Severability

City and Consultant agree that the invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

35. Waiver

City and Consultant agree that no waiver of a breach of any provision of this Agreement by either Consultant or City shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either City or Consultant to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver of such provision or breach.

36. Counterparts

City and Consultant agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

37. Arbitration

Consultant and City agree that in the event of any dispute with regard to the provisions of this Agreement, the services rendered or the amount of Consultant's compensation, the dispute may be submitted to arbitration upon the mutual agreement of the parties, under such procedures as the parties may agree upon, or, if the parties cannot agree, then under the Rules of the American Arbitration Association.

38. Expenses of Enforcement

Consultant and City agree that the prevailing party's reasonable costs, attorneys' fees (including the reasonable value of the services rendered by the City Attorney Office) and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

39. Authority to Execute

- a. City acknowledges that the person executing this Agreement has been duly authorized by the City Council to do so on behalf of City.
- b. Consultant acknowledges that the person executing this Agreement has been duly authorized by Consultant to do so on behalf of Consultant.

40. Notices

- a. Any notices to Consultant may be delivered personally or by mail addressed to Southwest Environmental, Inc., 11545 Sorrento Valley Road # 315, San Diego, CA 92121, Attention: John Weber, Director of Business Development.
- b. Any notices to City may be delivered personally or by mail addressed to City of Oxnard, Public Works Administration, 305 West Third Street, Oxnard, California 93030, Attention: Anthony Emmert, Water Resources Manager.

41. Amendment

City and Consultant agree that the terms and conditions of the Agreement may be reviewed or modified at any time. Any modifications to this Agreement, however, shall be effective only when agreed upon to in writing by both the City representative authorized to do so under the City's purchasing policies and Consultant.

42. Entire Agreement

City and Consultant agree that this Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements, and promises, either oral or written.

CITY OF OXNARD

CONSULTANT

\_\_\_\_\_  
Dr. Thomas E. Holden, Mayor

  
\_\_\_\_\_  
Dale Chessher, Director of Operations  
Southwest Environmental, Inc.

ATTEST:

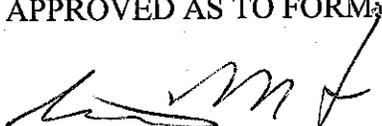
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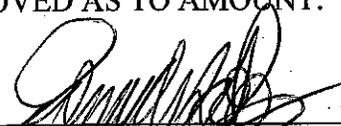
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Daniel Martinez, City Clerk

  
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James Cameron, Risk Manager

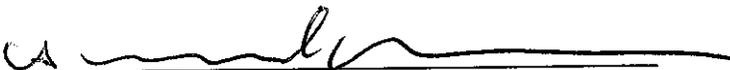
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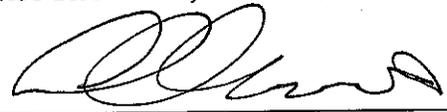
APPROVED AS TO AMOUNT:

  
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Alan Holmberg, City Attorney

  
\_\_\_\_\_  
Edmund F. Sotelo, City Manager

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Rob Roshanian, Interim Public Works Director

  
\_\_\_\_\_  
Anthony Emmert, Water Resources Manager

## EXHIBIT A SCOPE OF SERVICES

### INTRODUCTION

The Consultant will implement a Residential High Efficiency Toilet (HET) Exchange Program (Program) for residents within the City's service area. The Program will focus on the single-family residential sector.

The Program's goal is two-fold; 1) to achieve water consumption savings by providing qualifying residents with high-efficiency toilets in exchange for their old high water use toilets, and 2) to create a community event where residents can receive free High Efficiency Toilets (HETs) and other water conservation information.

### SCOPE OF SERVICES

#### CONSULTANT RESPONSIBILITIES

The Consultant will be responsible for, but not limited to, the tasks outlined below.

#### **Task 1 – Coordinate and Implement HET Exchange Events**

The Consultant will be responsible for pre-screening residents prior to each event to determine their eligibility and to develop a database, sorted by customer last name. Qualifying residents will be invited to attend a one-day HET distribution event where the customer will receive up to 3 HETs per qualifying address. Two weeks after each distribution event, the Consultant will hold a recycling event for participating customers to return their old toilets for recycling.

##### **1.1 Event Size (Number of HETs)**

The Program will consist of at least one Exchange Event each year within the City of Oxnard's service area. A total of 650 HETs will be distributed annually. City staff, along with the Consultant, will decide the number of exchange events warranted in a given year.

##### **1.2 Materials**

The Consultant will be responsible for acquiring all necessary materials (approved HETs, billy bolts, wax rings, toilet seats, and installation instructions) for each event. The Consultant will order the merchandise from an approved manufacturer and coordinate all logistics for delivery and pick-up of materials at each event. The Consultant will ensure that the manufacturer and distributor have packed the materials and pallets safely and that a pallet jack is included to unload the pallet of toilets. The Consultant will be responsible for working with the shipping company to account for all new, broken, and returned merchandise and will retain a copy of the packing slip.

- a. The HETs used for distribution in this Program must be approved, in writing, by City staff prior to purchase by the Consultant's Program Manager;
- b. The Consultant will be required to purchase only white, WaterSense approved, tank-type HETs with a MaP score of 600 or greater;

- c. The Consultant will have a small number of handicapped style HETs available (10 toilets on a contingency basis) at each distribution event. The City may be charged the additional cost for each handicapped HET given away.

### 1.3 Forklift

The Consultant will be responsible for renting a forklift and having it delivered the day before the event and stored safely at the site. This is crucial because the toilets cannot be unloaded without a forklift. Per City of Oxnard policy, the person operating the forklift must be certified to operate a forklift.

### 1.4 Marketing

With assistance from the City, the Consultant will work with Water Conservation staff and Oxnard City Corps volunteers to provide targeted residents with door hangers. The City will assist by helping coordinate the distribution of the door hangers with Oxnard City Corps, working with the Consultant to design the door hanger language for each event, and placing ads in the local newspapers.

### 1.5 Customer Pre-Screening

The Consultant, with assistance from the City of Oxnard, will develop an effective pre-screening mechanism to identify the flush volume of each resident's existing toilet prior to qualifying the resident for the Program. The goal is to identify residents who have toilets with a flush volume of 3 gallons or greater to participate in the Program. The following are responsibilities that the Consultant will be required to implement.

- a. The Consultant will have an established local or 800 phone number that residents can contact to sign-up for the Program.
- b. The Consultant will pre-screen every resident to ensure the following:
  - i. That their housing unit is within the city of Oxnard's service area; and
  - ii. That they have a 3 gallon per flush or greater toilet.
- c. The Consultant will accomplish the pre-screening by asking each resident a series of questions to determine the type of toilet they have. For example, some questions may include:
  - i. Have you replaced your toilet since 1992;
  - ii. What year was your home built;
  - iii. Has your restroom ever been remodeled, and, if so, in what year;
  - iv. Does the current toilet have a name or any other information marked on the bowl; if not,
  - v. Is the inside of the tank marked with a date?; and
  - vi. Provide some measuring techniques to determine size of tank and water used.

Note: The City of Oxnard currently receives a \$50 per HET incentive from the Metropolitan Water District of Southern California (MWD) for replacing a 3 gpf or greater toilet with a 1.28 gpf or less HET. MWD will not provide the incentive for replacing a 1.6 gpf toilet with an HET. Therefore, the Consultant will pre-screen all residents prior to providing them with an HET.

## 1.6 Conditions and Limitations

Participation in the Program shall be limited to single-family dwelling units located within the City's service area with the following additional conditions applied:

- a. Qualifying residents may receive a maximum of 3 HETs per single-family address, limited to the number of 3 gpf or greater toilets currently in the home; and
- b. The resident may be liable for payment if they exchange a 1.6 gpf or less toilet for a new 1.28 gpf or less toilet.

## 1.7 Distribution Events

The Program will consist of at least one free distribution event a year within the City of Oxnard's service area. A total of 650 HETs will be distributed annually. The following guidelines will apply to each distribution event:

- a. Resident Eligibility. A resident will be eligible to participate only if they have participated in the pre-screening process and have been identified as having an older 3 gpf or greater toilet. Once deemed qualified, the resident will receive a confirmation number to take to the day of the exchange event.
- b. Product Release and Return Form. The Consultant, with input from the City of Oxnard, will develop a product Release and Return Form (Form) to capture each participant's information. The Form will be used for the following:
  - i. Contact information (i.e. participants name, address, phone number, account number and pre-qualification information);
  - ii. Exchange event information;
  - iii. Toilet return event information; and
  - iv. Warranty/replacement part information for the new toilets being distributed;
  - v. Release of liability; and
  - vi. Confirmation that the customer is responsible for the cost of the new HET if they exchange a toilet rated at 1.6 gpf or less
- c. Database. The Consultant will use the information from the Form to develop an Excel Spreadsheet database for each Exchange Event. The database will include the following information:
  - i. Tracking numbers assigned to each HET correlated to a Form Number;
  - ii. Customer name, address, phone number, driver's license number (if available), and City of Oxnard water account number;
  - iii. Dates of customer participation (i.e. dates of HET receipt and old toilet return);
  - iv. Number of HETs received, model designation, and the specific dwelling units into which the HETs are to be installed; and
  - v. Number of old toilets, including their flush volume, returned by the resident.

- d. The Consultant will provide a copy of the Form and customer database to the City upon completion of each event

### **1.8 Coordinate Recycling Events**

The Consultant will coordinate a recycling event two weeks after the distribution event; allowing customers time to install their new toilets. At the recycling event, the Consultant will be responsible for the following:

- a. Ensuring a licensed recycling contractor recycles all recyclable portions of the old, used toilets, and
- b. Verifying all costs and that the old toilets being returned are non-conserving, high water using toilets.

In all cases the insured personnel dismantling the toilets will use face shields, heavy-duty gloves, steel-toed boots, and complete covering to eliminate, as practicable as possible, any chance of injury.

### **1.9 Event Reports**

At the end of each distribution and toilet recycling event, the Consultant shall provide a final report to the City of Oxnard, which, at a minimum, shall include the following (Excel spreadsheet) for each Form:

- a. Sequential Form number;
- b. Customer name and contact telephone number;
- c. Address;
- d. City of Oxnard water account number;
- e. Total number of HETs received (not to exceed three per household);
- f. Model of HET received;
- g. Number and type of old toilets returned for recycling (old ULFT, non-ULFT, or new HET); and
- h. Total weight of all materials recycled and location of facilities responsible for recycling the materials;
- i. Dates of HET pick-up and old toilet return.

## **Task 2 – Reporting/Invoicing**

Consultant shall provide a final report to the City of Oxnard, which shall include the following:

- Excel database of resident information (as defined in the Event Reports section above) for each event; and
- Written Final Report explaining each component of the Program including factual information (i.e. number of participants, number of devices given away, etc.), lessons learned, recommendations to improve the Program, etc.

### **Task 3 – Other Consultant General Provisions**

In addition to the two tasks mentioned above, the Consultant shall be responsible for the following general deliverable materials:

- Procurement of all deliverable materials, including the negotiation of price, schedule and delivery commitments by manufacturer(s) for the HETs;
- Arranging and being responsible for receiving, storing, and handling of the deliverable materials;
- Implementing such collection-inspection policies and practices as necessary to assure that the deliverable materials are undamaged, complete and consistent with the shipping documents of the selected supplier;
- The control and security of the deliverable materials inventory while in the care of the Consultant;
- Paying the manufacturer(s)/supplier(s) for deliverable materials;
- Developing the door hangers to promote the Exchange Events; Developing flyers as necessary to inform participants of the recycling events;
- Providing enough Forms necessary to conduct each distribution event. The Form must be approved by the City of Oxnard prior to use;
- Storage or return to the manufacturer/supplier of those HETs not distributed to residents on the day of delivery; and
- Meeting all liability, licensing, and living wage insurance requirements. The Consultant, any subcontractors hired, or any other personnel that come on site to work within the City must meet these requirements.

### **CITY OF OXNARD RESPONSIBILITIES**

The City of Oxnard will be responsible for the following:

#### **Task 1 – Assisting With Marketing Each One-Day HET Exchange Event**

The City of Oxnard will conduct the following to help promote each one-day event:

- Use available means to communicate the event to its water customers (for example, on bill messaging, newsletter articles, Neighborhood Council fliers, etc.).
- Develop newspaper ads.
- Assist with language and design to be used on door hangers.
- Printing door hangers and coordinating their distribution with Oxnard City Corps.

#### **Task 2 – Identifying and Confirming Event Locations**

The City of Oxnard will identify an appropriate location to conduct each one-day exchange event. City of Oxnard staff will arrange meetings with site locations and the Consultant to discuss event and parking logistics as needed.

**EXHIBIT B  
SCHEDULE**

Consultant shall work with City staff to schedule the High Efficiency Exchange Events to ensure that program goals are met and the events are completed with adequate time to submit invoices to Calleguas Municipal Water District and Metropolitan Water District of Southern California (MWD) for reimbursement through MWD's Member Agency Funded Programs. City staff, along with the Consultant, will decide the number of exchange events warranted in a given year. At least one event will be scheduled annually. The following table illustrates an appropriate implementation schedule for one HET Exchange event.

Project Component	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11
Selection of Consultant											
Initial Meeting with City and Consultant											
City Approval of Program Materials											
Selection of Exchange Event Site											
Meeting at Exchange Event Site											
Promotion of Exchange Event											
Pre-Qualification of Participants											
Exchange Event											
Recycling Event											
Reports/Invoice to City											

**EXHIBIT C  
RATES**

Prices for the High Efficiency Toilet Exchange Program for each year of the agreement at \$137,030 per year for a not-to-exceed \$411,090 over a three year term at the rates below:

<b>TASK</b>	<b>EQUIPMENT</b>	<b>UNITS</b>	<b>UNIT COSTS</b>	<b>SUB TOTAL</b>
Program Marketing	Develop flyers, door hangers, etc. Printing of flyers	2 (1 per event)	\$1,500	\$3,000
Administration	Comprehensive program administration tasks	2 (1 per event)	\$12,025	\$24,050
Hardware (Toilet, Toilet Seat, Wax Ring, Billy Bolts)	Western Pottery 822-HET (standard height, round front, HET)	630 (315 per event)	\$148	\$93,240
Hardware (ADA Toilet, Toilet Seat, Wax Ring, Billy Bolts)	Western Pottery 872-HET (ADA elongated, HET)	20 (10 per event)	\$187	\$3,740
Toilet Recycling	Recycling of returned toilets	650 (325 per event)	\$20	\$13,000
			<b>Total:</b>	<b>\$137,030</b>

**INSURANCE REQUIREMENTS FOR CONSULTANTS  
(WITHOUT ERRORS AND OMISSIONS REQUIREMENT)**

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

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

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

c. Workers' compensation insurance in compliance with the laws of the State of California, and employer's liability insurance in an amount not less than \$1,000,000 per claimant.

2. Consultant shall, prior to performance of any services, file with the Risk Manager certificates of insurance with original endorsements affecting coverage required by this Exhibit INS-B. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on the attached forms or on other forms approved by the Risk Manager. All certificates and endorsements are to be received and approved by the Risk Manager before work commences. City reserves the right to require complete certified copies of all required insurance policies at any time. The certificates of insurance and endorsements shall be forwarded to the Risk Manager, addressed as follows:

City of Oxnard  
Risk Manager  
Reference No. A-7443  
300 West Third Street, Suite 302  
Oxnard, California 93030

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

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

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

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

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

## INSTRUCTION FOR SUBMITTING INSURANCE CERTIFICATES AND ENDORSEMENT FORMS

### *Certificates of Insurance*

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

### *Endorsement Forms*

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

INS-B.doc





