



## REGULAR CITY COUNCIL MEETING AGENDA

City Hall - Council Chambers  
4381 Broadway St., Suite 201, American Canyon  
**October 17, 2023**  
**6:30 PM**

**Mayor:** Leon Garcia  
**Vice Mayor:** Pierre Washington  
**Councilmembers:** Mariam Aboudamous, Mark Joseph, David Oro

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### AMENDED AGENDA

*This agenda was amended to remove the item: Presentation - Diwali, it will be rescheduled to an upcoming agenda; and to correct an administrative error on the minutes of October 3, 2023.*

Tonight's meeting is a limited public forum. American Canyon promotes respectful and responsible behavior among its meeting participants, whether they are present in person or remotely. Using offensive language or remarks that promote, foster, or perpetuate discrimination based on race, creed, color, age, religion, gender marital status, status regarding public assistance, national origin, physical or mental disability or sexual orientation/gender identification, as well as any other category protected by federal, state or local laws will not be tolerated. In the case of an occurrence, the speaker will be immediately disconnected from the microphone.

*City Council and other public meetings will be conducted in person at City Hall, 4381 Broadway, Suite 201, American Canyon, CA 94503. This meeting is also available via Zoom Teleconferencing as a convenience for public participation. This meeting will be broadcast live to residents on Napa Valley TV, on our website [here](#) and on YouTube [here](#). Should technical issues with Zoom occur, please select another viewing option.*

### PUBLIC PARTICIPATION

**Oral comments, during the meeting:** Oral comments can be made in person during Open and Closed Session. A Zoom Webinar has been established for public comments made via zoom, during Open Session only. To give your public comment via zoom, connect via the below Zoom link and use the "raise your hand" tool, or call into the zoom meeting at 408-638-0968 and press \*9 to "raise your hand" when the item is called. To avoid confusion, all hands raised outside of Public Comment periods will be lowered.

**Written comments, via eComments:** Please submit written comments through the eComments link, located on the Meetings & Agendas page of our website [here](#). Comments will be available to council members in real time. To allow for review of comments, eComments will close at 3:00 pm on the day of the meeting. All comments received will be posted online and become part of the meeting record.

**Zoom Meeting Link:** [Click here.](#)

**Webinar ID:** 852 5117 7763 **Passcode:** 123456

**AMERICANS WITH DISABILITIES ACT:** The City Council will provide materials in appropriate alternative formats to comply with the Americans with Disabilities Act. Please send a written request to City Clerk at 4381 Broadway, Suite 201, American Canyon, CA 94503 or by email to [cityclerk@cityofamericancanyon.org](mailto:cityclerk@cityofamericancanyon.org). Include your name, address, phone number and brief description of the requested materials, as well as your preferred alternative format or auxiliary aid, at least three calendar days before the meeting.

**AGENDA MATERIALS:** City Council agenda materials are published 72 hours prior to the meeting and are available to the public via the City's website at [www.cityofamericancanyon.org](http://www.cityofamericancanyon.org). The above-identified measures exceed all legal requirements for participation in public comment, including those imposed by the Ralph M. Brown Act.

## **5:30 P.M. – CLOSED SESSION**

*The Mayor will call the meeting to order and conduct role call. Council will immediately convene into Closed Session after hearing any public comment on Closed Session items. At 6:30 p.m. the Council will reconvene into Open Session and then resume Closed Session at the end of the meeting to address outstanding items, if necessary.*

### CALL TO ORDER - CLOSED SESSION

### ROLL CALL - CLOSED SESSION

## **PUBLIC COMMENTS - CLOSED SESSION ITEMS**

*This time is reserved for members of the public to address the City Council on Closed Session Items only. Comments must be made in person and are limited to 3 minutes. Comments for items on the Open Session agenda will be taken when the item is called in Open Session. Comments for Items not on the Closed Session or Open Session agenda will be heard during the Open Session Public Comment period.*

### MEETING RECESS - COUNCIL TO CONVENE IN CLOSED SESSION

## **5:30 P.M. CLOSED SESSION ITEMS**

- 1. Conference with Legal Counsel – Anticipated Litigation. Authorized pursuant to Government Code Section 54956.9 (d)(2).  
One Matter.**
- 2. Conference with Legal Counsel - Existing Litigation. Authorized pursuant to Government Code Section 54956.9(d)(1):**
  - a. *American Canyon I, LLC vs. Napa Unified School District*(Napa Superior Court Case No. 22CV001145).**
  - b. *City of American Canyon v. City of Vallejo, et al.* (Sacramento Superior Court Case No. 34-2022-00327471).**
  - c. *City of American Canyon v. Leon Dale Schmidt* (Napa County Superior Court Cases No. 22CV001041 and 23PR00161).**
  - d. *Center for Biological Diversity v. City of American Canyon et al.* (Napa County Superior Court Case No. 23CV000511).**
  - e. *Golden State Environmental Justice Alliance v. City of American Canyon et al.* (Napa Superior Court Case No. 23CV000510).**
  - f. *City of Vallejo v. City of American Canyon et al.* (Napa County Superior Court Case No. 23CV000517).**

## **6:30 P.M. OPEN SESSION - REGULAR MEETING**

### CALL TO ORDER - COUNCIL TO RECONVENE IN OPEN SESSION

### PLEDGE OF ALLEGIANCE

### ROLL CALL - OPEN SESSION

### REPORT ON CLOSED SESSION/CONFIRMATION OF REPORTABLE ACTION

## PROCLAMATIONS AND PRESENTATIONS

### 3. [Proclamation - Domestic Violence Awareness Month](#)

## PUBLIC COMMENTS - ITEMS NOT ON CLOSED SESSION OR OPEN SESSION AGENDA

*This time is reserved for members of the public to address the City Council on items that are not on the Closed Session or Open Session agenda and are within the subject matter jurisdiction of the City Council. Comments are limited to 3 minutes. Comments for items on the Open Session agenda will be taken when the item is called in Open Session. The City Council is prohibited by law from taking any action on matters discussed that are not on the agenda, and no adverse conclusions should be drawn if the City Council does not respond to public comment at this time.*

## AGENDA CHANGES

*The Mayor and Council may change the order of the Agenda or request discussion of a Consent Item. A member of the Public may request discussion of a Consent Item by making that request during Public Comment.*

## CONSENT CALENDAR

### 4. [Minutes of October 3, 2023](#)

**Recommendation:** Approve the minutes of the Regular City Council meeting of October 3, 2023.

### 5. [Via Bellagio Playground Surface Project \(PR23-0800\)](#)

**Recommendation:** Take the following actions related to Via Bellagio Playground Surface Project:

1. Adopt a Resolution amending The Fiscal Year 2023/24 Project Budget from \$150,000.00 to \$165,000.00;
2. Authorizing The City Manager to award a Construction Agreement with Miracle Playsystems, Inc. for an amount not exceed \$148,544.57; and
3. Authorizing the Public Works Director to approve and execute Contract Change Orders in an aggregated amount not to exceed the Project Budget in conjunction with the Via Bellagio Playground Surface Project (PR23-0800).

### 6. [Ordinance Increasing the Monthly Salary of City Council Members](#)

**Recommendation:** Waive second reading, by title only, and adopt an Ordinance of the City Council of the City of American Canyon to increase the Monthly Salary of the Members of the City Council.

## PUBLIC HEARINGS

There are no Public Hearing items.

## BUSINESS

### 7. [2023 4th of July Celebration Re-cap](#)

**Recommendation:** Receive a presentation regarding the 2023 4th of July Celebration in American Canyon.

## MANAGEMENT AND STAFF ORAL REPORTS

### 8. **Maintenance and Utilities Department, Environmental Services Quarterly Update**

**Recommendation:** Receive a Presentation on Maintenance and Utilities Department, Environmental Services Division

## MAYOR/COUNCIL COMMENTS, COMMITTEE REPORTS, AND FUTURE AGENDA ITEMS

*The Mayor and Council may comment on matters of public concern and announce matters of public interest; no collective council action will be taken.*

### 9. **Future Agenda Items of Note:**

#### **November 7, 2023, Regular City Council Meeting. 6:30 p.m.**

**Veterans Day Proclamation  
Minimum Wage Increase  
Paoli/Watson Annexation  
Human Resources Annual Update  
American Canyon Little League**

#### **November 21, 2023, Regular City Council Meeting. 6:30 p.m.**

**MEETING CANCELLED**

#### **December 5, 2023 Regular City Council Meeting. 6:30 p.m.**

**2024 Council and Commission Meeting Calendar  
Public Works Quarterly Update  
Wastewater Enterprise Quarterly Update  
Recology Franchise Agreement**

#### **December 19, 2023 Regular City Council Meeting. 6:30 p.m.**

**Local Appointment List - Maddy Act Compliance  
Selection of Vice Mayor and 2024 City Council Committee Assignments  
Water Enterprise Quarterly Presentation**

**Note: Council requested items are marked "\*"**

## ADJOURNMENT

## CERTIFICATION

I, Taresa Geilfuss, CMC, City Clerk for the City of American Canyon, do hereby declare that the foregoing agenda of the City Council was posted in compliance with the Brown Act prior to the meeting date.

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Taresa Geilfuss, CMC, City Clerk

# CITY OF AMERICAN CANYON PROCLAMATION



## Domestic Violence Awareness Month - October 2023

**WHEREAS**, NEWS, Domestic Violence and Sexual Abuse Services, is commemorating 42 years of service to survivors of domestic violence (DV) in Napa County, having opened the first confidential safe house on October 5<sup>th</sup>, 1981, and began providing safety to those escaping abuse; and

**WHEREAS**, every year since 1989, the United States Congress has proclaimed October as Domestic Violence Awareness Month, renewing our Country's commitment to standing against DV and meeting the needs of survivors; and

**WHEREAS**, DV is a public health concern that impacts the well-being and success of individuals, as well as the community. Data shows that nearly 1 in 4 women and 1 in 9 men in the U.S. report experiencing severe physical violence from an intimate partner in their lifetime, while nearly half of U.S. adults have experienced psychological aggression such as humiliating or controlling behaviors from their partner. DV can cause severe physical and emotional distress for survivors who are more likely to become suicidal and lose economic opportunities from the abuse. Children who witness abuse are likely to experience lifelong impacts on their mental health. Aside from the physical and emotional trauma inflicted, DV contributes to over 10% of all intentional violent deaths (not including suicide) and costs America over 8 billion dollars a year; and

**WHEREAS**, by observing October as Domestic Violence Awareness Month we show that our community is committed to supporting survivors and working toward the prevention of domestic violence among future generations; and

**WHEREAS**, in Fiscal Year 2022/2023 NEWS provided services to nearly 1,800 Napa County community members, including 24-hour response, assistance with protective orders, safety and shelter, permanent housing, financial aid, support groups and children's services, for issues related to violence in the home; and

**NOW, THEREFORE, I**, Mayor Leon Garcia, on behalf of the City of American Canyon, do hereby proclaim October 2023 as "Domestic Violence Awareness Month", and encourage all residents of American Canyon to honor domestic violence survivors and those who serve them during this month and throughout the year.

Dated: October 17, 2023

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Leon Garcia, Mayor

**CITY OF AMERICAN CANYON  
REGULAR CITY COUNCIL MEETING**

**ACTION MINUTES**

*October 3, 2023*

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**CLOSED SESSION CANCELLED**

*Assistant City Attorney David Schwarz announced that consistent with AB2449 Councilmember David Oro is participating remotely.*

**6:30 P.M. OPEN SESSION - REGULAR MEETING**

**CALL TO ORDER**

The meeting was called to order at 6:32 p.m.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited.

**ROLL CALL - OPEN SESSION**

**Present:** Councilmember Mark Joseph, Councilmember Mariam Aboudamous, Councilmember David Oro, Mayor Leon Garcia

**Absent:** None

**Excused:** Vice Mayor Pierre Washington

**REPORT ON CLOSED SESSION/CONFIRMATION OF REPORTABLE ACTION**

As Closed Session was cancelled, there is no Report Upon Return for Closed Session.

**PROCLAMATIONS AND PRESENTATIONS**

**1. Proclamation - Filipino American Heritage History Month**

Mayor Garcia announced the proclamation. It was received by representatives of following community groups: Clarence Mamaril, FLAGG; Romeo C. Blanquera, Grand Knight, Holy Family Council 15750; Elmer Manaid, Board Advisor, Fil-Am Association of American Canyon; Rodny B, Suspene, Master, American Canyon Lodge No. 875, Grand Lodge of California; Eva M. Garcia, Solano Association of Realtors; Davet Mohammed, Planning Commissioner & Chair, Pastoral Council, Holy Family Church; Gio, Karla, Chrisaldo, Phillip, and Mike with Cooked by Gio.

**2. Proclamation - October 2023 National Code Compliance Appreciation Month**

Mayor Garcia announced the proclamation. It was received by Code Enforcement Officer Tiffany Ford with Community Development Director Brent Cooper.

### 3. Appointment of Youth Commissioners

**Action:** Motion to appoint by Minute Order 2023-17 Youth Commissioners: DeAndre Lendsey to the Planning Commission, Alaina Rei Guido to the Parks and Community Services Commission, and Allison Bencsik to the Open Space, Active Transportation, and Sustainability Commission; and direct the City Clerk to administer the Oath of Office to the Youth Commissioners made by Councilmember Mark Joseph, seconded by Councilmember Mariam Aboudamous, and CARRIED by roll call vote.

**Ayes:** Councilmember Mark Joseph, Councilmember Mariam Aboudamous, Councilmember David Oro, Mayor Leon Garcia

**Nays:** None

**Abstain:** None

**Excused:** Vice Mayor Pierre Washington

### PUBLIC COMMENTS - ITEMS NOT ON CLOSED SESSION OR OPEN SESSION AGENDA

Mayor Garcia called for public comments. Written comments: none. Oral comments: Anne Payne was called to speak; Chris Sweet was called to speak; Fran Lemos was called to speak. The public comments period was closed.

### AGENDA CHANGES

There were no changes to the agenda.

### CONSENT CALENDAR

**Action:** Motion to adopt CONSENT CALENDAR made by Councilmember Mark Joseph, seconded by Councilmember Mariam Aboudamous, and CARRIED by roll call vote.

**Ayes:** Councilmember Mark Joseph, Councilmember Mariam Aboudamous, Councilmember David Oro, Mayor Leon Garcia

**Nays:** None

**Abstain:** None

**Excused:** Vice Mayor Pierre Washington

### 4. Minutes of September 19, 2023

**Action:** Approved the minutes of the Regular City Council meeting of September 19, 2023.

### 5. Report Upon Return from Closed Session

**Action:** Approved the Report Upon Return from Closed Session for the Regular City Council Meeting of September 19, 2023.

### 6. Notice of Completion for the Wetlands Edge Court Extension Project

**Action:** Adopted Resolution 2023-76 accepting the contracted work as complete, authorizing the Public Works Director to file a Notice of Completion, and releasing Retention payment to Argonaut Constructors in conjunction with the Wetlands Edge Court Extension Project (TR22-0200).

## **7. Purchasing System Ordinance**

**Action:** Waived final reading, read by title only, and adopted Ordinance 2023-10 by the City Council of the City of American Canyon amending the American Canyon Municipal Code removing chapter 3.12 - Purchasing System.

## **PUBLIC HEARINGS**

### **8. Ordinance Increasing the Monthly Salary of City Council Members**

Council received a staff report from Assistant City Attorney David Schwarz. Council members provided comments. Mayor Garcia opened the public hearing and called for public comments. Written comments: none. Oral comments: Ken Leary was called to speak. Public comments and the public hearing were closed.

**Action:** Motion to adopt an Ordinance supporting the proposed Councilmember compensation made by Councilmember David Oro, seconded by Councilmember Mariam Aboudamous, and CARRIED by roll call vote.

**Ayes:** Councilmember Mark Joseph, Councilmember Mariam Aboudamous, Councilmember David Oro, Mayor Leon Garcia

**Nays:** None

**Abstain:** None

**Excused:** Vice Mayor Pierre Washington

*Councilmember David Oro was excused from the meeting at 7:35 p.m.*

## **BUSINESS**

### **9. City Properties Review**

Council received a presentation from Community Development Director Brent Cooper. Council provided comments. Mayor Garcia called for public comments. Written comments: none. Oral comments: Fran Lemos was called to speak; Alyssa Lamatina was called to speak; Ken Leary was called to speak. The public comments period was closed.

## **MANAGEMENT AND STAFF ORAL REPORTS**

### **10. Parks and Recreation Department Update**

Council received a presentation from Parks & Recreation Director Alexandra Ikeda. Council provided comments. Mayor Garcia called for public comments. Written comments: none. Oral comments: Ken Leary was called to speak. The public comments period was closed.

## **MAYOR/COUNCIL COMMENTS, COMMITTEE REPORTS, AND FUTURE AGENDA ITEMS**

### **11. Council Committee Report - Councilmember Mark Joseph**

Mayor Garcia allowed additional public comments on non-agenda items. Ken Leary was called to speak; Fran Lemos was called to speak. The public comments period was closed.

## **12. Future Agenda Items of Note:**

### **October 17, 2023, Regular City Council Meeting. 6:30 p.m.**

Domestic Violence Awareness Month

\*4th of July Re-Cap

\*New Affordable Condominiums on Surplus City Property

Environmental Compliance Presentation

### **November 7, 2023, Regular City Council Meeting. 6:30 p.m.**

Veterans Day Proclamation

Quarterly Investment Report

Paoli/Watson Lane Annexation

### **November 21, 2023, Regular City Council Meeting. 6:30 p.m.**

**MEETING CANCELLED**

### **December 5, 2023, Regular City Council Meeting. 6:30 p.m.**

Minimum Wage Increase

2024 Council Meeting Calendar

Public Works Quarterly Update

Wastewater Enterprise Quarterly Update

### **December 19, 2023, Regular City Council Meeting. 6:30 p.m.**

Selection of Vice Mayor and 2024 City Council Committee Assignments

Human Resources Annual Presentation

FY 2022-2023 Auditors Report

Water Enterprise Quarterly Presentation

Note: Council requested items are marked "\*\*"

## **ADJOURNMENT**

The meeting was adjourned at 8:29 p.m.

## **CERTIFICATION**

Respectfully Submitted,

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Taresa Geilfuss, City Clerk



# City Council Community Update

OCTOBER 3, 2023 CITY COUNCIL MEETING

## Proclamations & Accolades

**Filipino American Heritage History Month:** Proclamation received by Gio, Karla, Chrisaldo, Phillip, and Mike with Cooked By Gio, Filipino Community Liaison and Filipino Life and Generation Groups (FLAGG) Coordinator Clarence Mamaril, Holy Family Council 15750 Grand Knight Romeo C. Blanquera, Fil-Am Association of American Canyon Board Advisor Elmer Manaid, American Canyon Lodge No. 875 Master Rodny B. Suspene, Solano Association of Realtors member Eva M. Garcia, Holy Family Church Pastoral Council Chair Davet Mohammed.

**Code Compliance Appreciation Month:** Proclamation received by Code Enforcement Officer Tiffany Ford and Community Development Director Brent Cooper



## Presentations

Received updates from the and the **Parks and Recreation Department** and appointed **three youth commissioners**



## City Action

- Adopted a resolution accepting the completion of the Wetlands Edge Court Extension Project
- Adopted an Ordinance amending the American Canyon Municipal Code to remove chapter 3.12 - Purchasing System.
- Considered findings in the proposed Ordinance supporting the proposed Council member compensation increase

## Next time...

Join our **October 17** meeting to learn more about:

- Domestic Violence Awareness Month
- 4th of July Recap
- New Affordable Condos on Surplus City Property

**View presentations, agenda packets and meeting details:**





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## TITLE

Via Bellagio Playground Surface Project (PR23-0800)

## RECOMMENDATION

Take the following actions related to Via Bellagio Playground Surface Project:

1. Adopt a Resolution amending The Fiscal Year 2023/24 Project Budget from \$150,000.00 to \$165,000.00;
2. Authorizing The City Manager to award a Construction Agreement with Miracle Playsystems, Inc. for an amount not exceed \$148,544.57; and
3. Authorizing the Public Works Director to approve and execute Contract Change Orders in an aggregated amount not to exceed the Project Budget in conjunction with the Via Bellagio Playground Surface Project (PR23-0800).

## CONTACT

Alexandra Ikeda, Parks and Recreation Director  
Erica Ahmann Smithies, P.E., Public Works Director

## BACKGROUND & ANALYSIS

Via Bellagio Park is an important community amenity that provides recreational opportunities, contributes to the health and wellness of our community, and creates valuable greenspace that is enjoyable and loved by the residents in the LaVigne community in American Canyon. The Via Bellagio Park playground was recently updated per CIP Project No. PR21-0100. After receiving feedback from community members, the Parks and Community Services Commission, and City Council Members on the desired playground design and features, City staff worked exclusively with Miracle PlaySystems, Inc. to resurface the Via Bellagio Park playground to provide an all-access universal play experience for all.

At the June 6, 2023 City Council Meeting, the Council approved and adopted the Five-Year Capital Improvement Program Budget which includes the Via Bellagio Park Playground Surface Project (PR23-0800). Attachment 2 is the Engineers Estimate for the project.

In accordance with the City of American Canyon Municipal Code Title 3, Chapter 3.12.270 D Exceptions to competitive bidding requirement, Council may authorize the execution of contracts for contractual services without observing the bidding procedures where the amount of the contract

exceeds the value of five thousand dollars. Sourcewell's Cooperative Contracts (FPF 030117) (Attachment 3 and Attachment 4) are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/providence, municipal, K-12 and higher education, tribal governments, and other public entities.

In accordance with the City of American Canyon Municipal Code Title 3, Chapter 3.12, staff is recommending the Council to award a construction agreement to Miracle PlaySystems, Inc. in reliance on Sourcewell's award schedule to purchase and install playground surfacing for the Via Bellagio Playground Surface Project (PR23-0800). Once the contract has been awarded and signed by both Miracle PlaySystems, Inc. and the City of American Canyon, the project will be scheduled and an official start date will be provided.

### **COUNCIL PRIORITY PROGRAMS AND PROJECTS**

Outdoors and Recreation: "Expand opportunities for use of outdoor recreation and an active and healthy lifestyle."

### **FISCAL IMPACT**

On June 6, 2023, City Council adopted the Fiscal Year 2023/24 Capital Improvement Program which included a Project Budget in the amount of \$150,000.00 for the Via Bellagio Playground Surface Project (PR23-0800). Miracle PlaySystems, Inc. has provided an estimate of \$148,544.57 for the project not leaving adequate funding for project contingencies that may be encountered during construction; therefore, staff is recommending a budget increase of \$15,000.00 from the Special Revenue Fund - LLAD Zone 1, LaVigne (261-85-450-48310) to the Capital Improvement Program Fund (350-85-450-37390) for a total budget amount of \$165,000. Any unexpended funds will be returned to the original fund account after the completion of the project.

### **ENVIRONMENTAL REVIEW**

15302 - The Project is exempt from review under the California Environmental Quality Act ("CEQA") under the Class 2 exemption of replacement or reconstruction of existing facilities of Section 15302 of Title 14 of the California Code of Regulations and said exemption is not negated by any exception under Section 15300.2 of said Regulations.

### **ATTACHMENTS:**

- [1. Resolution - CIP Project No. PR23-0800](#)
- [2. Via Bellagio Playground Surface - Engineer Estimate](#)
- [3. Miracle PlaySystems, Inc. - Sourcewell Letter](#)
- [4. Miracle PlaySystems, Inc. - Sourcewell Contract](#)

**RESOLUTION NO. 2023-\_\_\_\_\_**

**A RESOLUTION 1) AMENDING THE FISCAL YEAR 2023/24 PROJECT BUDGET FROM \$150,000.00 TO \$165,000.00; 2) AUTHORIZING THE CITY MANAGER TO AWARD A CONSTRUCTION AGREEMENT WITH MIRACLE PLAYSYSTEMS, INC. FOR AN AMOUNT NOT EXCEED \$148,544.57; AND 3) AUTHORIZING THE PUBLIC WORKS DIRECTOR TO APPROVE AND EXECUTE CONTRACT CHANGE ORDERS IN AN AGGREGATED AMOUNT NOT TO EXCEED THE PROJECT BUDGET IN CONJUNCTION WITH THE VIA BELLAGIO PLAYGROUND SURFACE PROJECT (PR23-0800)**

**WHEREAS**, Via Bellagio Park is an important community amenity that provides recreational opportunities, contributes to the health and wellness of our community, and creates valuable greenspace that is enjoyable and loved by the residents in the LaVigne community in American Canyon; and

**WHEREAS**, after receiving feedback from community members, the Parks and Community Services Commission, and City Council Members on the desired playground design and features for Via Bellagio Park, City staff worked exclusively with Miracle PlaySystems, Inc. to resurface Via Bellagio Park playground to provide an all access and universal play experience for all; and

**WHEREAS**, the Via Bellagio Playground Surface Project (PR23-0800) was approved by City Council on June 6, 2023, as part of the Fiscal Year 2023/24 Capital Improvement Program Budget in the amount of \$150,000.00. The source of the budget is Special Revenue Fund – LLAD Zone 1, LaVigne (261-85-450-48310); and

**WHEREAS**, the Engineer’s Estimate for the construction of the project is \$148,544.57 not leaving adequate funding for project contingencies that may be encountered during construction; and

**WHEREAS**, there are sufficient funds available in Special Revenue Fund – LLAD Zone 1, LaVigne (261-85-450-48310) to increase the project budget by \$15,000.00 for a total of \$165,000.00; and

**WHEREAS**, in accordance with the City of American Canyon Municipal Code Title 3, Chapter 3.12.270 D Exceptions to competitive bidding requirements, City Council may authorize the execution of contracts for contractual services without observing the bidding procedures where the amount of the contract exceeds the value of five thousand dollars; and

**WHEREAS**, Sourcewell’s Cooperative Contracts (RFP 030117) are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/providence, municipal, K-12 and higher education, tribal government, and other public entities; and

**WHEREAS**, in accordance with the City of American Canyon Municipal Code Title 3, Chapter 3.12, staff is recommending the City award a construction agreement to Miracle PlaySystems, Inc. in reliance on Sourcewell’s award schedule to install playground surface for CIP Project No. PR23-0800 in the amount not to exceed \$148,544.57; and

**WHEREAS**, the playground surface replacement for Via Bellagio Park is a minor alteration to an existing facility therefore is exempt from the requirements of CEQA pursuant to Section 15302, Class 2, which exempts the replacement or reconstruction of an existing facility.

**NOW THEREFORE BE IT FURTHER RESOLVED** that the City Council of the City of American Canyon amends the Fiscal Year 2023/24 Project Budget as follows:

Source	Current Amount	New Amount
LLAD Zone 1, LaVigne (261-85-450-48310)	\$150,000.00	\$165,000.00

**NOW THEREFORE BE IT FURTHER RESOLVED** that the City Council of the City of American Canyon authorizes the City Manager to authorize a Construction Agreement with Miracle PlaySystems, Inc. for the Via Bellagio Playground Surface Project (PR23-0800) for an amount not to exceed \$148,544.57.

**NOW THEREFORE BE IT FURTHER RESOLVED** that the City Council of the City of American Canyon authorizes the Public Works Director to approve and execute Contract Change Orders in an aggregate amount not to exceed the Project Budget in conjunction with the Via Bellagio Playground Surface Project (PR23-0800).

**PASSED, APPROVED and ADOPTED** at a regularly scheduled meeting of the City Council of the City of American Canyon held on the 17<sup>th</sup> day of October 2023, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

\_\_\_\_\_  
Leon Garcia, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Taresa Geilfuss, CMC, City Clerk

\_\_\_\_\_  
William D. Ross, City Attorney

**Job Number:** 23-2760  
**Job:** Via Bellagio PIP  
**Quote Name:** Quote-23-2760-Via Bellagio PIP\_09.11.23  
**Quote Number:** Q-06106



**Prepared by:**  
 ShanaFriesen  
 shana@miracleplaygroup.com

**Terms:** Net 30  
**Remit to:** Miracle Playsystems, Inc.  
 1276 S Main St., Salinas, CA 93901

**Sub Total:** \$141,274.30  
**Freight:** \$0.00  
**Estimated Tax:** \$7,270.27  
**Total:** \$148,544.57

Installation Services- Prevailing Wages Applied

Product Code	Description	Qty	Rate	Total	Estimated Tax (if applicable)
B03	EWf Stockpile 150 CY- Provide Labor and Equipment to Remove Existing 150 CY EWf figured at 12" depth in both Play Boxes, 1,195 SF and 1,885 SF, and Stockpile Adjacent to Area. City to Remove Stockpile from Site.	1	\$18,505.00	\$18,505.00	\$0.00
B06	Baserock 3,080 SF, 8.5"-10"- Supply and Install approx 175 TN Baserock Compacted at 10" depth 1,195 SF and 8.5" depth 1,885 SF	1	\$42,514.00	\$42,514.00	\$3,294.84
B06	Remove ADA Ramps- Removal and Disposal of (2) Concrete Standard ADA Ramps	1	\$7,877.00	\$7,877.00	\$610.47

Rubber/Turf Surfacing Prevailing Wages Applied

Product Code	Description	Qty	Rate	Total	Estimated Tax (if applicable)
C3	2-12 Area- Rubber Surfacing Material Only: 1,195 SF of SAFEPOUR Standard EPDM pour-in-place resilient rubber surfacing at 2" thickness (meets up to 4' CFH) using 50% Black and 50% Standard Color TBD with AROMATIC urethane binder. Standard colors include Blue, Green, Red, and Beige	1,195	\$11.60	\$13,862.00	\$1,074.31

Via Bellagio PIP  
 MIRACLE PLAYSYSTEMS, INC. – PO BOX 263, ALAMO, CA 94507 – (800) 879-7730 – (510) 893-2163 (FAX)  
 CSL: 981433 (Exp Date 03/23) – DIR: 1000015853

C1	2-12 Area- Rubber Surfacing Install Only: 1,195 SF with a 2.0" system comprised of a 1.5" cushion layer and a 0.5" wear layer accounting for up to a 4' fall height.	1,195	\$7.75	\$9,261.25	\$0.00
C7	5-12 Area- Rubber Surfacing Material Only: 1,885 SF of SAFEPOUR Standard EPDM pour-in-place resilient rubber surfacing at 3.5" thickness (meets up to 8' CFH) using 50% Black and 50% Standard Color TBD with AROMATIC urethane binder. Standard colors include Blue, Green, Red, and Beige	1,885	\$15.68	\$29,556.80	\$2,290.65
C1	5-12 Area: Rubber Surfacing Install Only: 1,885 SF with a 3.5" system comprised of a 1.5" cushion layer and a 0.5" wear layer accounting for up to an 8' fall height.	1,885	\$10.45	\$19,698.25	\$0.00

**Sub Total:** \$141,274.30  
**Total Freight:** \$0.00  
**Total Estimated Tax:** \$7,270.27  
**Grand Total:** \$148,544.57

**OPTIONAL PRODUCT**

*The below product(s) are optional and do not contribute to the quote totals, estimated taxes and freight amounts.*

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

**Please confirm or edit order information below.**

**End User Company:**  
City of American Canyon

**End User Contact:**

**End User Email:**

**Delivery Contact:**

**Delivery Email:**

**Delivery Phone:**

**Delivery Address:**

**Site Address:**

108 Vía Bellagio  
American Canyon

**Bill To Email:**

**Bill To:**

City of American Canyon,  
100 Benton Way,,  
American Canyon, CA,  
94503

**Customer Reference #:**

**INDEMNITY**

Client/Owner shall defend, indemnify and hold harmless Miracle Playsystems, Inc., its officers, directors, board of trustees, agents, or employees and each of them, from any and all claims, demands, causes of action in law or in equity, damages, penalties, costs, expenses, reasonable attorneys’ fees, reasonable experts’ fees, reasonable consultants’ fees, judgments, losses or liabilities, of every kind and nature whatsoever arising out of or in any way connected with or incidental to, the performance of the services under this Agreement or any of the obligations contained in this Agreement (“Claims”). Without limitation, “damages” include personal injury, including, but not limited to bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Miracle Playsystems, Inc., or any other person; or other damages of any kind to anyone including, without limitation, economic loss, property damage and loss of use thereof. It is expressly acknowledged and agreed that each of the foregoing indemnities is independent, that each shall be given effect, and that each shall apply despite any acts or omissions, misconduct or negligent conduct, whether active or passive, on the part of, or other contractor(s); provided, however, Miracle Playsystems, Inc. duty to indemnify shall be limited to the percentage or the degree Miracle Playsystems, Inc. comparative negligence caused any damages.

**STANDARD NOTES**

- Price quotation is good for 30 days. Accurate color selections must be made in writing prior to equipment going into production. Colors to be confirmed with your local sales representative.
- PLEASE MAKE PURCHASE ORDER TO MIRACLE PLAYSYSTEMS, INC at PO Box 263 Alamo, CA 94507
- PLEASE REMIT CHECKS TO: MIRACLE PLAYSYSTEMS INC., 1276 S MAIN ST, SALINAS, CA 93901
- Please email/fax quotation with your signature to accept this quote and place order. Fax 510-893-2163 or email Info@MiraclePlayGroup.com
- Unless otherwise specified, Miracle Playsystems, Inc **DOES NOT** include the following in this proposal:
  - Engineered drawings
  - Installation of equipment or other site amenities
  - Specialty trades, equipment, power supply required to install equipment
- Any insurance requiring in excess of \$1M/\$2M per occurrence, special insurance coverage or wording, Prevailing/Certified wage rates, local permitting, bid/performance bonds, temp fencing, geo tech surveys, playground safety inspection, equipment offload, and testing services.
- Inspect equipment upon delivery. Color discrepancy must be reported at time of delivery. Installation constitutes acceptance of colors.
- Warranty does not cover labor for reinstallation.

**TERMS & CONDITIONS**

- Purchase contract terms & conditions of sale: The client/customer’s acceptance and understanding of these terms & conditions and all other supporting documentation provided as part of this package is evidenced by signing of this estimate/quote.
- Payment terms: Standard terms (on approved credit), unless otherwise noted are 50% with order and balance to ship equipment (no retention). Should any changes be required to the products after order is placed, modifications or changes will be at client/customers expense. Miracle Playsystems, Inc maintains a no return policy and asks all clients to determine feature, layout and color selection prior to ordering. Should any order be cancelled after production has started a 30% restocking fee will be charged to client. Credit card convenience fee is 3.5% which will be added to all credit card charges
- Lead times: Estimated lead times for the time the order is released into production until it is delivered will vary.
- **Lead times may currently be extended due to reasons such as supply chain issues, shipping delays, raw material shortages, and other COVID-19 related impacts.**
- Custom play feature lead times are determined on a case by case basis.

Via Bellagio PIP  
MIRACLE PLAYSYSTEMS, INC. – PO BOX 263, ALAMO, CA 94507 – (800) 879-7730 – (510) 893-2163 (FAX)  
CSL: 981433 (Exp Date 03/23) – DIR: 1000015853

**CONSTRUCTION SERVICES (if applicable)**

Unless otherwise noted, we exclude responsibility for material delivery & offloading equipment, removal & disposal of packaging accumulated by equipment packaging, project security, landscape & hardscape repair based on access route to site, delays or returns due to layout conflicts or delay of other trades, removal of spoils from job site, locating underground: utilities, pipes, obstructions in work area, conditions unforeseen and/or not disclosed at time of estimate, permits, engineering, material testing, soil samples, CPSI. Conditions: Grades; stable, compacted & workable with 95% compaction and less than 1% grade, adequate access to site for labor, materials, tools and equipment. Estimate good for 90 days from quote or Dec. 31 of current calendar year, whichever comes first. Terms: Upon completion.

**GENERAL TERMS**

- THIS QUOTE IS LIMITED TO AND GOVERNED BY THE TERMS CONTAINED HEREIN: Miracle Playsystems, Inc. objects to any other terms proposed by client, in writing or otherwise, as material alterations, and all such proposed terms shall be void. Client authorizes Miracle Playsystems, Inc. to ship equipment and agrees to pay the total specified. Shipping terms are FOB the place of shipment via common carrier.
- Client and owner/operator agree to indemnify and hold Miracle Playsystems, Inc. harmless from and against all liabilities, losses, penalties, damages and expenses, including costs and attorney fees, resulting from any and all claims, liens, damages, actions, suits, judgments or settlements, injuries arising or alleged to arise out of their failure, or failure of architect, contractors, subcontractors, installers, employees, agents and assigns to assemble, install, inspect and/or maintain the play equipment and impact absorbing surfacing in full compliance with each manufacturers installation instructions and safety requirements and their misuse and/or alteration of the play equipment.

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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



Via Bellagio PIP

MIRACLE PLAYSYSTEMS, INC. – PO BOX 263, ALAMO, CA 94507 – (800) 879-7730 – (510) 893-2163 (FAX)  
CSL: 981433 (Exp Date 03/23) – DIR: 1000015853

Page 4 of 4

October 7, 2020

Re: Recreation and Playground Equipment, Accessories, and Supplies  
Contract# 030117-LTS

To Whom it May Concern:

PlayPower Inc.'s response to Sourcewell's Request for Proposal (RFP) 030117 outlines on Form A, Question #18 that PlayPower permits Miracle PlaySystems, inc. to provide services on behalf of PlayPower, Inc. through the contract they hold with Sourcewell. Miracle PlaySystems, Inc. is the exclusive supplier for Miracle in the Northern California territory, they are authorized and incorporated into the contract as indicated in the language of the proposal as an authorized dealer.

If any additional information is needed please feel free to call or email.

Sincerely,



**Kelly Pearson** | Supplier Development Administrator

Office: 218-895-4139 |

Website: [www.sourcewell-mn.gov](http://www.sourcewell-mn.gov)

Sourcewell 

**Solicitation Number: RFP #010521****CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and PlayPower, Inc., 11515 Vanstory Drive #100, Huntersville, NC 28078 (Vendor).

Sourcewell is a State of Minnesota local government agency and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Playground and Water Play Equipment with Related Accessories and Services from which Vendor was awarded a contract.

Vendor desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

**1. TERM OF CONTRACT**

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires February 17, 2025, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended up to one additional one-year period upon request of Sourcewell and with written agreement by Vendor.
- C. **SURVIVAL OF TERMS.** Articles 11 through 14 survive the expiration or cancellation of this Contract.

**2. EQUIPMENT, PRODUCTS, OR SERVICES**

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Vendor will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above. Vendor's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new/current model. Vendor may offer close-out or refurbished Equipment or Products if they are clearly indicated in Vendor's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Vendor warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Vendor warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Vendor's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that is effective past the expiration of the Vendor's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution, Vendor will make available to Sourcewell a means to validate or authenticate Vendor's authorized dealers, distributors, and/or resellers relative to the Equipment, Products, and Services related to this Contract. This list may be updated from time-to-time and is incorporated into this Contract by reference. It is the Vendor's responsibility to ensure Sourcewell receives the most current version of this list.

### **3. PRICING**

All Equipment, Products, or Services under this Contract will be priced as stated in Vendor's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Vendor must permit the Equipment and Products to be returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable

time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery.

Vendor must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcwell may declare the Vendor in breach of this Contract if the Vendor intentionally delivers substandard or inferior Equipment or Products. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Vendor as soon as possible and the Vendor will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

B. SALES TAX. Each Participating Entity is responsible for supplying the Vendor with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Vendor may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Vendor determines it will offer Hot List Pricing, it must be submitted electronically to Sourcwell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcwell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

#### **4. PRODUCT AND PRICING CHANGE REQUESTS**

Vendor may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcwell Price and Product Change Request Form to the assigned Sourcwell Contract Administrator. This form is available from the assigned Sourcwell Contract Administrator. At a minimum, the request must:

- Identify the applicable Sourcwell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;
- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing

restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and be incorporated by reference.

## **5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS**

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Vendor understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Vendor is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Vendor's employees may be required to perform work at government-owned facilities, including schools. Vendor's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

## **6. PARTICIPATING ENTITY USE AND PURCHASING**

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Vendor that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Vendor. Typically, a Participating Entity will issue an order directly to Vendor. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell contract number. All Participating Entity orders under this Contract must be issued prior to expiration of this Contract; however, Vendor performance, Participating Entity payment, and any applicable warranty periods or other Vendor or Participating Entity obligations may extend beyond the term of this Contract.

Vendor's acceptable forms of payment are included in Attachment A. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. **ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM.** Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Vendor, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be worked out directly between the Participating Entity and the Vendor. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. **SPECIALIZED SERVICE REQUIREMENTS.** In the event that the Participating Entity requires service or specialized performance requirements (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements) not addressed in this Contract, the Participating Entity and the Vendor may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. **TERMINATION OF ORDERS.** Participating Entities may terminate an order, in whole or in part, immediately upon notice to Vendor in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the goods to be purchased;
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements; or
3. Vendor commits any material breach of this Contract or the additional terms agreed to between the Vendor and a Participating Entity.

E. **GOVERNING LAW AND VENUE.** The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

## **7. CUSTOMER SERVICE**

A. **PRIMARY ACCOUNT REPRESENTATIVE.** Vendor will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Vendor must perform a minimum of one business review with Sourcwell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, supply issues, customer issues, and any other necessary information.

## **8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT**

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Vendor must provide a contract sales activity report (Report) to the Sourcwell Contract Administrator assigned to this Contract. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Vendor must submit a report indicating no sales were made).

The Report must contain the following fields:

- Customer Name (e.g., City of Staples Highway Department);
- Customer Physical Street Address;
- Customer City;
- Customer State/Province;
- Customer Zip Code;
- Customer Contact Name;
- Customer Contact Email Address;
- Customer Contact Telephone Number;
- Sourcwell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcwell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Vendor.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcwell, the Vendor will pay an administrative fee to Sourcwell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Vendor may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Vendor will submit payment to Sourcwell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased by Participating Entities under this Contract during each calendar quarter. Payments should note the Vendor's name and Sourcwell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcwell's banking institution per Sourcwell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Vendor agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Vendor is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Vendor in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

## **9. AUTHORIZED REPRESENTATIVE**

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Vendor's Authorized Representative is the person named in the Vendor's Proposal. If Vendor's Authorized Representative changes at any time during this Contract, Vendor must promptly notify Sourcewell in writing.

## **10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE**

A. **AUDIT.** Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant this Agreement are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. **ASSIGNMENT.** Neither the Vendor nor Sourcewell may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed assignment agreement. Such consent will not be unreasonably withheld.

C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been fully executed by the parties.

D. **WAIVER.** If either party fails to enforce any provision of this Contract, that failure does not waive the provision or the right to enforce it.

E. **CONTRACT COMPLETE.** This Contract contains all negotiations and agreements between Sourcewell and Vendor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their

respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

## 11. LIABILITY

Vendor must indemnify, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees, arising out of the performance of this Contract by the Vendor or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications.

## 12. GOVERNMENT DATA PRACTICES

Vendor and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract.

If the Vendor receives a request to release the data referred to in this article, the Vendor must immediately notify Sourcewell and Sourcewell will assist with how the Vendor should respond to the request.

## 13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

### A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:
  - a. Sourcewell grants to Vendor a royalty-free, worldwide, non-exclusive right and license to use the Trademark(s) provided to Vendor by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Vendor.
  - b. Vendor grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Vendor's Trademarks in advertising and promotional materials for the purpose of marketing Vendor's relationship with Sourcewell.
2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to its and their respective distributors, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.
3. *Use; Quality Control.*

- a. Sourcewell must not alter Vendor's Trademarks from the form provided by Vendor and must comply with Vendor's removal requests as to specific uses of its trademarks or logos.
  - b. Vendor must not alter Sourcewell's Trademarks from the form provided by Sourcewell and must comply with Sourcewell's removal requests as to specific uses of its trademarks or logos.
  - c. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's Trademarks only in good faith and in a dignified manner consistent with such party's use of the Trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.
4. As applicable, Vendor agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Vendor in violation of applicable patent or copyright laws.
5. *Termination.* Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of vendors which may be used until the next printing). Vendor must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. **PUBLICITY.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. **MARKETING.** Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Materials should be sent to the Sourcewell Contract Administrator assigned to this Contract.

D. **ENDORSEMENT.** The Vendor must not claim that Sourcewell endorses its Equipment, Products, or Services.

#### **14. GOVERNING LAW, JURISDICTION, AND VENUE**

Minnesota law governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state court in Todd County or federal court in Fergus Falls, Minnesota.

## 15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

## 16. SEVERABILITY

If any provision of this Contract is found to be illegal, unenforceable, or void then both Sourcewell and Vendor will be relieved of all obligations arising under such provisions. If the remainder of this Contract is capable of performance, it will not be affected by such declaration or finding and must be fully performed.

## 17. PERFORMANCE, DEFAULT, AND REMEDIES

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Vendor will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Vendor may escalate the resolution of the issue to a higher level of management. The Vendor will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed will be borne by the Vendor.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

Written notice of default and a reasonable opportunity to cure must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

## 18. INSURANCE

A. REQUIREMENTS. At its own expense, Vendor must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

- \$500,000 each accident for bodily injury by accident
- \$500,000 policy limit for bodily injury by disease
- \$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Vendor will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

- \$1,000,000 each occurrence Bodily Injury and Property Damage
- \$1,000,000 Personal and Advertising Injury
- \$2,000,000 aggregate for Products-Completed operations
- \$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Vendor will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

- \$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Vendor will maintain umbrella coverage over Workers' Compensation, Commercial General Liability, and Commercial Automobile.

Minimum Limits:  
\$2,000,000

5. *Professional/Technical, Errors and Omissions, and/or Miscellaneous Professional Liability*. During the term of this Contract, Vendor will maintain coverage for all claims the Vendor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Vendor's professional services required under this Contract.

Minimum Limits:  
\$2,000,000 per claim or event  
\$2,000,000 – annual aggregate

Failure of Vendor to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Vendor must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Contract Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Vendor to provide certificates of insurance, in no way limits or relieves Vendor of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Vendor agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Vendor's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Vendor, and products and completed operations of Vendor. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. WAIVER OF SUBROGATION. Vendor waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Vendor or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance

maintained by the Vendor or its subcontractors. Where permitted by law, Vendor must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION. The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

## **19. COMPLIANCE**

A. LAWS AND REGULATIONS. All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. LICENSES. Vendor must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Vendor conducts with Sourcewell and Participating Entities.

## **20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION**

Vendor certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Vendor declares bankruptcy, Vendor must immediately notify Sourcewell in writing.

Vendor certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Vendor further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

## **21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS**

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may also require additional requirements based on specific funding specifications. Within this Article, all references to "federal" should be interpreted to mean the United States federal government.

The following list only applies when a Participating Entity accesses Vendor's Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. § 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Vendor must be in compliance with all applicable Davis-Bacon Act provisions.

C. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40

hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Vendor certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Vendors must file any required certifications. Vendors must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any

agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Vendors must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Vendors must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Vendor must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Vendor further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Vendor must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Vendor must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Vendor agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**22. CANCELLATION**

Sourcewell or Vendor may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Vendor's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

PlayPower, Inc.

DocuSigned by:  
*Jeremy Schwartz*  
C0FD2A139D06489...  
By: \_\_\_\_\_  
Jeremy Schwartz  
Title: Director of Operations &  
Procurement/CPO

DocuSigned by:  
*W. Todd Brinker*  
B286C633F68749C...  
By: \_\_\_\_\_  
W. Todd Brinker  
Title: Senior Vice President Global Sales &  
Marketing Outdoor Play

2/15/2021 | 10:36 PM CST  
Date: \_\_\_\_\_

2/15/2021 | 2:23 PM CST  
Date: \_\_\_\_\_

Approved:

DocuSigned by:  
*Chad Coquette*  
7E42B8F817A64CC...  
By: \_\_\_\_\_  
Chad Coquette  
Title: Executive Director/CEO  
2/15/2021 | 10:46 PM CST  
Date: \_\_\_\_\_



## **TITLE**

Ordinance Increasing the Monthly Salary of City Council Members

## **RECOMMENDATION**

Waive second reading, by title only, and adopt an Ordinance of the City Council of the City of American Canyon to increase the Monthly Salary of the Members of the City Council.

## **CONTACT**

William D. Ross, City Attorney

## **BACKGROUND & ANALYSIS**

State law regulates compensation for councilmembers. On June 29, 2023, the Governor approved Senate Bill No. 329, authored by Senator Bill Dodd, (“SB 329”) which increases the maximum amount of salary, based on City population. SB 329 amends Government Code section 36516 to allow compensation for Councilmembers in cities up to and including 35,000 in population, to be increased up to nine hundred fifty dollars (\$950) per month. It also allows for specified inflation increases. Senator Dodd recognized that:

SB 329 “enables city councilmembers to balance their careers and personal obligations with the calling to serve their community,” while “making it easier for members of marginalized communities to serve.”

The maximum amounts set by state law have not been increased since 1984, despite inflation of more than 300% during that time. Because of the disparity, people from diverse communities are discouraged to run for office. Others with fulltime jobs have been forced to resign their posts before their terms expire because they can’t devote time to council service and supporting their families. SB 329 allows councils to adjust their maximum pay to reflect inflation as measured by the California Consumer Price Index.

SB 329 becomes effective January 1, 2024. Government Code section 36516.5 requires that no change in compensation applies to a member of the City Council during his or her term of office unless an election was held subsequent to the passage of the Ordinance and one or more members of such council becomes eligible for a salary increase by virtue of beginning a new term of office. Therefore, Councilmembers will receive the increase beginning November 6, 2024.

Under current State law, Council compensation has a base rate of three hundred dollars (\$300.00) per month. In 2004, the Council increased the monthly compensation from three hundred dollars (\$300.00) to three hundred fifteen dollars (\$315.00), under provisions of Government Code section 36516 allowing for cost-of-living increases.

Under SB 329, the City may, but is not required to, set Councilmember compensation at up to \$950.00 per month. Consistent with the provisions of SB 329, the proposed ordinance sets forth findings supporting the increase in Councilmember compensation and must be adopted at a subsequent City Council meeting.

## **COUNCIL PRIORITY PROGRAMS AND PROJECTS**

Organizational Effectiveness: "Deliver exemplary government services."

## **FISCAL IMPACT**

Currently the collective annual cost of paying Councilmembers is \$18,900. Adopting this ordinance would amount to a collective annual cost up to \$57,000, which amounts to an added \$38,100.

## **ENVIRONMENTAL REVIEW**

Consistent with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and the Administrative Regulations Implementing CEQA (Title 14, Cal. Code Regs., Section 15000 et seq.) ("CEQA Guidelines") , the Board has determined that the adoption of this Resolution is not a "project" within the meaning of CEQA because pursuant to CEQA Guidelines Section 15378(b)(4) it involves only a government fiscal activity that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. The City Clerk or designee may file a Notice of Exemption with the Napa County Clerk within three (3) days following adoption of this Resolution.

## **ATTACHMENTS:**

1. [Ordinance - City Council Compensation Increase](#)

**ORDINANCE NO. 2023-\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON  
TO INCREASE THE MONTHLY SALARY OF THE MEMBERS OF THE CITY COUNCIL**

**WHEREAS**, Government Code section 36516(a)(2)(a) (effective January 1, 2024), authorizes city councils in cities with a population of 35,000 people or less to enact ordinances wherein the members of the city council receive compensation of up to \$950.00 per month, regardless of the number of council meetings that the members of the city council attend; and,

**WHEREAS**, the City of American Canyon ("City") has a population of less than 35,000 people; and,

**WHEREAS**, pursuant to Government Code section 36516(a)(4) (effective January 1, 2024), in addition to authorizing the monthly compensation of up to \$950.00, the City Council is authorized to adjust the compensation paid to its members by an additional 5% or an amount equal to inflation since January 1, 2024.

**WHEREAS**, the 5% increase may be added for each calendar year from the operative date of the last adjustment of the salary in effect when the ordinance adopting the increase is enacted and the amount equal to inflation since January 1, 2024, is based upon the California Consumer Price Index, which shall not exceed 10 percent for each calendar year.

**WHEREAS**, Government Code section 36516.5 requires that no change in compensation applies to a member of the City Council during his or her term of office unless an election was held after the passage of the Ordinance and one or more members of such council becomes eligible for a salary increase by virtue of beginning a new term of office; and,

**WHEREAS**, City Ordinance 2004-15 currently sets the City Council compensation at \$315.00 per month.

**WHEREAS**, on November 5, 2024, there will be an election to determine the new members of the City Council.

**NOW THEREFORE THE CITY COUNCIL OR THE CITY OF AMERICAN CANYON DOES HEREBY ORDAIN AS FOLLOWS:**

Consistent with the findings of the State Legislature, the City Council makes the following findings:

- A) The Legislature has not raised the base pay amounts for City Councilmembers since

1984; and

- B) Since 1984 inflation has increased more than 300%; and
- C) The City of American Canyon has not raised the pay for City Councilmembers since 2004; and
- D) An increase in base pay amounts for City Councilmembers will enable City Councilmembers to balance their careers and personal obligations with the calling to serve the American Canyon community; and
- E) An increase in base pay amounts for City Councilmembers will make it easier for members of marginalized communities to serve on the Council.

Chapter 2.04.060 of the Municipal Code shall be amended to provide (amendments in bold):

1. Section 2.04.060(A)(1) is amended to provide: **Consistent with Government Code Section 36516(a)(2)(A), the city council establishes the compensation to be paid to each member as nine hundred fifty dollars per month.**
2. Section 2.04.060(A)(3) is amended to provide: **The ordinance codified in this chapter shall become effective on January 1, 2024.**
3. Section 2.04.060(A)(4) is amended to provide: **Notwithstanding the effective date of the ordinance codified in this chapter, consistent with Government Code Section 36516.5, the salaries of the members of the city council shall not be increased to nine hundred fifty dollars per month until November 6, 2024.**

Consistent with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and the Administrative Regulations Implementing CEQA (Title 14, Cal. Code Regs., Section 15000 et seq.) ("CEQA Guidelines"), the Board has determined that the adoption of this Resolution is not a "project" within the meaning of CEQA because pursuant to CEQA Guidelines Section 15378(b)(4) it involves only a government fiscal activity that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. The City Clerk or designee may file a Notice of Exemption with the Napa County Clerk within three (3) days following adoption of this Resolution.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 3<sup>RD</sup> day of October 2023, by the following vote:

AYES: Councilmembers Aboudamous, Joseph, Oro, Mayor Garcia  
NOES: None  
ABSTAIN: None  
ABSENT: Vice Mayor Washington

The foregoing Ordinance was adopted at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 17<sup>th</sup> day of October 2023, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST:

\_\_\_\_\_  
Leon Garcia, Mayor  
APPROVED AS TO FORM:

\_\_\_\_\_  
Taresa Geilfuss, CMC, City Clerk

\_\_\_\_\_  
William D. Ross, City Attorney



## **TITLE**

2023 4th of July Celebration Re-cap

## **RECOMMENDATION**

Receive a presentation regarding the 2023 4th of July Celebration in American Canyon.

## **CONTACT**

Alexandra Ikeda, Parks and Recreation Director

## **BACKGROUND & ANALYSIS**

**The following item was requested by the City Council.**

American Canyon's 2023 4th of July Celebration was the most well-attended event since data became available, with over 10,000 people enjoying the festivities.

The parade began at 3:00pm - with participants staging on American Canyon Road before making their way north along the 1/2 mile long route on Elliott Dr. and concluding at Community Park II. Consistent with prior years, there were 26 parade entries from our community partners, nonprofit organizations, and City and County dignitaries.

The festival commenced at the conclusion of the parade (approximately 4:00pm) and was also located at Community Park II. It included food trucks, vendors, live music, and youth activities in and around the Boys and Girls Club. The fireworks spectacular began at dusk and concluded around 10p.

The program for the 2024 4th of July Celebration will be similar to 2023. Tonight's item includes a presentation of how staff uses data to inform the decision making process.

## **COUNCIL PRIORITY PROGRAMS AND PROJECTS**

Community and Sense of Place: "Build on the strength of our local community to develop a clear

'sense of place' and establish our unique identity."

### **FISCAL IMPACT**

The budget for the 2024 4th of July Celebration is \$54,300.00 - includes the fireworks show, stage and sound, various professional services, and miscellaneous supplies.

### **ENVIRONMENTAL REVIEW**

15378(b) - The action is not a "Project" subject to the California Environmental Quality Act ("CEQA") because it does not qualify as a "Project" under Public Resources Code Sections 21065 and 21080 and in Section 15378(b) of Title 14 of the California Code of Regulations.

### **ATTACHMENTS:**

1. [2024 - 4th of July Presentation](#)

CITY OF  
AMERICAN  
CANYON



# 2023 4th of July Recap

October 17, 2023



# American Canyon Parade

**Staging: American Canyon Road at 2 PM**

**Parade started at 3 PM - American Canyon Road to Community Park II**





# The Festival

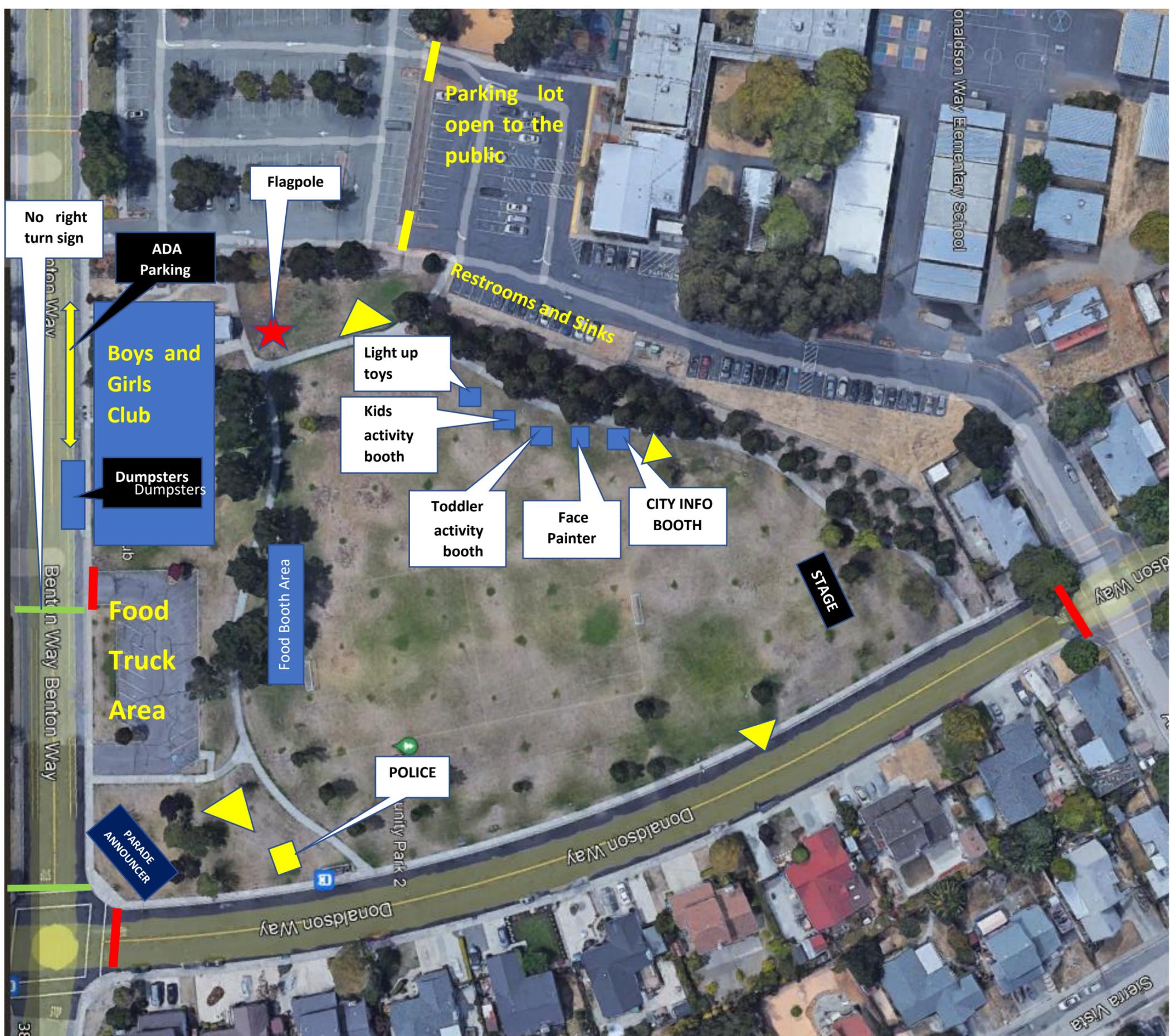
4:00 - 9:45PM



## Community Park II

- 12+ Food Trucks
- Live Music - 3 Bands
- Boys and Girls Club: 4-7 PM
- Face Painting
- Air Tattoos
- Kids Tent: Sensory Station
- Balloon Twisters
- Fireworks at dusk (about 9:15pm)

# Community Park II



Indicates an all-day street/parking lot closure. Will be opened momentarily to let parade through then reclosed.



Indicates closed gates between parking lots, Donaldson Way Parking lot will not be closed to the public.



Indicates temporary street closures that will be put in place then removed once the parade is completed.



Indicates light tower, towers will be aimed into park for after the fireworks.



# Community Park I



 Indicates Hard closure with security



*Welcome*



**Placer.ai**



**3 PM Parade on Elliott Drive**  
from American Canyon Rd. to Amarillo Dr.

**4 PM Festival at Community Park II**  
Music, Free Activities & Food Vendors

**Fireworks at Community Park II at Dusk**

Community Park II is located at the corner  
of Donaldson & Benton Way



## **TITLE**

Maintenance and Utilities Department, Environmental Services Quarterly Update

## **RECOMMENDATION**

Receive a Presentation on Maintenance and Utilities Department, Environmental Services Division

## **CONTACT**

Erica Ahmann Smithies, P.E., Public Works Director  
Pam Phillips, Environmental Services Manager

## **BACKGROUND & ANALYSIS**

The Maintenance and Utilities Department is responsible for the treatment and distribution of drinking water; the collection, reclamation, and reuse of wastewater; compliance with all environmental regulations related to water, wastewater, stormwater, and solid waste; and management of the City's facilities and fleet. The City operates a Water Treatment Plant, Water Reclamation Facility and Corporation Yard. The Water Reclamation Facility processes wastewater for either discharge to receiving waters or for recycled water production and distribution. The Environmental Services Division is located at the Water Reclamation Facility.

The Environmental Services Division encompasses many programs, some forward facing and some not. The Environmental Service Division monitors federal, state, and city laws, regulations, and codes in regard to NPDES (National Pollutant Discharge Elimination System) wastewater discharge, recycled water applications, solid waste, industrial pretreatment, pollution prevention, stormwater discharge, biosolid disposal, greenhouse gas emissions and water conservation. This division implements environmental program activities such as water quality analysis, inspections, field/plant sample collection, data validation and reporting, and educational outreach. The division administers environmental programs, including issuing permits, performing site inspections, identifying pollution sources, mitigating illicit discharges, and interfacing with regulatory agencies. The division develops, implements, modifies, coordinates, and monitors elements of a water conservation program including recycled water.

The Environmental Services Division works with other jurisdictions, community service providers and other agencies in environmental program development and coordination efforts. The division works

closely with all other departments in the City to build effective working relationships so that we all can be stewards of the environment.

Tonight, Council will receive a presentation of the Maintenance and Utilities Department, Environmental Services Division update.

**ENVIRONMENTAL REVIEW**

None

**ATTACHMENTS:**

[Environmental Services Quarterly Update](#)



# Maintenance and Utilities Department

City Council Update

October 17, 2023

# Environmental Services Division Update



# 2 New Environmental Services Division Hires

**Melisa Guillen**



**Mike Lombard**



# Environmental Service Division Programs

Water Reclamation Facility (WRF) Water Quality Compliance/Reporting

Pretreatment Inspections/Permits

Pollution Prevention/Outreach

Recycled Water Permits/Programs/Spill Reporting

Water Conservation Public Programs

Solid Waste Franchise/SB 1383 Regulations/Hazardous Waste

Bay Area Air Quality Management District Permits

Hazardous Materials Business Plan (HMBP) Unified Program

Support Stormwater Illicit Discharges/Reporting

Sustainability/EV Charging System/Solar

# Water Reclamation Facility (WRF) Water Quality Compliance/Reporting

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/CalSuWers-Dashboard.aspx>

## California Wastewater Surveillance Network Dashboard

### Filters

#### 1. Select Sewershed:

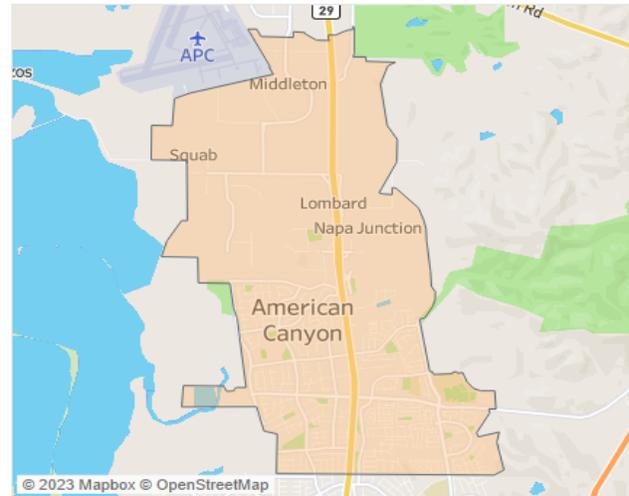
- Alabama (Eastern Mission District)
- Alameda (East Bay)
- Alameda (San Leandro)
- Alameda (Union City - Fremont Basin)
- Alameda (Union City - Newark Basin)
- Alameda (Union City - Union Basin)
- Butte (Chico)
- Butte (Orville)
- Contra Costa (Central San)

#### 2. Select Data Source:

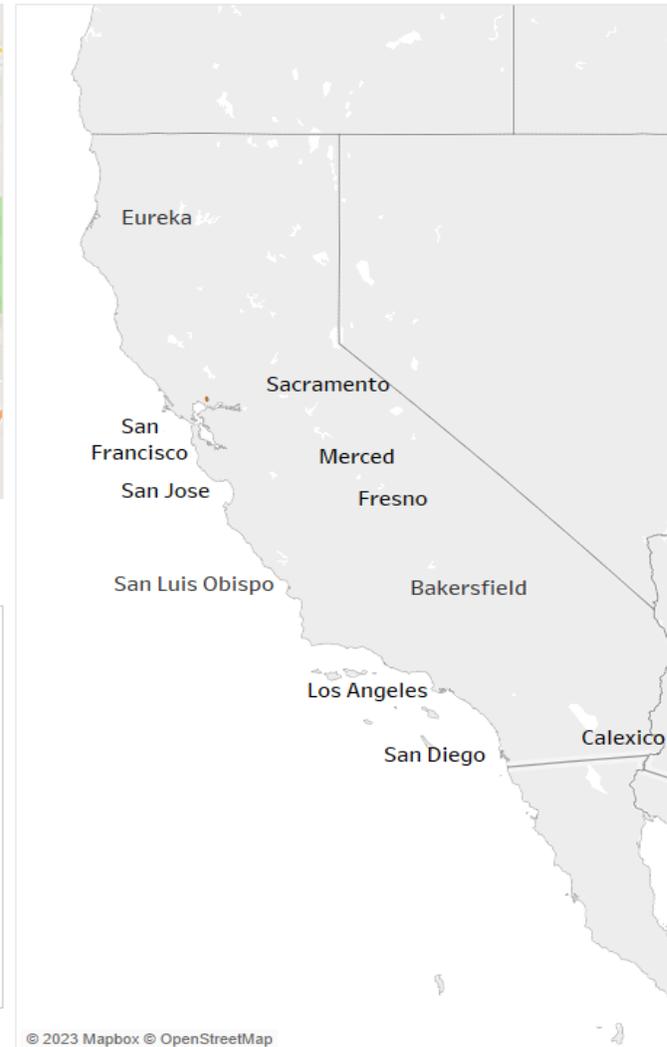
#### 3. Select Sample Date:

All values

### Sewershed: Napa (American Canyon)



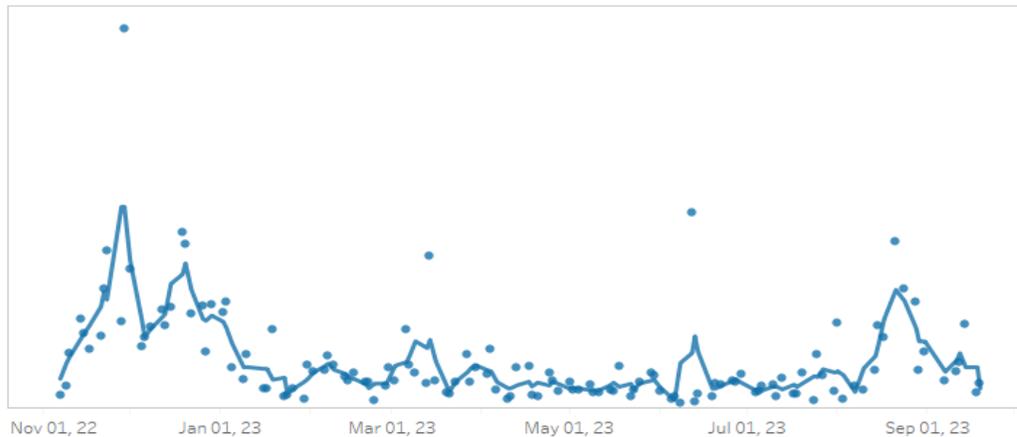
### Overall Sewershed Site Locations



### SARS-CoV-2 Concentrations: Napa (American Canyon)

Concentration Unit: SARS-CoV-2/PMMoV

Data Source: CDPH Drinking Water and Radiation Lab



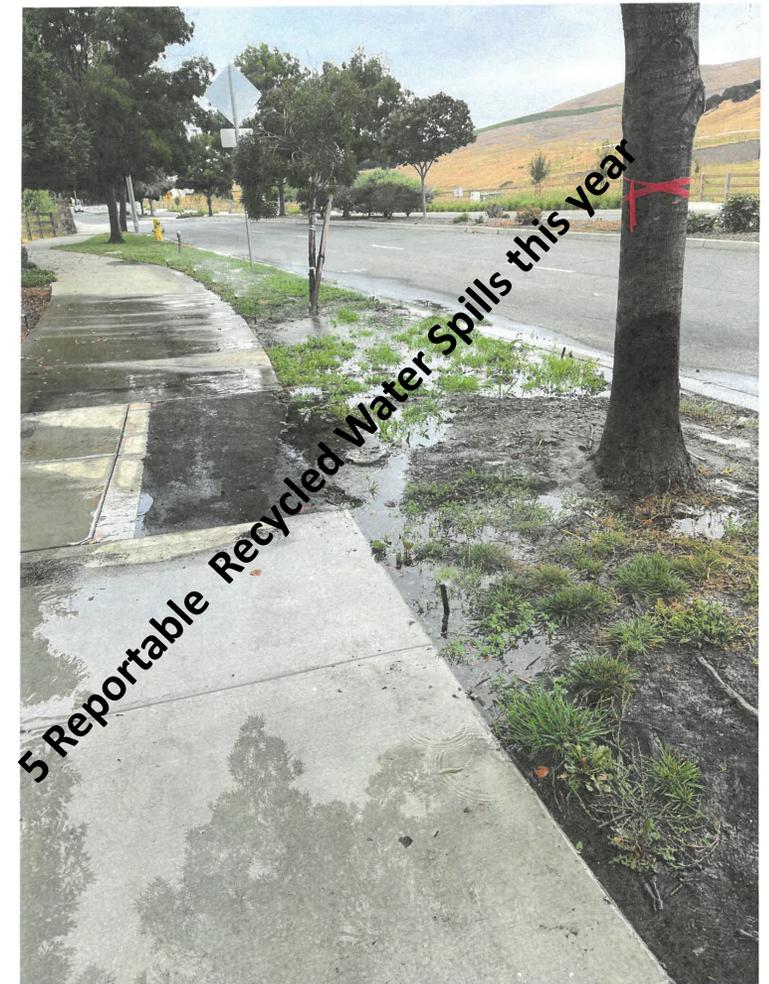


# Outreach

- Meet Me in the Streets
- Plant Tour for Napa Co Dept Public Health/Epidemiologists & Outreach Coordinators
- Tire Amnesty/Paper Shredding Event
  - Paper: 75% truck full (4,000 – 5,000 lbs)
  - Tires: 198

# Recycled Water Permits/Programs/Spill Reporting

	Inf Comb Flow Total	EFF-001 UV Flow	EFF-002 (E-3) Flow	% total effluent as Reclaimed Water	Residential Fill Station Use
Month	MG	MG	MG	%	MG
Jan 2023	94.97	98.34	8.25	8	0.001
Feb 2023	51.81	53.34	5.72	10	0.001
Mar 2023	103.92	104.05	7.19	6	0.001
Apr 2023	59.87	56.69	7.40	12	0.030
May 2023	52.02	41.78	14.08	25	0.065
Jun 2023	47.67	34.29	18.47	35	0.107
Jul 2023	47.10	28.16	22.95	45	0.132
Aug 2023	45.56	25.36	23.52	48	0.115
Sep 2023	37.33	26.20	15.23	37	0.073
Total	540.25	468.20	122.81	21	0.524 (0.43%)



# Water Conservation

- 2023 Rebate Program Participation
- Cash for Grass
  - 7,445 sq ft
- Toilet Rebates
  - 23 Toilets



# Solid Waste

## SB 1383

### Route Reviews

- Each hauler route required to be audited yearly
- Approximately 126 residential accounts completed to date
- Approximately 2% had NO contamination.



### Procurement of Recovered Organic Waste Products

- American Canyon Annual Procurement Target is 1,664 tons/yr
  - Phasing in: 580 tons 1<sup>st</sup> year, 1,160 tons 2<sup>nd</sup> year
- Compost, Renewable Gas, Electricity from Biomass conversion
- “Compost Hub” for American Canyon Residents
- 520 yards to date = 86.20% of 1<sup>st</sup> year procurement target

# Solid Waste

## Recology Quarterly Reports summarize to date

- 4,871 Garbage Tons Collected
- 2,012 Recycling Tons Collected
- 3,132 Organics Tons Collected
- 51 Bulky Item Pickups
- 156 gallons Used Oil Collected

ATTENTION! Our office and BOPA will close at 12:30 PM Friday, May 12, for our annual employee-owner meeting. Service will not be interrupted.



## American Canyon Waste Zero Ways

2023 SPRING NEWSLETTER



### DELINQUENT ACCOUNTS

It's important to make timely payments on your recycling, organics, and garbage account to prevent service disruption.

Recology will stop collection service if full payment is not received within thirty days after the customer is notified in writing that service may be discontinued because the account is ninety days past due.



If the past-due account is not paid in full, the account holder will be subject to a third-party collection agency and without recycling, organics, and garbage pickup.

Contact Customer Service at 707.552.3110 with billing questions or to make restitution on a delinquent account.

### CARE DISCOUNT

American Canyon residential customers participating in PG&E's low-income rate program CARE are eligible for a 15% discount on their monthly recycling, organics, and garbage collection bill.

To request the discount or maintain your current discount, you must present documentation annually showing your participation in the PG&E CARE program. The discount is effective from the date Recology receives the correct documentation. The discount is not retroactive.

Confirm your qualification for the discount by providing Recology American Canyon with a copy of the page(s) of your current PG&E bill showing:

- The date you enrolled or renewed participation in CARE.
- The name and address on the PG&E account must match your Recology account.

Submit the required documents to via—

Email: [Customerservice007@recology.com](mailto:Customerservice007@recology.com)  
US mail: 2021 Broadway St., Vallejo, CA 94589

In person: Bring it to the office or put an envelope in the drop box by the front door.  
FAX: 707.552.4126

### REDUCE PLASTIC CONTAMINATION

Put clean and dry recyclables directly into your blue bin. Do not bag them in plastic bags.

Plastic bags make it difficult for workers to sort recyclables properly and safely. It also slows the process and increases the cost of recycling. Plastic bags and other flimsy plastics can wrap around equipment, requiring operations to shut down while workers climb onto the

machinery to cut the plastic off of gears and screens.

Lightweight plastics, such as bags and plastic wrap, can contaminate paper bales, and mills will not buy bales if they contain more than 1 percent contamination.

For all these reasons, Recology Vallejo is asking customers to "Loose Load" recyclables.

For more helpful tips, visit [WhatBin.com](http://WhatBin.com).



Don't bag recyclables. Place items directly in the recycling container.

### HOW TO "LOOSE LOAD" RECYCLING:

1. Put clean and dry recyclables directly into your blue cart or your facility's large recycling container.
2. Use plastic liners only for smaller recycling bins typically used inside your kitchen or office.
3. Check the liner for food or liquids before emptying the recyclables into your larger recycling cart. If the liner contains food or liquid, it is contaminated. Cinch the bag and place it in your landfill bin. Reuse clean liners.

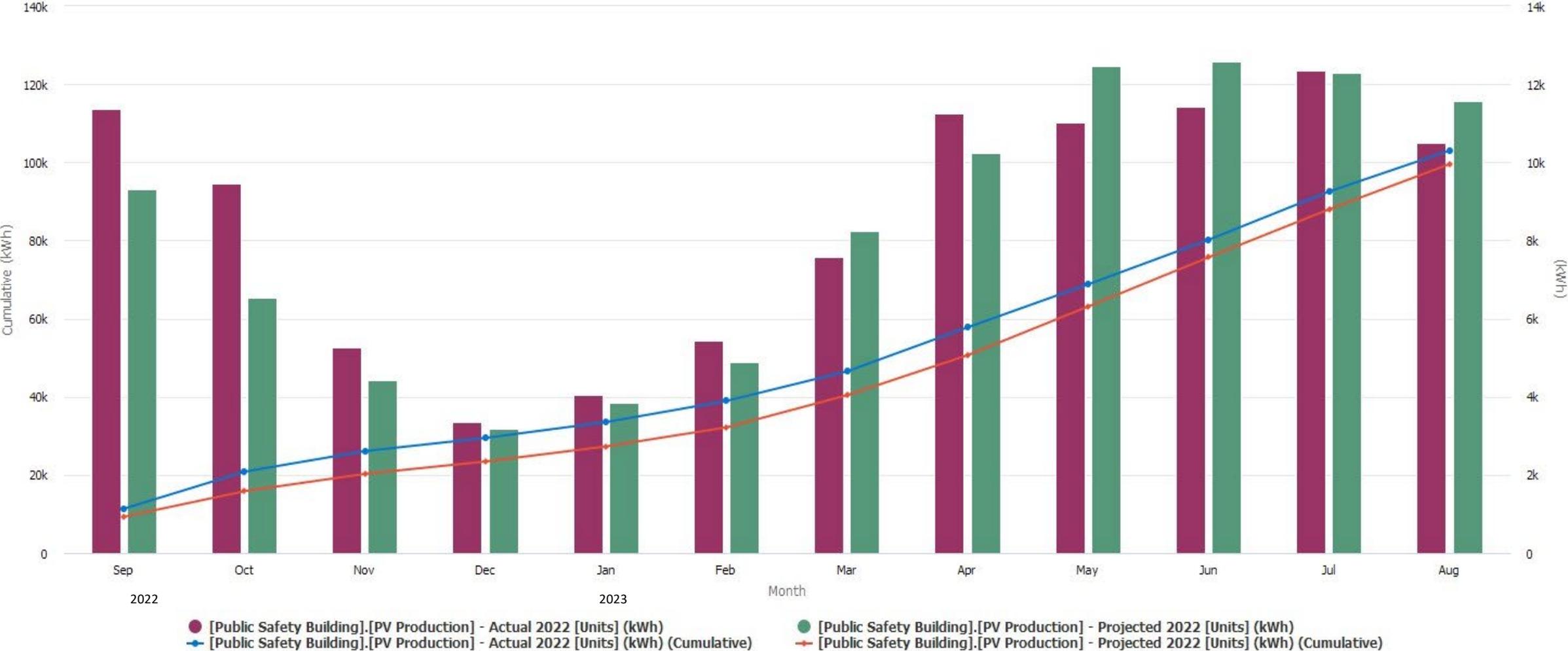


## Stormwater Support Illicit Discharge

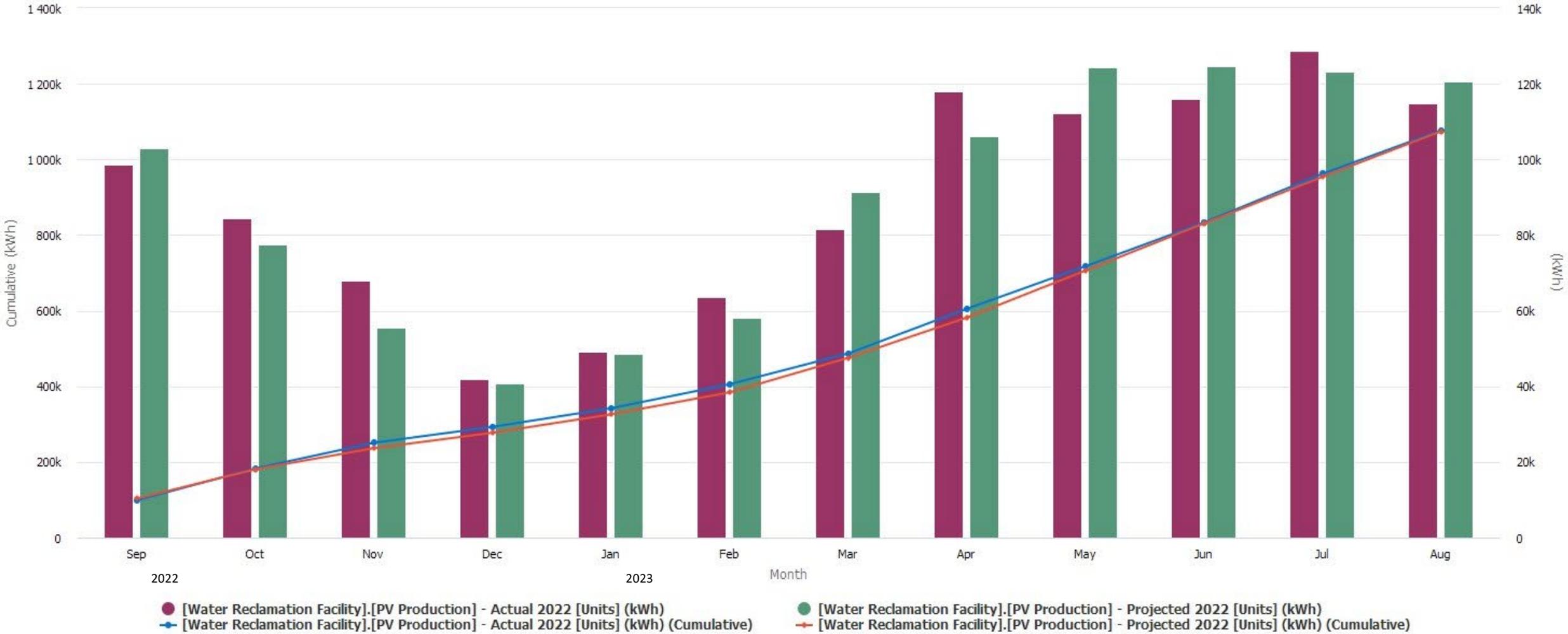
# Sustainability/EV Charging System/Solar



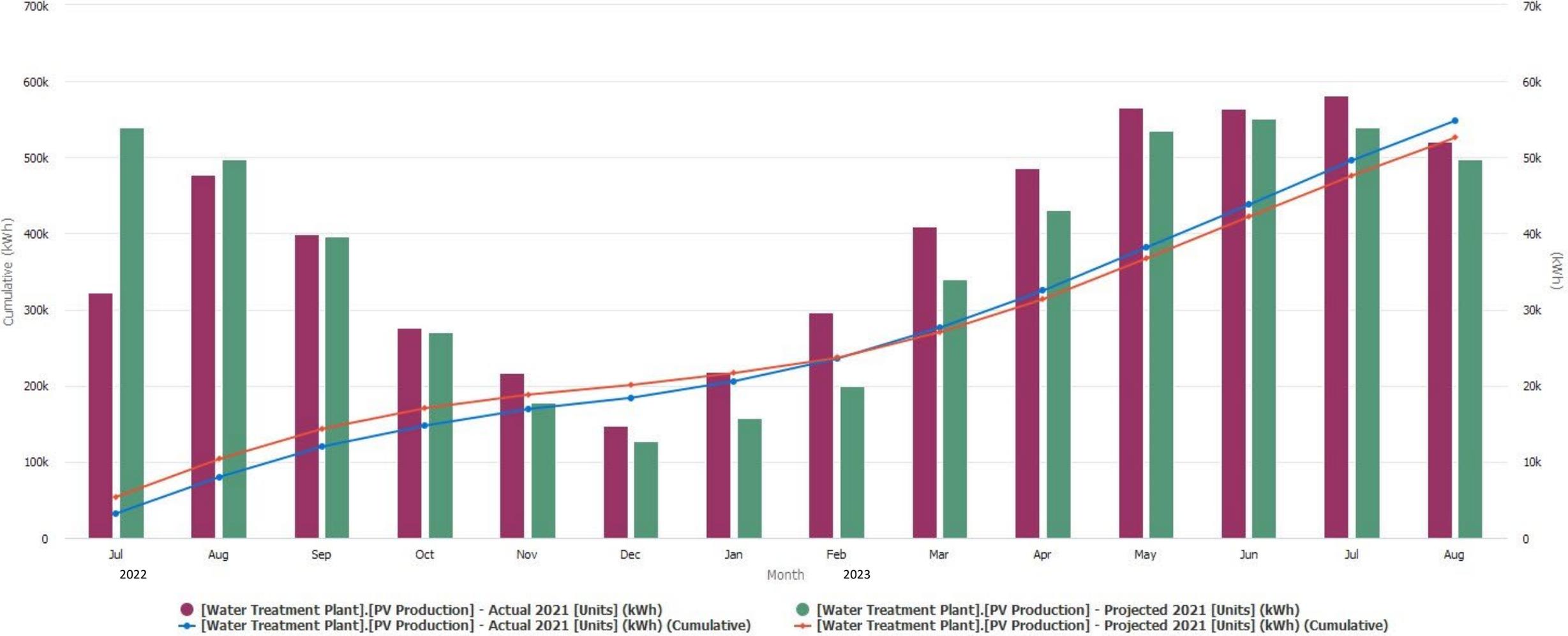
# Public Safety Building Solar Production



# Water Reclamation Solar Production



# Water Treatment Plant Solar Production





## City Hall EV Charging Station

January - September 2023

1,336 Total Charge Sessions

283,476 Total Charge Minutes



CITY OF  
AMERICAN  
CANYON

Questions?