



## City Council Meeting - Final

November 20, 2023  
7:00 PM

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- C. **CON2023-013** Approval of an Independent Contractor Service Delivery Strategy Agreement with the Cities of Marietta, Smyrna, Powder Springs, Austell, Kennesaw and Acworth (collectively, the "Cities") and Balli Law, LLC (800 Battery Avenue, Suite 100, Atlanta, Georgia 30339) effective November 1, 2023 and authorize the Mayor to sign and execute all related documents.



# City of Smyrna

## Issue Sheet

A Max Bacon  
City Hall  
2800 King Street  
Smyrna, GA 30080

File Number: CON2023-013

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**Agenda Date:** 11/20/2023

**In Control:** City Council

**File Type:** Contract

**Agenda Section:**

Formal Business

**Agenda Number:** C.

**Department:** Administration

**Agenda Title:**

Approval of an Independent Contractor Service Delivery Strategy Agreement with the Cities of Marietta, Smyrna, Powder Springs, Austell Kennesaw and Acworth (collectively, the "Cities") and Balli Law, LLC (800 Battery Avenue, Suite 100, Atlanta, Georgia 30339) effective November 1, 2023 and authorize the Mayor to sign and execute all related documents.

***Citywide***

**ISSUE AND BACKGROUND:**

BALLI LAW has extensive experience in the field of government consulting services; with significant past experience and involvement with previously adopted Service Delivery Strategy Agreements by the COUNTY and the CITIES

**RECOMMENDATION / REQUESTED ACTION:**

Staff recommends the approval of an Independent Contractor Service Delivery Strategy Agreement with the Cities of Marietta, Smyrna, Powder Springs, Austell Kennesaw and Acworth (collectively, the "Cities") and Balli Law, LLC (800 Battery Avenue, Suite 100, Atlanta, Georgia 30339) effective November 1, 2023 and authorize the Mayor to sign and execute all related documents.

## **INDEPENDENT CONTRACTOR** **AGREEMENT**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2023 between COBB COUNTY, GEORGIA (“County”) and THE CITIES OF MARIETTA, SMYRNA, POWDER SPRINGS, AUSTELL, KENNESAW AND ACWORTH (collectively, the “Cities”) and BALLI LAW, LLC, a Georgia limited liability corporation (hereinafter “BALLI LAW”).

**Whereas**, the COUNTY and the CITIES are required to develop and adopt a Service Delivery Strategy Agreement in accordance with O.C.G.A. §§ 36-70-20 through 36-70-28.

**Whereas**, BALLI LAW has extensive experience in the field of government consulting services; with significant past experience and involvement with previously adopted Service Delivery Strategy Agreements by the COUNTY and the CITIES.

**Whereas**, the COUNTY and the CITIES and BALLI LAW wish to finalize the terms and conditions of BALLI LAW’s analysis of services, the associated financial arrangements, and subsequent negotiations to finalize an updated Service Delivery Strategy in accordance with the findings and constitutional and statutory options.

**Now, therefore**, for Ten (\$10) Dollars and other good and valuable consideration, including the covenants herein contained and the monies to be paid hereunder, the parties agree as follows:

**1. Services to be performed by BALLI LAW:**

- a) BALLI LAW will use its best efforts to provide its professional services in the area of intergovernmental consulting matters on behalf of the COUNTY and the CITIES (hereinafter, the “Services”).
- b) The Services shall include those itemized in Exhibit “A.”
- c) The Services will be performed in a professional and workmanlike manner.
- d) James Balli and Rob Hosack are considered to be essential to the successful delivery of the Services and will perform the Services on behalf of BALLI LAW.
- e) Disclaimer: Nothing in this Agreement shall be construed to express or imply that BALLI LAW is providing any professional services other than those expressly stated herein.<sup>1</sup>

**2. Compensation and Expenses:**

- a) The COUNTY and the CITIES agrees to pay BALLI LAW \$10,000.00 monthly (\$5,000 from Cobb County and \$5,000 from the collective cities<sup>2</sup>), such payment to be remitted on the 1st of day of every month. Increases in the monthly fee, if any, to be paid under this Agreement shall be in writing, approved by all Parties, and signed by all Parties and shall constitute an Amendment to this Agreement.
- b) The COUNTY and the CITIES shall reimburse BALLI LAW for all out-of-pocket

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<sup>1</sup> BALLI LAW is being retained as consultants, not attorneys at law. If services of a legal professional are needed, BALLI LAW will coordinate such services with the COUNTY and the CITIES.

<sup>2</sup> Each City’s portion of the \$5,000.00 City total is as follows: Acworth - \$557.39; Austell - \$197.57; Kennesaw - \$839.54; Marietta - \$1,566.44; Powder Springs - \$433.81; and Smyrna – \$1,405.24.

expenses not exceeding \$200.00 per month incurred in connection with the performance of the Services as detailed on the attached Exhibit B. BALLI LAW shall keep accurate and complete expense reports showing all costs and expenses incurred, including original receipts and/or other appropriate documentation acceptable to the COUNTY and the CITIES. BALLI LAW shall seek and obtain pre-authorization from the COUNTY and the CITIES for any out-of-pocket expense exceeding \$200.00 per month. Any out-of-pocket expense incurred by BALLI LAW that is over \$200.00 per month and that is not pre-authorized by the COUNTY and the CITIES may or may not be reimbursed at the discretion of the COUNTY and the CITIES.

3. **Effective Date and Term:** The effective date of this Agreement is November 1, 2023. The term of this Agreement shall be for up to ten months, renewable on a month-to-month basis, upon the written agreement of the Parties. This Agreement may be terminated by the COUNTY and the CITIES for any reason upon thirty (30) days prior written notice to BALLI LAW. This Agreement may also be terminated by BALLI LAW for any reason upon thirty (30) days prior written notice to the COUNTY and the CITIES. In the event of termination by the COUNTY and CITIES, the COUNTY and the CITIES's sole obligation shall be limited to the payment of BALLI LAW for Services rendered through the termination date and all pre-approved expenses and actual expenses incurred by BALLI LAW as of the date of termination. In the event of termination by BALLI LAW, any Materials remaining in the hands of BALLI LAW shall be delivered immediately to the COUNTY and the CITIES.
4. **Independent Contractor:** BALLI LAW agrees and acknowledges that the services hereunder are performed on an independent contractor basis, and that none of BALLI LAW's employees are employees of the COUNTY or the CITIES for any purpose, including, but not limited to, for purposes of Federal, state, or local tax or other laws. No BALLI LAW representative shall hold himself out to be an employee of the COUNTY or the CITIES. BALLI LAW agrees that as an independent contractor, compensation paid hereunder is not subject to withholdings for social security or Federal, state or local income taxes, and BALLI LAW expressly acknowledges full responsibility for reporting of all said compensation and payment of all applicable taxes, including self-employment taxes, arising therefrom. BALLI LAW acknowledges and agrees that where workers compensation coverage is applicable to services performed hereunder, it shall be BALLI LAW's responsibility to provide such coverage. BALLI LAW acknowledges and agrees that BALLI LAW is in no way entitled to participate in any employee benefit plans or programs of the COUNTY or the CITIES. The COUNTY and the CITIES agrees that neither the COUNTY nor the CITIES, nor their agents or representatives, shall have any right to control or direct the details, manners or means by which BALLI LAW accomplishes the results of the BALLI LAW's services as set forth in this Agreement. BALLI LAW shall perform the services under this Agreement at any place of BALLI LAW's choosing and BALLI LAW shall have no obligation to work any particular hours or any particular number of hours during any period of time, to the extent permitted by the nature of the services to be rendered. BALLI LAW has no authority to act, to enter into any contract or to incur any liability on behalf of the COUNTY or the CITIES.

5. **Compliance with Laws.** BALLI LAW agrees that in carrying out its duties and responsibilities under this Agreement, it will neither undertake nor cause, nor permit to be undertaken, any activity which either, (i) is illegal under any laws, decrees, rules, or regulations in effect in any country, or (ii) would have the effect of causing the COUNTY or the CITIES to be in violation of any laws, decrees, rules or regulations in effect in any country.
6. **Communications Strategy.** BALLI LAW and the COUNTY and the CITIES may establish weekly status meetings (virtual or in person) or telephone conferences to discuss the status of potential agreements and developments related to an updated Service Delivery Strategy between the Parties.
7. **Insurance.** BALLI LAW shall procure and maintain in full force and effect for the duration of this Agreement, insurance protecting against claims for injuries to persons or damages to property which may arise from or in connection with performance of the Services hereunder by BALLI LAW, its agents, representatives, or employees. The limits of insurance shall be a minimum of \$1,000,000 in professional liability coverage and \$1,000,000 per occurrence with a \$2,000,000 aggregate. In the event Worker's Compensation coverage is required by law, BALLI LAW shall obtain a minimum of \$1,000,000 per occurrence. Certificates of insurance shall be furnished to the COUNTY and the CITIES prior to execution of this agreement.
8. **Notice:** Notice required or permitted to be given by a Party pursuant to this Agreement must be given in writing and personally delivered, mailed by certified mail, return receipt requested, or sent via email (with written confirmation of receipt) to the other party at the address set forth below such party's signature of this Agreement or at such other address as such party will designate by written notice given in accordance with this Agreement. Any notice complying with this paragraph shall be deemed received upon actual receipt by the addressee. Notice under this Agreement shall be to the following addresses:

Notice to BALLI LAW:

Rob Hosack, Director of Governmental Relations  
Balli Law, LLC  
800 Battery Avenue, Suite 100  
Atlanta, Georgia 30339  
[rhosack@balli-law.com](mailto:rhosack@balli-law.com)

James Balli, Managing Partner/Lobbyist  
Balli Law, LLC  
800 Battery Avenue, Suite 100  
Atlanta, Georgia 30339  
[jballi@balli-law.com](mailto:jballi@balli-law.com)

Notice to the COUNTY:

Dr. Jackie McMorris  
Cobb County Manager  
100 Cherokee Street, Suite 300  
Marietta, Georgia 30060  
[jackie.mcmorris@cobbcounty.org](mailto:jackie.mcmorris@cobbcounty.org)

Notice to the City of Marietta:

Bill Bruton, Jr.  
205 Lawrence Street  
Marietta, Georgia 30060  
[bbruton@mariettaga.gov](mailto:bbruton@mariettaga.gov)

Notice to the City of Smyrna:

Joe Bennett  
2800 King Street  
Smyrna, Georgia 30080  
[jbennett@smyrnaga.gov](mailto:jbennett@smyrnaga.gov)

Notice to the City of Powder Springs:

Pam Connor  
4426 Marietta Street  
Powder Springs, Georgia 30127  
[pconner@cityofpowdersprings.org](mailto:pconner@cityofpowdersprings.org)

Notice to the City of Austell:

Mayor Ollie Clemons Jr.  
2716 Broad Street SW  
Austell, Georgia 30126  
[oclemons@austellga.gov](mailto:oclemons@austellga.gov)

Notice to the City of Kennesaw:

Jeff Drobney  
2529 J.O. Stephenson Avenue  
Kennesaw, Georgia 30144  
[jdrobney@kennesaw-ga.gov](mailto:jdrobney@kennesaw-ga.gov)

Notice to the City of Acworth:

James Albright  
4415 Center Street  
Acworth, Georgia 30101  
[jalbright@acworth.org](mailto:jalbright@acworth.org)

9. **Assignability:** The parties agree that this Agreement is binding on all Parties and their successors in interest. The rights, duties, and interests of the Parties under this

Agreement shall not be assignable without the written consent of the other Party.

10. **Law:** This Agreement shall be interpreted and/or construed under the laws of the State of Georgia.
11. **Amendment:** This Agreement may be amended or revised only in writing and signed by all Parties.
12. **Waiver or Breach:** The waiver by either party of a breach or any violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions hereof.
13. **Severability:** In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement which shall remain in full force and effect and enforceable in accordance with its terms.
14. **Indemnification:** BALLI LAW covenants and agrees to take and assume all responsibility for the Services rendered in connection with this Agreement. BALLI LAW shall bear all losses and damages directly or indirectly resulting to it and/or the COUNTY and the CITIES on account of the performance or character of the Services rendered pursuant to this Agreement. To the fullest extent permitted by law, BALLI LAW shall defend, indemnify and hold harmless the COUNTY and the CITIES and the COUNTY and the CITIES' elected and appointed officials, officers, boards, commissions, employees, representatives, servants, agents, attorneys and volunteers (individually an "Indemnified Party" and collectively "Indemnified Parties") from and against any and all claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability of any kind whatsoever, including but not limited to attorney's fees and costs of defense ("Liabilities"), which may arise from or be the result of alleged willful, negligent or tortious conduct arising out of the Services, performance of contracted services, or operations by BALLI LAW, anyone directly or indirectly employed by BALLI LAW or anyone for whose acts BALLI LAW may be liable, regardless of whether or not the negligent act is caused in part by a party indemnified hereunder. This indemnity obligation does not include Liabilities caused by or resulting from the sole negligence of an Indemnified Party. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision.

In any and all claims against an Indemnified Party, by any employee of BALLI LAW, anyone directly or indirectly employed by BALLI LAW or anyone for whose acts BALLI LAW may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for BALLI LAW under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. This obligation to indemnify, defend, and hold harmless the Indemnified Party(ies) shall survive expiration or termination of this Agreement, provided that the claims are based upon or

arise out of actions or omissions that occurred during the performance of this Agreement.

- 15. Intellectual Property Indemnification:** BALLI LAW shall hold Indemnified Parties harmless from liability of any nature or kind for use of any intellectual property, copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of this Agreement, for which BALLI LAW is not the patentee, assignee or licensee. This indemnification provision shall supersede any infringement indemnification provision set forth in BALLI LAW's standard form contract, including exhibits, attachments, and appendices thereto. No limitation of liability provision included in the Agreement shall apply to BALLI LAW's indemnification obligations under this section. The provisions of this paragraph shall survive expiration or termination of the Agreement.

If an Infringement Claim occurs, BALLI LAW shall at its expense: (a) procure the right for the COUNTY and the CITIES to continue using the Infringing Product; (b) replace or modify the Infringing Product so that it becomes non-infringing; or (c) grant the COUNTY and the CITIES (i) pro-rated refund of any amounts pre-paid for the Infringing Product (if the Infringing Product is a licensed software or subscription software) or a credit for the infringing Product, less a reasonable charge for depreciation (if the Infringing Product is equipment, including equipment with embedded software).

- 16. Time is of the Essence:** The Parties acknowledge and agree that time is of the essence for the completion of these services.

- 17. Ownership:** All reports, designs, drawings, plans, specifications, schedules, work product, and other materials, including those in electronic form, prepared or in the process of being prepared for the Services to be performed by BALLI LAW ("Materials") shall be the property of the COUNTY and the CITIES, and the COUNTY and the CITIES shall be entitled to full access and copies of all such Materials in the form prescribed by the COUNTY and the CITIES. Any such Materials remaining in the hands of BALLI LAW upon completion or termination of the Services shall be delivered immediately to the COUNTY and the CITIES; provided that BALLI LAW may retain a copy of any deliverables for its records. BALLI LAW assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the COUNTY and the CITIES, BALLI LAW shall replace them at its own expense. Any and all copyrightable subject matter in all Materials is hereby assigned to the COUNTY and the CITIES, and BALLI LAW agrees to execute any additional documents that may be necessary to evidence such assignment.

- 18. Georgia Security and Immigration Compliance Act:**

The Parties agree that compliance with the requirements of O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 of the Rules of the Georgia Department of Labor are conditions of this Agreement for the physical performance of services.

Physical Performance of Services includes any performance of labor or services for a public employer using a bidding process or by contract wherein the labor or services exceed



\$2,499.99.

BALLI LAW further agrees and represents that its compliance with the requirements of O.C.G.A. §13-10-91 and DOL Rule 300-10-1-.02 is attested to on the executed **Exhibit “C-1” Contractor Affidavit and Agreement**, included herein by reference.

BALLI LAW further agrees and represents that:

- a) BALLI LAW shall fully comply with the requirements for completing **Exhibit “C-2” Immigration Compliance Certification** and that such certification shall be received by the COUNTY and the CITIES prior to the commencement of any Services under this Agreement;
- b) The COUNTY and the CITIES reserve the right to dismiss, or require the dismissal of, any contractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);
- c) Failure to comply with any of the requirements and procedures of the COUNTY and the CITIES (i.e., failure to timely supply required affidavits or compliance certification documents; failure to utilize federal work authorization procedures; failure to permit or facilitate audits or reviews of records by county or state officials upon request; and/or failure to continue to meet any of the statutory or county obligations during the life of the contract) shall constitute a material breach of the Agreement and shall entitle the COUNTY and the CITIES to dismiss any independent contractor for failing to fully comply with these requirements;
- d) Upon notice of a material breach of these provisions, BALLI LAW shall be entitled to cure the breach within ten (10) days and provide evidence of such cure. Should the breach not be cured, the COUNTY and the CITIES shall be entitled to all available remedies, including termination of the Contract, and any and all damages permissible by law.

IN WITNESS WHEREOF, the parties have executed this Agreement with legal authority to do so:

The COUNTY  
100 Cherokee Street, Suite 300  
Marietta, Georgia 30060

By: \_\_\_\_\_  
Dr. Jackie McMorris, County Manager

Date: \_\_\_\_\_

City of Marietta  
205 Lawrence Street  
Marietta, Georgia 30060

By: \_\_\_\_\_

Date: \_\_\_\_\_

City of Smyrna  
2800 King Street  
Smyrna, Georgia 30080

By: \_\_\_\_\_

Date: \_\_\_\_\_

City of Powder Springs  
4426 Marietta Street  
Powder Springs, Georgia 30127

By: \_\_\_\_\_

Date: \_\_\_\_\_

City of Austell  
2716 Broad Street SW  
Austell, Georgia 30126

By: \_\_\_\_\_

Date: \_\_\_\_\_

City of Kennesaw  
2529 J.O. Stephenson Avenue  
Kennesaw, Georgia 30144

By: \_\_\_\_\_

Date: \_\_\_\_\_

City of Acworth  
4415 Center Street  
Acworth, Georgia 30101

By: \_\_\_\_\_

Date: \_\_\_\_\_

BALLI LAW, LLC  
800 Battery Avenue SE, Suite 100  
Atlanta, Georgia 30339

By: \_\_\_\_\_  
James Balli, Managing Partner/Lobbyist

By: \_\_\_\_\_  
Rob Hosack, Director of Governmental Relations

Date: \_\_\_\_\_

## **EXHIBIT A**

Balli Law is retained to provide Intergovernmental Consulting. “Intergovernmental Consulting” rendered in connection with this Agreement could include, but would not be limited to, the following in furtherance of the COUNTY’s and the CITIES’ objectives:

- Coordinating correspondence, agreements, forms and other documents as may be required for submittal and approval (by the COUNTY and the CITIES) of a legally compliant Service Delivery Strategy to the Georgia Department of Community Affairs by September 30, 2024.
- Facilitating negotiations and dialogues necessary to have a final draft of a legally compliant Service Delivery Strategy provided to the COUNTY and the CITIES no later than August 31, 2024.
- Attending official meetings of the COUNTY and the CITIES when necessary to assist county and municipal staff with presenting materials related to a Service Delivery Strategy.
- Recruiting and coordinating other contract professionals, if necessary, to assist with the delivery of services where appropriate and acceptable to the COUNTY and the CITIES.

This is not an exhaustive or exclusive list of the Intergovernmental Consulting Services that Balli Law may render on the COUNTY’S and the CITIES' behalf in connection with providing Services. This list is meant to describe the types of activities that could constitute Intergovernmental Consulting Services that Balli Law may perform on behalf of the COUNTY’s and the CITIES’ in connection with this Agreement.

## EXHIBIT B

Out-of-pocket expenses, e.g. outside copying charges, parking, will be reimbursed at actual cost without mark-up. Mileage for travel on behalf of the COUNTY and the CITIES will be reimbursed at the rate published by IRS annually.

Similarly, the following are expenses which are non-reimbursable and are considered to be absorbed in the monthly fee. These non-reimbursable expenses include:

- Clerical and secretarial services, in-house copying in excess of 10 cents/page, document conversion and facsimile services.
- Fees for legal research services (e.g. Westlaw), copying, printing, or scanning.
- Duplicative consultant time that are not necessary for cost-effective handling of the matter, as support services should be part of the overhead expenses.
- Routine postage. (Consultant is encouraged to utilize email communications with other parties, whenever permissible, and not to duplicate communications.)
- Time spent preparing invoices or addressing questions regarding the same.
- Preparation of any memo of nominal utility.

**EXHIBIT "C-1"**  
**CONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is contracting with the COUNTY and the CITIES, has registered with, is authorized to use, and is participating in a federal work authorization program (an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned Contractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the Contract period.

\_\_\_\_\_  
EEV (E-Verify) Program User ID Number

\_\_\_\_\_  
BY: Authorized Officer or Agent  
(Contractor Name)

\_\_\_\_\_  
Contractor Business Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

SWORN AND SUBSCRIBED BEFORE ME ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_,  
2023.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_

*Version 09-20-2013*

**EXHIBIT "C-2"**  
**EMPLOYER IMMIGRATION COMPLIANCE CERTIFICATION**

*(To be completed by Contractor prior to contract initiation, every six months after commencement of Services, and at any time there is a change in personnel assigned to provide Services.)*

I certify to the COUNTY and the CITIES that the following employees will be assigned to provide Intergovernmental Consulting:

<u>James Balli</u>	<u>Rob Hosack</u>	
_____	_____	_____
_____	_____	_____

I further certify to the COUNTY and the CITIES the following:

- The E-Verify program was used to verify the employment eligibility of each of the above-listed employees hired after the effective date of our contract to use the program;
- We have not received a Final Non-confirmation response from E-Verify for any of the employees listed;
- If we receive a Final Non-confirmation response from E-Verify for any of the employees listed above, we will immediately terminate that employee's involvement with the Services;
- I have confirmed that we have an I-9 on file for every employee listed above and that to the best of my knowledge all the I-9s are accurate;
- To the best of my knowledge and belief, all of the employees on the above list are legally authorized to work in the United States;
- If any other employee is assigned to provide these Services, a certification will be provided for said employee prior to the employee commencing work on the Services.

To the best of my knowledge and belief, the above certification is true, accurate and complete.

Sworn to by:

Employer Name and Address:

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Printed Name/Title

\_\_\_\_\_  
Date

SWORN AND SUBSCRIBED BEFORE ME ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_

*Version 09-20-2013*