



STAFF REPORT

DATE: NOVEMBER 15, 2011
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ROD FOSTER, CITY MANAGER/GENERAL MANAGER
PREPARED BY: AMER JAKHER, PUBLIC WORKS & UTILITY SERVICES DIRECTOR
SUBJECT: AWARD BID TO PROMINENT SYSTEMS, INC. TO PROVIDE PUROLITE A530E ION EXCHANGE FILTER RESIN AND MAINTENANCE SERVICES.

A handwritten signature in blue ink, appearing to read "Rod Foster".

RECOMMENDED ACTION

1. Staff recommends that the City Council authorize award of the Purolite A530E Ion Exchange Filter Resin and Maintenance Services for the Perchlorate Wells 15, 17 and 24 to the lowest responsive/responsible bidder, Prominent Systems, Inc. in an amount not-to-exceed \$314,184 per year, and authorize the City Manager to execute the Agreement.
2. It is recommended that the Colton Utility Authority Board review, ratify and to the extent necessary, direct the City Council to take the above action(s).

GOAL STATEMENT

This action supports the Council's goal to provide continuous supply of safe drinking water and meets all State requirements.

BACKGROUND

Two wellhead treatment systems that remove perchlorate to levels below the State of California Action Level of 6 parts per billion were installed to treat the water produced by three (3) wells (Well Nos. 15, 17 and Well No. 24) that supply water to the City. These treatment systems use an ion exchange filter resin process to remove the perchlorate from the water. Each treatment system consists of four (4) tanks and the ion exchange filter resin must be replaced when fully saturated with perchlorate.

The ion exchange filter resin at Wells 15 and 17 has reached its absorption capacity and the resin must be replaced. The treatment systems must be maintained and ready to meet the City's water demand.

ISSUES/ANALYSIS

Diligent effort was made to solicit competitive bids for the Ion Exchange Filter Resin and Maintenance Services. On September 22, 2011, Notice of Inviting Bids were sent to five potential bidders and was also advertised in The City News Group, Inc. on September 22 and September 30, 2011. Sealed bids were received on October 18, 2011 at 3:00 p.m. from the following:

Bidders	Qty	1 YEAR		3 YEAR		5 YEAR	
		Purolite A530E Total Amount	Purolite A532E Total Amount	Purolite A530E Total Amount	Purolite A532E Total Amount	Purolite A530E Total Amount	Purolite A532E Total Amount
Prominent Systems, Inc.	1200	\$ 291,978.00	\$ 313,959.00	\$ 301,614.96	\$ 325,164.00	\$ 314,184.00	\$ 333,564.00
Activated Carbon Corp.	1200	\$ 301,250.40	\$ 321,374.40	\$ 314,066.40	\$ 335,372.40	\$ 331,670.40	\$ 353,228.40
Siemens Industry, Inc.	1200	\$ 432,876.00	\$ 463,404.00				
Calgon Carbon Corp.	1200	NON RESPONSIVE					

As required on the Request For Bid form, City received bids for fixed prices per year for one (1) year, three (3) years and five (5) years. After evaluation and consideration of price increases for the past purchases of Purolite A530E products, staff finds that it will be advantageous for the City to enter into a five (5) year fixed amount Agreement. Staff is recommending the award of this Agreement to Prominent Systems, Inc., as the lowest and most responsive/responsible bidder, in an annual amount not-to-exceed \$314,184. The proposed Agreement will commence upon execution by the City and Prominent Systems, Inc. for an Agreement term of five (5) years.

FISCAL IMPACTS

The Water Department has sufficient funds in the Perchlorate Resin Account #521-8100-8101-2309 to fund the expenditure.

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENTS

1. Agreement for Maintenance Services

**CITY OF COLTON
AGREEMENT FOR MAINTENANCE SERVICES**

1. PARTIES AND DATE.

This Agreement is made and entered into this _____ day of _____, 2011 by and between the City of Colton, a municipal corporation of the State of California, located at 650 North La Cadena Drive, Colton, California 92324, County of San Bernardino, State of California, (hereinafter referred to as "City") and **Prominent Systems, Inc.**, a Corporation with its principal place of business at 13095 East Temple Ave., City of Industry, CA 91746 (hereinafter referred to as "Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing Ion Exchange Filter Resin and Maintenance services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City.

2.2 Project.

City desires to engage Contractor to render such services for the Water Department's Continuous Feed Perchlorate Ion Exchange System Filter Media ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the Owner all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional installation of disinfected ion exchange filter resin for treatment of perchlorate contaminants in the City's Ion Exchange Treatment Facilities and maintenance services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **November 16, 2011 to November 15, 2016** unless earlier terminated as provided herein. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 City's Representative. The City hereby designates Amer Jakher, Public Works and Utility Services Director, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.5 Contractor's Representative. Contractor hereby designates Dan Indrasena, Business Development or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and

attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.6 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.9 Insurance.

3.2.9.1 Time for Compliance. Contractor shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.9.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

(C) Pollution Legal Liability Insurance. A policy of pollution legal liability insurance written on a claims made basis shall be written in an amount not less than \$5,000,000 per loss. Said policy shall remain in effect until five (5) years after the date of completion of this Agreement. Contractor shall provide such evidence of insurance annually to the City, naming the City as an additional insured, with regards to the Contractor's work under the Agreement.

3.2.9.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Contractor.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.9.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.9.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.9.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.2.9.7 Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City

reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.11 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.2.12 Bonds.

3.2.12.1 Performance Bond. If specifically requested by City in Exhibit "B" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.12.2 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "B" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.12.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

3.2.12.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Three Hundred Fourteen Thousand One Hundred Eighty-Four Dollars and Zero Cents (\$314,184.00)** without written approval of City's Council. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work

which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CONTRACTOR:

Prominent Systems, Inc.
13095 East Temple Ave.
City of Industry, CA 91746
Attn: Dan Indrasena, Business Development

CITY:

City of Colton
650 North La Cadena Drive
Colton, CA 92324
Attn: Amer Jakher, Public Works & Utility Services Director
Water Department

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.4 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.5 Indemnification. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents or volunteers.

3.5.6 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

3.5.8 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.9 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

3.5.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.11 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.12 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.13 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.14 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.15 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.16 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.17 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely

for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.18 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.19 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.20 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[SIGNATURES ON NEXT PAGE]

CITY OF COLTON

PROMINENT SYSTEMS, INC.

By: _____
Rod Foster
City Manager

By: _____
Victor Butar Butar
President

Attest:

Eileen Gomez
City Clerk

Approved as to Form:

Best Best & Krieger LLP
City Attorney

Risk Management Division
Risk Manager

EXHIBIT "A"
SCOPE OF MAINTENANCE SERVICES

The scope of ion exchange filter resin and maintenance services to be provided by the contractor includes the following:

1. Furnish an initial 600 cubic feet of Type A530E or A532E ion exchange filter resin as manufactured by the Purolite Company for treatment of perchlorate contaminants in the City's existing Ion Exchange Treatment Facilities.
2. Provide all labor, material, equipment, transportation, and installation of a total of 600 cubic feet of disinfected ion exchange filter resin in existing USFilter ion exchange vessels for treatment of perchlorate contaminants in the City's existing Ion Exchange Treatment Facilities. It is the Contractor's responsibility to ensure that such disinfected ion exchange filter resin does not become contaminated.
3. Provide all labor, materials, equipment, and transportation for the removal, analysis, and proper disposal of a total of 600 cubic feet of Type A530E or A532E ion exchange filter resin as manufactured by the Purolite Company currently installed by others and spent in the City's existing Ion Exchange Treatment Facilities. The lab analysis will determine if such spent ion exchange filter resin is hazardous or non-hazardous. Based on the results of the lab analysis, the Contractor shall properly dispose of (via incineration) the spent ion exchange filter resin at an appropriate Owner-approved disposal facility.

All work will be performed in accordance with the attached specifications for Continuous Feed Perchlorate Ion Exchange System Filter Resin Technical Specifications contained in Exhibit B. The City may direct the Contractor to perform all or part of the work described above.

ADDITIONAL ORDERS

The City may elect, in its sole discretion, to purchase additional deliveries of ion exchange filter resin in 600 cubic feet increments throughout the term of the Agreement, along with associated delivery and installation of such additional disinfected ion exchange filter resin, and associated removal, analysis, and proper disposal of (via incineration) such additional spent ion exchange filter resin. However, as described above, the City is under no obligation to order any specific quantities at any time. Upon notification by the City, the Contractor shall provide such additional products and services.

ADDITIONAL INFORMATION AND CONSIDERATIONS

1. The Contractor must possess and maintain, at its own expense, throughout the term of this Agreement, all required licenses and permits for the performance of these services.
2. The Contractor shall provide to the City a certificate of destruction from the appropriate owner-approved disposal facility(ies) for all spent (exhausted) ion exchange filter resin destroyed (via incineration) within thirty (30) days of such disposal and destruction.

EXHIBIT "B"
SCHEDULE OF MAINTENANCE SERVICES

The term of this Agreement shall be from November 16, 2011 to November 15, 2016, unless earlier terminated as provided herein. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

The City will request Purolite Type A530E ion exchange filter resin and maintenance services, from Contractor, on an as needed basis. Contractor shall provide and deliver Purolite Type A530E ion exchange filter resin and maintenance services within twenty-one (21) calendar days or less of City's request for such Purolite Type A530E ion exchange filter resin and maintenance services.

EXHIBIT "C"
COMPENSATION

The total compensation shall not exceed **Three Hundred Fourteen Thousand One Hundred Eighty-Four Dollars (\$314,184)** per year without written approval of the City Council.

Contractor shall be compensated for ion exchange filter resin and maintenance services as follows:

Purolite A530E Ion Exchange Filter Resin

Item	Description	Qty	UOM	Unit Price	Amount
1	Furnish & deliver Type A532E Ion Exchange Filter Resin as manufactured by the Purolite Company for treatment of perchlorate contaminants in the City's existing Ion Exchange Treatment Facilities.	1200	Cubic Feet	\$250.85	\$301,020.00
2	Provide all labor, transportation, and equipment necessary for the installation of <u>disinfected</u> Type A532E Ion Exchange Filter Resin as manufactured by the Purolite Company for treatment of perchlorate contaminants in the City's existing Ion Exchange Treatment Facilities.	1200	Cubic Feet	\$3.22	\$3,864.00
3	Remove, analyze, and properly dispose of (via incineration) spent Type A532E Ion Exchange Filter Resin as manufactured by the Purolite Company for treatment of perchlorate contaminants in the City's existing Ion Exchange Treatment Facilities.	1200	Cubic Feet	\$7.75	\$9,300.00
TOTAL AMOUNT:					\$314,184.00

EXHIBIT "D"
CONTINUOUS FEED PERCHLORATE
ION EXCHANGE SYSTEM FILTER RESIN
TECHNICAL SPECIFICATIONS

PART 1 – GENERAL

1.01 Description

The Contractor shall furnish and install an initial 600 cubic feet of Purolite A530E or A532E ion exchange filter resin in City's existing **Well 24** ion exchange treatment system. 300 cubic feet of said ion exchange filter resin shall be installed per ion exchange treatment vessel in two (2) of the existing four (4) ion exchange treatment vessels installed at City's existing Well 24 ion exchange treatment system. Existing ion exchange system equipment is as manufactured by USFilter/Ionpure, Inc. (USFilter) and as described hereafter.

The Contractor shall remove, analyze, and properly dispose of (via incineration) 600 cubic feet of spent Type A530E ion exchange filter resin as manufactured by the Purolite Company and previously installed by others in two (2) ion exchange treatment vessels located at City's existing Well 24 ion exchange treatment system.

Prior to delivery and installation of new ion exchange filter resin by Contractor, the City will disinfect and flush (as necessary) said ion exchange treatment vessels. Contractor shall subsequently fill each of the ion exchange treatment vessels with new disinfected ion exchange filter resin. The Contractor shall then perform bacteriological testing of said new disinfected ion exchange filter resin after installation.

In the event said newly installed disinfected ion exchange filter resin does not pass bacteriological testing, the Contractor shall provide all necessary labor, materials, and equipment for disinfection of said ion exchange filter resin for use in a potable water system. The disinfection method used by the Contractor shall not result in a degradation of the ion exchange filter resin life when used for removal of perchlorate contaminants from the raw well water. In the event degradation of the ion exchange filter resin occurs during any disinfection processes, the Contractor shall issue a credit equal to the lost ion exchange filter resin capacity to City.

The City may request the Contractor to furnish and install an initial quantity of 600 cubic feet of Purolite A530E or A532E ion exchange filter resin for City's existing **Wells 15 and 17** ion exchange treatment system located at City's Domeqc Reservoir site. As described above, the City is under no obligation to order any specific quantities at any time. 300 cubic feet of said ion exchange filter resin shall be installed per ion exchange treatment vessel in two (2) of the existing four (4) ion exchange treatment vessels installed at City's existing Wells

15 and 17 ion exchange treatment system. Existing ion exchange system equipment is as manufactured by USFilter/Ionpure, Inc. (USFilter) and as described hereafter. The Contractor shall anticipate said initial quantity of ion exchange filter resin would be required to be delivered during the term of this Agreement.

In addition, the City may request the Contractor to furnish and install a second quantity of 600 cubic feet of Purolite A530E or A532E ion exchange filter resin each for both the City's existing **Well 24 and, Wells 15 and 17** ion exchange treatment systems during the term of the Agreement, along with associated removal, analysis and proper disposal (via incineration) of spent Type A530E ion exchange filter resin as manufactured by the Purolite Company and previously installed by the Contractor in two (2) ion exchange treatment vessels located at the City's existing Well 24 and, Wells 15 and 17 ion exchange treatment systems.

Furthermore, the City may request the Contractor to furnish and install unspecified subsequent quantities (in 600 cubic feet increments) of Purolite A530E or A532E ion exchange filter resin for each of the City's existing Well 24 and, Wells 15 and 17 ion exchange treatment systems during the term of the Agreement, along with associated removal, analysis and proper disposal (via incineration) of spent Type A530E or A532E ion exchange filter resin as manufactured by the Purolite Company and previously installed by the Contractor in two (2) ion exchange treatment vessels located at the City's existing Well 24 and, Wells 15 and 17 ion exchange treatment systems.

1.02 Existing Equipment General Process Description

The City's existing ion exchange treatment system for Well 24 treats well water discharged from Well 24 only and is located at the existing City's Well 24 site. The City's existing ion exchange treatment system for Wells 15 and/or 17 treats well water discharged from the City's Wells 15 and/or 17 and are located at the existing City's Domeqc Reservoir site. Specific existing equipment installed at the Well 24 and at the Domeqc Reservoir sites is generally as shown on Figures 1 through 7, included at the end of these specifications and as specified herein.

The City's existing ion exchange treatment systems for Wells 15, 17, and 24 consists of two treatment trains (sets) of two (2) USFilter HP1220W™ Vessels (four treatment vessels total). Each treatment train is configured in a lead/lag arrangement. Specifically, one (1) ion exchange treatment vessel provides primary filtering of raw water and feeds a second (lag) ion exchange treatment vessel for final filtering (polishing). Specific existing operating parameters are specified hereafter for each of the two (2) existing ion exchange treatment systems.

The general process flow for each site is such that feed water enters each ion exchange treatment vessel at the top of the ion exchange treatment vessel and passes vertically through the ion exchange filter resin bed. Perchlorate ions in the feed water are replaced with chloride ions as the water passes through said ion exchange filter resin bed.

1.03 Submittals

The contractor shall submit the following documents subsequent to execution of the Agreement with the City and a Notice to Proceed is issued by the City:

1. Ion exchange filter resin description and associated Material Safety Data Sheet (MSDS);
2. Ion exchange filter resin performance warranty;
3. Insurance documentation verifying compliance with insurance requirements contained in the Agreement; and
4. Documentation verifying compliance with license and permit requirements contained in the Agreement.

1.04 Existing Site Specific Ion Exchange System Equipment Drawings

See Figures 1 through 7 at the end of this Exhibit B.

PART 2 – PRODUCTS

2.01 Existing Ion Exchange Treatment Vessel Data

A. General

The existing USFilter ion exchange treatment vessels consist of four (4) treatment vessels installed at each of the City's existing ion exchange treatment systems. Each ion exchange treatment vessel is oriented vertically.

B. Specific existing ion exchange treatment vessel criteria is as follows:

Vessel Diameter	144"
Strait-Side Shell Height	60"
Overall Height (Approx.)	15'-9"
Working Pressure	125 psi @ 150° F
Vessel Volume	7520 gallons
Vessel Resin Capacity	600 cubic feet (maximum)
Vessel Material	Carbon Steel

C. Equipment Appurtenances

Each existing ion exchange treatment vessel includes the following appurtenances (minimum):

- 1) One (1) 20-inch (I.D.) manway, located at vessel shell

- 2) One (1) 14"x18" flanged elliptical type manway, located at vessel head
- 3) Two (2) steel lifting lugs
- 4) Four (4) steel wide flange structural support legs
- 5) One (1) 8" feed water inlet nozzle and associated piping
- 6) One (1) 8" effluent water outlet nozzle and associated piping
- 7) One (1) manual air vent nozzle (2" minimum diameter)
- 8) One (1) 4" upper resin fill inlet nozzle and piping
- 9) One (1) 4" lower resin fill outlet nozzle and piping
- 10) One (1) bottom drain and valve (2" minimum diameter)
- 11) One (1) automatic pressure relief valve
- 12) One (1) automatic air release valve and piping, Apco 143-C or equal
- 13) Vessel underdrains are as follows:

SEPTA™ Design	Stainless Steel
Eight (8) Resin Screens	304L Stainless Steel V-Wire Screens 4.5" Diameter

2.02 Ion Exchange Filter Resin

The Contractor shall furnish all labor, materials, and equipment necessary to install all disinfected ion exchange filter resin required to fill two (2) **each** of the City's existing Well 24 and Wells 15 and 17 ion exchange treatment vessels. A minimum of 300 cubic feet of disinfected Purolite Type A530E ion exchange filter resin shall be furnished and installed in each ion exchange treatment vessel (two treatment vessels at 600 cubic feet total for **each** of the City's existing ion exchange treatment systems). The Contractor shall furnish all labor, materials, and equipment necessary to remove, analyze, and properly dispose of (via incineration) said ion exchange filter resin once such ion exchange filter resin is spent. Said 600 cubic feet of spent ion exchange filter resin for **each** of the City's existing ion exchange treatment systems shall be removed, analyzed, and properly disposed of (via incineration) by the Contractor upon notification by City staff that said ion exchange filter resin is spent.

The Contractor shall furnish all labor, materials, and equipment necessary to remove, analyze, and properly dispose of (via incineration) all existing spent ion exchange filter resin previously installed by others in two (2) each of the City's existing Well 24 and, Wells 15 and 17 ion exchange treatment vessels. 300 cubic feet of spent Purolite Type A530E ion exchange filter resin shall be removed, analyzed, and properly disposed of (via incineration) by the Contractor in a total of two (2) of the four (4) ion exchange

treatment vessels (two treatment vessels at 600 cubic feet total of spent ion exchange filter resin to be removed per existing ion exchange treatment system) upon notification by City staff that said ion exchange filter resin is spent.

Ion exchange filter resin furnished and installed shall be Type A530E as manufactured by the Purolite Company, consisting of perchlorate selective functional resin. All ion exchange filter resin shall be FDA and NSF approved.

2.03 Current Water Chemistry Data

The most current water analysis results for each ion exchange treatment system are shown below:

Analysis Type	Well 15	Well 17	Well 24
Perchlorate	3ppb to 7.8 ppb	4 ppb to 10 ppb	2 ppb to 6.1 ppb
Nitrate as nitrate 11	15 ppm	3.6 ppm	19 ppm
ph	7.98	7.88	8.58
Sulfate	24 ppm	13 ppm	22 ppm
Chloride	7.1 ppm	5.4 ppm	7.4 ppm
Hardness (as CaCO3)	150 ppm	120 ppm	170 ppm
Alkalinity	130 ppm	140 ppm	140 ppm
Bicarbonate	130 ppm	140 ppm	140 ppm
Flow Rate	700 gpm	1500 gpm	1900 gpm

PART 3 – EXECUTION

3.01 Ion Exchange Filter Resin Installation

The Contractor shall bear full responsibility for the satisfactory installation of the specified ion exchange filter resin furnished under these Specifications and shall provide sufficient personal supervision over all installation and startup procedures accordingly, unless otherwise specified.

3.02 Ion Exchange Filter Resin Disposal

The Contractor shall remove, analyze, and properly dispose of (via incineration) all spent ion exchange filter resin. Said spent ion exchange filter resin shall be removed, analyzed, and properly disposed of (via incineration) when at the conclusion of the run length for such ion exchange filter resin, the bank of two (2) ion exchange treatment vessels that has achieved a City predetermined breakthrough point will be removed from service. This bank of two (2) ion exchange treatment vessels (that contains the spent (exhausted) ion exchange filter resin) shall be removed from service and the spent (exhausted) ion exchange filter resin shall be sluiced from the ion exchange treatment vessels and transferred to a lined waste material container or tank trailer provided by the Contractor. The Contractor shall then transport and properly dispose of (via incineration) said spent ion exchange filter resin to an appropriate Owner-approved disposal facility. The Contractor shall anticipate a minimum of four (4) trips, during the Agreement term, required to remove, analyze, and properly dispose of the spent (exhausted) ion exchange filter resin as follows: two (2) trips to remove two ion exchange treatment vessels (600 cubic feet total per trip) worth of spent ion exchange filter resin from the City's existing Well 24 ion exchange treatment system; and two (1) trips to remove two ion exchange treatment vessels (600 cubic feet total per trip) worth of spent ion exchange filter resin from the City's existing Wells 15 and 17 ion exchange treatment system.

A certificate of destruction from an appropriate Owner-approved disposal facility for all properly disposed of (via incineration) spent ion exchange filter resin shall be provided to the City by the Contractor within thirty (30) days of such destruction.