

FORM APPROVED COUNTY COUNSEL ATTACHMENTS FILED WITH THE CLERK OF THE BOARD DATE

BY: LARISA R-MCKENNA
 PURCHASING: Mark Seiler, Assistant Director

Dept's Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy



**SUBMITTAL TO THE BOARD OF DIRECTORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

375



FROM: Regional Park & Open-Space District

SUBMITTAL DATE:
6/9/09

SUBJECT: Agreement Award for the *Arundo donax* Weed Removal & Maintenance Services – District I and II

RECOMMENDED MOTION: That the Board approves and:

1. Authorizes the Agreement between the Riverside County Regional Park & Open-Space District (Park District) and RPW Services Inc for one year at an annual cost of \$102,036, with the option to renew the agreement for four additional one-year periods for the restoration of the Santa Ana River *Arundo donax* Weed Removal & Maintenance Services;
2. Authorizes the chairperson to execute four (4) Agreements;
3. Directs the Clerk of the Board to return three (3) copies for Park District to distribute; and
4. Authorizes the Purchasing Agent, in accordance with Ordinance No. 459.4, to exercise the renewal option based on the availability of fiscal funding and to sign amendments that do not change the substantive terms of the agreement, including amendments to the compensation provision that do not exceed the annual CPI rates.

BACKGROUND: As part of an ongoing restoration project for the Santa Ana River, on August 23, 2008 per Minute Order 13.2, the Board approved continuation of the *Arundo* Removal Program utilizing the re-authorization of the unspent funds from the Arundo Trust from the Santa Ana Watershed Project Authority (SAWPA) (34%) and the Santa Ana River Mitigation Bank fund (66%).
 (continued on page 2)

722-SARP Arundo Weed Removal & Maintenance Services.doc

Scott Bangle, General Manager

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 102,036	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ -0-	Budget Adjustment:	No
	Annual Net County Cost:	\$ -0-	For Fiscal Year:	09/10
SOURCE OF FUNDS: Santa Ana River Mitigation Bank Fund; Arundo Trust Fund (Prop 13 Dept)			Positions To Be Deleted Per A-30	<input type="checkbox"/>
			Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE
 BY: Alex Gann
 Alex Gann

County Executive Office Signature

3800 W. 3rd St
 RIVERSIDE, CA 92503

SUBJECT: Agreement Award for the *Arundo donax* Weed Removal & Maintenance Services - District I and II

For the past ten years, Park District personnel have performed the work in the Santa Ana River. However, through attrition, the Park District is now faced with the option of hiring additional staff or looking at other alternatives to complete the services. After careful analysis, it has been determined that cost savings will be realized by contracting the work out rather than to continue to use Park District personnel. No County funds are requested, or will be required, for the completion of this work.

PRICE REASONABLENESS: On March 3, 2009, the District advertised on the website and distributed sixteen "Request for Proposals" for the *Arundo donax* Weed Removal and Maintenance Services to restore the Santa Ana River. Ten firms attended the pre-proposal conference, and five firms submitted proposals. The proposals were evaluated in conformance with County Policy A-18. The proposals cost range was \$102,036 as the lowest to \$1,031,434 as the highest. Based on the evaluation criteria set forth in the RFP, RPW Services Inc. of Fullerton, California was determined to be the most responsive and responsible vendor as well as the lowest cost proposal.

Purchasing and County Counsel have reviewed and approved the agreement as to legal form.

AGREEMENT

This Agreement, made and entered into this ____ day of _____, 2009, by and between RPW SERVICES INC., (herein referred to as "CONTRACTOR"), and the RIVERSIDE COUNTY REGIONAL PARK & OPEN-SPACE DISTRICT, a political subdivision of the State of California, (herein referred to as "PARK DISTRICT"). The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide all services as outlined and specified in Appendix A, Scope of Services, consisting of three pages at the prices stated in Exhibit A, Cost Proposal, consisting of one page.

1.2 CONTRACTOR represents that it has the skills, experience and knowledge necessary to fully and adequately perform under this Agreement, and the PARK DISTRICT relies upon this representation. CONTRACTOR shall perform to the satisfaction of the PARK DISTRICT and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit A. CONTRACTOR is not to perform services or provide products outside of the Agreement.

1.4 Acceptance by the PARK DISTRICT of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

2. Period of Performance

2.1 This Agreement shall be effective upon signature of this Agreement by both parties and continue in effect through June 30, 2010 with the option to renew for a period of four additional years, renewable in one year increments by written amendment, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter.

3. Compensation

3.1 The PARK DISTRICT shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit A, COST PROPOSAL. Maximum payments by PARK DISTRICT to CONTRACTOR shall not exceed \$102,036.00 annually including all expenses. The PARK DISTRICT is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit A, PARK DISTRICT shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.2 No price increases will be permitted during the first year of this Agreement. All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the PARK DISTRICT. The PARK DISTRICT requires written proof satisfactory to PARK DISTRICT of cost increases prior to any approved price adjustment. After the first year of the award, a

minimum of 30-days advance notice in writing is required to be considered and approved by PARK DISTRICT. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas weed abatement services and be subject to satisfactory performance review by the PARK DISTRICT and approved (if needed) for budget funding by the Board of Supervisors.

3.3 CONTRACTOR shall be paid only in accordance with an invoice submitted to PARK DISTRICT by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and PARK DISTRICT shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by PARK DISTRICT. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

RIVERSIDE COUNTY PARK DISTRICT
4600 Crestmore Rd
Riverside, CA 92509

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number PKARC-064; quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered monthly in arrears.
- c) In accordance with California Government Code Section 926.10, PARK DISTRICT is not allowed to pay excess interest and late charges.

3.4 The PARK DISTRICT obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of PARK DISTRICT funding from which payment can be made. No legal liability on the part of the PARK DISTRICT shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, PARK DISTRICT shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated and have no further force and effect.

4. Alteration or Changes to the Agreement

4.1 The Board of Directors and the Park District and/or his designee are the only authorized representatives who may at any time, by written order, make alterations to this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work which results in additional and unanticipated cost to the CONTRACTOR. If the PARK DISTRICT decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

5. Termination

5.1. PARK DISTRICT may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

5.2 PARK DISTRICT may, upon five (5) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress so as to endanger performance and does not immediately cure such failure. In the event of such termination, the PARK DISTRICT may proceed with the work in any manner deemed proper by PARK DISTRICT.

5.3 After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to PARK DISTRICT and deliver in the manner as directed by PARK DISTRICT any materials, reports or other products which, if the Agreement had been completed or continued, would have been required to be furnished to PARK DISTRICT.

5.4 After termination, PARK DISTRICT shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit A.

5.5 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6 The rights and remedies of PARK DISTRICT provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

6. Ownership/Use of Contract Materials and Products

The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by PARK DISTRICT pursuant to this Agreement shall be the sole property of the PARK DISTRICT; and may be used by the PARK

DISTRICT for any purpose PARK DISTRICT deems to be appropriate, including, but not limit to, duplication and/or distribution within the PARK DISTRICT or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports or products without prior written authorization of the PARK DISTRICT.

7. Conduct of Contractor

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the PARK DISTRICT of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the PARK DISTRICT's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to PARK DISTRICT employees.

8. Inspection of Service; Quality Control/Assurance

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the PARK DISTRICT or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other PARK DISTRICT representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the PARK DISTRICT shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the PARK DISTRICT. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the PARK DISTRICT shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The PARK DISTRICT may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the PARK DISTRICT because of the CONTRACTOR's failure to perform.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a PARK DISTRICT

representative or other regulatory official to monitor, assess or evaluate CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

9. Independent Contractor

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the PARK DISTRICT. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents and subcontractors) shall in no event be entitled to any benefits to which PARK DISTRICT employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold PARK DISTRICT harmless from any and all claims that may be made against PARK DISTRICT based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of PARK DISTRICT merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

10. Disputes

10.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement which is not resolved by the parties shall be decided by the PARK DISTRICT's Compliance Contract Officer who shall furnish the decision in writing. The decision of the PARK DISTRICT's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

10.2 Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

11. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the PARK DISTRICT. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

12. Use By Other Political Entities

The CONTRACTOR agrees to extend the same pricing, terms and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and PARK DISTRICT shall in no way be responsible to CONTRACTOR for other entities' purchases.

13. Non-Discrimination

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. §1210 et seq.) and all other applicable laws or regulations.

14. Records and Documents

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State or County agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the PARK DISTRICT. CONTRACTOR shall provide to the PARK DISTRICT reports and information related to this Agreement as requested by PARK DISTRICT.

15. Confidentiality

15.1 The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; PARK DISTRICT information or data which is not subject to public disclosure; PARK DISTRICT operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

15.2 The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the PARK DISTRICT all third party requests for disclosure of such information. The

CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the PARK DISTRICT, any such information to anyone other than the PARK DISTRICT. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

16. Administration/Contract Liaison

The PARK DISTRICT representative or designee, shall administer this Agreement on behalf of the PARK DISTRICT.

17. Notices

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

PARK DISTRICT

RIVERSIDE COUNTY REGIONAL
PARK DISTRICT
4600 Crestmore Rd
Riverside, CA 902509

CONTRACTOR

RPW SERVICES INC.
2473 E. Orangethorpe
Fullerton, Ca 92831

18. Force Majeure

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

19. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the PARK DISTRICT may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the PARK DISTRICT within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax

Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

20. Hold Harmless/Indemnification

20.1 CONTRACTOR shall indemnify and hold harmless the PARK DISTRICT, County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability, claim, damage or action whatsoever, based or asserted upon any act or omission of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death. CONTRACTOR shall defend, at its sole cost and expense, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, the PARK DISTRICT, County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any such action or claim. With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of PARK DISTRICT; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR's indemnification of PARK DISTRICT. CONTRACTOR's obligations hereunder shall be satisfied when CONTRACTOR has provided to PARK DISTRICT the appropriate form of dismissal (or similar document) relieving the PARK DISTRICT from any liability for the action or claim involved. The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR's obligations to indemnify and hold harmless the PARK DISTRICT.

20.2 In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONTRACTOR from indemnifying the PARK DISTRICT to the fullest extent allowed by law.

21. Insurance

Without limiting or diminishing the CONTRACTOR's obligation to indemnify or hold the PARK DISTRICT harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverages during the term of this Agreement:

21.1 Workers' Compensation

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than **\$1,000,000** per person per accident. The policy shall be endorsed to waive subrogation in favor of the PARK DISTRICT, and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

21.2 Commercial General Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name PARK DISTRICT, all Agencies, Districts, Special Districts, and Departments of the County of Riverside, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds. Policy's limit of liability shall not be less than **\$1,000,000** per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

21.3 Vehicle Liability

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than **\$1,000,000** per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name PARK DISTRICT, all Agencies, Districts, Special Districts, and Departments of the County of Riverside, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

21.4 General Insurance Provisions - All lines

a) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

b) The CONTRACTOR must declare its insurance self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self insured retention unacceptable to the PARK DISTRICT, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the PARK DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

c) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the PARK DISTRICT with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be

given to the PARK DISTRICT prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the PARK DISTRICT receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. **CONTRACTOR shall not commence operations until the PARK DISTRICT has been furnished original Certificate (s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.**

d) It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and the PARK DISTRICT's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

e) The PARK DISTRICT Reserved Rights--Insurance. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work (such as the use of aircraft or watercraft) the PARK DISTRICT reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if; in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

f) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

g) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the PARK DISTRICT.

22. General

22.1 CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of PARK DISTRICT. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

22.2 Any waiver by PARK DISTRICT of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of PARK DISTRICT to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing PARK DISTRICT from enforcement of the terms of this Agreement.

22.3 In the event the CONTRACTOR receives payment under this Agreement which is later disallowed by PARK DISTRICT for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the PARK DISTRICT on request; or at its option the PARK DISTRICT may offset the amount disallowed from any payment due to the CONTRACTOR.

22.4 CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

22.5 CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to PARK DISTRICT pursuant to this Agreement, free from all liens, claims or encumbrances.

22.6 Nothing in this Agreement shall prohibit the PARK DISTRICT from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the PARK DISTRICT to be in its best interest. The PARK DISTRICT reserves the right to purchase more or less than the quantities specified in this Agreement.

22.7 The PARK DISTRICT agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to PARK DISTRICT data, information and personnel.

22.8 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable PARK DISTRICT policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

22.9 CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes or regulations which apply to performance under this Agreement.

22.10 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

22.11 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

22.12 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

PARK DISTRICT

RIVERSIDE COUNTY REGIONAL
PARK DISTRICT
4600 Crestmore Rd
Riverside, CA 902509

CONTRACTOR

RPW SERVICES INC.
2473 E. Orangethorpe
Fullerton, Ca 92831

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

ATTEST:

KECIA HARPER-IHEM, Clerk of the Board

APPROVED AS TO FORM COUNTY COUNSEL:

PAMELA J. WALLS, County Counsel

By: _____
Deputy

By:  _____

APPENDIX A

1.0 PURPOSE

The Riverside County Regional Park & Open-Space District is seeking proposals from qualified vendors to provide weed removal and maintenance services of the Giant Reed (*Arundo Donax*) and other exotic vegetation. The project site is located on the Santa Ana River mainstream, roughly between Mount Rubidoux in Riverside on the upstream end to Van Buren Blvd on the downstream end consisting of approximately 484 acres in three distinct areas. Exhibit D.

The Riverside County Regional Park District has been instrumental in removing the *Arundo Donax* since the mid 90's. However, as new cutting becomes less and less, the District is seeking a long-term maintenance contract with a vendor to maintain the areas already cleared and to provide new cuttings of the *Arundo Donax* where needed.

2.0 SCOPE OF SERVICE

2.01 This proposal is divided up into three (3) areas; Proposition 13 Area, Mitigation Bank Expansion Areas and Existing Mitigation Bank Areas, each requiring specific needs as described below:

Table 1

	NAME	EXHIBIT	ACRES	NEEDS
A.	Proposition 13 Areas	D	190	Maintenance spraying with some occasional cutting on 190.21 acres
B.	Mitigation Bank Expansion Areas	D	69.24	Maintenance spraying on 20.02 acres – New cutting on 49.22 acres – Entire site to be completed within one year of contract award
C.	Existing Mitigation Bank Areas	D	174	Maintenance spraying with some occasional cutting; much of this area has been completely restored

A. **Proposition 13 areas:** Consist of approximately 190 acres. The vast majority of these areas have already been cleared of *Arundo* and sprayed several times. Remedial cutting may be necessary. Because of the dynamic nature of the river, upstream *Arundo* can sometimes re-infect some of these areas. As a result and although it is anticipated to be minor, some cutting may be required to maintain these areas until the *Arundo* is gone completely. As a result, the vast majority of the work here will be maintenance.

B. **Existing Mitigation Bank:** Consist of approximately 174 acres. This area has had *Arundo* removed and many areas are essentially *Arundo*-free and fully restored. It is expected that

spraying will be the major activity here, with minor cutting of newly-arrived contaminants from upstream. The District's maintenance obligation for the Bank is for 20 years.

- C. **Mitigation Bank Expansion Area**: Consist of approximately 49 acres. This area has not been cut or sprayed yet, and new cutting will be required. This area has an accelerated time frame - initial clearing must be completed within the first year of operations. As with the existing Mitigation Bank, the duration of maintenance is for 20 years.

- 2.02 By a combination of cutting and spraying, maintain (per Table 1 above) the designated areas within the Santa Ana River as Arundo-free. For definition purposes, Arundo-free refers to the condition where Arundo comprises 5% or less of the vegetative cover of the area.
- 2.03 Within the first year of contract acceptance, complete the cutting (and spraying if necessary) within the Mitigation Bank Expansion Area.
- 2.04 Arundo shall be mulched in place, or removed and mulched, to prevent further contamination of other areas.
- 2.05 To the extent possible, remove other exotic vegetation within the project areas. Such vegetation should include, but is not limited to, tamarisk, perennial pepper weed, non-native palm trees, and Indian tree tobacco. However, it is expected and understood that the main thrust of the project is Arundo removal, and such other species as may be removed are of a secondary nature.
- 2.06 All maintenance work performed shall be approved by a Park District representative prior to spraying or cutting. Contractor will not be compensated for any maintenance work performed without prior approval by a Park District representative.
- 2.07 Maintain all necessary federal, state and local permits and/or licenses to carry out this work, and insure reporting compliance for herbicide use.
- 2.08 Contractor shall insure all employees are trained in any necessary clean water management practices, such as but not limited to the National Pollution Discharge Elimination System (NPDES) training.
- 2.09 Contractor shall maintain all necessary insurance coverage as required by the PARK DISTRICT of Riverside.
- 2.10 Contractor shall provide an annual report describing the efforts put forth during the year to maintain the areas as Arundo-free. This report will be due at the end of January each year and covering the previous year's activities.
- 2.11 Contractor shall provide assistant as necessary for yearly inspections by the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service personnel.
- 2.12 Contractor shall coordinate all services referenced in this RFP with a Park District representative. All work shall be performed Monday through Friday, during the hours of 8:00 a.m. to 5:00 p.m.
- 2.13 Contractor shall possess and maintain in continuous working condition, proper communication equipment to maintain contact with designated District personnel, and in the event of an accident will allow for the immediate contact of emergency services.

- 2.14 Contractor shall insure each worker will be able to perform his/her duties in a manner that will not endanger the employees' health or safety or the health and safety of others and be attired with appropriate protective clothing and footwear. The Contractor will furnish gloves, safety glasses, hearing protection, and any other safety equipment that is necessary for this type for work. The Contractor shall provide safe and healthful working conditions, transport equipment, and shall at all times comply with OSHA requirements.
- 2.15 No employee drinking alcohol or under the influence of alcohol and/or drugs shall be allowed to participate in the performance of this contract, nor shall any employee bring alcohol and/or drugs onto to the work location required by this contract. The Contractor agrees to immediately remove and replace any employee whose conduct and/or workmanship are in any way unsatisfactory to the PARK DISTRICT. **To ensure fire safety, smoking is prohibited on any of the lands covered by this scope of work.**
- 2.16 It shall be the bidders responsibility to familiarize themselves with all areas of the sites to be bid.
- 2.17 Errors or omissions in the contract document will not serve as an excuse for extra payment for inferior work if the intent is plainly understandable. The Contractor shall include in the bid a sufficient sum to cover all items, including labor, equipment and materials, which are implied or required to complete the project or work. The Contractor will not be paid for any abatement completed by their own error, or errors of their employees.

2.18 **SUBCONTRACTING**

In the event the Contractor employs subcontractors for any phase of this abatement project, the Contractor shall make the intent known to the PARK DISTRICT representative. All Subcontractors will answer to the General Contractor and will be subject to the same terms and conditions of the applicable sections of the contract as would apply to the General Contractor. Contractors shall be responsible for payment directly to any subcontractors employed to carry out any aspect of this contract. The Contractor shall not subcontract or assign the performance of any service under the contract, unless previously indicated in their response to this Request for Proposal.

Travel time between properties and/or to and from the disposal/recycling center location shall be included in the unit rate. The Contractor's charge for any equipment used in the scope shall also be included as part of the unit rate.

3.0 WORK PRODUCT

- 3.1 Reports shall be submitted no later than January 31, 2009. Contractors shall provide 2-Sets of copies.
- 3.2 All work papers prepared in connection with the contractual services will remain the property of the successful bidder, however, all reports rendered to the PARK DISTRICT are the exclusive property of the PARK DISTRICT and subject to its use and control.

4.0 DEFINITIONS:

Wherever these words occur in this RFP, they shall have the following meaning:

EXHIBIT A

COST PROPOSAL SHEET

After reading the specifications described herein for the Arundo Weed Abatement Removal Services in the County of Riverside, Riverside County Regional Park & Open-Space District, the undersigned does hereby bid and propose to the PARK DISTRICT of Riverside as follows:

The assigned project is to be completed within the assigned time after commencing work. Bid prices are to be inclusive of all labor, equipment, and transportation, dump fees, fuel, herbicides and all other costs necessary to complete the work specified.

	Cost Per Acre	Total Acreage Cost
1. Arundo Donax Weed Abatement/Removal (new cutting on 49 acres) (maintenance cutting on 393 acres)	\$ <u>695.00</u>	\$ <u>34,055.00</u>
2. Arundo Donax & Other Exotic Vegetation Maintenance (all areas, 433 Acres).	\$ <u>157.00</u>	\$ <u>67,981.00/year</u> \$ <u>339,905.00/5years</u>

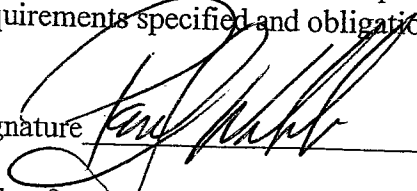
The PARK DISTRICT reserves the right to split or make the award in any manner determined by the PARK DISTRICT to be most advantageous to the PARK DISTRICT.

CERTIFICATIONS

I, Paul Webb, a duly authorized agent of R.P.W. Services, Inc.
Printed Name of Agent/Officer Name of Organization/Consortium

Hereby certify that R.P.W. Services, Inc.
Name of Organization/Consortium

by submission of this proposal in response to the personal services RFP agree upon contract award to carry out the requirements specified and obligations set forth therein.

Signature  Date April 13, 2009

Title of Agent/Officer Vice President

ARUNDO REMOVAL AREA MAP

EXHIBIT D

