

**City of Carson City
Agenda Report**

Date Submitted: May 25, 2012

Agenda Date Requested: June 7, 2012

Time Requested: 5 Minutes

To: Mayor and Supervisors

From: Purchasing and Contracts

Subject Title: For Possible Action: To approve and authorize the Mayor to sign a National Purchasing Cooperative Interlocal Participation Agreement with BuyBoard National Purchasing Cooperative and approve the purchase of a 2012 ADVANTAGE 500 Landfill Compactor, pursuant to NRS 332.115(1)(m) from Al-jon Manufacturing LLC for \$649,637.00 to be funded from the Capital Projects fund as provided in FY 2012/2013. (PO # 2012-114, Contract # 1112-192). (Kim Belt)

Staff Summary: The compactor currently in use at the landfill has exceeded its useful life; resulting in the loss of compaction that is negatively affecting valuable air space and landfill life span.

Staff's intention was to find a landfill compactor at a trade show; however, staff was unable to obtain the required equipment at a reasonable cost and turned to the BuyBoard National Purchasing Cooperative.

A purchasing cooperative enables public entities governed by competitive bidding requirements to take advantage of bids awarded by the cooperative. The National Purchasing Cooperative leverages the power of a nationwide network of purchasers to drive down prices of commodities, goods, and services by providing the successful bidder(s) the opportunity for a higher quantity of sales. Staff believes this effort has resulted in savings to the City of approximately \$70,000 over pricing through a local conducted bid process.

Type of Action Requested: (check one)

☐ Resolution

☐ Ordinance

☒ Formal Action/Motion

☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: I move to approve and authorize the Mayor to sign a National Purchasing Cooperative Interlocal Participation Agreement with BuyBoard National Purchasing Cooperative and approve the purchase of a 2012 ADVANTAGE 500 Landfill Compactor, pursuant to NRS 332.115(1)(m) from Al-jon Manufacturing LLC for \$649,637.00 to be funded from the Capital Projects Fund as provided in FY 2012/2013. (PO # 2012-114, Contract # 1112-192) (Kim Belt)

Explanation for Recommended Board Action: Pursuant to **NRS 332.115 subsection 1 (m)**, staff is requesting the Board of Supervisors declare that the contract is not adapted to award by competitive bidding and authorize all city departments to be

able to place orders from this agreement providing Carson City's approved funding and purchasing procedures are followed.

NRS 332.115(1)(m) Contracts not adapted to award by competitive bidding; purchases of equipment by local law enforcement agency; response agency or other local government agency; purchase of goods commonly used by hospital.

1. Contracts which by nature are not adapted to award by competitive bidding, including contracts for:

(m) Supplies, materials or equipment that are available pursuant to an agreement with a vendor that has entered into an agreement with the General Services Administration or another governmental agency located within or outside this State;

(Added to NRS by 1975, 1538; A 1987, 296, 1484; 1991, 337, 349, 648, 1934, 1935; 132; 1999, 889, 1684; 2001, 1317; 2003, 620, 2262; 2005, 226, 2554)

Applicable Statute, Code, Policy, Rule or Regulation: NRS 332.115 subsection 1 (m)

Fiscal Impact: \$649,637.00

Explanation of Impact: Account below will be decreased by \$649,637.00.

Funding Source: We are currently in the process of issuing a Medium Term Bond to purchase this piece of equipment. We are anticipating that we will have the money in the bank in late July, 2012 and since it takes upwards of 90 days to receive this equipment, we are ordering it now. The funding source is the board designated capital account in the Capital Projects fund - 210-0000-411-78-10 and we will use the \$.05 cent property tax for capital to pay the debt service payments.

Supporting Material: National Purchasing Cooperative Interlocal Participation Agreement, Purchase Order 2012-114 and Quote.

Prepared By: Kim Belt, Purchasing and Contracts Manager

Reviewed By: [Signature] Date: 5-29-12
(Public Works)
[Signature] Date: 5/29/12
(City Manager)
[Signature] Date: 5/29/12
(District Attorney)
Nancy Paulson Date: 5/29/12
(Finance Director)

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

(Vote Recorded By)

NATIONAL PURCHASING COOPERATIVE
INTERLOCAL PARTICIPATION AGREEMENT

This Interlocal Participation Agreement ("Agreement") is made and entered into on the date indicated below by and between The National Purchasing Cooperative ("Cooperative"), an administrative agency of cooperating local governments, acting on its own behalf and the behalf of all participating local governments, and the undersigned local government ("Cooperative Member").

I. RECITALS

WHEREAS, the National Purchasing Cooperative was formed on May 26, 2010, pursuant to Md. CODE ANN., STATE FIN. & PROC. § 13-110 (West 2009), and R.I.GEN.LAWS § 16-2-9.2 (2009); and

WHEREAS, the purpose of this Agreement is to facilitate compliance with state procurement requirements, to identify qualified vendors of commodities, goods and services, to relieve the burdens of the governmental purchasing function, and to realize the various potential economies, including administrative cost savings, for Cooperative Members;

NOW THEREFORE, in consideration of the mutual covenants, promises and obligations contained herein, the undersigned Cooperative Member and the Cooperative agree as follows.

II. TERMS AND CONDITIONS

1. **Adopt Organizational Interlocal Cooperation Agreement.** The Cooperative Member by the execution or acceptance of this Agreement hereby adopts and approves the Organizational Interlocal Agreement dated May 26, 2010, which agreement is incorporated herein by reference (and is available from the Cooperative upon request). The Organizational Interlocal Agreement established the Cooperative as an administrative agency of its collective participants, and Cooperative Member agrees to become a participant or additional party to that Organizational Interlocal Agreement.
2. **Term.** The initial term of this Agreement shall commence on the date it is executed by both parties and shall automatically renew for successive one-year terms unless sooner terminated in accordance with the provisions of this Agreement.
3. **Termination.**
 - (a) **By the Cooperative Member.** This Agreement may be terminated by the Cooperative Member at any time by thirty (30) days prior written notice to the Cooperative, provided any amounts owed to any vendor have been fully paid.

(b) **By the Cooperative.** The Cooperative may terminate this Agreement by:

(1) Giving ten (10) days notice by certified mail to the Cooperative Member if the Cooperative Member breaches this Agreement; or

(2) Giving thirty (30) days notice by certified mail to the Cooperative Member with or without cause.

(c) **Termination Procedure.** If the Cooperative Member terminates its participation under this Agreement or breaches this Agreement, or if the Cooperative terminates participation of the Cooperative Member, the Cooperative Member shall bear the full financial responsibility for all of its purchases made from vendors under or through this Agreement. The Cooperative may seek the whole amount due, if any, from the terminated Cooperative Member. In addition, the Cooperative Member agrees it will not be entitled to a distribution which may occur after the Cooperative Member terminates from the Cooperative.

4. **Payments by Cooperative Member.** The Cooperative Member will make timely payments to the vendor for the goods, materials and services received in accordance with the terms and conditions of the bid invitation, instructions, and all other applicable procurement documents. Payment for goods, materials and services and inspections and acceptance of goods, materials and services ordered by the procuring Cooperative Member shall be the exclusive obligation of the procuring Cooperative Member, and not the Cooperative. Furthermore, the Cooperative Member is solely responsible for negotiating and securing ancillary agreements from the vendor on such other terms and conditions, including provisions relating to insurance or bonding, that the Cooperative Member deems necessary or desirable under state or local law, local policy or rule, or within its business judgment.
5. **Payments by Vendors.** The parties agree that the Cooperative will require payment from vendors which are selected to provide goods, materials or services to Cooperative Members. Such payment (hereafter "Vendor Fees") may be up to two percent (2%) of the purchase price paid by Cooperative Members or a flat fee amount that may be set from time to time by the Cooperative Board of Directors. Cooperative Member agrees that these Vendor Fees fairly compensate the Cooperative for the services and functions performed under this Agreement and that these Vendor Fees enable the Cooperative to pay the administrative, endorsement, licensing, marketing, and other expenses involved in successfully operating a program of electronic commerce for the Cooperative Members. Further, Cooperative Member affirmatively disclaims any rights to such Vendor Fees, acknowledging all such fees are the property of the Cooperative. Similarly, in no event shall a Cooperative Member be responsible for payment of Vendor Fees.
6. **Distribution.** From time to time, and at the sole discretion of the Cooperative Board of Directors, the Cooperative may issue a distribution to Cooperative Members under a plan developed by the Cooperative Board of Directors. The Cooperative Member acknowledges that a distribution is never guaranteed and will depend on the overall financial condition of the Cooperative at the time of the distribution and the purchases made by the Cooperative Member.
7. **Administration.** The Cooperative may enter into contracts with others, including non-profit associations, for the administration, operation and sponsorship of the purchasing program provided by this Agreement. The Cooperative will provide reports, at least annually, to the Cooperative Member electronically or by

mail. Cooperative Member will report purchase orders generated under this Agreement to the Cooperative or its designee, in accordance with instructions of the Cooperative.

8. **BuyBoard®.** Cooperative Member will have a non-exclusive license to use the BuyBoard electronic purchasing application (BuyBoard) during the term of this Agreement. Cooperative Member acknowledges and agrees that the BuyBoard electronic application and trade name are owned by the Texas Association of School Boards, Inc., and that neither the Cooperative nor the Cooperative Member has any proprietary rights in the BuyBoard electronic application or trade name. The Cooperative Member will not attempt to resell, rent, or otherwise distribute any part of BuyBoard to any other party; nor will it attempt to modify the BuyBoard programs on the server or acquire the programming code. The Cooperative Member may not attempt to modify, adapt, translate, distribute, reverse engineer, decompile, or disassemble any component of the application. The Cooperative Member will use BuyBoard in accordance with instructions from the Cooperative (or its designee) and will discontinue use upon termination of participation in the Cooperative. The Cooperative Member will maintain equipment, software and conduct testing to operate the BuyBoard system at its own expense.

III. GENERAL PROVISIONS

1. **Amendment by Notice.** The Board may amend this Agreement, provided that prior written notice is sent to the Cooperative Member at least 60 days prior to the effective date of any change described in such amendment and provided that the Cooperative Member does not terminate its participation in the Cooperative before the expiration of said 60 days.
2. **Authorization to Participate and Compliance with Local Policies.** Each Cooperative Member represents and warrants that its governing body has duly authorized its participation in the Cooperative and that the Cooperative Member will comply with all state and local laws and policies pertaining to purchasing of goods and services through its membership in the Cooperative.
3. **Bylaws.** The Cooperative Member agrees to abide by the Bylaws of the Cooperative, as they may be amended, and any and all written policies and procedures established by the Cooperative.
4. **Cooperation and Access.** The Cooperative Member agrees that it will cooperate in compliance with any reasonable requests for information and/or records made by the Cooperative. The Cooperative reserves the right to audit the relevant records of any Cooperative Member. Any breach of this provision shall be considered material and shall make the Agreement subject to termination on ten (10) days written notice to the Cooperative Member.
5. **Coordinator.** The Cooperative Member agrees to appoint a program coordinator who shall have express authority to represent and bind the Cooperative Member, and the Cooperative will not be required to contact any other individual regarding program matters. Any notice to or any agreements with the coordinator shall be binding upon the Cooperative Member. The Cooperative Member reserves the right to change the coordinator as needed by giving written notice to the Cooperative. Such notice is not effective until actually received by the Cooperative.
6. **Current Revenue.** The Cooperative Member hereby warrants that all payments, fees, and

disbursements required of it hereunder shall be made from current revenues budgeted and available to the Cooperative Member.

7. **Defense and Prosecution of Claims.** The Cooperative Member authorizes the Cooperative to regulate the commencement, defense, intervention, or participation in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution, or other appearances of the Cooperative in any litigation, claim or dispute which arises from the services provided by the Cooperative on behalf of its members, collectively or individually. Neither this provision nor any other provision in this Agreement will create a legal duty for the Cooperative to provide a defense or prosecute a claim; rather, the Cooperative may exercise this right in its sole discretion and to the extent permitted or authorized by law. The Cooperative Member shall reasonably cooperate and supply any information necessary or helpful in such prosecution or defense. Subject to specific revocation, the Cooperative Member hereby designates the Cooperative to act as a class representative on its behalf in matters arising out of this Agreement.
8. **Governance.** The Board of Directors (Board) will govern the Cooperative in accordance with the Bylaws.
9. **Jurisdiction/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island and, to the extent permitted by law, venue for all disputes arising under this Agreement shall lie in United States District Court Eastern District of Virginia.
10. **Legal Authority.** The Cooperative Member represents and warrants to the Cooperative the following:
 - a) The Cooperative Member has conferred with legal counsel and determined it is duly authorized by the laws of the jurisdiction in which the Cooperative Member lies to participate in cooperative purchasing, and specifically, the National Purchasing Cooperative.
 - b) The Cooperative Member possesses the legal authority to enter into this Agreement and can allow this Agreement to automatically renew without subsequent action of its governing body.
 - c) Purchases made under this Agreement will satisfy all procedural procurement requirements that the Cooperative Member must meet under all applicable local policy, regulation, or state law.
 - d) All requirements—local or state—for a third party to approve, record or authorize the Agreement have been met.
11. **Disclaimer.** THE COOPERATIVE, ITS ENDORSERS AND SPONSORS, (INCLUDING, THE NATIONAL SCHOOL BOARDS ASSOCIATION, THE MARYLAND ASSOCIATION OF BOARDS OF EDUCATION, AND THE RHODE ISLAND ASSOCIATION OF SCHOOL COMMITTEES) AND SERVICING CONTRACTOR(S) (INCLUDING, THE NATIONAL SCHOOL BOARDS ASSOCIATION AND THE TEXAS ASSOCIATION OF SCHOOL BOARDS, INC.) DO NOT WARRANT THAT THE OPERATION OR USE OF COOPERATIVE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

THE COOPERATIVE, ITS ENDORSERS, SPONSORS AND SERVICING CONTRACTORS, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCT OR SERVICE FURNISHED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12. **Limitation of Liability.** Without waiver of the disclaimer or other limitation of liability in this Agreement, the parties agree that:
- (a) Neither party waives any immunity from liability afforded under law;
 - (b) In regard to any lawsuit or formal adjudication arising out of or relating to this Agreement, neither party shall be liable to the other under any circumstance for special, incidental, consequential, or exemplary damages;
 - (c) The maximum amount of damages recoverable will be limited to the amount of fees which the Cooperative received as a direct result of the Cooperative Member's purchase activity, within 12 months of when the lawsuit or action was filed; and
 - (d) In the event of a lawsuit or formal adjudication the prevailing party will be entitled to recover reasonable attorney's fees pursuant to the applicable law of the Commonwealth of Virginia.

Without waiver of the disclaimer or other limitation of liability in this Agreement, the parties further agree to limit the liability of the Cooperative's Endorsers, Sponsors and Servicing Contractors (defined in Paragraph 11, above) up to the maximum amount each received from or through the Cooperative, as a direct result of the undersigned Cooperative Member's purchase activity, within 12 months of the filing of any lawsuit or action.

13. **Limitation of Rights.** Except as otherwise expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Agreement.
14. **Merger/Entirety.** This Agreement, together with the Cooperative's Bylaws and Organizational Interlocal Agreement, represents the complete understanding of the Cooperative and Cooperative Member. To the extent there exists any conflict between the terms of this Agreement and that of prior agreements, the terms of this Agreement shall control and take precedence over all prior participation agreements.
15. **Notice.** Any written notice to the Cooperative shall be made by first class mail, postage prepaid, and delivered to the National Purchasing Cooperative, 1680 Duke Street, Alexandria, VA, 22314. Notices to Cooperative Member may be made by first class mail, postage prepaid, and delivered to the Cooperative Member's Coordinator or chief executive officer (e.g., superintendent, city manager, county judge or mayor).
16. **Severability.** If any portion of this Agreement shall be declared illegal or held unenforceable for any reason, the remaining portions shall continue in full force and effect.
17. **Signatures/Counterparts.** The failure of a party to provide an original, manually executed signature to the other party will not affect the validity, enforceability or binding effect of this Agreement because either party may rely upon a facsimile signature as if it were an original. Furthermore, this Agreement may be executed in several separate counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
18. **Warranty.** By the execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform

the terms of this Agreement.

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, accept this Agreement.

TO BE COMPLETED BY THE COOPERATIVE:

The National Purchasing Cooperative,
acting on behalf of all other Cooperative Members

By: _____
Deputy Executive Director

Date: _____

[Additional signature page follows.]

TO BE COMPLETED BY COOPERATIVE MEMBER:

[Signature required unless accepted as an Amendment by Notice as described in the Agreement.]

(Name of Local Government)

By: _____ Date: _____
Signature of authorized representative of Cooperative Member

Printed name and title of authorized representative

Coordinator for the
Cooperative Member is:

Name

Mailing Address

City

State

Zip Code

Telephone

Fax

Email

[Last page. Nothing follows.]



201 N. Carson Street, Suite 3
Carson City, Nevada 89701
(775)887-2133 [Fax] (775) 887-2107

Attn: Paul Foulger
15075 Al-jon Avenue
Ottumwa, IA 52501
866-536-7728

DATE May 23, 2012

CHECK DATE:

Carson City Public Works
3505 Burti Way
Carson City, NV 89701
775-887-2355

SHIPPING METHOD		SHIPPING TERMS		DELIVERY DATE		
QTY	UNIT	DESCRIPTION	BUDGET NUMBER	INVOICE #	UNIT COST	EXTENDED COST
1.00	ea.	2012 ADVANTAGE 500 Landfill Compactor	101-6804-441-77-75		\$ 640,050.00	\$ 640,050.00
1.00	ea.	Lincoln Data Auto Lube & Wheel Hard Face Edging	101-6804-441-77-75		9,587.00	\$ 9,587.00
					\$	-
		Equipped with: 11x7 3 compliant, 475 gross h.p. Caterpillar C15 ACERT engine, Magractor M-Blade, 11'X48'X36" wide wheels with 8" tall M-Trax Diamond weld-on cleats (128) (4			\$	-
					\$	-
		PO given to department to place order.			\$	-
		PO shall not be modified without approval from Finance Director.			\$	-
		PURCHASED BY: Ken Arnold		TOTAL	\$	649,637.00
		FED ID. NO. 88-6000189				

APPROVED FOR PURCHASE

APPROVED FOR PAYMENT



QUOTE
2012 ADVANTAGE 500 LANDFILL COMPACTOR

DATE: May 16, 2012

SELLER:

Al-jon Manufacturing LLC
15075 Al-jon Avenue
Ottumwa, IA 52501
Contact: Paul Foulger
Cell Phone: (866) 536-7728
Fax: (641) 682-6294
e-mail: pfoulger@aljon.com

PURCHASER:

City of Carson City Public Works
3303 Butti Way
Carson City, NV 89701
Contact: Allen Annett
Landfill Operations Supervisor
Phone: (775) 230-4141
e-mail: aannett@carson.org

QUANTITY DESCRIPTION

1 New **2012 ADVANTAGE 500** Landfill Compactor: **Operating weight 88,552 pounds**

Equipped with: Tier 3 compliant, 475 gross h.p. Caterpillar C15 ACERT engine, Macpactor M-Blade, 1" X 48" X 58" wide wheels with 8" tall M-Trax Diamond weld-on cleats (128) (4 rows of 8 Alternating Tooth Pattern), Joystick steering with throttle lock, heater/defroster and air conditioning, AM/FM radio with CD player and speakers, rear vision camera system with color monitor, 24VDC to 12VDC converter, Wiggins quick engine oil change system, cab-mounted strobe light, and all standard equipment.

EXTENDED WARRANTY:

Total Coverage - One (1) Year or 2,000 Hours.

Power Train – Five (5) Years or 10,000 Hours.

Caterpillar Engine – Five (5) Years or 10,000 Hours.

Wire Wrap Damage - Five (5) Years or 10,000 Hours.

M-Trax Diamond Wheel Cleat Wear Life Guarantee - NON-pro-rated Five (5) Years or 10,000 Hours.

DELIVERED PRICE	\$640,050.00
ADD: Lincoln Data Auto Lube and Wheel Hard Face Edging	<u>\$9,587.00</u>
TOTAL with listed options above:	\$649,637.00

(Includes on-site assembly, operator and maintenance training)

APPLICABLE SALES TAX ADDITIONAL

AVAILABILITY: 90-120 days ARO

PAYMENT TERMS: **NET 30 Days**

Approved:

Authorized Purchaser

Date:

TERMS AND CONDITIONS

1. **Financing:** The acceptance of this order is subject to completion of a credit investigation and the approval and acceptance of the purchaser's aforesaid conditional sales contract, security agreement or promissory note by a finance company approved by seller. If financed by other than our company, a confirmation from said company will be requested before shipment, and payment guaranteed upon delivery.
2. **Warranty:** Where the seller is not the manufacturer of the equipment described in this order, the seller makes no representation, warranties or guarantees, express or implied or statutory, whether with respect to quality, merchantability, and/or fitness for particular purposes or otherwise, which extends beyond the description of equipment, unless reduced to writing and made a part of this agreement, and in no event shall seller be liable to purchaser for anticipated profits or for incidental or consequential damages, and liability of seller hereunder, if any, shall be expressly limited to the manufacturer's warranty, or to such other warranty of seller as may be reduced to writing and made a part of this agreement.
3. **Cancellation:** Any deposits on purchase price, or proceeds thereof if sold, may be retained by seller as liquidated damages for breach of contract if purchaser fails or refuses to take goods ordered when ready for delivery.
4. **Title:** It is understood and agreed that until delivery of the equipment to purchaser the title thereto shall remain and be in the seller and shall continue in seller until full payment is made as provided herein.
5. **No Verbal Agreements:** There are no promises, verbal understandings or agreements of any kind pertaining to this agreement other than specified herein and no agent or employee of seller is authorized to make any such agreement unless specifically authorized by seller in writing.
6. **Acceptance:** This agreement shall be binding on seller only when signed and accepted by Al-jon Inc., Ottumwa, Iowa, and any dispute arising hereunder shall be governed by the Laws of the State of Iowa.
7. **Taxes:** The selling price of the item, subject of this Purchase Agreement, does not include Federal Excise Tax.. However, if under existing or future law passed by the United States, any state or municipality, Seller, in it's opinion, is required to pay or collect a tax, impost or charge on the manufacture, sale use or assembly of the items being purchased pursuant to this Purchase Order, the price to be paid by Buyer shall be increased by the amount of such tax, impost or charge. The amount of such additional tax will be paid by Buyer to Seller upon demand. To secure the payment of said tax, impost or charge, Buyer hereby grants Seller a lien on said equipment which shall continue in full force and effect until the applicable statute of limitation on the assessment of any additional Federal, State or Municipal taxes against the Seller has expired.
8. **Shipment Date:** Is a good faith estimated by Al-jon Inc., at time of quotation. Forces out of Al-jon Inc.'s control such as acts of war, force majeure, strikes, work slow downs, transportation delays or delays of any of Al-jon Inc.'s suppliers may affect shipping date. Under no circumstances shall Al-jon Inc. incur any liability to purchaser (whether or not delays are out of Al-jon Inc.'s control) as a result of a late shipment.