File No. 110933

Committee Item No. 1
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee **Date:** October 5, 2011

Board of Supervisors Meeting **Date** _____

Cmte	Board	
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OTHER **(Use back side if additional space is needed)**

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Completed by: Victor Young **Date:** September 30, 2011
Completed by: Victor Young **Date:** _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

[Contract Amendment - Western States Oil - Not to Exceed $75,580,000]

Resolution approving the Fifth Amendment to the Agreement between the City and Western States Oil increasing the total not-to-exceed amount of the contract from $50,500,000 to $75,580,000 pursuant to Charter Section 9.118(b).

WHEREAS, The Board of Supervisors approved Resolution No. 345-09 on August 11, 2009, authorizing a fuel contract for $25 million with Western States Oil for one year, with four one-year options to renew; and,

WHEREAS, The Office of Contract Administration entered into a one-year Agreement with the Contractor for $25,000,000, dated September 1, 2009 through August 31, 2010 for gasoline, biodiesel, and diesel fuels; and,

WHEREAS, The Office of Contract Administration executed the First Amendment, which did not require Board of Supervisors approval, to the contract on October 9, 2009 to add line items 228 and 324, Red Dye Diesel for the San Francisco Fire Department and the Port for "over marine waters"; and,

WHEREAS, The Office of Contract Administration executed the Second Amendment, which did not require Board of Supervisors approval, to the contract on February 3, 2010 to add line item 801, Methanol for the San Francisco PUC Oceanside Plant; and,

WHEREAS, The Board of Supervisors approved Resolution No. 368-10 on August 3, 2010 to increase the contract amount from $25,000,000 to $50,000,000; and,

WHEREAS, The Office of Contract Administration executed the Fourth

Amendment, which did not require Board of Supervisors approval, to the contract on July 1, 2011 to add $500,000 and extend the contract by one (1) year; and,

WHEREAS, The Office of Contract Administration and Contractor propose to enter into a Fifth Amendment to increase the contract's not-to-exceed amount from $50,500,000 to $75,580,000; and,

WHEREAS, The San Francisco Charter Section 9.118(b) provides that when agreements of $10 million or more are amended to increase the not-to-exceed amount by $500,000 or more, then such amendment shall be subject to approval of the Board of Supervisors by resolution; and,

WHEREAS, the Agreement and the proposed Fifth Amendment are on file with the Clerk of the Board of Supervisors in File No. 110933, which are hereby declared to be a part of this resolution as if set forth fully herein; now, therefore be it,

RESOLVED, that the Board of Supervisors approves the Fifth Amendment to the contract with Western States Oil as described above; and be it

FURTHER RESOLVED, that the Board of Supervisors authorizes the Office of Contract Administration to increase the contract amount from $50,500,000 to $75,580,000.

Item 1 File 11-0933	Department(s): Office of Contract Administration (OCA)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would authorize the City and County of San Francisco, through the Office of Contract Administration (OCA), to execute the Fifth Amendment to the existing agreement with Western States Oil to increase the not-to-exceed amount by $25,080,000, from the existing not-to-exceed amount of $50,500,000 to the proposed not-to-exceed amount of $75,580,000. The $25,080,000 would be expended during the second one-year option period under the existing agreement from September 1, 2011 through August 31, 2012.

Key Points

- The existing agreement between OCA and Western States Oil, under which Western States Oil provides gasoline, diesel, and biodiesel fuels to the City for over 6,000 vehicles and over 700 pieces of equipment, including generators, used by various City departments, had an original term of one year from September 1, 2009 through August 31, 2010 with four one-year options to extend, through August 31, 2014.

- On July 1, 2011, OCA executed the Fourth Amendment to the existing agreement, which was not subject to Board of Supervisors approval. The Fourth Amendment exercised the second option under the existing agreement to extend the agreement by one year from September 1, 2011 through August 31, 2012 and to increase the not-to-exceed amount by $500,000 from $50,000,000 to $50,500,000 to allow Departments to encumber funding to cover monthly invoices until OCA could request the additional amount of the total funding needed for the second option.

Fiscal Impact

- The funding source for the proposed Fifth Amendment are monies previously appropriated by the Board of Supervisors in the City Departments' FY 2011-2012 budgets for purchasing fuel including the Municipal Transportation Agency, the Public Utilities Commission, the Airport, the Police Department, the Fire Department, the Sheriff Department, the Port, the Department of Public Works, the Recreation and Park Department, and the City's Central Shops.

- The Budget and Legislative Analyst estimates that the needed amount under the proposed Fifth Amendment to the existing agreement for the second one-year option period from September 1, 2011 through August 31, 2012 is $27,800,000, including a $171,392 contingency amount. The estimated need of $27,800,000 is $2,720,000 more than the requested not to exceed amount of $25,080,000 under the proposed resolution. Therefore, the total not-to-exceed amount should be increased to $78,300,000.

Recommendations

- Amend the proposed resolution to increase the requested increased amount by $2,720,000 from $25,080,000 to $27,800,000 and increase the total requested not-to-exceed amount of $75,580,000 by $2,720,000 to a total not to exceed amount of $78,300,000.

- Approve the proposed resolution as amended.

MANDATE STATEMENT/ BACKGROUND

Mandate Statement

In accordance with Charter Section 9.118(b), City agreements with anticipated expenditures of $10,000,000, or more or amendments to such City agreements with anticipated expenditures of more than $500,000 are subject to approval by the Board of Supervisors.

Award of Existing Agreement to Western States Oil

On March 27, 2009, the Office of Contract Administration (OCA) issued an Invitation to Bid for a new agreement to provide the City and County of San Francisco with gasoline, diesel and biodiesel fuel for over 6,000 vehicles and over 700 pieces of equipment, including generators, used by various City Departments including the Municipal Transportation Agency, the Public Utilities Commission, the Fire Department, the Department of Public Works, the Recreation and Park Department, and the City's Central Shops, which handles all other Department vehicle needs including the Police Department and Airport.

OCA received four bids and awarded the City's primary fuel provider[1] agreement to Western States Oil on August 26, 2009 as the lowest bidder, based on fixed prices expressed as a markup or markdown from the daily price per gallon published by the industry group, known as the Oil Price Information Services (OPIS).[2] The bid prices are fixed for the entire term of the agreement, including options to extend, and include all overhead and/or delivery of fuel costs. OCA multiplied each bidder's markdown or markup price per gallon for each type of fuel by the City's estimated number of gallons needed per year, resulting in the total bid price.

The existing agreement between the OCA and Western States Oil, which was previously approved by the Board of Supervisors on August 11, 2009 (Resolution No. 345-09), was for one year, from September 1, 2009 through August 31, 2010, and included four one-year options to extend or through August 31, 2014, for a not-to-exceed annual amount of $25,000,000. The not-to-exceed annual amount of $25,000,000 (a) assumed an average annual consumption of 9,052,000 total gallons of fuel, or an average price of $2.76 per gallon, and (b) was consistent with the City's average actual expenditures on gasoline and diesel fuel in the two fiscal years preceding the existing agreement commencement date of September 1, 2009. The City expended $24,416,512 on gasoline and diesel fuel in FY 2007-2008 and $25,431,930 in FY 2008-2009.

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[1] In addition to the City's primary vendor, the Invitation to Bid requested secondary and tertiary fuel vendors, as back-up fuel vendors in case of emergency or in case the primary vendor was not able to satisfactorily perform. Under the existing agreement, Western States Oil, as the primary vendor, receives 100 percent of the City's business for the various types of fuel. If the primary vendor cannot perform in whole or in part the responsibilities under the existing agreement, then the City's secondary fuel vendor, Nella Oil Company, LLC, would receive business from the City on an as-needed basis. The same process would apply to the tertiary fuel vendor, Golden Gate Petroleum. These secondary and tertiary fuel vendors entered into separate agreements with OCA which were not subject to approval by the Board of Supervisors.

[2] The OPIS purchase price is a standard market purchase price for a particular fuel and is not controlled by the City or the fuel distribution vendor. While the markup or markdown price will remain fixed, the OPIS price per gallon fluctuates daily. Therefore, the actual price that the City pays for fuel fluctuates throughout the term of the agreement.

First Two Amendments to the Existing Agreement

On October 9, 2009, OCA executed the First Amendment to the existing agreement to add Red Dye Diesel[3] for use by the San Francisco Fire Department and the Port for "over marine waters". On February 12, 2010, OCA executed the Second Amendment to the existing agreement to add, Methanol[4] for the San Francisco Public Utilities Commission's (PUC) Oceanside Plant. In accordance with Charter Sections 9.118(b) and (c), because the First and Second Amendments had no impact on the length or cost of the existing agreement with Western States Oil, the first two Amendments were not subject to Board of Supervisors approval.

Two of the Four One-Year Options to Extend the Existing Agreement Have Been Exercised

On August 3, 2010 the Board of Supervisors approved the Third Amendment to the existing agreement, which exercised the first option to extend the agreement by one year from September 1, 2010 through August 31, 2011 and increased the not-to-exceed amount of the existing agreement by $25,000,000 from a not-to-exceed $25,000,000 to a not-to-exceed $50,000,000.

On July 1, 2011, OCA executed the Fourth Amendment to the existing agreement which exercised the second option to extend the agreement by one year from September 1, 2011 through August 31, 2012 and increased the not-to-exceed amount by $500,000 from $50,000,000 to $50,500,000 to allow Departments to encumber funding to cover monthly invoices until OCA could request the total additional amount of funding needed for the second option. In accordance with Charter Section 9.118(b) and (c), because the Fourth Amendment did not result in expenditures in excess of $500,000 and did not extend the existing agreement by more than ten years, it was not subject to Board of Supervisors approval.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the City and County of San Francisco, through the Office of Contract Administration (OCA), to execute the Fifth Amendment to the existing agreement with Western States Oil to increase the not-to-exceed amount by $25,080,000, from a not-to-exceed amount of $50,500,000 to a not-to-exceed amount of $75,580,000. The $25,080,000 would be expended during the second one-year option under the existing agreement from September 1, 2011 through August 31, 2012.

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[3] Red Dye Diesel is a diesel fuel with red pigment added that can only be used in non-road driven vehicles and equipment, such as lawn mowers and generators. According to Ms. Jennifer Browne, Assistant Director of OCA, because Red Dye Diesel cannot be used on roads, it is not taxed as heavily and therefore the City realizes a significant savings over regular diesel fuel.

[4] Methanol is a colorless, toxic, flammable liquid used as an antifreeze, a general solvent, a fuel, and a denaturant (a substance which changes by chemical or physical means, such as the action of acid or heat, to cause loss of solubility, biological activity, etc) for ethyl alcohol. Methanol may be used to produce biodiesel.

FISCAL IMPACTS

According to Ms. Jennifer Browne, Assistant Director of OCA, and as shown in Table 1 below, the City expended $23,023,840 under the existing agreement with Western States Oil for the ten-month period from September 1, 2010 through June 30, 2011 under the first one-year option of the existing agreement, which expired on August 31, 2011.

Table 1: Fuel Costs Under the Existing Agreement with Western States Oil September 1, 2010 through June 30, 2011

Fuel Type	Amount (in gallons)	Average Cost per gallon*	Total Cost (without Sales Tax)	Total Cost (with 9.5% Sales Tax)
B20 Biodiesel	3,203,296	$3.70	$11,852,195	$12,978,154
Diesel #2	1,374,635	3.14	4,316,353	4,726,407
B5 Biodiesel	948,427	3.76	3,566,087	3,904,865
Regular Gasoline	273,942	3.01	824,565	902,899
Premium Gasoline	34,877	3.41	118,930	130,228
Gasoline with Ethanol	31,443	3.11	97,788	107,078
Methanol	1,472	3.00	4,416	4,836
Biodiesel Additives	1,116	89.98	100,410	109,949
Surcharges**			145,594	159,425
Total	**5,869,208**		**$21,026,338**	**$23,023,840**

*Due to the fluctuation in prices, the cost per gallon listed by fuel type was calculated by averaging fuel prices paid from September 1, 2010 through June 30, 2011.

** Surcharges are the other taxes applied to Fuel Purchases such as Federal Leaking Underground Storage Tank Tax, Excise Taxes, Oil Spill Liability Taxes, AB 32 Fees, and Childhood Lead Poisoning Taxes.

OCA has not yet received data on fuel purchased in July and August of 2011, the last two months of the first one year option under the existing agreement from September 1, 2010 through August 31, 2011. According to Ms. Browne, that information will not be available until mid-October, 2011 at the earliest, depending on when individual City Departments make payments and enter these fuel transactions into the City's central data system maintained by the Controller's Office. Ms. Browne advises that based on the data for the first ten months of the existing agreement under the first one-year option which expired on August 31, 2011, the projected average cost for the last two months of the first one-year option period, from July 1, 2011 through August 31, 2011, will be approximately $4,604,768, including Sales Tax.[5] Therefore, the total estimated cost during the first one-year option to extend the existing agreement, from September 1, 2010 through August 31, 2011 is $27,628,608 ($23,023,840 (See Table 1 above) plus $4,604,768).

Proposed Not-to-Exceed Amount is Insufficient to Pay $27,628,608 in Projected Fuel Costs

Based on inquiries by the Budget and Legislative Analyst, as shown in Table 2 below, the Budget and Legislative Analyst estimates that the total not-to-exceed amount for the second one-

[5] This amount reflects the total expenditures on the agreement from September 1, 2010 through June 30, 2011 equal to $23,023,840 divided by ten months and multiplied by two months: $23,023,840/10 = $2,302,384/ month., $2,302,384 x 2 = $4,604,768 for July and August 2011.

year option period under the existing agreement from September 1, 2011 through August 31, 2012 should be increased by $27,800,000, or $2,720,000 more than the requested not-to-exceed increased amount of $25,080,000 as requested under the proposed resolution. This would result in a total not-to-exceed needed amount of $78,300,000 instead of the requested total amount of $75,580,000 under the proposed resolution.

Table 2: Total Estimated Amount Needed For the Second One-Year Option Exercised Under the Existing Agreement From September 1, 2011 through August 31, 2012

	Amount of Increase Requested Under Proposed Resolution Based on Spending From July 1, 2010 through June 30, 2011	Amount of Increase Recommended Based on Spending From September 1, 2010 through August 31, 2011	Difference
Projected Fuel Costs	$24,640,331	$27,628,608	$2,988,277
Proposed Contingency	500,000	171,392	328,608
Total Currently Estimated Not-to-Exceed Amount of Increased Amount Needed	**25,080,000***	**27,800,000**	**$2,720,000**

* - Ms. Browne advises that OCA rounded the not-to-exceed amount increase to the nearest thousand, resulting in a request for an increase of $25,080,000 rather than $25,080,331.

Ms. Browne advises that the currently estimated increased need is primarily based on two factors: (1) the original projections to determine the not-to-exceed amount of $25,080,000 were based on fuel expenditures from July 1, 2010 through June 30, 2011, rather than fuel expenditures made during the second year of the existing agreement, from September 1, 2010 through August 31, 2011, which includes several recent months of higher fuel costs, and (2) the original projections mistakenly omitted fuel costs for the month of September, 2011.

As noted above, the existing agreement has a total not-to-exceed authorized amount of $50,500,000. According to Ms. Browne, the entire $50,500,000 has been expended or encumbered by Departments to date.

According to Ms. Browne, the funding source for the proposed Fifth Amendment are monies included in the City Departments' FY 2010-2011 budgets for purchasing fuel including the Municipal Transportation Agency, the Public Utilities Commission, the Airport, the Police Department, the Fire Department, the Sheriff Department, the Port, the Department of Public Works, the Recreation and Park Department, and the City's Central Shops.

POLICY CONSIDERATIONS

If the cost of fuel continues to increase as OCA believes it will, it becomes increasingly important that City Departments work to decrease their fuel consumption and/or move to more efficient or less expensive fuels. According to Ms. Browne, prices on all fuel types have increased in recent months. However, the City has a number of initiatives aimed at fuel conservation in place, including Car Share, Fleet Reduction, installation of Electric Vehicle Charging Stations and Term Contracts designed to encourage purchases of Fuel Efficient and Hybrid Vehicles. Additionally, the Healthy Air & Clean Transportation Ordinance encourages

City Departments with responsibility for fleet vehicles to use public transportation whenever possible, to reduce fleet size and to trade in older, less fuel efficient vehicles.

RECOMMENDATIONS

1. Amend the proposed resolution to increase the requested increased amount by $2,720,000 from $25,080,000 to $27,800,000 and increase the total requested not-to-exceed amount of $75,580,000 by $2,720,000 to a total not to exceed amount of $78,300,000.

2. Approve the proposed resolution, as amended.

City and County of San Francisco
Office of Contract Administration
Purchasing Department
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

Contract Modification 5

Fuel, Diesel, Biodiesel, and Gas (Primary)

Western States Oil
Attn: Bob Brown
P.O. Box 1307
San Jose, CA 95107

Date	May 10, 2011
Buyer Name:	Horace Carter
Term contract	70882
City Blanket No:	BPSF00003605
Type:	Indefinite quantity
Not-to-exceed amount:	$75,580,000

The history of this contract and its modifications is as follows:

Modification	Start date	End date	Amount	Other changes
Original contract	09/01/09	08/31/10	$25,000,000	
1	No Change	No Change	No Change	Add Items 228 and 324
2	No Change	No Change	No Change	Add Item 801, and special conditions pertaining to Item 801 (methanol)
3	09/01/10	08/31/11	$25,000,000	Increase NTE/Extend one year/ Update Bid and Contract Conditions 24 & 29 Add Locations/Add Line Items 324-327
4	09/01/11	08/31/12	$50,500,000	Increase NTE/Extend Term Add Electronic Payment;
5			$75,580,000	Increase NTE Amount

This modification 4 changes the contract as follows:

- Increases the not-to-exceed amount from $50,500,000 to $75,580,000

All other terms and conditions remain the same.

Approved by the City: _____ _____
Jaci Fong, Acting Director of OCA and Purchaser — Date

Approved by Contractor: _____ _____
Signature — Date

Name and title _____

Sign and return one original. The duplicate original is for your files.

City and County of San Francisco
Office of Contract Administration
Purchasing Department
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

Contract Modification 4

Fuel, Diesel, Biodiesel, and Gas (Primary)

Western States Oil
Attn: Bob Brown
P.O. Box 1307
San Jose, CA 95107

Date	May 10, 2011
Buyer Name:	Horace Carter
Term contract	70882
City Blanket No:	BPSF00003605
Type:	Indefinite quantity
Not-to-exceed amount:	$50,500,000

The history of this contract and its modifications is as follows:

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3	09/01/10	08/31/11	$25,000,000	Increase NTE/Extend one year/ Update Bid and Contract Conditions 24 & 29 Add Locations/Add Line Items 324-327
4	09/01/11	08/31/12	$50,500,000	Increase NTE/Extend Term Add Electronic Payment;

This modification 4 changes the contract as follows:

- Increases the not-to-exceed amount from $50,000,000 to $50,500,000
- Extends contract for one year from 09/01/11 through 08/31/12
- Add Electronic Payment Section. (See Attachment "A")

All other terms and conditions remain the same.

Approved by the City: _____ _____
Jaci Fong, Acting Director of OCA and Purchaser — Date

Approved by Contractor: _____ _____
Signature — Date

Name and title _____

Sign and return one original. The duplicate original is for your files.

File No. 110933

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information *(Please print clearly.)*	
Name of contractor: Western States Oil	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. ***Use additional pages as necessary.*** Thomas A. Lopes – Chairman of the Board Stephen T. Lopes – CEO/CFO Jeffrey M. Lopes – COO The corporate ownership is 50% Stephen T. Lopes and 50% Jeffrey M. Lopes None of the directors control or sponsor any political committee There is no sub-contractor listed on the bid	
Contractor address: 1790 South Tenth Street, San Jose, CA 95112	
Date that contract was approved: *(By the SF Board of Supervisors)*	Amount of contract: $75,580,000
Describe the nature of the contract that was approved: For furnishing and delivering Fuel, Diesel, Biodiesel and Gas	
Comments: File #090916, Res #345-09 was approved 8/20/09 for $25million. The first contract amount increase was for $25million, approved by the Board on 09/01/10. The second contract amount increase for $500,000 was administratively approved by Purchasing on 5/13/11. The third contract amount increase for $25.08 million is currently pending Board approval.	

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

_____
Print Name of Board

Filer Information *(Please print clearly.)*	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

_____ _____
Signature of City Elective Officer (if submitted by City elective officer) Date Signed

_____ _____
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CONTRACT ADMINISTRATION
PURCHASING DIVISION

70882

AWARD

Fuel, Diesel, Biodiesel, Gas and Propane
For the Term September 1, 2009 Through August 31, 2010

BID AND CONTRACT CONDITIONS

Terms Related To Bidding

1. When Bids Are Due; Bid Opening Procedures

Bids must be delivered before time set for bid opening. Bids will be opened by Purchasing at the hour and place stated in the ad in the presence of bidders who attend, and bid prices will be read upon request as time permits. Bidders may inspect the bids after award.

2. Alternates

When the name of a manufacturer, brand or make, with or without model number, is used in describing any item in this document, bids for similar articles will be considered unless otherwise stated. Purchasing shall be the sole judge as to whether such alternate articles are acceptable. Unless bidder states to the contrary, articles offered will be assumed to be the specific articles named in this document. If not offering the specific article named, bidder should enclose with its bid full information, specifications and descriptive data on items offered. Purchasing reserves the right to permit deviations from the specifications if any article offered is substantially in accord with Purchasing's specifications and is deemed by Purchasing to be of as good quality and as fully satisfactory for its intended use, Bidder is responsible for identifying any deviations from Purchasing's specifications.

3. Articles Furnished

Articles and services must comply with applicable laws, ordinances and other legal requirements, including (among others) the Cal-OSHA regulations in Title 8 of the Code of Regulations and, for electrical products, Sections 110.2 and 110.3 (B) of the S.F. Electrical Code. In addition, if an electrical item has not been tested by a lab approved by City's Department of Building Inspection (DBI) or Department of Public Works (DPW), Contractor shall notify the requesting department before delivery by writing the department at the "Deliver to" address on the front of the Purchase Order. Approved testing labs are posted on Purchasing's website at http://www.sfgov.org/oca/. When a non-tested item is delivered, the department will request approval from DPW. If the department is unable to obtain approval, City reserves the right to cancel the transaction and return the item to Contractor, at no charge to City.

4. Place of Manufacture

No article furnished shall have been made in prison or by convict labor, except, for articles purchased for use by City's detention facilities.

5. Condition of Article

Articles offered and furnished must be new and previously unused, and of manufacturer's latest model, unless otherwise specified herein.

** Complete copy of document is located in

File No. 110933