



PALMDALE

a place to call home

**CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS
38300 SIERRA HIGHWAY
SUITE B
PALMDALE, CA 93550
WEDNESDAY, NOVEMBER 16, 2022
5:00 PM
7:00 PM
www.cityofpalmdale.org**

WELCOME

The Council Chamber is open for in-person public comment and seating. The Mayor and/or one or more members of the City Council may participate virtually in this meeting.

How to observe the meeting virtually:

1. Spectrum local access Channel 27
2. Online live webcast at www.cityofpalmdale.org.

How to Submit Public Comments:

VERBAL PUBLIC COMMENT DURING THE MEETING – ZOOM Number: US: +1 669
444 9171 Webinar ID: 884 9129 5351 Passcode: 213250

Webinar attendee link [https://us06web.zoom.us/j/88491295351?](https://us06web.zoom.us/j/88491295351?pwd=OTZFcU1PUFBsdEoxbDNLd1hjN2NQQT09)
[pwd=OTZFcU1PUFBsdEoxbDNLd1hjN2NQQT09](https://us06web.zoom.us/j/88491295351?pwd=OTZFcU1PUFBsdEoxbDNLd1hjN2NQQT09).

Verbal comments must be limited to three (3) minutes. Public comments submitted will become part of the official meeting record.

The safety and well-being of employees and the public remains the City's top priority. The City of Palmdale appreciates your patience and understanding during these challenging times.

The City Council is making every effort to follow the spirit and intent of the Brown Act and

other applicable laws regulating the conduct of public meetings in order to maximize transparency and public access.

In accordance with the Americans with Disabilities Act of 1990, if you require a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (661) 267-5151 at least 72 hours prior to the meeting.

If you require oral Spanish translation, please contact the City Clerk's Office at (661) 267-5151 at least 72 hours prior to the meeting.

Your courtesy is requested to help our meetings run smoothly. If you'll be kind enough to follow these simple rules, we can make the best possible use of your time and ours:

- Please refrain from public displays or outbursts, such as unsolicited applause, comments, cheering, foul language or obscenities.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be asked to leave the meeting.
- Please turn off/mute your cell phones and mobile devices.

5:00 P.M.

1. MAYOR TO CALL MEETINGS TO ORDER

2. ROLL CALL

MAYOR HOFBAUER, MAYOR PRO TEM LOA,
COUNCILMEMBERS CARRILLO, BISHOP, BETTENCOURT

3. PUBLIC COMMENTS ON CLOSED SESSION ITEMS

The public is invited to comment on any closed session item listed below. Please submit a Speaker's Form to the City Clerk **BEFORE** this portion of the meeting begins. Each person addressing the Council is customarily given up to three minutes to speak (with double the time allotted to non-English speakers using a translator). The amount of time authorized may be adjusted by the chair. If you wish to provide information to the Council, please present the City Clerk with 7 copies. Otherwise, your materials will simply be added to the administrative record. If you are attending the meeting by phone, please press *9 to "raise your hand." If attending by personal computer, please click the "raise your hand" button. Press *6 to un-mute yourself, state your name and begin speaking.

4. PRESENTATION BY CITY ATTORNEY

- 4.1 CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
Government Code Section 54956.9(d)(1)
Name of case: John J. Murphy v. City of Palmdale
Los Angeles County Superior Court Case Number: 22STCV22544
Related City Claim Number: 2022-007
- 4.2 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Shanae Smith, Patricia Nevarez and Michael "Mike" Behen vs. City of Palmdale, et al.
Los Angeles County Superior Court
Case No. 22STCV18219
This closed session is being held pursuant to the authority of California Government Code Section 54956.9(d)(1).
- 4.3 CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
Ricci v. City of Palmdale, et al.
Los Angeles County Superior Court
Case No. 22STCV01269
This closed session is being held pursuant to the authority of California Government Code Section 54956.9(d)(1).
- 4.4 CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Government Code 54956.9(d)(2): 1 potential case
- 4.5 CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
CV Communities, LLC et al. v. Antelope Valley East Kern Water Agency et al.
Los Angeles County Superior Court Case Nos. BC661107 and 20STCV10953
This closed session is being held pursuant to the authority of California Government Code Section 54956.9(d)(1).
- 4.6 CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
Marian K. Allen v. City of Palmdale
Los Angeles County Superior Court Case No. 21AVCV00824
This closed session is being held pursuant to the authority of California Government Code Section 54956.9(d)(1).

- 4.7 CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
Angela Lisa Thompson v. City of Palmdale
Los Angeles County Superior Court Case No. 22AVCV00437
This closed session is being held pursuant to the authority of California
Government Code Section 54956.9(d)(1).

5. **ANNOUNCEMENT BY CITY ATTORNEY**

6. **ADJOURN CLOSED SESSION MEETING**

7:00 P.M.

7. **PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE IN HONOR OF OUR TROOPS**

8. **PRESENTATION**

- 8.1 Presentation by Mayor and Council of the MISAC Award of Achievement to the City of Palmdale Information Technology Division for their practices that have met or surpassed local government standards.

9. **WAIVER OF FULL READING OF RESOLUTION(S) and ORDINANCE(S)**

Staff Recommendation: Move to waive full reading of the Resolution (s) and/or Ordinance(s) to be considered and voted on at this meeting.

10. **PUBLIC COMMENTS ON LISTED AGENDA ITEMS (EXCLUDING PUBLIC HEARINGS)**

You may address the Council once per meeting during Public Comments. This portion of the public comment is on any item listed on the agenda, excluding public hearings (if any). Public comment on public hearing items (if any) will be heard when that matter is considered. To address the Council regarding an item on the agenda, please fill out a Speaker's Form and submit it to the City Clerk **BEFORE** the Mayor announces the item. Each person addressing the Council is customarily given up to three minutes to speak (with double the time allotted to non-English speakers using a translator). The amount of time authorized may be adjusted by the chair. If you wish to provide information to the Council, please present the City Clerk with 7 copies. Otherwise, your materials will simply be added to the administrative record. If you are attending the meeting by phone, please press *9 to "raise your hand." If attending by personal computer, please click the "raise your hand" button. Press *6 to un-mute yourself, state your name and begin speaking.

11. **CONSENT CALENDAR**

All matters listed under the Consent Calendar will be enacted by one motion unless an item(s) is pulled by Council, in which case the item(s) will be removed from the Calendar and will be considered separately following this portion of the Agenda.

- 11.1 Approve First Amendment to Agreement between the City of Palmdale and Advantage Mailing, LLC for printing, bundling and delivery of the Palmdale News, Activities & Entertainment Magazine. (Staff Reference: Communication and Public Information Officer Lynch)

[Staff Report - Advantage Mailing 11_16_2022 Final.docx](#)

[Amendment to Agreement A-7679 Advantage Mailing LLC - signed.pdf](#)

[A-7679 Advantage Mailing LLC - FINAL.pdf](#)

- 11.2 Approve Agreement with Hafrisco LLC and Tripod LLC, for a loan of \$2,750,000 for acquisition of property located at the southeast corner of Avenue M and 10th Street West (APN 3128-015-900 and 3128-015-902). (Staff Reference: Director of Economic and Community Development Garibay)

[SR-_A-8142-Loan_Hafrisco_and_Tripod-11-16-22.docx](#)

[City Loan Agreement.11.10.22 with_attach.pdf](#)

- 11.3 Approve First Amendment to Legal Services Agreement with Burke Williams & Sorensen, LLP to amend the scope of services and to increase the total amount of the Agreement by \$600,000, to increase the the not to exceed amount to \$850,000 (Staff Reference: Interim City Attorney Porter)

[SR - Burke Williams & Sorensen LLP A-7802 Amend 1 - 11162022.docx](#)

[Burke Williams Sorensen LLP \(A-7802\) Amendment 1 - 11162022.pdf](#)

[Burke, Williams & Wellerstein, LLP \(A-7802\).pdf](#)

- 11.4 Approve First Amendment to Legal Services Agreement with Bradley, Gmelich & Wellerstein, LLP to increase the total amount of the Agreement by \$500,000, to increase the the not to exceed amount to \$750,000. (Staff Reference: Interim City Attorney Porter)

[SR - Bradley, Gmelich & Wellerstein, LLP A-7819 Amend 1 - 11162022.docx](#)

[Bradley, Gmelich & Wellerstein, LLP \(A-7819\) Amendment 1 - 11162022.pdf](#)

[Bradley, Gmelich & Wellerstein, LLP \(A-7819\).pdf](#)

- 11.5 Approve Second Amendment to Legal Services Agreement with Kane, Ballmer & Berkman, LLC to increase the total amount of the Agreement by \$200,000, to increase the the not to exceed amount to \$650,000. (Staff Reference: Interim City Attorney Porter)

[SR - Kane, Ballmer & Berkman, LLC A-7222 Amend 2 - 11162022.docx](#)

[Kane, Ballmer & Berkman, LLC \(A-7222\) Amendment 2 - 11162022.pdf](#)

[Kane, Ballmer & Berkman, LLC \(A-7222\).pdf](#)

[Kane, Ballmer & Berkman, LLC \(A-7222\) Amend 1.pdf](#)

- 11.6 Adopt Resolution No. CC 2022-120, a Resolution of the City Council of the City of Palmdale Making Legally Required Findings for Extending Remote Teleconference Participation for Meetings of the City Council and its Related and/or Subordinate Legislative Bodies. (Staff Reference: Interim City Attorney Porter)

[SR_-_RESO_Authorizing_Remote_Meetings_111622.docx](#)

[RESO_-_120Continuing_Remote_Meeting_authorization_-_For_Nov_16_2022.docx](#)

- 11.7 Approve Purchase Order No. 20230047 with All-State Utility Supply, Inc. for the purchase of replacement streetlight poles and other related items in the amount of \$144,468.84. (Staff Reference: Director of Public Works Glidden)

[All-State Utility Supply PO 20230047.docx](#)

[PO 20230047.pdf](#)

[Bid - All-State Utility Supply.pdf](#)

- 11.8 Approve additional funds of \$69,000.00 on Purchase Order No. 20230013 with Vulcan Materials Company for as needed asphalt materials in an amount not to exceed \$169,000.00. (Staff Reference: Director of Public Works Glidden)

[1._SR_Approve_Vulcan_Materials_PO_20230013_Musical_Road_Project.docx](#)

[2. Purchase Order No. 20230013 Vulcan Materials Co.pdf](#)

[3. IFB 22-001-3300 Asphalt Materials Cost Proposal.pdf](#)

12. WORKSHOP PRESENTATION

- 12.1 Presentation to Council regarding Certificate in Applied Psychology Program (CAPP). (Staff Reference: Assistant to the City Manager Lopez)

13. PUBLIC COMMENTS ON NON-AGENDA ITEMS

This portion of the Agenda allows an individual the opportunity to address the Council on any subject within the City's subject matter jurisdiction not on the Agenda. Under state legislation, in general, no action can be taken on items not specifically referenced on the Agenda, but may offer suggestions on how your concerns may best be resolved. To address the Council regarding a non-agenda item, please fill out a Speaker's Form and submit it to the City Clerk **BEFORE** the Mayor announces the item. Each person addressing the Council is customarily given up to three minutes to speak (with double the time allotted to non-English speakers using a translator). The amount of time authorized may be adjusted by the chair. If you wish to provide information to the Council, please present the City Clerk with 7 copies. Otherwise, your materials will simply be added to the administrative record. If you are attending the meeting by phone, please press *9 to "raise your hand." If attending by personal computer, please click the "raise your hand" button. Press *6 to un-mute yourself, state your name and begin speaking.

14. CITY MANAGER'S REPORT

15. ADJOURNMENT



City Council Staff Report

DATE: NOVEMBER 16, 2022
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: CITY MANAGER DEPARTMENT
COMMUNICATIONS DIVISION
DISTRICT: ALL
SUBJECT: APPROVE FIRST AMENDMENT TO AGREEMENT BETWEEN THE
CITY OF PALMDALE AND ADVANTAGE MAILING, LLC FOR
PRINTING, BUNDLING, AND DELIVERY OF THE PALMDALE
NEWS, ACTIVITIES & ENTERTAINMENT MAGAZINE

ISSUE

Approve First Amendment to Agreement No. A-7679 between the City of Palmdale and Advantage Mailing, LLC for printing, bundling, and delivery of the Palmdale News, Activities & Entertainment Magazine.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve the First Amendment to Agreement No. A-7679 between the City of Palmdale and Advantage Mailing, LLC for printing, bundling, and delivery of the Palmdale News, Activities & Entertainment Magazine in the overall contract amount not to exceed \$420,000 for a term of two years; and,
2. Authorize the Interim City Manager or designee to execute First Amendment to Agreement No. A-7679 with Advantage Mailing, LLC including making minimal and/or non-substantive changes.

BACKGROUND

The Palmdale News, Activities & Entertainment Magazine is published quarterly (Winter, Spring, Summer, Fall) to provide residents and businesses with information on City news, events, and classes. The magazine is mailed to Palmdale residents located in zip codes 93550, 93552, and 93591; and is distributed to community stakeholders for use in their recruitments, distributed at community events and throughout City and community facilities.

In 2021, in an effort to improve the delivery and distribution of the magazine, the City released a Request for Proposal (RFP) for the printing, bundling, and delivery services. At the City Council meeting held on October 20, 2021, the Council approved Agreement

No. A-7679 with vendor Advantage Mailing, LLC, the selected vendor through the RFP process. Agreement No. A-7679 is for \$119,128 and includes an option to extend the agreement term for an additional two years.

First Amendment to Agreement No. A-7679 will allow Staff to exercise the option to extend the agreement term for two years, including new services, and increase the overall contract amount not to exceed \$420,000, which constitutes an allocation of \$147,200 for FY 22/23 and \$153,100 for FY 23/24.

DISCUSSION

Staff recommends approval of the First Amendment to Agreement No. A-7679 to continue services with Advantage Mailing, LLC for two years. The services received in 2022 from Advantage for printing, mailing, and bundling the magazine demonstrated they are an experienced vendor who produces a top-quality product, in a timely fashion, with the ability and flexibility to make changes if needed up to press time and at a good value.

FISCAL IMPACT

The contract total amount is not to exceed \$420,000; funds have been budgeted in FY 22/23 for \$147,200 in account 10117001-722330. Funds for FY 23/24 will be appropriated during the next budget cycle.

STRATEGIC PLAN

Goal I: Maintain effective public safety and protection for life, property, and the environment.

C. Use a variety of methods to communicate timely, useful, and trusted information about City programs, services, and policies.

Prepared by:	Thomas Lynch, Communication and Public Information Officer
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, Interim City Manager
Approved as to form:	Scott E. Porter, Acting City Attorney

ATTACHMENTS

First Amendment to Agreement No. A-7679

**FIRST AMENDMENT TO AGREEMENT A-7679
BETWEEN THE CITY OF PALMDALE AND ADVANTAGE MAILING, LLC**

This First Amendment to Agreement No. A-7679 ("Agreement") between the City of Palmdale and ADVANTAGE MAILING, LLC is made and entered into this 17th day of November, 2022 by and between the City of Palmdale (hereinafter called "CITY") and ADVANTAGE MAILING, LLC (hereinafter called "CONTRACTOR").

WHEREAS, the CITY and CONTRACTOR entered into an agreement on October 18, 2021, to provide printing, bundling, and delivery of the Palmdale News Activities and Entertainment Magazine.

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in the Contract, and if required, is duly registered under the laws of the State of California.

WHEREAS, the CITY and CONTRACTOR now desire to amend the Agreement to include new services, increase the total compensation, and exercise the option to extend the agreement for two (2) years term.

NOW THEREFORE, the parties agree as follows:

TERM OF CONTRACT

The CITY and CONTRACTOR desire to use the two (2) terms of one (1) year each; extending the agreement through November 17, 2024.

Sections 1, 2.1, 5, and 5.3 are revised to provide as follows. All other sections remain unchanged.

1 CITY PROJECT MANAGER

CONTRACTOR shall act under the authority and approval of the Communication Public Information Officer/designee, who shall oversee this contract.

2.1 CONTRACTOR shall provide printing, bundling, and delivery of the Palmdale News, Activities & Entertainment Magazine. CITY's schedule allows for two weeks (10 working days) from the day the final artwork is released to delivery to the designated addresses. The magazine's printing must be high quality, have accurate color, accurate registration, clean pages (no ghosting, dirt marks, or spots), and sharp images and typography.

Quantity:	55,000 Winter 2023 and 2024 editions
	55,000 Spring 2023 and 2024 editions
	58,000 Summer 2023 and 2024 editions
	55,000 Fall 2023 and 2024 editions

Over/Under:	Not to exceed 2% of the quantity ordered.
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Paper Stock: 70 lb. white gloss text, coated two sides

Size: Trim size 8-1/4" x 10-3/4"

Prints: 4/4 full-color process

Bleeds: Full

Pages: 48 pages with self-cover

Coating: N/A

Binding: Fold, collate, saddle stitch, bind, and trim

Artwork: Will be created on the Apple platform using InDesign with linked Word, Photoshop, and Illustrator files. Artwork can be supplied as a package of native InDesign file(s) with links or as a press-quality PDF.

Prints: Web or sheet-fed press.

Proofs: An accurate digital color proof showing pagination, crossovers, bleeds, etc., must be approved by City staff before printing. Proofs must be delivered electronically to communications@cityofpalmdale.org within two (2) business days.

Press Check: Required. A press check is preferred if travel is limited to within a one-hour drive of the City of Palmdale. If this is not possible, the representative from the awarded vendor must conduct the press check to ensure quality and that the final printed piece matches exactly the City-approved proofs, including accurate color, pagination, bleeds, etc.

Delivery: Winter edition:
55,000 magazines bundled and strapped in 50s (each bundle should consist of two stacks of 25 magazines with the spines at alternating edges) delivered to the mailing house (address below) first week of January 2023 and January 2024, for mailing no later than second week of January 2023 and January 2024.
Remaining magazines delivered to the City Manager's office (address below) Attn.: Communications Division.

Spring edition:
55,000 magazines bundled and strapped in 50s (each bundle

should consist of two stacks of 25 magazines with the spines at alternating edges) delivered to the mailing house (address below) first week of March 2023 and March 2024, for mailing no later than second week of March 2023 and March 2024. Remaining magazines delivered to the City Manager's office (address below) Attn.: Communications Division.

Summer edition:

58,000 magazines bundled and strapped in 50s (each bundle should consist of two stacks of 25 magazines with the spines at alternating edges) delivered to the mailing house (address below) first week of May 2023 and May 2024, for mailing no later than second week of May 2023 and May 2024. Remaining magazines delivered to the City Manager's office (address below) Attn.: Communications Division.

Fall edition:

55,000 magazines bundled and strapped in 50s (each bundle should consist of two stacks of 25 magazines with the spines at alternating edges) delivered to the mailing house (address below) first week of September 2023 and September 2024, for mailing no later than second week of September 2023 and September 2024. Remaining magazines delivered to the City Manager's office (address below) Attn.: Communications Division.

The mailing house address:

Minuteman Press
331 East Ave K-4
Lancaster, CA 93535

The remaining magazines are to be delivered to:

City of Palmdale
City Manager's Office
Attn: COMMUNICATIONS Division
38300 Sierra Highway, Suite A
Palmdale, CA 93550

5 PRICE

CITY shall pay to CONTRACTOR an overall contract amount not to exceed FOUR HUNDRED TWENTY THOUSAND (\$420,000) dollars; which constitutes an allocation of \$147,200 for FY 22/23 and \$153,100 for FY 23/24 for the completion of all the work and services described in this First Amendment Section 2 above for the contract term which sum shall include all costs or expenses incurred by CONTRACTOR.

5.3 PAYMENT

A separate detailed invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.

All other terms and conditions remain in full force and effect.

(REST OF PAGE INTENTIONALLY LEFT BLANK)

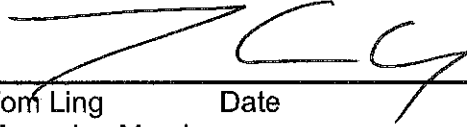
In Witness Whereof, the parties hereto have caused this Contract to be executed and attested by their respective officers thereunto duly authorized.

CITY OF PALMDALE:

ADVANTAGE MAILING:

Ronda Perez Date
Interim City Manager

Tom Ling Date
Managing Member



ADDRESS FOR NOTICE:
CITY OF PALMDALE
38300 Sierra Highway, Suite A
Palmdale, CA 93550

ADDRESS FOR NOTICE:
ADVANTAGE MAILING
1600 N. Kraemer Blvd.
Anaheim, CA 92806

APPROVE AS TO FORM:

Scott E. Porter
Interim City Attorney

ATTEST:

ATTEST: If Corporation

Roxanne Faber
Acting City Clerk

Secretary

**AGREEMENT NO. A-7679
CONTRACT FOR SERVICES
BETWEEN THE CITY OF PALMDALE AND ADVANTAGE MAILING,**

This CONTRACT for services ("Contract" herein) is made and entered into this 18th day of October, 2021, by and between the City of Palmdale, a public body corporate and politic, (hereinafter called "CITY"), and ADVANTAGE MAILING, a LLC, (hereinafter called "CONTRACTOR"). The term of this Contract is one (1) year, commencing on October 18, 2021, with CITY reserving the option to extend the agreement for two (2) additional terms of one (1) year each.

RECITALS

WHEREAS, CONTRACTOR represents that CONTRACTOR has the expertise and is qualified to perform the services described in this Contract.

NOW THEREFORE, CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1 CITY PROJECT MANAGER

To provide the services required by this Contract, CONTRACTOR shall act under the authority and approval of John Mlynar Director/designee, who shall oversee this Contract, the work performed by CONTRACTOR, assist CONTRACTOR with any necessary information, audit billings, and approve payments. The CONTRACTOR shall channel all contacts and requests through the City project manager.

2 DESCRIPTION OF WORK

2.1 CONTRACTOR shall provide the following services in a manner satisfactory to CITY:

CONTRACTOR shall provide, Printing, Bundling, and Delivery of the Palmdale News Activities Entertainment Magazine. Our schedule allows for two weeks (10 working days) from the day final artwork is released, to delivery to the designated addresses. The printing of the magazine must be high quality, have accurate color, good registration, clean pages (no ghosting, dirt marks or spots), sharp images and type.

Quantity: 55,000 Winter/Spring 2022 Palmdale Magazines
58,000 Summer 2022 Palmdale Magazines
55,000 Fall 2022 Palmdale Magazines
56,000 Date TBD Palmdale Magazines (if needed)

Overs/Unders: Should not exceed 2% of the quantity ordered.

Paper Stock: 70 lb., white, gloss text, coated two sides

Size: Finished size 8-1/4" x 10-3/4"

Prints: 4/4 full color process

Bleeds: Full, on all sides

Pages: 52 pages with self-cover

Coating: N/A

Binding: Fold, collate saddle stitched, bind, and trim

Artwork: Will be created on the Macintosh platform in InDesign and can be supplied as native InDesign file(s) with placed images, or as a press quality PDF.

Prints: Web press, or sheetfed.

Proofs: Accurate color, and a folded and trimmed blueline (or similar), for pagination, crossovers, bleeds etc., must be approved by City Communications Manager before printing. Proofs can be either delivered or mailed overnight to the City (cost to mail proofs are bidder's responsibility). Proofs will be returned via FedEx mail within two (2) business days (City will pay costs for returning proofs).

Press Check: Will be required. A press check is preferred if travel is limited to within an hour drive of the City of Palmdale. However, if this is not possible, the representative from the awarded vendor must conduct the press check to ensure quality and that the final printed piece matches exactly with the signed off proofs supplied by the awarded vendor; the color matches the supplied color proofs supplied by the City, including accurate color pagination, and that all changes requested during the proofing process are made and placed correctly in the book.

Delivery: Winter/Spring: Approximately 52,000 magazines bundled & strapped in 50's. Each bundle should consist of two stacks of 25 magazines with the spines at alternating edges, to be delivered to mailing house (see below) no later than January 3, 2022, for mailing of magazine on January 6, 7 & 8. Remaining magazines to be delivered as follows: 500 magazines delivered to City of Palmdale City Manager's office (see below), remaining magazines to be delivered to City of Palmdale Parks and Recreation Department (see below).

Summer: Approximately 55,000 000 magazines bundled & strapped in 50's. Each bundle should consist of two stacks of 25 magazines with the spines at alternating edges, to be delivered to mailing house (see below) no later than May 5, 2022, for mailing of magazine on May 12, 13 & 14. Remaining magazines to be delivered as follows: 500 magazines delivered to City of Palmdale City Manager's

office (see below), remaining magazines to be delivered to City of Palmdale Parks and Recreation Department (see below).

Fall: Approximately 52, 000 magazines bundled & strapped in 50's. Each bundle should consist of two stacks of 25 magazines with the spines at alternating edges, to be delivered to mailing house (see below) no later than September 6, 2022, for mailing of magazine on September 9, 10 & 11. Remaining magazines to be delivered as follows: 500 magazines delivered to City of Palmdale City Manager's office (see below), remaining magazines to be delivered to City of Palmdale Parks and Recreation Department (see below).

The mailing house address:

Minuteman Press
331 East Ave K-4
Lancaster, CA 93550

The remaining magazines to be delivered to:

City of Palmdale
City Manager's Office
Attn: John Mlynar
38300 Sierra Highway, Suite A
Palmdale, CA 93550

City of Palmdale
Parks & Recreation Department
Attn: Keri Smith
827 East Avenue Q-9
Palmdale, CA 93550

2.2 CONTRACTOR shall have no claim for compensation for any services or work, which has not been authorized by CITY's Authorization to Proceed.

2.3 CONTRACTOR shall not accept any change of scope, or change in contract provisions, to this Contract unless issued in writing, as a contract change order or amendment and signed by CITY. Any extensions of time must be mutually agreed upon in writing and executed by both parties.

2.4 CONTRACTOR shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the CONTRACTOR as applicable to this contract.

2.5 All work supplied under this Contract shall be fully guaranteed by CONTRACTOR for a minimum period of 60 days from the date of acceptance by CITY. Any defects of design, workmanship, or materials that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.

2.6 CITY shall provide to CONTRACTOR, without charge, all data, program information, including reports, records, maps, and other information, now in CITY's possession, which may facilitate the timely performance of the work.

3 CONTRACTOR'S KEY PERSONNEL

3.1 **Key Staff.** CITY reserves the right to review and approve CONTRACTOR'S staff including all subcontractors to be assigned to any project by CONTRACTOR during the term of this Contract.

This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.

CONTRACTOR's Team and Key Personnel are as follows:

Tom Ling, Managing Member

This Services Contract has been awarded to CONTRACTOR based on its representation that those personnel and subcontractors submitted as part of its bid and listed above will perform the portions of the work listed above.

CONTRACTOR shall not deviate nor substitute any of these team members without prior written approval by CITY.

3.2 Subcontractors. During the performance of the Agreement, CONTRACTOR may engage such additional SUBCONTRACTORS as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with CONTRACTOR.

CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

3.3 Direct Responsibility. All services required under this Contract shall be performed by CONTRACTOR, or under CONTRACTOR's direct supervision, and all personnel shall possess the qualifications, permits and licenses required by State and local law to perform such services.

3.3.1 CONTRACTOR shall be solely responsible for the satisfactory work performance of all personnel engaged in performing services required by this Contract, and compliance with all reasonable performance standards established by CITY.

3.3.2 CONTRACTOR shall be responsible for payment of all CONTRACTOR's employees' and subcontractor's wages and benefits and shall comply with all requirements pertaining to the employer's liability, workers' compensation, unemployment insurance, and Social Security.

3.3.3 CONTRACTOR shall indemnify and hold harmless CITY, and its respective officers, agents and employees from and against all claims, demands, damages or costs arising from CONTRACTOR's acts or omissions with respect to any liability, damages, claims, costs and expenses of any nature arising from alleged violations of personnel practices.

4 ACCEPTANCE AND DOCUMENTATION

Each task shall be reviewed and approved by the Contract Project Manager to determine acceptable completion.

4.1 **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.

4.2 **Property of CITY.** All materials, including reports, computer programs and other deliverables, supplied or created under this Contract are the sole property of CITY. CONTRACTOR is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. CONTRACTOR shall not use or release these materials without the prior written consent of CITY.

4.3 **Products.** All equipment, materials, parts, and other components incorporated in the work or services performed pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.

5 PRICE

CITY shall pay to CONTRACTOR an amount not to exceed One Hundred Nineteen Thousand One Hundred Twenty Eight dollars (\$119128.00) for the completion of all the work and services described in Section 2, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as follows:

Paper Stock: 10 lb., white, gloss test, coated both sides

52 page self-cover

6.4 When equipment, materials or supplies generally taxable to CONTRACTOR are eligible for a tax exemption due to the nature of the work, CONTRACTOR shall assist the City in applying for and obtaining such tax credits and exemptions, which shall be paid or credited to the City.

7 PATENT FEES AND ROYALTIES

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use, in the performance of the work or the incorporation in the work of any invention, design, process, program, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, program, product or device is specified in the contract documents for use in the performance of the work and if, to the actual knowledge of CITY, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by CITY in the contract documents. CONTRACTOR shall indemnify and hold harmless CITY and anyone directly or indirectly employed by CITY from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the work, or resulting from the incorporation in the work of any invention, design, process, program, product or device not specified in the contract documents, and shall defend all such claims in connection with any alleged infringement of such rights.

8 INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR and any subcontractors working on its behalf agree to indemnify CITY, its officers, employees, agents and elected and appointed boards (hereinafter "Indemnified Parties") for any loss, claim, demand, cause of action, cost, expense, damage, obligation or liability which arises out of or is in any way connected with the performance of any work under this agreement, including any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of CONTRACTOR, or its subcontractors, and regardless of any acts, omissions or negligence (whether active or passive) of any person or entity indemnified hereunder. At their own expense, CONTRACTOR and, as applicable, any subcontractors working on its behalf, shall defend any suit, claim or action against the Indemnified Parties founded upon such loss, claim, demand, cause of action, cost, expense, damage, obligation or liability. CONTRACTOR shall ensure that the contract of any subcontractor working under this agreement contain an indemnity agreement, requiring the subcontractor to indemnify and defend the Indemnified Parties pursuant the terms set forth above. CONTRACTOR shall indemnify the Indemnified Parties, and save it harmless from any and all loss, damage, costs, expenses and attorney's fees suffered or incurred on account of any breach of the aforesaid obligations and covenants, and any other provision or covenant of this agreement.

9 INSURANCE

9.5 The requirements as to the types and limits of insurance to be maintained by CONTRACTOR are not intended to and shall not in any manner limit or qualify CONTRACTOR's liabilities and obligations under this Contract.

9.6 Any policy or policies of insurance that CONTRACTOR elects to carry as insurance against loss or damage to its equipment and tools or other personal property used in the performance of this Contract shall include a provision waiving the insurer's right of subrogation against CITY.

9.7 All insurance coverage must be maintained throughout the duration of this Contract.

9.8 Acceptable Proof of Insurance:

9.8.1 ACORD Certificate of Insurance listing all coverage, limits, deductibles and insured; and endorsements for all applicable coverage if agent has authority to issue it; or additional insured Form CG20100704 and CG20370704 or equivalent must be provided for general liability coverage. Additional insured form CA0001 must be provided for automobile liability coverage.

9.8.2 Binders of insurance for all coverage. Agents must confirm that policy endorsements have been ordered from the respective insurance companies. Upon issuance, policy endorsements and a corresponding Certificate of Insurance listing all insurers and coverage must be submitted to the City Attorney.

9.9 Notwithstanding any other provision of this Contract, CITY may immediately terminate this Contract if, at any time CONTRACTOR fails to maintain the required insurance for any period of time or fails to comply with any of the insurance requirements listed above.

10 TERMINATION WITHOUT CAUSE

City reserves the right to terminate this Contract or any part thereof for its sole convenience with fifteen (15) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. CONTRACTOR shall also surrender to CITY all finished or unfinished documents, processes, programs and other supplies and materials, which shall be City's property. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive an amount equal to the value of the work completed as of the termination date in accordance with the fee schedule or as negotiated between the parties. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this Contract.

11 TERMINATION FOR CAUSE

If CITY determines that CONTRACTOR has failed to supply an adequate working force, or to provide services of proper quality, or has failed in any other respect to

satisfactorily perform the services specified in this Contract, CITY shall give written notice to CONTRACTOR specifying all defaults to be remedied within thirty (30) days. Such notice shall set forth the basis for CITY's dissatisfaction and suggest corrective measures. If, after thirty days, CONTRACTOR has failed to implement appropriate corrective measures, CITY may elect to terminate this Contract in whole or in part.

11.1 In the event CITY terminates this Contract, in whole or in part, for cause, CITY may procure, upon such terms and in such manner, as it may deem appropriate, services similar to those terminated.

11.2 CONTRACTOR shall provide all finished or unfinished documents, data, studies, software, drawings, programs, processes, maps, photographs, reports, etc., prepared by CONTRACTOR within fifteen (15) working days after notice of termination. Upon such termination, CONTRACTOR shall be paid an amount equal to the value of the services provided and work performed as of the date of termination, taking into consideration the costs associated with hiring another CONTRACTOR to complete the services. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to both completed work and work in progress, to complete and incomplete documents when such are delivered to CITY, and to authorized reimbursement expenses. The above is in addition to any other remedies available by law or equity to CITY.

11.3 If, after notice of termination of the Contract under the provisions of this Section 11, it is determined, for any reason, that CONTRACTOR was not in default, or that the default was excusable, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 10.

12 DISPUTE RESOLUTION

All claims, disputes, and other matters in question between CITY and CONTRACTOR arising out of or relating to this Contract or the breach thereof shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.

13 OWNERSHIP OF PRODUCT

All product, data, documents, programs and software including, but not limited to, research, field notes, investigations, analysis, studies, processes, software, instructions for use and other manuals, whether complete or incomplete, which are prepared or produced in the performance of this Contract are to be, and remain the property of CITY and shall be delivered to or left with CITY upon the completion or termination of this Agreement. CONTRACTOR shall furnish CITY, upon its request, originals and reproducible and electronic copies of product, data reports, studies and of all other documents listed above. Electronic copies shall be provided in an unprotected format which allows CITY to copy, reproduce and makes changes as CITY deems necessary.

14 DELEGATION AND ASSIGNMENT

14.2 Any assignment, delegation or subcontract shall be made in the name of CONTRACTOR and shall not bind or purport to bind CITY and shall not release CONTRACTOR from any obligations under this Contract including, but not limited to, the duty to properly supervise and coordinate the work of employees, assignees, delegates and subcontractors. No such assignment, delegation or subcontract shall result in any increase in the amount of total compensation payable to CONTRACTOR under this Contract.

15.1 In performance of this Contract, CONTRACTOR shall not discriminate against any employee, subcontractor, or applicant for employment because of sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, or age. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation or age. Affirmative action relating to employment shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

16 FINANCIAL INTEREST CERTIFICATION

16.2 For breach or violation of this warranty, CITY shall have the right to annul this Contract without liability or at its discretion to deduct from the Contract Price or

consideration, the full amount of such commission, percentage, brokerage or contingent fee.

17 CONFLICT OF INTEREST

17.1 CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract or which would cause CONTRACTOR to be "financial interested" (as provided in California Government Code Section 1090 et seq. or 87100 et seq.) in any contract or decision made by CITY on any matter.

17.2 CONTRACTOR shall not employ any City official or employee to perform any work required pursuant to this Contract.

17.3 To the extent required by the City Manager or his designee, CONTRACTOR shall complete and file with the City Clerk a Form 700 Statement of Economic Interests disclosing any reportable property interests, income, gifts, investments, or business positions.

18 COMPLIANCE WITH LAW

18.1 CONTRACTOR shall comply with all state and federal laws, including but not limited to, the requirement to hire only those persons authorized by federal law to work in the United States. If CONTRACTOR uses any subcontractors to complete this Contract, this same requirement shall be included in all subcontracts and strictly enforced by CONTRACTOR.

18.2 The law of the state of California shall govern this Contract. The venue of any legal action, either formal or informal, shall be the County of Los Angeles.

19 NOTICES

Any notice required under this Contract shall be in writing, addressed to the appropriate party at its address on the signature page and given personally or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

20 ENTIRE AGREEMENT AND AMENDMENTS

20.1 This Contract is the complete Agreement between the parties and supersedes all prior proposals, agreements, and understandings between the parties and may not be modified or terminated orally.

20.2 No attempted waiver of any of the provisions hereof, nor any modification in the nature, extent or duration of the work to be performed by CONTRACTOR

hereunder, shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.

20.3 The failure of any party to enforce against another party any provision of this Contract shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Contract.

21 ATTORNEY'S FEES

If any action at law or in equity is brought to enforce or interpret any provisions of this Contract, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

In Witness Whereof, the parties hereto have caused this Contract to be executed and attested by their respective officers thereunto duly authorized.

CITY OF PALMDALE:



J.J. Murphy, ICMA-CM 17 Nov 21
City Manager Date

ADVANTAGE MAILING,:



Tom Ling Date
Managing Member

ADDRESS FOR NOTICE:

CITY OF PALMDALE
38300 Sierra Highway
Palmdale, CA 93550

ADDRESS FOR NOTICE:

ADVANTAGE MAILING,
1600 N. Kraemer Blvd.
Anaheim, CA 92806

APPROVE AS TO FORM:



Christopher L. Beck
City Attorney

ATTEST:



Shanae S. Smith
City Clerk

ATTEST: If Corporation

Secretary



City Council Staff Report

DATE: NOVEMBER 16, 2022
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT
ECONOMIC DEVELOPMENT DIVISION
DISTRICT: ALL
SUBJECT: APPROVE AGREEMENT NO. A-8142 WITH TRIPOD INVESTMENTS, LLC AND HAFRISCO, LLC, AN ECONOMIC DEVELOPMENT LOAN IN THE AMOUNT OF \$2,750,000 FOR THE ACQUISITION OF PROPERTY LOCATED ON THE SOUTHEAST CORNER OF AVENUE M AND 10TH STREET WEST

ISSUE

Approve Agreement No. A-8142 with Tripod Investments, LLC and Hafrisco, LLC, an economic development loan in the amount of \$2,750,000 for the acquisition of property located on the southeast corner of Avenue M and 10th Street West.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve Agreement A-8142 with Tripod Investments, LLC and Hafrisco, LLC;
2. Authorize the Interim City Manager or her designee to prepare and execute all necessary documents and to make minimal and/or non-substantive changes, as needed; and,
3. Authorize budget appropriations in the amount of \$2,750,000.

BACKGROUND

The Successor Agency to the Community Redevelopment Agency of the City of Palmdale (Successor Agency) owns approximately 118 acres located at the southeast corner of Avenue M and 10th Street West (Property). On September 20, 2017, the Successor Agency entered into Purchase and Sale Agreement A-5896 (PSA) to sell the Property to build a new development that would create hundreds of new jobs for the community. The City worked closely with the purchaser to find a Fortune 500 company that will build over a million square feet of new industrial space to support its operations.

On January 27, 2022, the City approved Site Plan Review 21-005 for this new project. However, California Department of Fish and Wildlife (CDFW) approval is required before construction can commence and there is a delay in the issuance of the necessary environmental permits from CDFW. The Property is currently in escrow and the end user

has indicated that it will not close escrow until all necessary permits, including those from CDFW, has been secured. Although the Property is currently exempt from the Surplus Land Act, the disposition of the property needs to be completed by December 31, 2022. If the disposition of the property is not completed before the end of the year, then the Property would be subject to additional requirements from the State and there would be no guarantee that the Property would be conveyed to the end user as intended in the PSA and related Extension Agreements.

DISCUSSION

To avoid any potential delays in the development of the Property, the City will enter into a City Loan Agreement with Tripod Investments, LLC and Hafrisco, LLC (Borrower) to close escrow prior to the December 31, 2022, deadline. Loan terms and conditions include a 14% interest rate plus a \$140,800 loan fee to cover the City's staff and legal costs. The Borrower can only use the funds to pay the purchase price of the Property to the Successor Agency. The maturity date will be six (6) months from the Loan date; however, the City can extend the term, at its sole discretion. If the term is extended, an additional loan fee and interest will be charged to the Borrower.

To secure the Loan, a First Deed of Trust listing the City as the beneficiary will be recorded on the Property. The Deed of Trust shall include covenants burdening the Property and running with the land binding the Borrower and its successors and assigns to the performance of all obligations of the Borrower set forth in the Purchase and Sale Agreement, the Settlement Agreement, and the City Loan Agreement. This includes a condition for the Borrower to convey the property to the end user once all permits needed for construction to commence have been secured.

FISCAL IMPACT

The Loan will be for \$2,750,000. The City will receive \$140,800 loan fee plus \$192,498 in interest. If the City extends the term, an additional loan fee and interest will be collected.

STRATEGIC PLAN

Goal II: Ensure long-term fiscal health of the City and maintain funding for services.

A. Manage resources, costs and liabilities to ensure the City's long-term fiscal health.

Prepared by:	Mica Schuler, Senior Management Analyst
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, Interim City Manager
Approved as to form:	Scott E. Porter, Interim City Attorney

ATTACHMENTS

Agreement No. A-8142

ECONOMIC DEVELOPMENT LOAN AGREEMENT

THIS ECONOMIC DEVELOPMENT LOAN AGREEMENT (this “**Agreement**”), dated as of _____, 2022, is entered into by and between the CITY OF PALMDALE, a municipal corporation of the State of California (“**City**”) and Tripod Investments, LLC, a limited liability company of the State of California and Hafrisco, LLC, a limited liability company of the State of New Mexico (collectively the “**Borrower**”). City and Borrower agree as follows:

RECITALS

A. Ben Sayani and Fariborz Matian entered into that certain Purchase and Sale Agreement with the Successor Agency to the Community Redevelopment Agency of the City of Palmdale, a public body corporate and politic (the “Successor Agency”) dated as of September 20, 2017 and numbered Agreement No. A-5896 (the “PSA”), and that certain Settlement Agreement with the Successor Agency dated as of December 16, 2020 and numbered Agreement No. A-7348, as extended and modified by the first extension on April 12, 2021, the second extension on March 30, 2022, the third extension on May 26, 2022, the fourth extension on June 27, 2022, the fifth extension on July 28, 2022 and Modifications to Extension dated June 9, 2022 (as so extended and modified, the “Settlement Agreement”). Pursuant to the Settlement Agreement the rights of Ben Sayani and Fariborz Matian to purchase the Property was assigned to Tripod Investments, LLC, a limited liability company of the State of California and Hafrisco, LLC, a limited liability company of the State of New Mexico, which entities are referred to herein collectively as Borrower.

B. The purpose of the PSA is to provide for the acquisition from the Successor Agency by Borrower and the development pursuant to the PSA of that certain parcel of real property located at the southeast corner of Columbia Way and 10th Street West in the City of Palmdale, and described as the Property in the PSA, and to foster the economic development of the area and the creation of jobs meeting the needs of the City and its inhabitants. The purpose of the Settlement Agreement was to resolve any and all disputes among the parties concerning the PSA, to achieve the purposes of the PSA and to carry out the Successor Agency’s duties under applicable statutes to wind down the affairs of the former Redevelopment Agency and to carry out the Successor Agency’s approved Long Range Property Management Plan, and to avoid costly and time-consuming litigation.

ARTICLE I. SUBJECT OF AGREEMENT

Section 1.01 Purpose of the Agreement

The purpose of this Agreement is to provide for the City’s assistance in financing the acquisition of the Property for development pursuant to the PSA and the Settlement Agreement. The acquisition and development and use of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of Palmdale and the health, safety, morals, and welfare of its residents, and in accord with the public purposes of the PSA and the Settlement Agreement and the provisions of applicable federal, state, and local

laws and requirements. Borrower will acquire the Property and City will assist Borrower in paying the Acquisition Costs of acquiring the Property, and Borrower will develop and operate the Project on the Property, or cause the development and operation of the Project on the Property, all in accordance with the terms and conditions of this Agreement, the PSA and the Settlement Agreement.

Section 1.02 Definitions

For purposes of this Agreement, the following capitalized terms will have the following meanings:

“Acquisition Costs” means the Purchase Price to be paid for the Property by the Purchaser pursuant to the PSA and closing and related costs approved by the City.

“Assignment of Agreements” means a document substantially in the form attached to this Agreement as Attachment No. 4, which is incorporated herein by this reference.

“City” means the City of Palmdale, California, a municipal corporation of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

“City Deed of Trust” means the First Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents), in which Borrower is the Trustor and City is the Beneficiary, which secures the City Loan and the City Loan Promissory Note, substantially in the form attached to this Agreement as Attachment No. 3. The City Deed of Trust shall include covenants burdening the Property and running with the land binding Borrower and its successors and assigns to the performance of all obligations of Borrower set forth in the PSA, the Settlement Agreement and this Agreement.

“City Loan” means the loan to Borrower from City for acquisition of the Property in accordance with all of the terms and conditions of this Agreement, in the amount of \$2,750,000.

“City Loan Promissory Note” means the City Loan Promissory Note evidencing the City Loan, substantially in the form attached to this Agreement as Attachment No. 2.

“Due Date” means June 30, 2023, upon which date Borrower shall repay to the City the principal amount and all accrued and unpaid interest owed to the City under the City Loan and the City Loan Promissory Note. The Due Date is subject to extension for up to two (2) extensions each not to exceed 90 days, given in writing at the sole discretion of the City upon payment prior to each extension, if any, of the Loan Fee.

“Environmental Indemnity” means an instrument substantially in the form attached to this Agreement as Attachment No. 5.

“Escrow Agent” means the escrow agent for the acquisition of the Property by Borrower from the Successor Agency pursuant to the PSA.

“Legal Description” means the legal description of the Property attached to this Agreement as Attachment No. 1.

“Loan Fee” means the fee to be paid to the City in the amount of One Hundred Forty Thousand Eight Hundred (\$140,800) in connection with the making of the City Loan and an additional Seventy Thousand Four Hundred Dollars (\$70,400.00) in connection with the granting of each extension of the Due Date, if any, that may be agreed to in writing by the City in its sole and absolute discretion. The Loan Fee is for the purpose of defraying the costs and expenses of the City in connection with the City Loan, the City Loan Promissory Note and the negotiation and implementation of this Agreement.

“Person” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, domestic or foreign.

“Plans” means the architectural and construction plans and drawings prepared on behalf of Borrower for Borrower’s use for the Project in accordance with the PSA.

“Property” means the real property described in the Legal Description of the Property attached to this Agreement as Attachment No. 1.

“Successor Agency Deed of Trust” means the second deed of trust in favor of the Successor Agency securing certain obligations under the Settlement Agreement, which is junior to the City Deed of Trust.

“Title Company” means the title insurance company mutually acceptable to City and Borrower for the acquisition of the Property by Borrower from the Successor Agency pursuant to the PSA.

“Title Insurance Policies” means a lender’s policy or policies of title insurance in favor of City, together with such endorsements as City may reasonably require, insuring the lien of the City Deed of Trust in the cumulative amount of the City Loan (the **“City’s Title Policy”**).

“Transfer” means:

a. the sale, agreement to sell, transfer, assignment, encumbrance or conveyance of the Property, the Project, or any portion thereof or interest therein (including, without limitation, a beneficial interest), whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment sale contract or similar instrument affecting all or a portion of the Property or Project, or the lease of all or substantially all of the Property or Project.

b. “Transfer” also includes the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of an interest in Borrower, or a conversion of Borrower to an entity form other than that of Borrower at the time of execution of this Agreement.

Section 1.03 The Property

The “Property” is that real property located in the City of Palmdale, County of Los Angeles, State of California and described in the “Legal Description of the Property” (attached hereto as Attachment No. 1).

Section 1.04 The City

- a. The City is a municipal corporation of the State of California.
- b. The address of the City for purposes of receiving notices pursuant to this Agreement is as follows: 38300 Sierra Highway, Palmdale, California 93550, Attn: City Manager.
- c. “City” as used in this Agreement includes the City of Palmdale and any assignee or successor to its rights, powers and responsibilities.

SECTION 1.05 The Borrower

Borrower is Tripod Investments, LLC, a limited liability company of the State of California and Hafrisco, LLC, a limited liability company of the State of New Mexico. The address of Borrower for purposes of receiving notices pursuant to this Agreement is as follows:

Tripod Investments, LLC
Hafrisco, LLC
1718 Westwood Blvd
Los Angeles, CA 900024

With a copy to:

Law Offices of Saul Reiss
11835 West Olympic Blvd.
Suite 415E
Los Angeles, CA 90064
E-Mail: saulreiss@reisslaw.net

Section 1.06 Assignments and Transfers

- a. The qualifications and identity of the Borrower are of particular concern to the City. It is because of those qualifications and identity that the City has entered into this Agreement with the Borrower. No voluntary or involuntary successor in interest of the Borrower will acquire any rights or powers under this Agreement.
- b. The rights of Borrower under this Agreement are personal to Borrower, and Borrower expressly agrees not to assign, Transfer or convey all or any part of this Agreement.

c. For the reasons cited above, Borrower represents and agrees for itself and any successor in interest that there will be no change in ownership interest of any member or general partner, by any method or means.

d. Borrower will promptly notify the City of any and all changes whatsoever in the identity of the parties in control of Borrower or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. This Agreement may be terminated by the City, and the City may exercise its remedies pursuant to the City Loan Documents, if there is any significant change (voluntary or involuntary) in membership, executive management or control of Borrower (other than such changes occasioned by the death or incapacity of any individual). "Significant change" as used in the preceding sentence is any change that results (directly or indirectly) in a change of the day-to-day management or control of Borrower following the date of this Agreement.

e. The Borrower will not make or attempt to make a Transfer, including without limitation any encumbrance on or affecting the Property other than the City Deed of Trust and the Successor Agency Deed of Trust.

ARTICLE II. ACQUISITION OF THE PROPERTY BY BORROWER

Section 2.01 Condition of the Property

a. No person acting on behalf of the City is authorized to make, and by execution of this Agreement, Borrower acknowledges that neither the City nor any person acting on behalf of the City has made any representation, agreement, statement, warranty, guarantee or promise regarding the zoning, construction, physical condition or other status or condition of the Property, except as otherwise expressly provided in this Agreement.

b. Borrower acknowledges and agrees that, except as expressly set forth in this Agreement, the City makes no representations and warranties, express or implied, as to the Property, the physical condition of the Property, and any condition which may exist on, in or under the Property. Other than the representations and warranties set forth in this Agreement, Borrower hereby expressly acknowledges and agrees that it is relying solely upon its inspections, examination, and evaluation of the Property.

c. It will be the sole responsibility of Borrower, at Borrower's expense, to investigate and determine all conditions of the Property and its suitability for the uses to which the Property is to be put in accordance with this Agreement. If the conditions of the Property are not in all respects entirely suitable for the use or uses to which the Property will be put, then it is the responsibility and obligation of Borrower, without cost to the City, to take such action or cause such action to be taken, as may be necessary to place the Property in all respects in a condition entirely suitable for its development and use in accordance with this Agreement.

Section 2.02 Acquisition of the Property by Borrower

a. The Borrower shall acquire the Property on or before the time required in the Settlement Agreement, and shall pay therefor a purchase price as required by the PSA.

b. The timely acquisition of the Property by Borrower as and when required by this Agreement shall be a condition precedent to the performance by City of any of its obligations in this Agreement.

ARTICLE III. FINANCING

Section 3.01 City Assistance

a. City Loan. In accordance with and subject to the terms and conditions of this Agreement, the City agrees to lend to the Borrower, and the Borrower agrees to borrow from the City, the City Loan, in the amount of \$2,750,000. At or prior to the close of escrow for acquisition of the Property by Borrower pursuant to the PSA, the City and Borrower will execute and deliver such instruments and documents as may be necessary to evidence and secure the City Loans, consistent with the terms of this Agreement, each in a form that is acceptable to the City Manager or designee, including without limitation the obligation of the Borrower to pay a market-rate interest rate to the City in connection with the City Loan, as set forth in the City Loan Promissory Note. Borrower hereby warrants and agrees that Borrower will use the City Loan solely for the purpose of paying the Purchase Price and Acquisition Costs for the Property pursuant to the PSA and for no other purpose.

b. Senior Loan. Borrower agrees that the lien of the City Deed of Trust will be a first and senior lien encumbering the Property, and that the Successor Agency Deed of Trust will be subordinate to the City Deed of Trust, and Borrower will neither encumber nor permit the encumbering of the Property with any other loan, claim, lien, mortgage or deed of trust of any kind prior to the full repayment of the City Loan and any accrued and unpaid interest thereon and the reconveyance by the City of the City Deed of Trust.

c. Loan Documents. Prior to the disbursement of City Loan funds, the City and Borrower will execute and deliver such instruments and documents as may be necessary to evidence and secure the City Loan, consistent with the terms of this Agreement, and each in a form that is acceptable to the City Manager or designee, including the following documents, as applicable, which are referred to as the "City Loan Documents":

1. City Loan Promissory Note evidencing the City Loan;
2. City Deed of Trust securing the City Loan;
3. Assignment of Agreements; and
4. Environmental Indemnity.

d. Recordation. Prior to the disbursement of City Loan funds, the Title Company will record the recordable City Loan Documents in accordance with instructions provided by the City, and will be prepared to issue to the City an ALTA policy of title insurance, insuring the City Deed of Trust as a first priority lien on the Property, in amounts and with endorsements as the City may determine is appropriate.

e. Disbursement of City Loan. The City Loan will be disbursed solely for the payment of the Purchase Price and Acquisition Costs payable by Borrower in the amount and at the time of the close of escrow required by the PSA and the Settlement Agreement, based on information and documentation requested or required by the City. The City will have the right to condition any disbursement upon receipt and approval of such documentation, evidence or information that it may request. The City will have the right in its sole discretion to make disbursements of funds payable jointly to Borrower and third parties entitled to such payment. The City will have the right to review and audit all records of Borrower pertaining to disbursement of the City Loan. The loan proceeds shall be deposited with the Escrow holder at the time required by the escrow instructions approved by the City, or payable to Borrower and/or third parties as approved by the City in accordance with this Section 3.01.e.

f. Repayment Terms. The repayment terms of the City Loan will be as set forth in the City Loan Promissory Note to be executed by Borrower prior to any disbursement of the City Loan with the form and content set forth in the City Loan Promissory Note attached to this Agreement as Attachments No. 2. Borrower shall repay to the City the principal and all accrued and unpaid interest thereon on or before the Due Date. The Due Date may be extended by the City in writing prior to the Due Date in the sole and absolute discretion of the City upon the payment of a Loan Fee by Borrower to City for each such extension, if any.

g. Conditions Precedent to the City Loan. The City Loan is conditioned upon each of the following occurring to the satisfaction of, and in a form approved by, the City Manager prior to the disbursement of the City Loan funds under this Agreement:

1. Borrower submits evidence that all preconditions required by the PSA and the Settlement Agreement for the acquisition of the Property by Borrower have occurred or have been otherwise satisfied or waived;
2. Borrower submits evidence satisfactory to the City Manager or designee that the Borrower has financing commitments sufficient to pay all costs of acquisition of the Property in accordance with the PSA, the Settlement Agreement, and the City Loan Documents;
3. Borrower submits the evidence of insurance policies and the endorsements required by the PSA and this Agreement;
4. Title Insurance Company is prepared to issue the title insurance policies for the benefit of the City pursuant to this Agreement;

5. Borrower duly executes and delivers to the City or into escrow the City Loan Documents and delivers to the City or into escrow all funds necessary to pay all costs and expenses to effectuate the City Loan, including without limitation the Loan Fee, escrow fees, and the cost of the title insurance policy and endorsements insuring the City Deed of Trust;
6. City Manager determines that Borrower is not in default of its obligations to the City under the PSA, the Settlement Agreement and this Agreement; and
7. Purchaser and Successor Agency have entered into a modification to the Settlement Agreement providing for revisions to the Settlement Agreement, the Grant Deed to the Purchaser under the PSA, the Grant Deed from the Purchaser to the Subsequent Purchaser under the Settlement Agreement and the Assignment and Assumption Agreement between the Purchaser and Subsequent Purchaser required by the Settlement Agreement, including without limitation (i) the requirement that Purchaser reconvey the Property to the Subsequent Purchaser within the time required by such modification to Settlement Agreement; (ii) the reservation for the benefit of the City from the conveyance of the Property to Purchaser under the PSA of that certain 6-acre parcel described in Section 3.b(i) of the Third Extension of the Settlement Agreement, for the purpose of implementing entitlement approvals, without, however, any decrease or change to the Purchase Price required under the PSA; (iii) a delineation of which obligations and payments required of Purchaser under the Settlement Agreement shall be performed or paid on or before the conveyance of the Property to the Purchaser under the PSA and which shall be performed or paid on or before the conveyance of the Property to the Subsequent Purchaser under the Settlement Agreement; and (iv) providing for the Successor Agency Deed of Trust required by the Settlement Agreement be junior in seniority to the City Deed of Trust required by this Agreement.

The City's approval to record the City Deed of Trust will confirm the City's approval of the conditions set forth in this Section 3.01.g.

Section 3.02 Land Use Approvals

a. It is the responsibility of the Borrower, without cost to City, to ensure that zoning of the Property and all applicable land use requirements of the City or any other governmental agency with jurisdiction over the Property will be such as to permit development of the and the use, operation and maintenance of improvements. Notwithstanding the foregoing, the City shall continue to provide appropriate assistance to pursue those permits from the State of California Department of Fish and Wildlife which are now pending, including those incidental taking and mitigation permits relating to Joshua trees and the stream bed which is located on the Property.

The compensation to the City for such efforts is included in the Settlement Agreement as amended and extended as defined herein.

b. The City makes no warranties of any kind as to entitlements required for the development of the Property and disclaims all liability arising from use thereof by Borrower or any third party. Borrower and/or any Subsequent Purchaser under the Settlement Agreement and its architect, engineer, and general contractor, are responsible to obtain all building permits and to ensure that all work performed in the development of the Project is in accordance with of all applicable federal, state, and local building codes as well as applicable construction standards, fire department standards, utility company standards and best practices. Borrower hereby waives, to the fullest extent permitted by law, any right it may have to hold the City liable, or recover from the City, or any of their officers, agents, or employees, for any claims or damages which shall or might occur in connection with Borrower's use of entitlements.

Nothing contained herein will be deemed to entitle Borrower to any City of Palmdale permit or other City approval necessary for the development of the Property, or waive any applicable City requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Borrower, (b) supersede, nullify or amend any condition which may be imposed by the City of Palmdale in connection with approval of the development described herein, (c) guarantee to Borrower or any other party any profits from the development of the Property, or (d) amend any City laws, codes, rules or regulations. This is not a Development Agreement under Government Code Section 65864.

Section 3.03 Hazardous Materials

Prior to the disbursement of City Loan funds to Borrower, Borrower will execute and deliver to the City the Environmental Indemnity (Attachment No. 5).

Section 3.04 Local, State and Federal Laws

a. Borrower will carry out or cause the development, construction (as defined by applicable law) and operation of the improvements on the Property, including, without limitation, any and all public works (as defined by applicable law), to be in conformity with all applicable local, state and federal laws, including, without limitation, all applicable federal and state labor laws (including, without limitation, the requirement to pay state or federal prevailing wages, if applicable).

b. Borrower hereby expressly acknowledges and agrees that the City of Palmdale has not ever previously affirmatively represented to the Borrower or its contractor(s) for the improvements in writing or otherwise, in a call for bids or otherwise, that the work to be covered by the bid or contract is not a "public work," as defined in Section 1720 of the Labor Code. Borrower hereby agrees that Borrower will have the obligation to provide any and all applicable disclosures or identifications required by Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law. Borrower will indemnify, protect, defend and hold harmless the City, and its officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim,

cost, expense, and/or “increased costs” (including reasonable attorneys’ fees, court and litigation costs, and fees of expert witnesses) (collectively, the “Claims”) which, in connection with the development, construction (as defined by applicable law) and/or operation of any improvements on the Property, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Borrower of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, the requirement to pay state prevailing wages); (2) the implementation of Section 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; and/or (3) failure by Borrower to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law.

c. It is agreed by the parties that, in connection with the development, construction (as defined by applicable law) and operation of any improvements, including, without limitation, any and all public works (as defined by applicable law), Borrower will bear all risks of payment or non-payment of any applicable state prevailing wages, as the same may be enacted, adopted or amended from time to time, and/or any other similar law. “Increased costs” as used in this Section 3.04 will have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time.

d. The foregoing indemnity will survive termination of this Agreement and will continue after repayment of the City Loan.

Section 3.05 Indemnification and Insurance

a. Borrower agrees to and will, to the fullest extent permitted by law, defend, indemnify and hold the City of Palmdale and its officers, employees, contractors and agents harmless from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys’ fees and court costs) arising from or as a result of, in whole or in part, any of the following: (1) any act or omission of Borrower or its architect, engineer, contractors, suppliers, or vendors, of any contracting tier, or anyone directly or indirectly employed by any of them, or anyone for whose acts Borrower may be liable, in connection with the performance or nonperformance of this Agreement, including but not limited to the development, rehabilitation, marketing or use of the Property in any way, and any plans or designs for improvements prepared by or on behalf of Borrower, including without limitation any errors or omissions with respect to such plans or designs; (2) the breach of any obligations of Borrower hereunder; (3) the use of any products, material or equipment furnished by Borrower or its contractors, suppliers, or vendors, of any contracting tier; and (4) the making and/or disbursement of the City Loan to Borrower by the City. Such obligation to indemnify will not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.05. The foregoing indemnification will apply to the extent of the violation of a legal duty, including but not limited to active or passive negligence, strict liability, breach of contract, or intentional or willful misconduct, by Borrower or its architect, contractors, suppliers, or vendors, of any contracting tier, or anyone directly or indirectly employed

by any of them, or anyone for whose acts Borrower may be liable. Indemnitees will be entitled to recovery of attorney's fees incurred as a result of Borrower's failure to provide the defense and indemnity required by this Section 3.05. This Section 3.05 will survive the expiration or termination of this Agreement.

b. Prior to the disbursement of any City Loan funds to Borrower, Borrower will furnish or cause to be furnished to the City evidence of the following policies of insurance, naming Borrower as insured and certificate holder. The insurance requirements set forth in this subsection b. are subject to change prior to the City Loan funds disbursement, as needed to satisfy City's then-applicable requirements. Evidence of insurance must include a primary insurance and waiver of contribution clause, a separation of insureds clause and a cancellation notice clause, in the form approved by the City. It is the mutual intent of the parties that the levels of insurance coverage described herein will be and remain comparable to the level of insurance coverage that is customary with comparable operations in Los Angeles County. At any time during the term of the City Loan, and from time to time, either party may provide notice to the other party that the level of insurance being maintained by Borrower is no longer comparable to the level of insurance coverage that is customary with comparable operations in Los Angeles County, and request that the minimum limit hereinabove designated will be changed (either increased or decreased) accordingly. The party receiving such request will not unreasonably withhold its consent to such change. Borrower agrees that provisions of this paragraph as to maintenance of insurance will not be construed as limiting in any way the extent to which Borrower may be held responsible for the indemnification of City or the payment of damages to persons or property resulting from Borrower's activities, or the activities of any other person or persons for which Borrower is otherwise responsible. Borrower will require its insurer to waive its subrogation rights against the City and will provide endorsements evidencing same.

(i) General Liability Insurance: General liability insurance of at least \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(ii) Workers' Compensation Insurance: Borrower will maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance will cover all persons employed by Borrower in connection with the Property and will cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Borrower. Borrower will furnish the City with a certificate of waiver of subrogation under the terms of the Workers' Compensation Insurance. Borrower will require its general contractor to waive subrogation and will require that its subcontractors waive subrogation to the extent that such a waiver is commercially available.

c. All policies hereunder will not be subject to cancellation, reduction in coverage, or non-renewal except after notice in writing will have been sent by registered mail addressed to the City not less than 30 days in advance of the effective date, except for cancellation for nonpayment of premium, in which event notice will be given not less than 10 days in advance of the effective date. All policies will name the City, Borrower and/or any general contractor as insureds, additional insureds, and/or loss payable parties as their interests may appear.

d. The term “full insurable value” as used in this Section 3.05 means the actual replacement cost (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of improvements on the Property immediately before such casualty or other loss, including the cost of construction, architectural and engineering fees, and inspection and supervision. To ascertain the amount of coverage required, Borrower will cause the full insurable value to be determined from time to time by appraisal by the insurer, by the insurer’s automatic inflationary measure if acceptable to the Borrower and the City, by agreement between Borrower and City or by an appraiser mutually acceptable to City and Borrower, not less often than once every three years.

e. All insurance provided under this Section 3.05 will be for the benefit of Borrower and City. Borrower agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Borrower agrees to submit policies of all insurance required by this Section 3.05, or certificates and endorsements evidencing the existence thereof, to City within 10 days prior to the disbursement of City Loan funds, indicating full coverage of the contractual liability imposed hereby. Within thirty (30) days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, will be submitted to City. All insurance herein provided for under this Section 3.05 will be effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California reasonably approved by City.

f. Borrower must cause all contractors and subcontractors performing any work relating to the Project, if any, to maintain, at a minimum, the liability insurance and workers compensation insurance described in this Section 3.05. Borrower must also cause its architects and engineers to maintain Architects and Engineers Professional Liability (Errors and Omissions) insurance on a “claims made basis” in an amount of not less \$1,000,000. When coverage is provided on a “claims made basis”, Borrower must cause all contractors and subcontractors to continue to renew the insurance for a period of ten (10) years after the end of any construction period. Such insurance must have the same coverage and limits as the policy that was in effect initially, and cover Borrower for all claims made by the City arising out of any acts or omissions of Borrower, or its officers, employees or agents.

g. If Borrower fails or refuses to procure or maintain insurance as required by this Agreement, City will have the right, at City’s election, and upon ten (10) days prior notice to Borrower, to procure and maintain such insurance. The premiums paid by City will be treated as a loan, due from Borrower, to be paid on the first day of the month following the date on which

the premiums were paid. City will give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

Section 3.06 Disclaimer of City Responsibility

Except as provided in this Agreement, the City neither undertakes nor assumes nor will have any responsibility or duty to Borrower or to any third party to review, inspect, supervise, pass judgment upon or inform Borrower or any third party of any matter in connection with the Property, whether with respect to the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Project, any person furnishing the same or otherwise. Borrower and all third parties will rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Borrower or to any third party by the City in connection with such matter is for the public purpose of economic development and job creation and effectuating the winding down of the affairs of the former redevelopment agency, and neither Borrower (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. Neither may Borrower or any third party assert such review, inspection, supervision, exercise of judgment or information supplied to Borrower or to any third party as a defense to the indemnification obligation set forth in Section 3.05 of this Agreement.

Section 3.07 Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Property, Borrower will, at its own expense, secure or cause to be secured, any and all permits which may be required by the City or any other governmental authority affected by such construction, development or work.

Section 3.08 Taxes, Assessments, Encumbrances and Liens

Commencing upon the acquisition of the Property by Borrower, Borrower will pay prior to delinquency all real estate taxes and assessments assessed and levied on or against the Property. Prior to full repayment of the City Loan and the reconveyance of the City Deed of Trust, Borrower will not place, or allow to be placed, on title to the Property or any portion thereof, any mortgage, trust deed, encumbrance or lien other than the Successor Agency Deed of Trust in second position. In addition, Borrower will remove, or will have removed, any levy or attachment made on title to the Property (or any portion thereof), or will assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder. Nothing herein contained will be deemed to prohibit the Borrower from contesting the validity or amount of any tax assessment, encumbrance or lien, or to limit the remedies available to the Borrower in respect thereto.

Section 3.09 Rights to Plans

a. All work product prepared after the date of this Agreement, including (but not limited to), all Plans, construction documents, soils tests and similar reports, permits and other entitlements are hereby assigned to the City as security for Borrower's obligations hereunder. In

the event that this Agreement is terminated by the City, Borrower will, within ten (10) business days of such termination, transmit all such work product to the City.

b. To effectuate the assignment described in paragraph a., concurrently with executing a contract with the project architect, Borrower will execute and deliver to the City an Assignment of Agreements (the "Assignment"), substantially in the form attached to this Agreement as Attachment No. 4 in a form that is acceptable to the City Manager, granting to the City all of Borrower's rights to: (1) any Plans prepared for or in connection with the development of the Property; (2) any contract between Borrower and its architect; (3) all permits relating to the Project; (4) studies and reports concerning the Property; and similar rights and property interests.

Section 3.10 Obligation to Refrain from Discrimination

a. Borrower covenants and agrees for itself, its successors and its assigns in interest to the Property or any part thereof, that there will be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor will Borrower itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property.

b. All deeds, leases or contracts will contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there will be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor will the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants will run with the land."

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status will not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code will also apply to the preceding paragraph.

2. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there will be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor will the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status will not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code will also apply to the preceding paragraph.

3. In contracts: There will be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor will the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

Section 3.11 Equal Employment Opportunity

During the term of this Agreement, Borrower agrees as follows:

a. Borrower will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin(s). Borrower will take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin(s). Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Borrower agrees to post in conspicuous places,

available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. Borrower will, in all solicitations or advertisements for employees placed by or on behalf of Borrower, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

ARTICLE IV. DEFAULTS AND REMEDIES

Section 4.01 Defaults - General

a. Failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who fails or delays must immediately commence to cure, correct or remedy such failure or delay and will complete such cure, correction or remedy with reasonable diligence.

b. The injured party will give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice will not constitute a waiver of any default, nor will it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default will not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies will not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

c. If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party will give the party in default written notice of such default. The party in default will have a period of ten (10) days after such notice is given within which to cure the default prior to exercise of remedies by the injured party.

d. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party will give the party in default notice of such default. If the default is reasonably capable of being cured within thirty (30) days, the party in default will have such period to effect a cure prior to exercise of remedies by the injured party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the party in default (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default will have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party, but in no event to exceed a period of sixty (60) days after such notice is given.

Section 4.02 Applicable Law

The laws of the State of California will govern the interpretation and enforcement of this Agreement, without reference to the principles relating to conflicts of laws.

Section 4.03 Acceptance of Service of Process

a. If legal action is commenced by the Borrower against the City, service of process on the City will be made by personal service upon the City Manager, or in such other manner as may be provided by law.

b. If legal action is commenced by the City against the Borrower, service of process on the Borrower will be made by personal service upon the Borrower (or upon a general partner, managing member or officer of the Borrower) and will be valid whether made within or without the State of California, or in such manner as may be provided by law.

Section 4.04 Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies will not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 4.05 Damages

If either party defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 4.01, the defaulting party will be liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may, after such notice and opportunity to cure (but not before) commence an action for damages against the defaulting party with respect to such default.

Section 4.06 Specific Performance

If either party defaults with regard to any of the provisions of this Agreement, subject to the notice and cure provisions of Section 4.01, the non-defaulting party, at its option, may, after such notice and opportunity to cure (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

Section 4.07 Termination by Either Party

Prior to the disbursement of City Loan proceeds to Borrower, either party will have the right to terminate this Agreement in the event (i) the other party is in default of any material term or provision of this Agreement, and, following notice, fails to cure such default within the time provided in Section 4.01.

ARTICLE V. GENERAL PROVISIONS

Section 5.01 Conflicts of Interest

Borrower warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

Section 5.02 Nonliability of City Officials and Employees

No member, official, employee or consultant of the City will be personally liable to the Borrower, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Borrower or to its successor, or on any obligations under the terms of this Agreement.

Section 5.03 Inspection of Books and Records

a. Borrower will maintain complete, accurate, and current records pertaining to the Property for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the City to inspect and copy records, during regular business hours upon reasonable advance notice. Records must be kept accurate and current.

b. The City reserves the right to inspect, monitors, and observe work and services performed by Borrower at any and all reasonable times.

c. The City reserves the right to audit the records of Borrower any time during the performance of this Agreement and for a period of five years after final payment is made under this Agreement.

d. Access will be immediately granted to the City or any of its duly authorized representatives to any books, documents, papers, and records of Borrower or its contractors for the purpose of performing audits and examinations or making copies and transcriptions. This requirement must be included in all contracts and subcontracts.

Section 5.04 Approvals

a. Except as otherwise expressly provided in this Agreement, approvals required of the City will be deemed granted upon the written approval of the City Manager or designee. Notwithstanding the foregoing, the City Manager or designee may, in his or her sole discretion, refer to the governing body of the City any item requiring City approval.

Section 5.05 Real Estate Commissions

Neither the City nor the Borrower will be liable for any real estate commissions, brokerage fees or finder fees which may arise from this loan transaction. The City and the Borrower each represent to the other that it has employed no broker, agent, or finder in connection with this loan transaction. Brokerage fees relating to the purchase transaction are as set forth in the PSA.

Section 5.06 No Third Party Beneficiaries

This Agreement is made solely and specifically between the City and Borrower and their respective successors and assigns; and, except as expressly provided otherwise in this Agreement, no other person will have any rights, interest or claims under this Agreement or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

Section 5.07 Authority to Sign

Borrower hereby represents that each person executing this Agreement on behalf of Borrower has full authority to do so and to bind Borrower to perform pursuant to the terms and conditions of this Agreement.

Section 5.08 No Partnership

Nothing contained in this Agreement will be deemed or construed to create a partnership, joint venture, or any other similar relationship between the parties hereto or cause City to be responsible in any way for the debts or obligations of Borrower or any other Person.

Section 5.09 Compliance With Law

Borrower agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the development and use of the Property and any improvements thereon, as well as operations conducted thereon. The judgment of any court of competent jurisdiction, or the admission of Borrower in any action or proceeding, whether City be a party thereto or not, that Borrower has violated any such ordinance or statute in the development and use of the Property will be conclusive of that fact as between City and Borrower.

Section 5.10 Binding Effect

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, will be binding upon and will inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Section 5.11 Incorporation by Reference

Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

Section 5.12 Counterparts

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, will constitute one single instrument.

Section 5.13 Entire Agreement, Waivers and Amendments

a. This Agreement will constitute the entire understanding and agreement of the parties. Nothing in this Agreement shall be deemed to modify or amend in any way any of the provisions of the PSA and/or the Settlement Agreement, and Borrower shall remain responsible for and shall timely perform all obligations and the payment of all amounts required by the PSA and Settlement Agreement, including without limitation the payment at the sole expense of Borrower of all acquisition costs and expenses in connection with the acquisition of the Property and the payment of the Purchase Price and all other sums required by the PSA and/or the Settlement Agreement.

b. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the City and Borrower with respect to all or any part of the Property.

c. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Borrower, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Borrower. This Agreement and any provisions hereof may be amended by mutual written agreement by the Borrower and the City.

Section 5.14 Time for Acceptance of Agreement by City

This Agreement, when executed by Borrower and delivered to City, must be authorized, executed and delivered by City within thirty (30) days after date of signature by Borrower or this Agreement may be terminated by Borrower upon written notice to City. The effective date of this Agreement will be the date when this Agreement has been executed by City.

[SIGNATURES COMMENCE ON NEXT PAGE]

IN WITNESS WHEREOF, City and Borrower have signed this Agreement as of the date first written above.

"CITY"

By: _____

Ronda Perez

Interim City Manager

Attest:

By: _____

Roxanne Faber

Acting City Clerk

Approved as to form:

By: _____

Scott Porter

Interim City Attorney

[SIGNATURES CONTINUE ON NEXT PAGE]

“BORROWER”

Tripod Investments, LLC

By: _____

Farshad Matian, Managing Member

Hafrisco, LLC

By: _____

Ben Sayani, Managing Member

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 1:

LOT 1 IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 12 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALMDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND.

EXCEPT THAT PORTION OF SAID LOT 1 DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 1, SAID SOUTHWEST CORNER BEING THE TRUE POINT OF BEGINNING; THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT 1, SAID WEST LINE BEING THE WEST LINE OF SAID SECTION 3, NORTH 0° 07' 20" WEST 668.74 FEET; THENCE NORTH 89° 56' 08" EAST 2674.18 FEET, MORE OR LESS TO THE EAST LINE OF SAID LOT 1, SAID EAST LINE ALSO BEING THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE ALONG SAID EAST LINE SOUTH 0° 01' 19" EAST 671.19 FEET, MORE OR LESS TO THE SOUTHEAST CORNER ALSO BEING THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE SOUTH 89° 59' 17" WEST 2673.01 FEET, MORE OR LESS, THE TRUE POINT OF BEGINNING.

PARCEL 2:

LOT 2 IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 12 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALMDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

EXCEPT THE INTEREST IN THE NORTHERLY 30 FEET OF SAID LAND WHICH WAS CONVEYED TO THE COUNTY OF LOS ANGELES, FOR PUBLIC ROAD AND HIGHWAY PURPOSES BY DEED RECORDED IN BOOK 6637 PAGE 249 OF DEEDS.

APN: 3128-015-900, -901

ATTACHMENT NO. 2

CITY LOAN PROMISSORY NOTE

(On following page)

CITY LOAN PROMISSORY NOTE
TO THE CITY OF PALMDALE

14% Interest
\$2,750,000

Palmdale, California
_____, 202_

FOR VALUE RECEIVED, Tripod Investments, LLC, a limited liability company of the State of California and Hafrisco, LLC, a limited liability company of the State of New Mexico (collectively “**Borrower**”), hereby promises to pay to the CITY OF PALMDALE, a municipal corporation of the State of California (“**City**”), or order, on or before the Due Date, the principal amount of TWO MILLION, SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$2,750,000), being the principal amount of the City’s economic development loan (the “**City Loan**”), plus all accrued and unpaid interest payable to the City under this City Loan Promissory Note (“**Note**”). This Note is given pursuant to that certain Economic Development Loan Agreement dated as of _____, 2022, between Borrower and the City (the “**City Loan Agreement**”) and evidences the City Loan to Borrower, which provides part of the financing for the acquisition by Borrower of that certain real property located at the southeast corner of Columbia Way and 10th Street West in the City of Palmdale, legally described in the Deed of Trust securing this Note (the “**Property**”). The obligation of Borrower to City hereunder is subject to the terms of the City Loan Agreement, this Note; the First Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) (“**City Deed of Trust**”); and an Assignment of Agreements (“**Assignment of Agreements**”). Said documents are public records on file in the offices of City, and the provisions of said documents are incorporated herein by this reference. The Borrower will pay interest at the rate, in the amount and at the time hereinafter provided.

1. Capitalized terms not otherwise defined herein will have the meaning ascribed to such terms in the City Loan Agreement. In addition, the following terms have the following meanings:

“**City Deed of Trust**” means the First Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents) executed by Borrower in favor of City and dated on or about the date hereof, which secures this Note and the City Loan evidenced hereby. The City Deed of Trust shall include covenants burdening the Property and running with the land binding Borrower and its successors and assigns to the performance of all obligations of Borrower set forth in the PSA, the Settlement Agreement and the City Loan Agreement.

“**Due Date**” means June 30, 2023, upon which date Borrower shall repay to the City the principal amount and all accrued and unpaid interest owed to the City under the City Loan and this Note. The Due Date is subject to extension for up to two (2) extensions each not to exceed 90 days, given in writing at the sole discretion of the City upon payment prior to each extension, if any, of the Loan Fee.

“Loan Fee” means the fee to be paid to the City in the amount of One Hundred Forty Thousand Eight Hundred (\$140,800) in connection with the making of the City Loan and an additional Seventy Thousand Four Hundred Dollars (\$70,400.00) in connection with the granting of each extension of the Due Date, if any, that may be agreed to in writing by the City in its sole and absolute discretion. The Loan Fee is for the purpose of defraying the costs and expenses of the City in connection with the City Loan, this Note and the negotiation and implementation of the City Loan Agreement.

“City Loan” means the loan made by the City to Borrower in the amount of \$2,750,000, which is evidenced by this Note and secured by the City Deed of Trust.

“Note” means this Note dated as of the date hereof first written above, evidencing the City Loan.

“Person” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, domestic or foreign.

“Property” means the real property described as the “Property” in and legally described as set forth in Exhibit “A” of the City Deed of Trust.

“Transfer” will have the meaning set forth in 8.e of this Note.

2. This Note evidences the obligation of the Borrower to the City for the repayment of the City Loan.

3. This Note is payable on or before the Due Date at the principal office of City, 38300 Sierra Highway, Palmdale, California 93550, or at such other place as the holder hereof may inform the Borrower in writing, in lawful money of the United States.

4. This Note is secured by the City Deed of Trust.

5. This Note will bear fourteen percent (14%) per annum simple interest.

6. The entire unpaid principal balance of this Note and any accrued but unpaid interest will be due and payable to the City on or before the Due Date.

7. All payments applied to this Note will be applied first to penalties, late fees and Loan Fees, then to interest, then to reduce the principal amount owed.

8. Prohibitions on Transfer.

a. Prior to the repayment in full of the City Loan, the Borrower must not assign or attempt to assign the City Loan Agreement or this Note or any right therein or herein, nor make any total or partial sale, transfer, conveyance, assignment or encumbrance of the whole or any part of the Property (referred to hereinafter as a **“Transfer”**), without the prior written approval of the City given in the sole and absolute discretion of the City. Consent to one such transaction will not

be deemed to be a waiver of the right to require consent to future or successive transactions. If consent should be given, any such transfer shall be subject to this Section 8, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. City has consented to the recordation against the Property of a second deed of trust in favor of the Successor Agency to the Community Redevelopment Agency of the City of Palmdale (the "Successor Agency") securing certain obligations under that certain Settlement Agreement between Borrower and Successor Agency dated as of December 16, 2020, as extended, amended and modified (the "Successor Agency Deed of Trust").

b. Proposed transferees (other than an Affiliate of Borrower) must have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the City, to fulfill Borrower's obligations undertaken in the City Loan Agreement, this Note and the City Deed of Trust. A proposed transferee (including an Affiliate of Borrower), by instrument in writing satisfactory to the City and in form recordable among the land records, for itself and its successors and assigns, and for the benefit of the City must expressly assume all of Borrower's obligations under the City Loan Agreement and this Note and agree to be subject to all conditions and restrictions applicable to Borrower. There must be submitted to the City for review all instruments and other legal documents proposed to affect any such transfer; and if approved by the City its approval will be indicated to Borrower in writing. If consent should be given, such transfer will be subject to this Section 8.

c. In the absence of specific written agreement by the City, no unauthorized Transfer, or approval thereof by the City, will be deemed to relieve the Borrower or any other party from any obligations under the City Loan Agreement or this Note.

d. In the event of a Transfer prior to the time the City Loan is paid in full without the prior written consent of the City, the remaining principal balance of the City Loan and all accrued but unpaid interest will be immediately due and payable.

e. As used herein, "Transfer" means

i. the sale, agreement to sell, transfer, assignment, encumbrance or conveyance of the Property, the Project, or any portion thereof or interest therein (including, without limitation, a beneficial interest), whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment sale contract or similar instrument affecting all or a portion of the Property or Project, or the lease of all or substantially all of the Property or Project.

ii. "Transfer" also includes the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of an interest in Borrower, or a conversion of Borrower to an entity form other than that of Borrower at the time of execution of the City Loan Agreement.

9. Borrower waives presentment for payment, demand, protest, and notices of dishonor and of protest; the benefits of all waivable exemptions; and all defenses and pleas on the ground of an extension or extensions of the time of payment or of a due date under this Note, in whole or in part, whether before or after maturity and with or without notice. Borrower hereby

agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the holder hereof, in the enforcement of this Note, the City Deed of Trust or any term or provision of either thereof.

10. If the rights created by this Note are held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the remaining obligations must be completely performed and paid.

11. The City and Borrower agree that the lien of the City Deed of Trust will be senior to the Successor Agency Deed of Trust. Borrower acknowledges and agrees that a default, event of default, or breach (however such terms may be defined) under the Successor Agency Deed of Trust will be an event of default under this Note and the City Deed of Trust and that all costs, damages or other amounts, including reasonable attorneys' fees incurred by the City as a result of an event of default by Borrower, and all amounts paid by City in connection with the Successor Agency Deed of Trust will be an obligation of Borrower and become a part of the debt evidenced by this Note and secured by the City Deed of Trust.

12. Borrower will have the right to prepay the obligation evidenced by this Note, or any part thereof, without penalty.

13. This Note may be executed by each signatory on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF Borrower has executed this Note as of the day and year first set forth above.

BORROWER

Tripod Investments, LLC

By: _____
Farshad Matian, Managing Member

Hafrisco, LLC

By: _____
Ben Sayani, Managing Member

ATTACHMENT NO. 3
CITY DEED OF TRUST

(On following page)

Recording Requested by and
When Recorded Mail to:

THE CITY OF PALMDALE
38300 Sierra Highway
Palmdale, California 93550
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN:

Document entitled to free
recording per Government
Code Section 27383

**FIRST DEED OF TRUST,
SECURITY AGREEMENT AND FIXTURE FILING
(WITH ASSIGNMENT OF RENTS)**

This First Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) is made as of [REDACTED], 2022 by TRIPOD INVESTMENTS, LLC, a California limited liability company and HAFRISCO, LLC, a New Mexico limited liability company (“**Trustors**”) (whose address is 1718 Westwood Blvd, Los Angeles, CA 90024), to _____, a _____ (“**Trustee**”), for the benefit of THE CITY OF PALMDALE, a municipal corporation of the State of California (“**Beneficiary**”), whose address is 38300 Sierra Highway, Palmdale, California 93550.

Witnesseth: That Trustors IRREVOCABLY GRANT, TRANSFER AND ASSIGN to Trustee, its successors and assigns, in Trust, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION the following property (the “**Trust Estate**”):

(a) that certain real property in the City of Palmdale, County of Los Angeles, State of California more particularly described in Exhibit “A” attached hereto and by this reference made a part hereof (the “**Subject Property**”);

(b) all buildings, structures, fixtures and other improvements now or in the future located or to be constructed on the Subject Property (the “**Improvements**”);

(c) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefitting or otherwise relating to the Subject Property or the Improvements, including easements, rights-of-way and development rights (the

“Appurtenances”). (The Appurtenances, together with the Subject Property and the Improvements, are hereafter referred to as the **“Real Property”**);

(d) subject to the assignment to Beneficiary set forth in Paragraph 4 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Estate or the ownership, use, management, operation leasing or occupancy of the Trust Estate, including those past due and unpaid (the **“Rents”**);

(e) all present and future right, title and interest of Trustors in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code (the **“UCC”**), and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property, but not including personal property that is donated to Trustors (the **“Goods,”** and together with the Real Property, the **“Property”**); and

(f) all present and future right, title and interest of Trustors in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate) (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (vi) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Trustors under any such agreements, (viii) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types on intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (the **“Intangibles”**).

Trustors further grants to Trustee and Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of Trustors in and to all Goods and Intangibles and all of the Trust Estates described above in which a security interest may be created under the UCC (collectively, the “**Personal Property**”). This Deed of Trust constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to Trustee and Beneficiary. Trustee and Beneficiary will have, in addition to all rights and remedies provided herein, all the rights and remedies of a “secured party” under the UCC and other applicable California law. Trustors covenants and agrees that this Deed of Trust constitutes a fixture filing under Section 9313 and 9402(6) of the UCC.

FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may elect, the following:

- (1) due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained herein or contained in the following:
 - (a) a promissory note in the original principal amount of \$2,750,000, executed by Trustors of even date herewith (the “**City Loan Note**”); and
 - (b) the Economic Development Loan Agreement dated as of , 2022 (the “**City Loan Agreement**”), between Trustors and Beneficiary; and
- (2) payment of indebtedness of the Trustors to the Beneficiary in the principal sum of \$2,750,000 or so much thereof as will be advanced, evidenced by the City Loan Note secured hereby, with interest, according to the terms of the City Loan Note secured hereby.

The City Loan Agreement, including all Attachments thereto, and the documents and instruments executed by Trustors in connection with the Project, including the City Loan Note and the Assignment of Agreements, all as described in the City Loan Agreement (collectively referred to as the “**Secured Obligations**”) and all of their terms are incorporated herein by reference and this conveyance will secure any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances evidenced by any note reciting that it is secured hereby. Each capitalized term that is not otherwise defined in this Deed of Trust has the meaning ascribed to it in the City Loan Agreement.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTORS COVENANTS AND AGREES:

1. That Trustors will pay the Note secured hereby at the time and in the manner provided therein, and perform the obligations of the Borrower as set forth in the Secured Obligations at the time and in the manner respectively provided therein;
2. That Trustors will not permit or suffer the use of any of the property for any purpose other than the uses permitted by the City Loan Agreement;

3. That the Secured Obligations are incorporated in and made a part of this Deed of Trust. Upon default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable.

4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustors so long as no default exists hereunder after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income for use in accordance with the provisions of the City Loan Agreement.

5. That upon default hereunder or under the aforementioned agreements, and after the giving of notice and the expiration of any applicable cure period, Beneficiary will be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom;

6. That Trustors will keep the improvements to be constructed on the Property in accordance with the City Loan Agreement insured against loss by fire and such other hazards, casualties, and contingencies as may reasonably be required in writing from time to time by the Beneficiary, and all such insurance will be evidenced by standard fire and extended coverage insurance policy or policies. In no event will the amounts of coverage be less than 100 percent of the insurable value of the Property. Such policies will be endorsed with standard mortgage clause with loss payable to the Beneficiary and certificates thereof together with copies of original policies will be deposited with the Beneficiary;

7. To pay, at least 10 days before delinquency, any taxes and assessments affecting said Property; to pay, when due, all encumbrances, charges and liens, with interest, on said Property or any part thereof; and to pay all costs, fees, and expenses of this Trust. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustors will not be required to pay and discharge any such tax, assessment, charge or levy so long as Trustors is contesting the legality thereof in good faith and by appropriate proceedings, and Trustors has adequate funds to pay any liabilities contested pursuant to this Section 7.

8. To keep said property in good condition and repair, subject to ordinary wear and tear, casualty and condemnation, not to remove or demolish any buildings thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon (subject to Trustors' right to contest the validity or applicability of laws or regulations); not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law and/or covenants, conditions and/or restrictions affecting said property; not to permit or suffer any material alteration of or addition to the buildings or improvements hereafter constructed in or upon said property without the consent of the Beneficiary;

9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and reasonable attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear;

10. Should Trustors fail, after the giving of notice and the expiration of any applicable cure period, to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustors and without releasing Trustors from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Following default, after the giving of notice and the expiration of any applicable cure period, Beneficiary or Trustee being authorized to enter upon said property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay his reasonable fees. Notwithstanding the foregoing, in the event of default under this Deed of Trust, the Beneficiary may also require Trustors to maintain and submit additional records. Beneficiary will specify in writing the particular records that must be maintained and the information or reports that must be submitted;

11. Beneficiary will have the right to pay fire and other property insurance premiums when due should Trustors fail to make any required premium payments. All such payments made by the Beneficiary will be added to the principal sum secured hereby;

12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the rate specified in the Notes secured hereby;

13. That the funds to be advanced hereunder are to be used in accordance with the Secured Obligations and upon the failure of Trustors, after the giving of notice and the expiration of any applicable cure period, to keep and perform all the covenants, conditions, and agreements of said agreements, the principal sum and all arrears of interest, and other charges provided for in the Notes secured hereby will at the option of the Beneficiary of this Deed of Trust become due and payable, anything contained herein to the contrary notwithstanding;

14. Trustors further covenants that it will not voluntarily create, suffer, or permit to be created against the property subject to this Deed of Trust any lien or liens except as permitted by the Secured Obligations or otherwise approved by Beneficiary, and further that it will keep and maintain the property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustors will not be obligated to pay any claims for labor, materials or services which Trustors in good faith disputes and is diligently contesting, provided that Trustors will, at Beneficiary's written request, within thirty (30) days after the filing of any claim or lien (but in any event, and without any requirement that Beneficiary must first provide a written request, prior to foreclosure) record in

the Office of the Recorder of Los Angeles County, a surety bond in an amount one-and-one-half (1½) times the amount of such claim item to protect against a claim of lien, or provide such other security reasonably satisfactory to Beneficiary;

15. That any and all improvements made or about to be made upon the premises covered by this Deed of Trust, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other applicable regulations made or promulgated, now or hereafter, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office;

16. Trustors herein agrees to pay to Beneficiary or to the authorized loan servicing representative of the Beneficiary a reasonable charge for providing a statement regarding the obligation secured by this Deed of Trust as provided by Section 2954, Article 2, Chapter 2 Title 14, Division 3, of the California Civil Code.

IT IS MUTUALLY AGREED THAT:

17. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary will be entitled to all compensation, awards, and other payments or relief therefor which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, and will be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary. After deducting therefrom all its expenses, including reasonable attorney's fees, the balance of the proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, will be applied to the amount due under the Note secured hereby. No amount applied to the reduction of the principal will relieve the Trustors from making regular payments as required by the Note secured hereby;

18. Upon default by Trustors in making any payments provided for in the Note secured hereby or in this Deed of Trust, or in performing any obligation set forth in any of the Secured Obligations, and if such default is not cured within the respective time provided therefor in Section 31 of this Deed of Trust, below, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the Property to be sold, which notice Trustee will cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary will also deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby;

19. a. Prior to the repayment in full of the City Loan, the Trustors will not assign or attempt to assign the City Loan Agreement or any right therein, nor make any total or partial

sale, transfer, conveyance or assignment of the whole or any part of the Property, the Project thereon, or any portion thereof or interest therein (referred to hereinafter as a “**Transfer**”), without prior written approval of the Beneficiary. Consent to one such transaction will not be deemed to be a waiver of the right to require consent to future or successive transactions. If consent should be given, any such transfer will be subject to this Section 19, and any such transferee will assume all obligations hereunder and agree to be bound by all provisions contained herein.

b. Any such proposed transferee will have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the Beneficiary, to fulfill the obligations undertaken by Trustors in the City Loan Agreement and the City Loan Documents. Any such proposed transferee, by instrument in writing satisfactory to the Beneficiary and in form recordable among the land records of Los Angeles County, for itself and its successors and assigns, and for the benefit of the Beneficiary will expressly assume all of the obligations of the Trustors under the City Loan Agreement and the City Loan Documents, and agree to be subject to all conditions and restrictions applicable to the Trustors in this Deed of Trust. There will be submitted to the Beneficiary for review all instruments and other legal documents proposed to effect any such transfer; and if approved by the Beneficiary its approval will be indicated to the Trustors in writing.

c. In the absence of specific written agreement by the Beneficiary, no unauthorized Transfer, or approval thereof by the Beneficiary, will be deemed to relieve the Trustors or any other party from any obligations under the City Loan Agreement or any other City Loan Document.

d. In the event of a Transfer without the prior written consent of the Beneficiary, prior to the time the City Loan is paid in full, the net proceeds will be paid to the Beneficiary to the extent necessary to pay in full the accrued interest, if any, current interest and remaining principal balance of the City Loan.

20. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustors, will sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee will deliver to the purchaser its Deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts will be conclusive proof of the truthfulness thereof. Any person, including Trustors, Trustee or Beneficiary, may purchase at the sale. The Trustee will apply the proceeds of sale to payment of (1) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee’s fees or attorney’s fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee’s Deed; (3)

all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the Note; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto;

21. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter will be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution will be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, will be conclusive proof of proper appointment of the successor trustee;

22. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law;

23. Upon written request of Beneficiary stating that all sums secured hereby have been paid and all obligations secured hereby have been satisfied, and upon surrender of this Deed of Trust and the Notes to Trustee for cancellation and retention and upon payment of its fees, Trustee will reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or fact will be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as “the person or persons legally entitled thereto”;

24. The trust created hereby is irrevocable by Trustors;

25. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term “Beneficiary” will include not only the original Beneficiary hereunder but also any future owner and holder including pledgees, of the Notes secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Trustors hereunder are joint and several;

26. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustors, Beneficiary, or Trustee will be a party unless brought by Trustee;

27. Trustors agrees at any time and from time to time upon receipt of a written request from Beneficiary, to furnish to Beneficiary detailed statements in writing of income, rents, profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the premises and their use as may be requested by Beneficiary.

28. Trustors agrees that the loan secured by this Deed of Trust is made expressly for the purpose of financing the purchase price payable for the acquisition of the Property for development as provided in the City Loan Agreement.

29. Trustors agrees that, except as otherwise provided in the Note secured hereby, upon sale or refinancing of the Property, the entire principal balance of the debt secured by this Deed of Trust, plus any accrued but unpaid interest thereon, will at the option of Beneficiary be immediately due and payable.

30. If the rights and liens created by this Deed of Trust will be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the unsecured portion of such obligations will be completely performed and paid prior to the performance and payment of the remaining and secured portion of the obligations, and all performance and payments made by Trustors will be considered to have been performed and paid on and applied first to the complete payment of the unsecured portion of the obligations.

31. (a) Failure or delay by Trustors to perform any term or provision respectively required to be performed under the Secured Obligations or this Deed of Trust constitutes a default under this Deed of Trust.

(b) Beneficiary will give written notice of default to Trustors, specifying the default complained of by the Beneficiary. Delay in giving such notice will not constitute a waiver of any default nor will it change the time of default.

(c) Any failures or delays by Beneficiary in asserting any of its rights and remedies as to any default will not operate as a waiver of any default or of any such rights or remedies. Delays by Beneficiary in asserting any of its rights and remedies will not deprive Beneficiary of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(d) If a monetary event of default occurs, prior to exercising any remedies hereunder, prior to exercising its remedies, Beneficiary will give Trustors written notice of such default. Trustors will have ten (10) days after such notice is given within which to cure the default prior to exercise of remedies by the Beneficiary under this Deed of Trust. In no event will the Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially impaired by a failure to cure a default or the default is not cured within ten (10) days after the notice of default is received or deemed received.

(e) If a non-monetary event of default occurs, prior to exercising any remedies hereunder, Beneficiary will give Trustors written notice of such default. If the default is reasonably capable of being cured within thirty (30) days after such notice is received or deemed received, Trustors will have such period to effect a cure prior to exercise of remedies by the Beneficiary under this Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Trustors (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Trustors will have such additional time as is reasonably necessary to cure the default prior to the Beneficiary's exercise of

remedies, but in no event more than sixty (60) days. In no event will Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by a failure to cure a default or the default is not cured within one hundred sixty (60) days after the notice of default is received or deemed received.

(f) Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a “hard” copy, will be deemed delivered upon its transmission; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), will be deemed received on the documented date of receipt by Trustors; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required will be deemed received on the date of receipt thereof.

32. This Deed of Trust is a first and senior deed of trust and is not subordinate nor junior to any other deed of trust or other encumbrance of any kind that may be recorded against the Property.

[Remainder of page intentionally blank]

[signatures on following page]

IN WITNESS WHEREOF Trustors has executed this Deed of Trust as of the day and year set forth above.

Tripod Investments, LLC

By: _____

Farshad Matian, Managing Member

Hafrisco, LLC

By: _____

Ben Sayani, Managing Member

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, _____ before me, _____,
a Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed
the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, _____ before me, _____,
a Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed
the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

Exhibit A

LEGAL DESCRIPTION

PARCEL 1:

LOT 1 IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 12 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALMDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND.

EXCEPT THAT PORTION OF SAID LOT 1 DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 1, SAID SOUTHWEST CORNER BEING THE TRUE POINT OF BEGINNING; THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT 1, SAID WEST LINE BEING THE WEST LINE OF SAID SECTION 3, NORTH 0° 07' 20" WEST 668.74 FEET; THENCE NORTH 89° 56' 08" EAST 2674.18 FEET, MORE OR LESS TO THE EAST LINE OF SAID LOT 1, SAID EAST LINE ALSO BEING THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE ALONG SAID EAST LINE SOUTH 0° 01' 19" EAST 671.19 FEET, MORE OR LESS TO THE SOUTHEAST CORNER ALSO BEING THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE SOUTH 89° 59' 17" WEST 2673.01 FEET, MORE OR LESS, THE TRUE POINT OF BEGINNING.

PARCEL 2:

LOT 2 IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 12 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALMDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

EXCEPT THE INTEREST IN THE NORTHERLY 30 FEET OF SAID LAND WHICH WAS CONVEYED TO THE COUNTY OF LOS ANGELES, FOR PUBLIC ROAD AND HIGHWAY PURPOSES BY DEED RECORDED IN BOOK 6637 PAGE 249 OF DEEDS.

APN: 3128-015-900, -901

ATTACHMENT NO. 4
ASSIGNMENT OF AGREEMENTS

(On following page)

ASSIGNMENT OF AGREEMENTS

FOR VALUE RECEIVED, the undersigned, TRIPOD INVESTMENTS, LLC, a limited liability company of the State of California and HAFRISCO, LLC, a limited liability company of the State of New Mexico (collectively the “**Borrower**”), assign to the CITY OF PALMDALE, a municipal corporation of the State of California (“**City**”), all of its rights, title and interest in and to:

1. All architectural, design, engineering and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, “**Architectural Agreements**”)), which as of this date do not exist. Should Borrower become the owner of any Architectural Agreements they will be deemed part of this Agreement; and
2. All plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively “**Plans and Specifications**”)

heretofore or hereafter into or prepared by any architect, engineer or other person or entity (collectively “**Architect**”), for or on behalf of Borrower in connection with the construction of the Project. There are no Plans and Specifications, as of the date hereof, which are owned by or in the possession or control of Borrower. Should Borrower become the owner of any Plans and Specifications they will be deemed part of this Agreement.

This ASSIGNMENT OF AGREEMENTS AND PLANS AND SPECIFICATION (“**Assignment**”) constitutes a present and absolute assignment to City as of the Effective Date,; provided, however, City confers upon Borrower the right to enforce the terms of the Architectural Agreements and Borrower’s rights to the Plans and Specifications so long as no Default or event which would constitute a Default after notice or the passage of time, or both, has occurred and is continuing under the Economic Development Loan Agreement dated as of _____, 2022, between City and Borrower (the “**City Loan Agreement**”), as well as any amendments and implementation agreements. Capitalized terms not otherwise defined herein have the meaning set forth in the City Loan Agreement. Upon the occurrence of a Default or event which would constitute a Default after notice or the passage of time, or both, under the City Loan Agreement, City may, in its sole discretion, give notice to Architect of its intent to enforce the rights of Borrower under the Architect Agreements and of its rights to the Plans and Specifications and may initiate or participate in any legal proceedings respecting the enforcement of said rights. Borrower acknowledges that by accepting this Assignment, City does not assume any of Borrower’s obligations under the Architectural Agreements or with respect to the Plans and Specifications.

Borrower represents and warrants to City, as of the Effective Date, that: (a) all Architectural Agreements entered into by Borrower are in full force and effect and are enforceable in accordance with their terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to said Architectural Agreements; (b) all copies of the Architectural Agreements and Plans and Specifications delivered to City are complete and correct; and (c) Borrower has not assigned any of its rights under the Architectural Agreements or with respect to the Plans and Specifications.

Borrower agrees: (a) to pay and perform all obligations of Borrower under the Architectural Agreements; (b) to enforce the payment and performance of all obligations of any other person or entity under the Architectural Agreements; (c) not to modify the existing Architectural Agreements nor to enter into any future Architectural Agreements without City's prior written approval except as otherwise may be permitted in the City Loan Agreement; and (d) not to further assign, for security or any other purposes, its rights under the Architectural Agreements or with respect to the Plans and Specifications with City's prior written consent.

This Assignment secures performance by Borrower of all obligations of Borrower under the City Loan Agreement. This Assignment is supplemented by the provisions of the City Loan Agreement and said provisions are incorporated herein by reference.

This Assignment will be governed by the laws of the State of California, without reference to the principles governing conflicts of laws, and Borrower consents to the jurisdiction of any Federal or State Court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action will be entitled, in addition to any other recovery, to reasonable attorney's fees and costs.

This Assignment will be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of Borrower and City; provided, however, this will not be construed and is not intended to waive any restrictions on assignment, sale, transfer, mortgage, pledge, hypothecation or encumbrance by Borrower contained in the City Loan Agreement.

The attached Architect's Consent, Schedule 1, and Exhibit A are incorporated by reference.

[SIGNATURES ON FOLLOWING PAGES]

BORROWER:

Tripod Investments, LLC

By: _____

Farshad Matian, Managing Member

Hafrisco, LLC

By: _____

Ben Sayani, Managing Member

ARCHITECT'S CONSENT

The undersigned architect ("**Architect**") hereby consents to the foregoing Assignment to which this Architect's Consent ("**Consent**") is part, and acknowledges that there presently exists no unpaid claims due to the Architect except as set forth on Schedule 1 attached hereto, arising out of the preparation and delivery of the Plans and Specifications to Borrower and/or the performance of the Architect's obligations under the Assignment.

Architect agrees that if, at any time, City will become the owner of said Property, or, pursuant to its rights under the City Loan Agreement, elects to undertake or cause the completion of construction of the Project on any portion of the Property, in accordance with the Plans and Specifications, and gives Architect written notice of such election; THEN, so long as Architect has received, receives or continues to receive the compensation called for under the Agreements, City may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Architect will continue to perform its obligations under the Agreements for the benefit and account of City in the same manner as if performed for the benefit or account of Borrower in the absence of the Assignment.

Architect further agrees that, in the event of a breach by Borrower of the Agreements, or any agreement entered into with Architect in connection with the Plans and Specifications, so long as Borrower's interest in the Agreements and Plans and Specifications is assigned to City, Architect will give written notice to City of such breach at the address shown below. City will have thirty (30) days from the receipt of such written notice of default to remedy or cure said default. Nothing herein will require City to cure said default or to undertake completion of construction of the Project.

[Architect's Signature on Following Page]

Assignment of Agreements
Architect's Consent

Architect warrants and represents that he or she has no knowledge of any prior assignment(s) of any interest in the Plans and Specifications and/or the Agreements. Except as otherwise defined herein, the terms used herein will have the meanings given them in the Assignment.

Executed as of _____, 2022.

[ARCHITECT NAME]

By: _____

Name:

Title:

[Architect address]

City's Address:

CITY OF PALMDALE
38300 Sierra Highway
Palmdale, California 93550
Attn: City Manager

Assignment of Agreements
Architect's Consent

SCHEDULE OF UNPAID CLAIMS

Schedule 1 to Assignment of Architectural Agreements and Plans and Specifications pursuant to the City Loan Agreement between Borrower and City.

[List Claims]

Assignment of Agreements
Schedule of Unpaid Claims

EXHIBIT A

PROPERTY DESCRIPTION

PARCEL 1:

LOT 1 IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 12 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALMDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND.

EXCEPT THAT PORTION OF SAID LOT 1 DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 1, SAID SOUTHWEST CORNER BEING THE TRUE POINT OF BEGINNING; THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT 1, SAID WEST LINE BEING THE WEST LINE OF SAID SECTION 3, NORTH 0° 07' 20" WEST 668.74 FEET; THENCE NORTH 89° 56' 08" EAST 2674.18 FEET, MORE OR LESS TO THE EAST LINE OF SAID LOT 1, SAID EAST LINE ALSO BEING THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE ALONG SAID EAST LINE SOUTH 0° 01' 19" EAST 671.19 FEET, MORE OR LESS TO THE SOUTHEAST CORNER ALSO BEING THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE SOUTH 89° 59' 17" WEST 2673.01 FEET, MORE OR LESS, THE TRUE POINT OF BEGINNING.

PARCEL 2:

LOT 2 IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 12 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALMDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

EXCEPT THE INTEREST IN THE NORTHERLY 30 FEET OF SAID LAND WHICH WAS CONVEYED TO THE COUNTY OF LOS ANGELES, FOR PUBLIC ROAD AND HIGHWAY PURPOSES BY DEED RECORDED IN BOOK 6637 PAGE 249 OF DEEDS.

APN: 3128-015-900, -901

ATTACHMENT NO. 5
ENVIRONMENTAL INDEMNITY

(On following page)

ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (“**Indemnity**”), dated as of _____, 2022, made by TRIPOD INVESTMENTS, LLC, a limited liability company of the State of California and HAFRISCO, LLC, a limited liability company of the State of New Mexico (collectively the “**Borrower**”), in favor of the CITY OF PALMDALE, a municipal corporation of the State of California (“**City**”).

WITNESSETH

WHEREAS, Borrower is the owner of the real property in the City of Palmdale, as more particularly described on Exhibit A attached hereto and made a part hereof, and the real property improvements thereon (collectively referred to as the “**Property**”);

WHEREAS, Borrower and the City, entered into that certain Economic Development Loan Agreement, dated as of _____, 2022 (“**City Loan Agreement**”), pursuant to which the City agreed to make a loan to Borrower in the original principal amount of TWO MILLION, SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$2,750,000) (“**City Loan**”), to provide part of the financing for the acquisition of the Property for development (the City Loan Agreement and the documents and instruments referred to therein which are being executed by Borrower concurrently herewith are referred to collectively as the “**Loan Documents**”);

WHEREAS, Borrower has agreed to execute and deliver to the City this Indemnity to induce the City to make the City Loan.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, Borrower hereby agrees with the City as follows:

Section 1. DEFINITIONS

For the purpose of this Indemnity, “Hazardous Materials” or “Hazardous Substances” will include, but not be limited to, substances defined as “extremely hazardous substances,” “hazardous substances,” “hazardous materials,” “hazardous waste” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 11001-11050; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; and those substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code, as “infectious waste” in Section 25117.5 of the California Health and Safety Code, or as “hazardous substances” in Section 25316 of the California Health and Safety Code or “hazardous materials” as defined in Section 353 of the California Vehicle Code; and in the regulations adopted and publications promulgated pursuant to said laws.

Other capitalized terms used in this Indemnity will have the meanings ascribed to them in the City Loan Agreement with the same force and effect as if set forth in full below.

Section 2. COVENANTS AND INDEMNITY

The following covenants and indemnities are hereby given and made by Borrower:

2.1 Covenants.

(a) Borrower covenants that it will comply with any and all laws, regulations, and/or orders which may be promulgated, from time to time, with respect to the discharge and/or removal of Hazardous Materials, to pay immediately when due the costs of the removal of, or any other action required by law with respect to, any such Hazardous Materials, and to keep the Property free of any lien imposed pursuant to any such laws, regulations, or orders.

(b) Borrower covenants that the Property will not, while Borrower is the owner thereof, be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials, except for de minimis quantities used at the Property in compliance with all applicable environmental laws and required in connection with the routine construction, operation and maintenance of the Property.

(c) Borrower further agrees that Borrower will not release or dispose of any Hazardous Materials at the Property without the express written approval of the City and that any such release or disposal will be effected in strict compliance with all applicable laws and all conditions, if any, established by the City.

(d) The City will have the right, at any time, to conduct an environmental audit of the Property at the City's expense, unless Hazardous Materials are found, then at Borrower's sole cost and expense, and Borrower will cooperate in the conduct of any such environmental audit. Other than in an emergency, such audit will be conducted only after reasonable prior notice has been given to Borrower and only in the presence of a representative of Borrower. Borrower will give the City and its agents and employees access to the Property at all reasonable times to remove, or otherwise to mitigate against the effects of, Hazardous Materials.

(e) Borrower will not install, or permit to be installed, on the Property friable asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material, and, with respect to any such material currently present in the Property, Borrower will promptly either (i) remove or cause to be removed any material that such regulations deem hazardous and require to be removed, or (ii) otherwise comply with such federal and state regulations, at Borrower's sole cost and expense. If Borrower will fail to so do within the cure period permitted under applicable law, regulation, or order, the City may do whatever is necessary to eliminate said substances from the premises or to otherwise comply with the applicable law,

regulation, or order, and the costs thereof will be added to the Obligations (as hereinafter defined) of Borrower under this Section 2.

(f) Borrower will immediately advise the City in writing of any of the following: (i) any pending or threatened environmental claim against Borrower or the Property, (ii) any condition or occurrence on the Property that (A) results in noncompliance by Borrower with any applicable environmental law, (B) could reasonably be anticipated to cause the Property to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any environmental law, or (C) could reasonably be anticipated to form the basis of an environmental claim against the Property or Borrower.

2.2 Indemnity. Borrower will indemnify, protect, and hold the City harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses (including, without limitation, reasonable attorneys' and experts' fees and disbursements) of any kind or of any nature whatsoever (collectively, the Obligations) which may at any time be imposed upon, incurred by or asserted or awarded against the City and arising from or out of:

- (a) The presence of any Hazardous Materials on, in, under, or affecting all or any portion of the Property or any surrounding areas;
- (b) The breach of any covenant made by Borrower in Section 2.1 hereof; or
- (c) The enforcement by the City of any of the provisions of this Section 2.2 or the assertion by Borrower of any defense to its obligations hereunder.

Subject to the qualifications set forth in Section 2.3, below, Borrower will be liable for payment and performance of the Obligations to the full extent (but only to the extent) of the property and assets (including the Property) which constitute security for such Obligations. If default occurs in the timely and proper payment and performance of any such Obligations (after notice and reasonable opportunity to cure), any judicial proceedings brought by the City against Borrower will be limited to the protection and preservation of the Property, the preservation, enforcement and foreclosure of the liens, mortgages, assignments, rights and security interests securing such Obligations and enforcement and collection of such Obligations for which Borrower remains directly liable as provided in this Section. If there is a foreclosure of any such liens, mortgages, assignments, rights and security interests by power of sale or otherwise, no personal judgment for any deficiency thereon will be sought or obtained by the City against Borrower, or its officers, members, directors, agents, attorneys, servants or employees. In no event shall Borrower be liable for any Obligations resulting exclusively from the gross negligence and/or willful misconduct of the City.

2.3 Exceptions to Non-Recourse Liability. Notwithstanding the foregoing provisions of Section 2.2 or any other agreements,

(a) the City may proceed against any other person or entity whatsoever with respect to the enforcement of any guarantees, surety bonds, letters of credit, reimbursement agreements or similar rights to payment or performance; and

(b) The City may recover personally from any person or entity:

(1) any damages, costs and expenses incurred by the City as a result of the negligence of such person or entity, involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials by such person or entity or by others;

(2) any damages, costs and expenses incurred by City as a result of fraud or any criminal act or acts of Borrower or any partner, shareholder, member, officer, director or employee of Borrower, or of any general or limited partner of Borrower; and

(3) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions.

Section 3. BORROWER'S UNCONDITIONAL OBLIGATIONS

3.1 Unconditional Obligations. Borrower hereby agrees that the Obligations will be paid and performed strictly in accordance with the terms of this Indemnity, regardless of any law, regulation, or order now or hereafter in effect in any jurisdiction affecting any of the Loan Documents or affecting any of the rights of the City with respect thereto. The obligations of Borrower hereunder will be absolute and unconditional irrespective of:

(a) The validity, regularity, or enforceability of the Loan Documents or any other instrument or document executed or delivered in connection therewith;

(b) Any alteration, amendment, modification, release, termination, or cancellation of any of the Loan Documents, or any change in the time, manner, or place of payment of, or in any other term in respect of, all or any of the obligations of Borrower contained in any of the Loan Documents;

(c) Any extension of the maturity of the City Loan or any waiver of, or consent to any departure from, any provision contained in any of the Loan Documents;

(d) Any exculpatory provision in any of the Loan Documents limiting the City's recourse to property encumbered by the Deed of Trust securing the City Loan, or to any other security, or limiting the City's rights to a deficiency judgment against Borrower;

(e) Any exchange, addition, subordination, or release of, or nonperfection of any lien on or security interest in, any collateral for the City Loan, or any release, amendment, waiver of, or consent to any departure from any provision of, any other Borrower or guarantee given in respect of the City Loan;

(f) The insolvency or bankruptcy of Borrower, Borrower, or of any indemnitor or guarantor under any other indemnity or guarantee given in respect of the City Loan; or

(g) Any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower, Borrower, or any other indemnitor or guarantor with respect to the City Loan or any or all of the Obligations.

3.2 Continuation. This Indemnity (a) is a continuing indemnity and will remain in full force and effect until the satisfaction in full of all of the Obligations; and (b) will continue to be effective or will be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the City upon the insolvency, bankruptcy, or reorganization of Borrower, Borrower or otherwise, all as though such payment had not been made.

3.3 Termination. Notwithstanding the payment (and performance) in full of all of the Obligations and the payment (or performance) in full of all of Borrower's obligations under the Loan Documents, this Indemnity will not terminate if any of the following will have occurred:

(a) The City has at any time or in any manner participated in the management or control of, taken possession of (whether personally, by agent or by appointment of a receiver), or taken title to the Property or any portion thereof, whether by foreclosure, deed in lieu of foreclosure, sale under power of sale or otherwise; or

(b) There has been a change, between the date hereof and the date on which all of the Obligations are paid and performed in full, in any Hazardous Materials laws, the effect of which may be to make a lender or mortgagee liable in respect of any of the Obligations, notwithstanding the fact that no event, circumstance, or condition of the nature described in paragraph (a) above ever occurred.

Section 4. WAIVER

Borrower hereby waives the following:

(a) Promptness and diligence;

(b) Notice of acceptance and notice of the incurrence of any obligation by Borrower;

(c) Notice of any action taken by the City, Borrower, or any other interested party under any Loan Document or under any other agreement or instrument relating thereto;

(d) All other notices, demands, and protests, and all other formalities of every kind, in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Borrower of its Obligations hereunder;

(e) The right to a trial by jury with respect to any dispute arising under, or relating to, this Indemnity;

(f) Any requirement that the City protect, secure, perfect, or insure any security interest or lien in or on any property subject thereto;

(g) Any requirement that the City exhaust any right or take any action against Borrower or any other person or collateral; and

(h) Any defense that may arise by reason of:

(1) The incapacity, lack of authority, death or disability of, or revocation hereof by, any person or persons;

(2) The failure of the City to file or enforce any claim against the estate (in probate, bankruptcy, or any other proceedings) of any person or persons; or

(3) Any defense based upon an election of remedies by the City, including, without limitation, an election to proceed by nonjudicial foreclosure or which destroys or otherwise impairs the subrogation rights of the City or any other right of the City to proceed against Borrower.

Section 5. NOTICES

Any notice, demand, statement, request, or consent made hereunder will be in writing and will be personally served or delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), or mailed by first-class registered mail, return receipt requested, to the following addresses (or to such other address as the parties hereto, will designate in writing):

In the case of the City:

38300 Sierra Highway
Palmdale, California 93550
Attn: City Manager

In the case of Borrower:

Tripod Investments, LLC
Hafrisco, LLC
1718 Westwood Blvd
Los Angeles, CA 900024

With a copy to:

Law Offices of Saul Reiss
11835 West Olympic Blvd.
Suite 415E
Los Angeles, CA 90064
E-Mail: saulreiss@reisslaw.net

Any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), will be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required will be deemed received on the date of receipt thereof.

Section 6. MISCELLANEOUS

6.1 Borrower will make any payment required to be made hereunder in lawful money of the United States of America, and in same day funds, to the City at its address specified in the first paragraph hereof.

6.2 No amendment of any provision of this Indemnity will be effective unless it is in writing and signed by Borrower and the City, and no waiver of any provision of this Indemnity, and no consent to any departure by Borrower from any provision of this Indemnity, will be effective unless it is in writing and signed by the City, and then such waiver or consent will be effective only in the specific instance and for the specific purpose for which given.

6.3 No failure on the part of the City to exercise, and no delay in exercising, any right hereunder or under any other Loan Document will operate as a waiver thereof, nor will any single

or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the City provided herein and in the other Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the City under any Loan Document against any party thereto are not conditional or contingent on any attempt by the City to exercise any of its rights under any other Loan Document against such party or against any other person or collateral.

6.4 Any provision of this Indemnity that is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

6.5 This Indemnity will (a) be binding upon Borrower, and Borrower's successors and assigns; and (b) inure, together with all rights and remedies of the City hereunder, to the benefit of the City, its respective directors, officers, employees, and agents, any successors to the City's interest in the Property, any other person who acquires any portion of the Property at a foreclosure sale or otherwise through the exercise of the City's rights and remedies under the Loan Documents, any successors to any such person, and all directors, officers, employees, and agents of all of the aforementioned parties. Without limiting the generality of clause (b) of the immediately preceding sentence, the City may, subject to, and in accordance with, the provisions of the Loan Documents, assign or otherwise transfer all or any portion of its rights and obligations under any other Loan Document, to any other person, and such other person will thereupon become vested with all of the rights and obligations in respect thereof that were granted to the City herein or otherwise. None of the rights or obligations of Borrower hereunder may be assigned or otherwise transferred without the prior written consent of the City.

6.6 Borrower hereby (a) irrevocably submits to the jurisdiction of any California or federal court sitting, in each instance, in Los Angeles County in any action or proceeding arising out of or relating to this Indemnity, (b) waives any defense based on doctrines of venue or forum non convenient or similar rules or doctrines, and (c) irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such California or federal court. Borrower irrevocably consents to the service of any and all process which may be required or permitted in any such action or proceeding to the address specified in the first paragraph of this Indemnity, above. Borrower agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

6.7 The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and will in no way define, limit, or describe the scope or the intent of this Indemnity or any of the provisions hereof.

6.8 This Indemnity will be governed by, and construed and interpreted in accordance with, the laws of the State of California applicable to contracts made and to be performed therein, except to the extent that the laws of the United States preempt the laws of the State of California.

6.9 This Indemnity may be executed in any number of counterparts, each of which will constitute an original and all of which together will constitute one agreement.

[Remainder of Page Intentionally Left Blank; Signatures on Following Page]

IN WITNESS WHEREOF, Borrower has duly executed this Indemnity as of the date first set forth above.

Tripod Investments, LLC

By: _____

Farshad Matian, Managing Member

Hafrisco, LLC

By: _____

Ben Sayani, Managing Member

Exhibit A
to Environmental Indemnity

LEGAL DESCRIPTION

PARCEL 1:

LOT 1 IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 12 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALMDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND.

EXCEPT THAT PORTION OF SAID LOT 1 DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 1, SAID SOUTHWEST CORNER BEING THE TRUE POINT OF BEGINNING; THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT 1, SAID WEST LINE BEING THE WEST LINE OF SAID SECTION 3, NORTH 0° 07' 20" WEST 668.74 FEET; THENCE NORTH 89° 56' 08" EAST 2674.18 FEET, MORE OR LESS TO THE EAST LINE OF SAID LOT 1, SAID EAST LINE ALSO BEING THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE ALONG SAID EAST LINE SOUTH 0° 01' 19" EAST 671.19 FEET, MORE OR LESS TO THE SOUTHEAST CORNER ALSO BEING THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE SOUTH 89° 59' 17" WEST 2673.01 FEET, MORE OR LESS, THE TRUE POINT OF BEGINNING.

PARCEL 2:

LOT 2 IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 12 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALMDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

EXCEPT THE INTEREST IN THE NORTHERLY 30 FEET OF SAID LAND WHICH WAS CONVEYED TO THE COUNTY OF LOS ANGELES, FOR PUBLIC ROAD AND HIGHWAY PURPOSES BY DEED RECORDED IN BOOK 6637 PAGE 249 OF DEEDS.

APN: 3128-015-900, -901



City Council Staff Report

DATE: NOVEMBER 16, 2022
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: CITY ATTORNEY'S OFFICE
DISTRICT: ALL
SUBJECT: APPROVE FIRST AMENDMENT TO LEGAL SERVICES AGREEMENT WITH BURKE WILLIAMS & SORENSEN, LLP TO AMEND THE SCOPE OF SERVICES AND TO INCREASE THE TOTAL AMOUNT OF THE AGREEMENT BY \$600,000 TO THEREBY INCREASE THE NOT TO EXCEED AMOUNT TO \$850,000

ISSUE

Approve a First Amendment to Legal Services Agreement with Burke Williams & Sorensen, LLP to amend the scope of services and to increase the total amount of the Agreement by \$600,000 not to exceed the sum of \$850,000.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve the First Amendment to Legal Services Agreement with Burke Williams & Sorensen, LLP to amend the scope of services and to increase the total amount of the Agreement by \$600,000 not to exceed the sum of \$850,000; and
2. Authorize the Interim City Manager or her designee to execute the First Amendment with Burke Williams & Sorensen, LLP substantially in the same form as presented to the City Council.

BACKGROUND

The law firm of Burke, Williams & Sorensen, LLP has represented the City since 2011, providing employment law general advisory and litigation services on behalf of the City. Burke, Williams & Sorensen, LLP has successfully handled and continues to represent the City in a number of employment matters.

DISCUSSION

To amend the scope of services to align with the legal services to be provided by Burke, Williams & Sorensen, LLP and to address the additional cost associated with pending and existing litigation, the First Amendment to the Legal Services Agreement will increase the not-to-exceed agreement amount by \$600,000 to \$850,000. Staff proposes

Report to Mayor and City Council

Re: First Amendment to Legal Services Agreement with Burke Williams & Sorensen, LLP

November 16, 2022

Page 2

that the City Council authorize the Interim City Manager to execute the Amendment and allow Burke Williams & Sorensen, LLP to continue to provide legal services.

FISCAL IMPACT

The First Amendment to the Legal Services Agreement will increase the not-to-exceed agreement amount by \$600,000. However, this amount is not guaranteed to be spent. Fees will only be paid to the extent services are provided. Funds for this agreement are currently budgeted in the City Attorney's Office budget accounts: General (10114001-721100) and Self-Insurance (15014101-721150 / 15014101-721151).

STRATEGIC PLAN

Goal II: Ensure long-term fiscal health of the City and maintain funding for services.

- A. Manage resources, costs, and liabilities to ensure the City's long-term fiscal health.

Prepared by:	Angie Barajas, Legal & Risk Coordinator
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, Interim City Manager
Approved as to form:	Scott E. Porter, Interim City Attorney

ATTACHMENTS

First Amendment with Burke Williams & Sorensen, LLP
Agreement with Burke Williams & Sorensen, LLP

**FIRST AMENDMENT TO AGREEMENT A-7802
BETWEEN THE CITY OF PALMDALE AND BURKE, WILLIAMS & SORENSEN,
LLP**

This First Amendment to Agreement No. A-7802 ("Agreement") between the City of Palmdale and Burke, Williams & Sorensen, LLP is made and entered into this 16th day of November, 2022 by and between the City of Palmdale (hereinafter called "CITY") and Burke, Williams & Sorensen, LLP (hereinafter called "FIRM").

WHEREAS, CITY and FIRM entered into an Agreement on March 29, 2022 for legal services pursuant to California Business and Professions Code Section 6148; and

WHEREAS, CITY and FIRM desire to amend the contract amount of the Agreement to provide for additional services.

NOW THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. Paragraph B of Recitals shall be amended to read as follows:

The CITY desires to retain the Firm to provide specialized legal services related to the area of labor and employment law, as well as general advisory services related to such areas of law.

2. The compensation identified in Section 4(e) shall be amended to increase the total amount of the Agreement by Six-Hundred Thousand Dollars (\$600,000) not to exceed the sum of Eight-Hundred and Fifty Thousand Dollars (\$850,000).

3. All other terms and conditions remain the same.

In Witness Whereof, the parties hereto have caused this Contract to be executed and attested by their respective officers thereunto duly authorized.

CITY OF PALMDALE

BURKE, WILLIAMS & SORENSEN, LLP

Ronda Perez Date
Interim City Manager

John J. Welsh, Esq. Date
Managing Partner

ADDRESS FOR NOTICE:
CITY OF PALMDALE
38300 Sierra Hwy
Palmdale, CA 93550

ADDRESS FOR NOTICE:
BURKE, WILLIAMS & SORENSEN, LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071

APPROVE AS TO FORM:

Scott E. Porter
Interim City Attorney

ATTEST:

ATTEST: If Corporation

Roxanne Faber
Acting City Clerk

Secretary

ORIGINAL

Legal Services Agreement
Agreement No. A-7802
Page 1 of 6

AGREEMENT FOR LEGAL SERVICES BETWEEN THE CITY OF PALMDALE AND BURKE, WILLIAMS & SORENSEN, LLP AGREEMENT NO. A-7802

This Legal Services Agreement ("Agreement") is made and entered into by and between the City of Palmdale ("City") and Burke, Williams & Sorensen, LLP ("Firm"), collectively identified as "the parties."

RECITALS:

A. This Agreement is made pursuant to California Business and Professions Code Section 6148 and is intended to fulfill the requirements of that section.

B. The City desires to retain the Firm to provide specialized legal services related to the areas of code enforcement, nuisance abatement, as well as general advisory services related to municipal law.

C. The attorneys of the Firm are duly licensed under the laws of the State of California and are fully qualified to provide the services contemplated by this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Scope of Services.

a. The Firm will provide those legal services as may be authorized and assigned by the Palmdale City Attorney, including, without limitation, legal services related to the area of labor and employment law, as well as general advisory services related to such areas of law. The firm will provide those legal services reasonably required to accomplish City's stated goals.

b. The legal services the Firm will provide to City will be billed at the rates set forth in Exhibit "A", attached.

2. Designation of Responsible Attorneys.

Sheila Delshad, Esq. and Cheryl L. Johnson-Hartwell, Esq. are designated as the attorneys responsible for providing the legal services under this Agreement to City and for supervising any other attorneys within the Firm assisting them in the performance of those services. The Firm's offices are located at 444 South Flower Street, Suite 2400, Los Angeles, CA 90071.

3. Confidentiality.

All reports, information, data or other documents prepared or assembled by the Firm under this agreement are confidential and the Firm shall not make the same

available to any individual or organization without the prior written approval of the Palmdale City Attorney.

4. Maximum Contract Amount. Billing Procedures. and Monthly Statements.

a. The Firm shall submit to the Palmdale City Attorney, within thirty (30) days after the end of each calendar month, an itemized statement of the professional services provided and the time expended providing those services. This statement will be in the form customarily submitted by the Firm to clients that are billed on an hourly basis. The parties acknowledge that payment of all monthly statements is expected to be made within thirty (30) days of the billing date.

b. The Firm will bill the City for items such as, but not limited to, long distance telephone calls, filing fees (if applicable), document duplication, computerized legal research, word-processing, and similar out-of-pocket expenditures. These items will be separately designated on the Firm's monthly statements as "disbursements," and will be billed in addition to the fees for professional services.

c. If the Firm's services are billed by the hour, time will be charged by the Firm in increments of 1/10 of an hour (i.e., six-minute units). Among the services which are routinely billed are telephone conversations and travel time. In addition to the fees charged for services, the Firm also bills for costs incurred, which include, but are not limited to, filing fees (if applicable), messenger and air courier expensed, parking expenses, local and out-of-town travel expenses, facsimile and other communication expenses, postage, and printing costs. In addition, the Firm charges for certain internal costs if incurred on City's behalf, such as photocopying, secretarial overtime, and word processing.

The rate structure in general, or the rates of particular attorneys, may be increased from time to time, after a minimum 30-day written notice to and written consent of the Palmdale City Attorney. To the extent feasible, these adjustments will be made so as to coincide with the beginning of City's fiscal year, which begins on July 1st. If possible, requests to increase fees should be forwarded to the Palmdale City Attorney in February of any given year.

d. The Firm's fees for legal services are based primarily on hourly rates; other factors considered by the Firm in determining a fair fee are set forth in Rule 1.5 of the Rules of Professional Conduct of the California State Bar Association. If persons who are "Of Counsel" to the Firm work on City matters, the Firm and its Of Counsel may from time to time share the fees paid by City; however, if such is the case, City's fees will not be increased in any way, and the fees which City is requested to pay will be the same as would have been payable had there been no such sharing of fees.

e. All fees, charges, costs and reimbursable items for the term of the Agreement shall not exceed a maximum of \$250,000.

5. Resolution of Fee Disputes.

City is entitled to require that any fee dispute be resolved by binding arbitration in Los Angeles in accordance with the arbitration rules of the Los Angeles County Bar Association for legal fee disputes. If City chooses not to use the Los Angeles County Bar Association's arbitration procedures, City agrees that any disputes regarding the professional services rendered or fees charged by the Firm will be submitted to binding arbitration in Los Angeles to be conducted by the American Arbitration Association in accordance with its commercial arbitration rules.

6. Term of the Agreement.

This Agreement will take effect on the date this Agreement is signed by the parties and will remain in full force and effect for a period of three (3) years or until terminated in accordance with the provisions of Section 7.

7. Termination of the Agreement.

City has the right to terminate the Firm's representation at any time, without cause, subject to an obligation to give notice in writing to the Firm at least thirty (30) days prior to termination. The Firm has the same right, subject to an obligation to give City written notice at least ninety (90) days prior to termination so that City will be able to arrange alternative representation. In either circumstance, City agrees to secure new counsel as quickly as possible and to cooperate fully in the substitution of the new counsel as counsel of record in any pending litigation matters. The Firm agrees to cooperate fully in any such transition, including the transfer of files. Upon termination, all finished or unfinished materials shall become the property of City. Notwithstanding the termination of the Firm's representation, City will remain obligated to pay to the Firm all fees and costs incurred prior to such termination.

8. Modifications to the Agreement.

Unless otherwise provided for in this Agreement, modifications relating to the nature, extent, or duration of the Firm's professional services to be rendered will require the written approval of the Palmdale City Attorney. Any such written approval will be deemed to be a supplement to this Agreement and will specify any changes in the Scope of Services and the agreed-upon billing rate to be charged by the Firm and paid by the City.

9. Independent Contractor.

No employment relationship is created by this Agreement with the Firm or any employees of the Firm. For all purposes, the Firm and its employees are independent contractors to City and shall not incur, nor have the authority to incur any debt, obligation, or liability for or against City.

10. Assignment and Delegation.

This Agreement contemplates the performance of professional services by the Firm. Neither this Agreement, nor any portion of it, may be assigned or delegated by the Firm without the prior written consent of the Palmdale City Attorney. Delegation to attorneys outside the Firm will be limited to those situations in which the Firm is disqualified by virtue of a conflict of interest, or where the Firm does not possess the expertise to perform services in a particular practice area. The Firm will supervise delegated work, except where precluded from doing so by virtue of a conflict of interest, and where otherwise agreed to by the parties.

11. Conflict of Interest.

The Firm affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having such interest shall be employed by or associated with the Firm.

12. Insurance.

a. The Firm shall obtain and maintain in full force and effect a professional liability insurance policy that provides coverage in an amount not less than \$1,000,000 per occurrence. This insurance policy shall provide coverage to the City for any damages or losses suffered by City as a result of any error, omission, or neglect by the Firm that arises out of the professional services rendered under this Agreement. Such insurance may be subject to a self-insured retention or deductible to be borne entirely by the Firm.

b. The Firm will obtain and maintain workers' compensation insurance in accordance with Section 3700 of the California Labor Code.

c. The Firm will obtain and maintain in full force and effect comprehensive general liability insurance in an amount not less than \$1,000,000 per occurrence with a \$2,000,000 aggregate.

d. All insurance coverage specified above will provide for a minimum of thirty (30) days' notice of cancellation by the insurance carrier, and will be maintained in full force and effect throughout the term of this Agreement.

13. Legal Files.

a. During the period that the Firm is actively working upon a matter, the files pertaining thereto will be maintained in its offices. After the Firm has concluded working upon a matter, the files may be transferred to an offsite storage facility, from which they can be retrieved upon reasonable notice. All original agreements, modification or deeds, easements or similar original documents should be forwarded to the Palmdale

City Clerk either as created or at the expiration of the fourth calendar year following the consummation or conclusion of each matter for which a file is opened. City may request copies of its client matter files at any time, including, without limitation, upon termination of the Firm's engagement. City agrees that upon delivery of any client matter files that it will pay the Firm for its costs incurred in photocopying such files.

b. If the firm is called upon to give testimony or produce documents in any legal or administrative proceeding which concerns City in any way, whether before or after the representation and rendition of legal services to City under this agreement terminates, City agrees to pay the Firm, at its then prevailing hourly rates, for its time in investigating, preparing for and in giving testimony and/or in producing documents and for all expense incurred in connection with doing so.

14. Entire Agreement

This Agreement will constitute the full and complete agreement and understanding of the parties and supersedes all prior agreements and all other written or oral statements of either party relating to its subject matter.

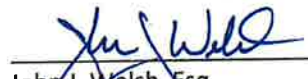
TO EFFECTUATE THIS AGREEMENT, the authorized representatives of the parties have caused this Agreement to be executed as of the dates indicated below.

CITY OF PALMDALE


Steven D. Hofbauer
Mayor

Date: 03/29/22

BURKE, WILLIAMS & SORENSEN, LLP


John J. Welsh, Esq.
Managing Partner

Date: 3/8/22

Attest:


Shanae Smith
City Clerk

Approved as to form:


Christopher Beck, Esq.
City Attorney

EXHIBIT "A"
RATE SCHEDULE

A. Identification.

Client: City of Palmdale
Matter: Any matters assigned by the Palmdale City Attorney

B. Attorney Fees

Hourly Rates
Partners: \$300.00 - \$320.00
Associates: \$225.00 - \$265.00
Paralegals: \$150.00

These rates shall automatically increase by three (3%) percent each new fiscal year, rounded up to the nearest \$5.00, in order to offset rising costs.

C. Standard Charges.

Hourly rate will be billed in minimum units of one-tenth hours.

D. Costs and Expenses.

In-office photocopying	\$0.25/page
Mileage	IRS prevailing mileage rates
Computerized Legal Research	At vendor cost
Word Processing	Varies
Postage	At vendor cost
Courier and Air Freight Charges	At vendor cost
Messenger Services	At vendor cost
Title Report and/or Litigation Guarantee	At vendor cost
Notary	At vendor cost
Court Photocopying	At cost
Incoming or out-going Fax Charges	No charge
Conference Call Charges	AT&T standard rates or equal
Travel Expenses	At cost
Other reasonable costs	At cost

E. Subject to Change.

The rates on this schedule are subject to change on thirty (30) days written notice and approval by the Palmdale City Attorney. If City declines to pay any increased rates, Firm will have the right to withdraw as Palmdale's counsel.



City Council Staff Report

DATE: NOVEMBER 16, 2022
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: CITY ATTORNEY'S OFFICE
DISTRICT: ALL
SUBJECT: APPROVE FIRST AMENDMENT TO LEGAL SERVICES AGREEMENT WITH BRADLEY, GMELICH & WELLERSTEIN, LLP TO INCREASE THE TOTAL AMOUNT OF THE AGREEMENT BY \$500,000 NOT TO EXCEED THE SUM OF \$750,000

ISSUE

Approve a First Amendment to Legal Services Agreement with Bradley, Gmelich & Wellerstein, LLP to increase the total amount of the Agreement by \$500,000 not to exceed the sum of \$750,000.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve the First Amendment to Legal Services Agreement with Bradley, Gmelich & Wellerstein, LLP to increase the total amount of the Agreement by \$500,000 not to exceed the sum of \$750,000; and
2. Authorize the Interim City Manager or her designee to execute the First Amendment with Bradley, Gmelich & Wellerstein, LLP substantially in the same form as presented to the City Council.

BACKGROUND

Bradley, Gmelich & Wellerstein, LLP has competently provided legal services to the City of Palmdale for more than a decade. The City Attorney's Office would like to continue to use their services for various legal matters.

DISCUSSION

Bradley, Gmelich & Wellerstein, LLP would continue to provide legal services pertaining to personal injury, property damage and employment law defense. This work would also include cross claims, counter claims, summary judgments and all manner of motions, discovery proceedings, trials, and post-trial and appellate work. In addition, the firm would provide general advisory services related to such claims and lawsuits and the prevention of future claims and lawsuits. The First Amendment to the Legal Services Agreement will increase the not-to-exceed agreement amount by \$500,000 to \$750,000.

Report to Mayor and City Council

Re: First Amendment to Legal Services Agreement with Bradley, Gmelich & Wellerstein, LLP

November 16, 2022

Page 2

Staff proposes that the City Council authorize the Interim City Manager to execute the Amendment and allow Bradley, Gmelich & Wellerstein, LLP to continue to provide legal services.

FISCAL IMPACT

The First Amendment to the Legal Services Agreement will increase the not-to-exceed agreement amount by \$500,000, however, this amount is not guaranteed. Fees will only be paid to the extent services are provided. Funds for this agreement are currently budgeted in the City Attorney's Office budget account: Self-Insurance (15014101-721150 / 15014101-721151).

STRATEGIC PLAN

Goal II: Ensure long-term fiscal health of the City and maintain funding for services.

A. Manage resources, costs, and liabilities to ensure the City's long-term fiscal health.

Prepared by:	Angie Barajas, Legal & Risk Coordinator
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, Interim City Manager
Approved as to form:	Scott E. Porter, Acting City Attorney

ATTACHMENTS

First Amendment with Bradley, Gmelich & Wellerstein, LLP
Agreement with Bradley, Gmelich & Wellerstein, LLP

**FIRST AMENDMENT TO AGREEMENT A-7819
BETWEEN THE CITY OF PALMDALE AND BRADLEY, GMELICH &
WELLERSTEIN LLP**

This First Amendment to Agreement No. A-7819 ("Agreement") between the City of Palmdale and Bradley, Gmelich & Wellerstein, LLP is made and entered into this 16th day of November, 2022 by and between the City of Palmdale (hereinafter called "CITY") and Bradley, Gmelich & Wellerstein, LLP (hereinafter called "FIRM").

WHEREAS, CITY and FIRM entered into an Agreement on February 16, 2022 for legal services pursuant to California Business and Professions Code Section 6148; and

WHEREAS, CITY and FIRM desire to amend the contract amount of the Agreement to provide for additional services.

NOW THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. The compensation identified in Section 4(e) shall be amended to increase the total amount of the Agreement by Five-Hundred Thousand Dollars (\$500,000) not to exceed the sum of Seven-Hundred and Fifty Thousand Dollars (\$750,000).
2. All other terms and conditions remain the same.

In Witness Whereof, the parties hereto have caused this Contract to be executed and attested by their respective officers thereunto duly authorized.

CITY OF PALMDALE

BRADLEY, GMELICH & WELLERSTEIN
LLP

Ronda Perez Date
Interim City Manager

Barry Bradley, Esq. Date
Managing Partner

ADDRESS FOR NOTICE:
CITY OF PALMDALE
38300 Sierra Hwy
Palmdale, CA 93550

ADDRESS FOR NOTICE:
BRADLEY, GMELICH & WELLERSTEIN
LLP
700 N. Brand Blvd., 10th Floor
Glendale, CA 91203

APPROVE AS TO FORM:

Scott E. Porter
Interim City Attorney

ATTEST:

ATTEST: If Corporation

Roxanne Faber
Acting City Clerk

Secretary

copy

**AGREEMENT FOR LEGAL SERVICES BETWEEN
THE CITY OF PALMDALE AND BRADLEY, GMELICH & WELLERSTEIN LLP**

AGREEMENT NO. A- 7819

This Legal Services Agreement ("Agreement") is made and entered into by and between the City of Palmdale ("City") and Bradley, Gmelich & Wellerstein LLP ("Firm"), collectively identified as "the parties."

RECITALS:

A. This Agreement is made pursuant to California Business and Professions Code Section 6148, and is intended to fulfill the requirements of that section.

B. The City desires to retain the Firm to provide specialized legal services related to the areas of civil litigation and personal injury defense, general advisory services related to municipal law and business practices, as well as legal services related to employment law litigation, advice and counsel.

C. The attorneys of the Firm are duly licensed under the laws of the State of California and are fully qualified to provide the services contemplated by this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. **Scope of Services.**

a. The Firm will provide those legal services as may be authorized and assigned by the Palmdale City Attorney, including, without limitation, legal services related to personal injury and property damage defense, employment law defense, cross claims, counter claims, summary judgments and all manner of motions, discovery proceedings, trials, and post-trial and appellate work, as well as general advisory services related to such claims and lawsuits and the prevention of future claims and lawsuits. The firm will provide those legal services reasonably required to accomplish City's stated goals.

b. The legal services the Firm will provide to City will be billed at the rates set forth in Exhibit "A", attached.

2. **Designation of Responsible Attorneys.**

Barry Bradley, Esq. is designated as the attorney responsible for providing the legal services under this Agreement to City and for

supervising any other attorneys within the Firm assisting him in the performance of those services. The Firm's offices are located at 700 North Brand Boulevard, 10th Floor, Glendale, CA 91203.

3. **Confidentiality.**

All reports, information, data, or other documents prepared or assembled by the Firm under this Agreement are confidential and the Firm shall not make the same available to any individual or organization without the prior written approval of the Palmdale City Attorney.

4. **Maximum Contract Amount, Billing Procedures, and Monthly Statements.**

a. The Firm shall submit to the Palmdale City Attorney, within thirty (30) days after the end of each calendar month, an itemized statement of the professional services provided and the time expended providing those services. This statement will be in the form customarily submitted by the Firm to clients that are billed on an hourly basis. The parties acknowledge that payment of all monthly statements is expected to be made within thirty (30) days of the billing date.

b. The Firm will bill the City for items such as, but not limited to, long distance telephone calls, filing fees (if applicable), document duplication, computerized legal research, word-processing, and similar out-of-pocket expenditures. These items will be separately designated on the Firm's monthly statements as "disbursements," and will be billed in addition to the fees for professional services.

c. If the Firm's services are billed by the hour, time will be charged by the Firm in increments of 1/10 of an hour (i.e., six-minute units). Among the services which are routinely billed are telephone conversations and travel time. In addition to the fees charged for services, the Firm also bills for costs incurred, which include, but are not limited to, filing fees (if applicable), messenger and air courier expensed, parking expenses, local and out-of-town travel expenses, facsimile and other communication expenses, postage, and printing costs. In addition, the Firm charges for certain internal costs if incurred on City's behalf, such as photocopying, secretarial overtime, and word processing.

The rate structure in general, or the rates of particular attorneys, may be increased from time to time, after a minimum 30-day written notice to and written consent of the Palmdale City Attorney. To the extent

feasible, these adjustments will be made so as to coincide with the beginning of City's fiscal year, which begins on July 1st. If possible, requests to increase fees should be forwarded to the Palmdale City Attorney in February of any given year.

d. The Firm's fees for legal services are based primarily on hourly rates; other factors considered by the Firm in determining a fair fee are set forth in Rule 4-200 of the Rules of Professional Conduct of the California State Bar Association. If persons who are "Of Counsel" to the Firm work on City matters, the Firm and its Of Counsel may from time to time share the fees paid by City; however, if such is the case, City's fees will not be increased in any way, and the fees which City is requested to pay will be the same as would have been payable had there been no such sharing of fees.

e. All fees, charges, costs and reimbursable items for the entire term of this Agreement shall not exceed a maximum of **\$250,000.00**.

5. **Resolution of Fee Disputes.**

City is entitled to require that any fee dispute be resolved by binding arbitration in Los Angeles in accordance with the arbitration rules of the Los Angeles County Bar Association for legal fee disputes. If City chooses not to use the Los Angeles County Bar Association's arbitration procedures, City agrees that any disputes regarding the professional services rendered or fees charged by the Firm will be submitted to binding arbitration in Los Angeles to be conducted by the American Arbitration Association (or an alternative provider if the Parties so agree) in accordance with its commercial arbitration rules.

6. **Term of the Agreement.**

This Agreement will take effect on February 16, 2022 and will remain in full force and effect for a period of three (3) years or until terminated in accordance with the provisions of Section 7.

7. **Termination of the Agreement.**

City has the right to terminate the Firm's representation at any time, without cause, subject to an obligation to give notice in writing to the Firm at least thirty (30) days prior to termination. The Firm has the same right, subject to an obligation to give City written notice at least ninety (90) days prior to termination so that City will be able to arrange alternative representation. In either circumstance, City agrees to secure new counsel as quickly as possible and to cooperate fully in the substitution of the new counsel as counsel of record

in any pending litigation matters. The Firm agrees to cooperate fully in any such transition, including the transfer of files. Upon termination, all finished or unfinished materials shall become the property of City. Notwithstanding the termination of the Firm's representation, City will remain obligated to pay to the Firm all fees and costs incurred prior to such termination.

8. **Modifications to the Agreement.**

Unless otherwise provided for in this Agreement, modifications relating to the nature, extent, or duration of the Firm's professional services to be rendered will require the written approval of the Palmdale City Attorney. Any such written approval will be deemed to be a supplement to this Agreement and will specify any changes in the Scope of Services and the agreed-upon billing rate to be charged by the Firm and paid by the City.

9. **Independent Contractor.**

No employment relationship is created by this Agreement with the Firm or any employees of the Firm. For all purposes, the Firm and its employees are independent contractors to City and shall not incur, nor have the authority to incur any debt, obligation, or liability for or against City.

10. **Assignment and Delegation.**

This Agreement contemplates the performance of professional services by the Firm. Neither this Agreement, nor any portion of it, may be assigned or delegated by the Firm without the prior written consent of the Palmdale City Attorney. Delegation to attorneys outside the Firm will be limited to those situations in which the Firm is disqualified by virtue of a conflict of interest, or where the Firm does not possess the expertise to perform services in a particular practice area. The Firm will supervise delegated work, except where precluded from doing so by virtue of a conflict of interest, and where otherwise agreed to by the parties.

11. **Conflict of Interest.**

The Firm affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having such interest shall be employed by or associated with the Firm.

12. **Insurance.**

a. The Firm shall obtain and maintain in full force and effect a professional liability insurance policy that provides coverage in an amount not less than \$1,000,000 per occurrence. This insurance policy shall provide coverage to the City for any damages or losses suffered by City as a result of any error, omission, or neglect by the Firm that arises out of the professional services rendered under this Agreement. Such insurance may be subject to a self-insured retention or deductible to be borne entirely by the Firm.

b. The Firm will obtain and maintain workers' compensation insurance in accordance with Section 3700 of the California Labor Code.

c. The Firm will obtain and maintain in full force and effect comprehensive general liability insurance in an amount not less than \$1,000,000 per occurrence with a \$2,000,000 aggregate.

d. All insurance coverage specified above will provide for a minimum of thirty (30) days notice of cancellation by the insurance carrier, and will be maintained in full force and effect throughout the term of this Agreement.

13. **Legal Files.**

a. During the period that the Firm is actively working upon a matter, the files pertaining thereto will be maintained in its offices. Files may be maintained in physical files or electronically. After the Firm has concluded working upon a matter, any physical files will be destroyed within a reasonable time in a confidentially safe manner. Electronic files will be maintained for a period of five years. City is free to request any of its original physical files or documents at any time, and further request that the original files not be destroyed for a specified period of time not to exceed four years from the date of file closure. All original agreements, modification or deeds, easements or similar original documents should be forwarded to the Palmdale City Clerk either as created or at the conclusion of a case. City may request copies of its client matter files at any time, including, without limitation, upon termination of the Firm's engagement. City agrees that upon delivery of any client matter files that it will pay the Firm for its costs incurred in photocopying such files.

b. If the firm is called upon to give testimony or produce documents in any legal or administrative proceeding which concerns City in any way, whether before or after the representation and rendition of legal services to City under this agreement terminates, City agrees to pay the Firm, at it's then prevailing hourly rates, for it's time in investigating, preparing for and in giving testimony and/or in producing documents and for all expense incurred in connection with doing so.

14. **Entire Agreement**

This Agreement will constitute the full and complete agreement and understanding of the parties and supersedes all prior agreements and all other written or oral statements of either party relating to its subject matter.

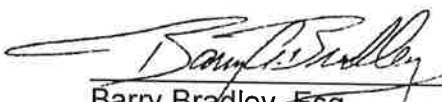
TO EFFECTUATE THIS AGREEMENT, the authorized representatives of the parties have caused this Agreement to be executed as of the dates indicated below.

CITY OF PALMDALE

BRADLEY, GMELICH & WELLERSTEIN LLP



Christopher Beck
City Attorney



Barry Bradley, Esq.
Managing Partner

Attest:



Shanae S. Smith
City Clerk

Approved as to form:



Christopher Beck
City Attorney

EXHIBIT "A"
RATE SCHEDULE

A. Identification.

Client: City of Palmdale
Matter: Any matters assigned by the Palmdale City Attorney.

B. Attorney Fees. (Hourly)

1. For General Liability, Personal Injury and Property Loss Claims:

Managing Partner	\$275/hour
Partners and Special Counsel	\$255/hour
Senior Associates	\$240/hour
Associates	\$220/hour
Paralegals and Law Clerks	\$135/hour

2. For Employment Law Claims, Including Employment Advice, Counsel and Workplace Investigations:

Managing Partner	\$300/hour
Partners and Special Counsel	\$300/hour
Senior Associates	\$250/hour
Associates	\$250/hour
Paralegals and Law Clerks	\$135/hour

C. Standard Charges.

Hourly rate will be billed in minimum units of one-tenth hours.

D. Costs and Expenses.

In-office photocopying	\$0.25/page
Mileage	IRS prevailing mileage rates
Computerized Legal Research	At vendor cost
Word Processing	Varies
Postage	At vendor cost
Courier and Air Freight Charges	At vendor cost
Messenger Services	At vendor cost
Title Report and/or Litigation Guarantee	At vendor cost
Notary	At vendor cost
Court Photocopying	At cost
Incoming or out-going Fax Charges	\$1.00/page

Conference Call Charges	AT&T standard rates or equal
Travel Expenses	At cost
Other reasonable costs	At cost

E. Subject to Change.

The rates on this schedule are subject to change on thirty (30) days written notice and approval by the Palmdale City Attorney. If City declines to pay any increased rates, Firm will have the right to withdraw as Palmdale's counsel.



City Council Staff Report

DATE: NOVEMBER 16, 2022
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: CITY ATTORNEY'S OFFICE
DISTRICT: ALL
SUBJECT: APPROVE SECOND AMENDMENT TO LEGAL SERVICES AGREEMENT WITH KANE, BALLMER & BERKMAN, LLC TO INCREASE THE TOTAL AMOUNT OF THE AGREEMENT BY \$200,000 NOT TO EXCEED THE SUM OF \$650,000

ISSUE

Approve a Second Amendment to Legal Services Agreement with Kane, Ballmer & Berkman, LLC to increase the total amount of the Agreement by \$200,000 not to exceed the sum of \$650,000.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve the Second Amendment to Legal Services Agreement with Kane, Ballmer & Berkman, LLC to increase the total amount of the Agreement by \$200,000 not to exceed the sum of \$650,000; and
2. Authorize the Interim City Manager or her designee to execute the Second Amendment with Kane, Ballmer & Berkman, LLC substantially in the same form as presented to the City Council.

BACKGROUND

The law firm of Kane, Ballmer & Berkman, LLC has represented the City for decades, providing legal advice related to the dissolution of the former redevelopment agency, housing law, development agreements, and related litigation. Kane, Ballmer & Berkman, LLP currently provides general legal advice to staff and represents the Housing Authority in the matter of Community Development Associates v. Housing Authority of the City of Palmdale, et al. The Second Amendment to the Legal Services Agreement will increase the not-to-exceed agreement amount by \$200,000 to \$650,000.

DISCUSSION

To continue Kane, Ballmer & Berkman's representation of the City, an amendment must be executed to extend the contract maximum. By extending the contract maximum by \$200,000, we can continue to use the services of Kane, Ballmer & Berkman for our

Report to Mayor and City Council

Re: Second Amendment to Legal Services Agreement with Kane, Ballmer & Berkman, LLC

November 16, 2022

Page 2

ongoing litigation in Community Development Associates v. Housing Authority of the City of Palmdale, et al., and for other legal services as stated above. Staff proposes that the City Council authorize the Interim City Manager to execute the Amendment and allow Kane, Ballmer & Berkman, LLC to continue to provide legal services.

FISCAL IMPACT

The Second Amendment to the Legal Services Agreement will increase the not-to-exceed agreement amount by \$200,000, however, this amount is not guaranteed. Fees will only be paid to the extent services are provided. Funds for this agreement are currently budgeted in the City Attorney's Office budget account: Litigation Account (10114001-721140).

STRATEGIC PLAN

Goal II: Ensure long-term fiscal health of the City and maintain funding for services.

A. Manage resources, costs, and liabilities to ensure the City's long-term fiscal health.

Prepared by:	Angie Barajas, Legal & Risk Coordinator
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, Interim City Manager
Approved as to form:	Scott E. Porter, Interim City Attorney

ATTACHMENTS

Second Amendment with Kane, Ballmer & Berkman, LLC

First Amendment with Kane, Ballmer & Berkman, LLC

Agreement with Kane, Ballmer & Berkman, LLC

**SECOND AMENDMENT TO AGREEMENT A-7222
BETWEEN THE CITY OF PALMDALE AND KANE, BALLMER & BERKMAN, LLC**

This Second Amendment to Agreement No. A-7222 ("Agreement") between the City of Palmdale and Kane, Ballmer & Berkman, LLC is made and entered into this 16th day of November, 2022 by and between the City of Palmdale (hereinafter called "CITY") and Kane, Ballmer & Berkman, LLC (hereinafter called "FIRM").

WHEREAS, CITY and FIRM entered into an Agreement on November 17, 2020 for legal services pursuant to California Business and Professions Code Section 6148;

WHEREAS, CITY and FIRM entered into an Amendment One to the Agreement for Legal Services on November 17, 2021 to increase the contract amount to \$450,000; and

WHEREAS, CITY and FIRM desire to amend the contract amount of the Agreement to provide for additional services.

NOW THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. The compensation identified in Section 4(e) shall be amended to increase the total amount of the Agreement by Two-Hundred Thousand Dollars (\$200,000) not to exceed the sum of Six-Hundred and Fifty Thousand Dollars (\$650,000).
2. All other terms and conditions remain the same.

In Witness Whereof, the parties hereto have caused this Contract to be executed and attested by their respective officers thereunto duly authorized.

CITY OF PALMDALE

KANE, BALLMER & BERKMAN, LLC

Ronda Perez Date
Interim City Manager

Todd C. Mooney, Esq. Date
Partner

ADDRESS FOR NOTICE:
CITY OF PALMDALE
38300 Sierra Hwy
Palmdale, CA 93550

ADDRESS FOR NOTICE:
KANE, BALLMER & BERKMAN, LLC
515 South Figueroa St., Suite 780
Los Angeles, CA 90071

APPROVE AS TO FORM:

Scott E. Porter
Interim City Attorney

ATTEST:

ATTEST: If Corporation

Roxanne Faber
Acting City Clerk

Secretary

A-7222

**AGREEMENT FOR LEGAL SERVICES BETWEEN
THE CITY OF PALMDALE, THE SUCCESSOR AGENCY TO THE
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALMDALE,
THE HOUSING AUTHORITY OF THE CITY OF PALMDALE AND KANE,
BALLMER & BERKMAN, L.L.C.**

This Legal Services Agreement ("Agreement") is made and entered into by and between the City of Palmdale, the Successor Agency to the Community Redevelopment Agency of the City of Palmdale, the Housing Authority of the City of Palmdale (hereinafter collectively referred to as "the City"), and the law firm of Kane, Ballmer & Berkman, L.L.C. (hereinafter "the Firm"), collectively identified as "the parties."

RECITALS:

A. This Agreement is made pursuant to California Business and Professions Code Section 6148, and is intended to fulfill the requirements of that section.

B. The City desires to retain the Firm to provide specialized legal services related to the dissolution of the former redevelopment agency, housing law, and litigation as set forth in Section 1, below.

C. The attorneys of the Firm are duly licensed under the laws of the State of California and are fully qualified to provide the services contemplated by this Agreement.

THE PARTIES AGREE AS FOLLOWS

1. **Scope of Services**

a. The Firm will continue to provide the legal services reasonably required to represent and advise the City in connection with legal advice related to the dissolution of the former redevelopment agency, housing law, development agreements, and litigation. The Firm will also provide legal services for additional matters as requested by the City Attorney, provided the Firm agrees to perform such additional work. A letter confirming such additional work shall bring such work within the scope of this agreement.

b. The legal services the Firm will provide to the City and the Agency will be billed at the rates set forth in Exhibit "A", attached.

2. **Designation of Responsible Attorneys**

Murray O. Kane, Esq. is designated as the attorney responsible for providing the legal services under this Agreement to the City and for supervising

any other attorneys within the Firm assisting him in the performance of those services.

3. **Confidentiality**

All reports, information, data, or other documents prepared or assembled by the Firm under this Agreement are confidential and the Firm shall not make the same available to any individual or organization without the prior written approval of the City Attorney.

4. **Billing Procedures, Monthly Statements, and Agreement Amount**

a. The Firm shall submit to the City Attorney, within thirty (30) days after the end of each calendar month, an itemized statement of the professional services provided and the time expended providing those services. This statement will be in the form customarily submitted by the Firm to clients that are billed on an hourly basis. The parties acknowledge that payment of all monthly statements is expected to be made within thirty (30) days of the billing date.

b. The Firm will bill the City for items such as, but not limited to, long distance telephone calls, filing fees, document duplication, computerized legal research, and word-processing, and similar out-of-pocket expenditures. These items will be separately designated on the Firm's monthly statements as "disbursements," and will be billed in addition to the fees for professional services.

c. Time will be charged by the Firm in increments of 1/10 of an hour (i.e., six-minute units). The rate structure in general, or the rates of particular attorneys, may be increased from time to time, after a minimum 30-day written notice to and written consent of the City Attorney. To the extent feasible, these adjustments will be made so as to coincide with the beginning of the City's fiscal year.

d. The Firm's fees for legal services are based primarily on hourly rates; other factors considered by the Firm in determining a fair fee are set forth in Rule 4-200 of the Rules of Professional Conduct of the California State Bar Association. If persons who are "Of Counsel" to the Firm work on City matters, the Firm and its Of Counsel may from time to time share the fees paid by City; however, if such is the case, City's fees will not be increased in any way, and the fees which City is requested to pay will be the same as would have been payable had there been no such sharing of fees.

e. All fees, charges, costs and reimbursable items for the entire term of this Agreement shall not exceed a maximum of \$300,000.00.

5. **Resolution of Fee Disputes**

The City is entitled to require that any fee dispute be resolved by binding arbitration in Los Angeles in accordance with the arbitration rules of the Los Angeles County Bar Association for legal fee disputes. If the City chooses not to use the Los Angeles County Bar Association's arbitration procedures, the City agrees that any disputes regarding the professional services rendered or fees charged by the Firm will be submitted to binding arbitration in Los Angeles to be conducted by the American Arbitration Association in accordance with its commercial arbitration rules.

6. **Term of the Agreement**

This Agreement will take effect on November 17, 2020 and will remain in full force and effect for a period of three (3) years or until terminated in accordance with the provisions of Section 7.

7. **Termination of the Agreement**

The City has the right to terminate the Firm's representation at any time, without cause, subject to an obligation to give notice in writing to the Firm at least thirty (30) days prior to termination. The Firm has the same right, subject to an obligation to give to the City written notice at least ninety (90) days prior to termination so that the City will be able to arrange alternative representation. In either circumstance, the City agrees to secure new counsel as quickly as possible and to cooperate fully in the substitution of the new counsel as counsel of record in any pending litigation matters. The Firm agrees to cooperate fully in any such transition, including the transfer of files. Upon termination, all finished or unfinished materials shall become the property of the City. Notwithstanding the termination of the Firm's representation, the City will remain obligated to pay to the Firm all fees and costs incurred prior to such termination.

8. **Modifications to the Agreement**

Unless otherwise provided for in this Agreement, modifications relating to the nature, extent, or duration of the Firm's professional services to be rendered will require the written approval of the City Attorney. Any such written approval will be deemed to be a supplement to this Agreement and will specify any changes in the Scope of Services and the agreed-upon billing rate to be charged by the Firm and paid by the City.

9. **Independent Contractor**

No employment relationship is created by this Agreement with the Firm or any employees of the Firm. For all purposes, the Firm and its employees are independent contractors to the City and shall not incur, nor have the authority to incur any debt, obligation, or liability for or against the City. Notwithstanding the

foregoing, the City acknowledges that the Firm maintains *of counsel* agreements with certain legal specialists. Because these individuals are deemed independent contractors under the applicable provisions of the tax laws and not employees of the firm, the City hereby consents to dual representation by the firm and the specialist in the event the matter in which the City has engaged the Firm requires the use of that specialist.

10. **Assignment and Delegation**

This Agreement contemplates the performance of professional services by the Firm. Neither this Agreement, nor any portion of it, may be assigned or delegated by the Firm without the prior written consent of the City Attorney. Delegation to attorneys outside the Firm will be limited to those situations in which the Firm is disqualified by virtue of a conflict of interest, or where the Firm does not possess the expertise to perform services in a particular practice area. The Firm will supervise delegated work, except where precluded from doing so by virtue of a conflict of interest, and where otherwise agreed to by the parties.

11. **Conflict of Interest**

The Firm affirms, that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having such interest shall be employed by or associated with the Firm.

City acknowledges that the Firm has represented over five hundred public clients, including numerous cities, redevelopment agencies, special districts, counties and other public entities since its founding in 1986. City also acknowledges that it is very likely that the Firm will work on projects from other clients having different governmental or political objectives, beliefs or views from Palmdale. This confirms that the services that the Firm renders in such cases may be limited in scope but will be for the sole benefit of the City.

12. **Insurance.**

a. The Firm shall obtain and maintain in full force and effect a professional liability insurance policy that provides coverage in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. This insurance policy shall provide coverage to the City for any damages or losses suffered by the City as a result of any error, omission, or neglect by the Firm that arises out of the professional services rendered under this Agreement. Such insurance may be subject to a self-insured retention or deductible to be borne entirely by the Firm.

b. The Firm will obtain and maintain workers' compensation insurance in accordance with Section 3700 of the California Labor Code.

c. The Firm will obtain and maintain in full force and effect comprehensive general liability insurance in an amount not less than \$1,000,000.

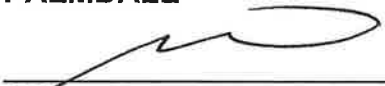
d. All insurance coverage specified above will provide for a minimum of thirty (30) days notice of cancellation by the insurance carrier, and will be maintained in full force and effect throughout the term of this Agreement.

13. **Entire Agreement.**

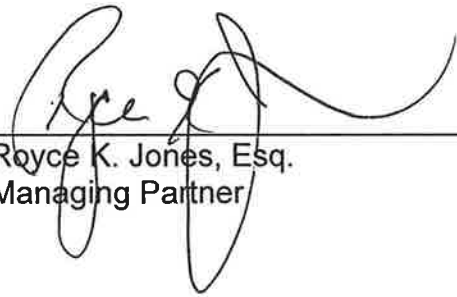
This Agreement will constitute the full and complete agreement and understanding of the parties and supersedes all prior agreements and all other written or oral statements of either party relating to its subject matter.

TO EFFECTUATE THIS AGREEMENT, the authorized representatives of the parties have caused this Agreement to be executed as of the dates indicated below.

**CITY OF PALMDALE, SUCCESSOR
AGENCY TO THE COMMUNITY
REDEVELOPMENT AGENCY OF
THE CITY OF PALMDALE, HOUSING
AUTHORITY OF THE CITY OF
PALMDALE**



Steven D. Hofbauer
Mayor/Chair



Royce K. Jones, Esq.
Managing Partner

ATTEST



Shanae Smith
City Clerk/Agency Secretary/Authority Secretary

APPROVED AS TO FORM



11/4/2020
Christopher Beck
City Attorney/Agency Attorney/Authority Counsel

EXHIBIT A**RATE SCHEDULE AS OF NOVEMBER 17, 2020****A. Identification.**

Client: City of Palmdale or the Successor Agency to the Community Redevelopment Agency of the City of Palmdale or the Housing Authority of the City of Palmdale

Matter: Firm to provide specialized legal services related to dissolution of the former redevelopment agency, legal services relating to housing law, general development agreements and litigation. Other legal services as assigned by the City and/or Agency Attorney and/or Authority Counsel or the City Manager/Executive Director SACRA.

B. Hourly Rates for Legal Personnel.

Senior Principal	\$250/hour
Principal	\$250/hour
Of Counsel	\$250/hour
Senior Counsel	\$250/hour
Senior Associate	\$225/hour
Associate	\$210/hour
Paralegal	\$100/hour

C. Standard Charges.

Time will be billed in minimum units of one-tenth hours.

D. Costs and Expenses.

In-office photocopying	\$0.25/page
Mileage	\$0.50/mile
Computerized Legal Research	At vendor cost
Word Processing	In excess of 10 pages \$25/hour
Postage	At vendor cost
Courier and Air Freight Charges	At vendor cost
Messenger Services	At third-party vendor cost
Title Report and/or Litigation Guarantee	At vendor cost
Notary	At vendor cost
Court Photocopying	At Cost
Out-going Fax Charges	\$1.25/page
Conference Call Charges	AT&T standard rates
Travel Expenses	At cost
Other reasonable costs	At cost

E. Subject to Change.

The rates on this schedule are subject to change on thirty (30) days written notice. If Client declines to pay any increased rates, Attorney will have the right to withdraw as Client's counsel.

**FIRST AMENDMENT TO THE AGREEMENT BY AND BETWEEN THE CITY OF
PALMDALE AND KANE, BALLMER & BERKMAN**

(A-7222)

Pursuant to Paragraph 8 of the "Agreement for Legal Services Between the City of Palmdale and Kane, Ballmer & Berkman (A-6240)", (hereinafter the "Agreement"), the Agreement may only be changed in writing signed by the parties thereto.

In accordance with the above stated Paragraph 8, the parties agree to increase the not-to-exceed amount by \$150,000 in paragraph 4 (e) of the Agreement.

This "First Amendment to the Agreement for Legal Services Between the City of Palmdale and Kane, Ballmer & Berkman (A-7222)", shall become effective on November 17, 2021.

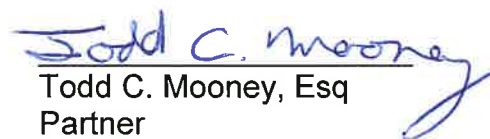
IN WITNESS WHEREOF, each of the parties have caused this "First Amendment to the Agreement for Legal Services Between the City of Palmdale and Kane, Ballmer & Berkman (A-7222) " to be executed by their duly authorized representatives as set forth below.

**THE CITY OF PALMDALE,
SUCCESSOR AGENCY,
HOUSING AUTHORITY OF THE
CITY OF PALMDALE**

KANE, BALLMER & BERKMAN



Steven D. Hofbauer
Mayor



Todd C. Mooney, Esq
Partner

ATTEST



Shanae Smith
City Clerk/Agency Secretary/Authority Secretary

APPROVED AS TO FORM



Christopher Beck
City Attorney/Agency Attorney/Authority Counsel



City Council Staff Report

DATE: NOVEMBER 16, 2022
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: CITY ATTORNEY'S OFFICE
DISTRICT: ALL
SUBJECT: ADOPT RESOLUTION NO. CC 2022-120, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE MAKING LEGALLY REQUIRED FINDINGS AND EXTENDING REMOTE TELECONFERENCE PARTICIPATION FOR MEETINGS OF THE CITY COUNCIL AND/OR ITS RELATED OR SUBORDINATE LEGISLATIVE BODIES

ISSUE

Adopt Resolution No. CC 2022-120, a Resolution of the City Council of the City of Palmdale authorizing remote teleconference participation for meetings of the City Council and/or its subordinate legislative bodies for an additional 30-day period.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve the resolution to thereby extend, for an additional 30-day period, the authority of the City Council, and all related and/or subordinate legislative bodies, to participate remotely in properly noticed meetings.

BACKGROUND

Since October 1, 2021 and through January 1, 2024, AB 361 has temporarily amended the Ralph M. Brown Act (California Government Code § 54950 *et seq.*) to provide more flexibility regarding participation in public meetings from a remote location. In layman's terms AB 361 allows "zoom" meetings if specified requirements are met.

If the City Council authorizes remote meetings, such initial authorization must expire no later than 30 days from the initial authorization. The City Council is authorized to thereafter extend the authorization if it makes one of various specified findings.

AB 361 requires several procedural safeguards to protect public participation during a remote meeting, key ones of which are summarized as follows:

1. The public must have the ability to address the legislative body directly and must be given information on how to address the legislative body;
2. The public must be provided with either a call-in or internet-based service option;
3. The legislative body must stop the meeting if the call-in or internet-based option fails;

4. The legislative body cannot require that public comments be submitted in advance (although this option can be provided);
5. Public speakers cannot be required to pre-register for public comment (except as required by an independent call-in or internet platform);
6. Members of the public must be given a reasonable time to register to provide public comment; and
7. Agencies that provide a timed public comment period shall not close the public comment period until that time period has expired.

DISCUSSION

The City Council adopted an initial AB 361 Resolution on June 15, 2022. This resolution has been extended multiple times. The most recent extension is set to expire on December 2, 2022. The question before the City Council is whether to extend this authority for an additional 30-day period. An extension of authority to remotely participate is allowed if (1) the state of emergency continues, and (2) a resolution with required findings has been adopted within the last 30 days.

The proposed resolution would be immediately effective and allow members of legislative bodies to continue to participate remotely for an additional thirty days if the agenda for the meeting has included the legally required participation noticing. The resolution would also allow the City Manager (or designee) to opt to not include such noticing, as there may be instances where it would be impractical, due to staffing considerations, to allow remote participation in meetings.

FISCAL IMPACT

There is no fiscal impact associated with this action.

STRATEGIC PLAN

Goal II: Ensure long-term fiscal health of the City and maintain funding for services.

C. Involve and expand engagement to enhance public oversight and transparency.

Prepared by:	Scott E. Porter, Interim City Attorney
Approved by:	Ronda Perez, Interim City Manager
Approved as to form:	Scott E. Porter, Interim City Attorney

ATTACHMENTS

1. Proposed Resolution No. CC 2022-120

**CITY COUNCIL
CITY OF PALMDALE, CALIFORNIA
RESOLUTION NO. CC 2022-120**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE
MAKING LEGALLY REQUIRED FINDINGS AND EXTENDING REMOTE
TELECONFERENCE PARTICIPATION FOR MEETINGS OF THE CITY
COUNCIL AND ITS RELATED AND/OR SUBORDINATE LEGISLATIVE
BODIES**

WHEREAS, the City of Palmdale is committed to preserving and fostering public access and participation in meetings of the City Council and all its subordinate bodies, consistent with the Ralph M. Brown Act (California Government Code § 54950 *et seq.*); and

WHEREAS, Government Code § 54953(e) expressly allows cities to, during the existence of a state of emergency declared by the Governor pursuant to Government Code § 8625, allow teleconference participation in city meetings;

WHEREAS, on March 4, 2020, the Governor declared a state of emergency and such declaration continues to be in effect;

WHEREAS, state and local officials have imposed or recommended measures to promote social distancing, including requirements to not return to work within specified time frames for people who have tested positive for COVID-19;

WHEREAS, the City Council adopted Resolution No 2022-118 within the last thirty days, authorizing exemption from the requirements of Government Code section 54953(b)(3) from November 2, 2022 until December 2, 2022.

NOW THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY OF PALMDALE DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

SECTION 1. The Recitals set forth above are correct and are incorporated by reference.

SECTION 2. The City Council finds that the state of emergency declared by the Governor remains in effect and state officials continue to impose or recommend measures to promote social distancing. Therefore, for agendas which include all the noticing required by Government Code § 54953(e), the City Council and its related and/or subordinate bodies, by this Resolution, shall continue to be exempt from the requirements of Government Code section 54953(b)(3) until the end of the day on

December 16, 2022. The City Council may conduct its meetings in a manner which allows telephonic participation by the members of the legislative body, staff, and the public. Such meetings shall be conducted consistent all requirements applicable to telephonic meetings. The City Clerk is directed to notice all such meetings to allow telephonic participation by the members of such bodies and the public and staff, except as otherwise directed by the City Manager, or the City Manager's designee.

SECTION 3. This Resolution shall take effect immediately upon its adoption and shall remain effective until the end of the day on December 16, 2022, unless the term of this resolution is extended or prematurely terminated.

SECTION 4. The City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED and ADOPTED this 16th day of December, 2022.

Steven D. Hofbauer, Mayor

APPROVED AS TO FORM:

ATTEST:

Scott E. Porter
Interim City Attorney

Rochelle Scott, Acting City Clerk

I, Rochelle Scott, Acting City Clerk of Palmdale, California, do hereby certify that the foregoing resolution was duly passed, approved, and adopted by the City Council of the City of Palmdale at a regular meeting of said Council held on the 16th day of December by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____ ABSENT: _____

Date: _____

Rochelle Scott, Acting City Clerk



City Council Staff Report

DATE: NOVEMBER 16, 2022
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
DISTRICT: All
SUBJECT: APPROVE PURCHASE ORDER NO. 20230047 WITH ALL-STATE UTILITY SUPPLY, INC. FOR THE PURCHASE OF REPLACEMENT STREETLIGHT POLES AND OTHER RELATED ITEMS IN THE AMOUNT OF \$144,468.84.

ISSUE

Approve Purchase Order No. 20230047 with All-State Utility Supply, Inc. for the purchase of replacement streetlight poles and other related items in the amount of \$144,468.84.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve Purchase Order No. 20230047 with All-State Utility Supply, Inc. for the purchase of replacement streetlight poles and other related items in the amount of \$144,468.84; and
2. Extend the term of agreement for an additional one (1) year period to terminate on June 30, 2023.

BACKGROUND

The City released Invitation for Bid No. 21-001-3100 for Streetlight Supplies on March 29, 2021. All-State Utility Supply, Inc. was the lowest responsive bidder as the result of the solicitation and Purchase Order No. 20220001 was awarded and approved by City Council on June 1, 2021, in the amount of \$117,368. The original agreement allows for the extension of two (2) one year terms.

DISCUSSION

The City of Palmdale Traffic Signal and Street Lighting Division is responsible for the maintenance of approximately 18,000 street light poles that illuminate our citywide roadway network. As part of maintenance, our goal is to have a quick response when

replacing any damaged street light poles due to knock downs. For this reason, we need to have replacement materials in stock to be responsive and accomplish our repairs in a timely manner.

FISCAL IMPACT

The blanket Purchase Order amount for Streetlight Poles and Related Items for FY 2022-2023 will not exceed \$144,468.84. Funds have been allocated in the following accounts: Account No. 25232006-732602 (Street Light District 1 &4 – Citywide), 25632006-732602 (Street Light District 2 – Anaverde), 25532006-732602 (Street Light District 5 – County).

STRATEGIC PLAN

Goal II: Ensure long-term fiscal health of the City and maintain funding for services.

- A. Manage resources, costs, and liabilities to ensure the City's long-term fiscal health.

Goal III: Invest in infrastructure to improve community livability.

- C. Plan and maintain safe and attractive neighborhoods, streets, facilities, and public spaces with exciting programming that promotes active fun for everyone.

Prepared by:	Lynn Glidden, P.E., Director of Public Works
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, Interim City Manager
Approved as to form:	Scott E. Porter, Acting City Attorney

ATTACHMENTS:

1. IFB 21-001-3100 Streetlight Pole Purchase Bid Tabulation
2. Purchase Order No. 20230047 All-State Utility Supply, Inc.



CITY OF PALMDALE

PURCHASING DIVISION

PHONE: (661) 267-5444 FAX (661) 267-5454

BILL TO: ACCOUNTS PAYABLE
38300 Sierra Highway
Palmdale, CA 93550
(661) 267-5460

Revisions 000
Expiration Date 06/30/2023

Purchase Order

Page: 1 of: 2

THIS NUMBER MUST APPEAR ON ALL INVOICES,
PACKAGES AND SHIPPING PAPERS.

Purchase Order # **20230047**

NO SUBSTITUTIONS WITHOUT APPROVAL OF
PURCHASING DIVISION. USE CITY OF PALMDALE
ADDRESS SPECIFIED BELOW. MERCHANDISE MUST
BE DELIVERED TO SPECIFIC DEPARTMENT.

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ALL-STATE UTILITY SUPPLY, INC.
PO BOX 102
SANTA MARGARITA, CA 93453

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JEFF NEWMAN
PUBLIC WORKS/TRAFFIC DIVISION
38250 SIERRA HWY
PALMDALE, CA 93550
Email: JNEWMAN@CITYOFPALMDALE.ORG
Phone: 661-267-5333

Vendor Phone Number		Vendor Fax Number	Requisition Number	Buyer		
			230184	Matthew Harris		
Date Ordered	Vendor Number	Date Required	Freight Method/Terms	Department/Location		
08/04/2022	9451		DESTINATION/NET 45	TRAFFIC ENGINEERING		
Item#	Description/PartNo		QTY	UOM	Unit Price	Extended Price
	AMERON 1C128 POLE, 8FOOT SINGLE ARM ASSEMBLY, 6FOO The Above Purchase Order Number Must Appear On All Correspondence - Packing Sheets And Bills Of Lading					
1	AMERON 1C128 POLE, 8FOOT SINGLE ARM ASSEMBLY, 6FOOT SINGLE ARM ASSEMBLY, AMERON 1C123 POLE. THE TERM IS ONE YEAR COMMENCING JULY 1 2022 WITH OPTION TO EXTEND TWO ADDITIONAL TERMS ONE YEAR EACH. OPEN PURCHASE ORDER IFB 21-001-3100 THIS FY 2022-2023 PURCHASE ORDER RESULTING FROM IFB 21-001-3100 IS PENDING CITY COUNCIL APPROVAL ON SEPTEMBER 7, 2022. THE TERM IS ONE YEAR, COMMENCING JULY 1, 2022 WITH CITY RESERVING THE OPTION TO EXTEND THE CONTRACT FOR TWO (2) ADDITIONAL TERMS OF ONE YEAR EACH. THIS PURCHASE ORDER IS THE FIRST OF TWO OPTIONS TO EXTEND. 25632006 - 732602		1.0	DL	\$6,551.88	\$6,551.88
2	TAX 25632006 - 732602		1.0	EA	\$671.57	\$671.57
3	AMERON 1C128 POLE, 8FOOT SINGLE ARM ASSEMBLY, 6FOOT SINGLE ARM ASSEMBLY, AMERON 1C123 POLE. 25232006 - 732602		1.0	EA	\$19,655.63	\$19,655.63
4	TAX 25232006 - 732602		1.0	EA	\$2,014.70	\$2,014.70

IMPORTANT: Read Terms and Conditions provided as part of this purchase order

**CONTINUED ON
NEXT PAGE**

VENDOR COPY



CITY OF PALMDALE

Purchase Order

Page: 2 of: 2

PURCHASING DIVISION

PHONE: (661) 267-5444 FAX (661) 267-5454

BILL TO: ACCOUNTS PAYABLE
38300 Sierra Highway
Palmdale, CA 93550
(661) 267-5460

Revisions 000
Expiration Date 06/30/2023

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS.	
Purchase Order #	20230047

NO SUBSTITUTIONS WITHOUT APPROVAL OF PURCHASING DIVISION. USE CITY OF PALMDALE ADDRESS SPECIFIED BELOW. MERCHANDISE MUST BE DELIVERED TO SPECIFIC DEPARTMENT.

VENDOR

ALL-STATE UTILITY SUPPLY, INC.
PO BOX 102
SANTA MARGARITA, CA 93453

SHIP TO

JEFF NEWMAN
PUBLIC WORKS/TRAFFIC DIVISION
38250 SIERRA HWY
PALMDALE, CA 93550
Email: JNEWMAN@CITYOFPALMDALE.ORG
Phone: 661-267-5333

Vendor Phone Number		Vendor Fax Number	Requisition Number	Buyer		
			230184	Matthew Harris		
Date Ordered	Vendor Number	Date Required	Freight Method/Terms	Department/Location		
08/04/2022	9451		DESTINATION/NET 45	TRAFFIC ENGINEERING		
Item#	Description/PartNo		QTY	UOM	Unit Price	Extended Price
5	AMERON 1C128 POLE, 8FOOT SINGLE ARM ASSEMBLY, 6FOOT SINGLE ARM ASSEMBLY, AMERON 1C123 POLE.		1.0	DL	\$104,830.00	\$104,830.00
	25532006 - 732602					\$104,830.00
6	TAX		1.0	DL	\$10,745.06	\$10,745.06
	25532006 - 732602					\$10,745.06

IMPORTANT: Read Terms and Conditions provided as part of this purchase order

By: _____
Approved City Representative

VENDOR COPY

Sales Tax	\$0.00
Order Total	\$144,468.84

BID TABULATION

IFB 21-001-3100 STREETLIGHT POLE PURCHASE

FY 2021-2022							FY 2022-2023	
All-State Utility Supply, Inc. (Fillmore, CA)							All-State Utility Supply, Inc. (Fillmore, CA)	
Item No.	DESCRIPTION	QTY	Unit Price	Extended Price	Unit Price	Extended Price		
1	Ameron 1c128 knockdown replacement pole or equivalent	40	1,746.50	\$69,860.00	2,125.00	\$85,000.00		
2	8-foot single arm assembly	10	308.10	\$3,081.00	368.75	\$3,687.50		
3	6-foot single arm assembly	40	240.50	\$9,620.00	291.25	\$11,650.00		
4	Ameron 1C123 knockdown replacement pole or equivalent	10	1,239.50	\$12,395.00	1,920.00	\$19,200.00		
5	Delivery and offloading of poles at City Maintenance Yard (non-taxable)	50	230.00	\$11,500.00	230.00	\$11,500.00		
	Bid Subtotal:		\$3,764.60	\$106,456.00	\$4,935.00	\$131,037.50		
	California Sales Tax 10.25%			\$10,911.74		\$13,431.34		
	Estimated Total Cost to City:		3,764.60	\$117,367.74	\$4,935.00	\$144,468.84		
Delivery Days After Receiving Order:				8 weeks + or -		12-14 Weeks + or -		

Delivery Days After Receiving Order:

8 weeks + or -

12-14 Weeks + or -

EXHIBIT E - OFFER SIGNATURE PAGE

(This Exhibit should be the Cover Page of Vendor's Bid Proposal)

IFB No. 21-001-3100 REPLACEMENT POLES FOR STREETLIGHT POLES KNOCKED DOWN

1. OFFEROR

Firm Name: All-state utility supply Inc.

Contact Name: christian Ramsey

Principal Address: P.O. Box 102 Santa Margarita
CA 93453

Local Address: 815 Fifth Street
Fillmore, CA 93015

Phone: (805) 524-4064 Fax: (805) 524-4065

Email: cramsey@allstateutility.com

Structure: ☐ Sole Proprietor ☐ Partnership ☒ Corporation ☐ Joint Venture

Tax ID No: 77-0454734 California Contractor License No: _____

2. Department of Industrial Relations (DIR) Registration No. N/A

Registration Date: _____ Expiration Date: _____

3. Prices:

- A. Prices shall be F.O.B. Destination or for the service rendered.
- B. Payment Terms: Net 45
- C. Respondents shall honor proposal prices for one hundred twenty (120) days or for the stated contract period whichever is longer.

THIS BID PROPOSAL IS BEING SUBMITTED BY:

The undersigned offers and agrees to furnish the goods or services at the price(s) entered herein subject to the terms and conditions attached hereto. I CERTIFY that (1) the proposal document has been read and understood and that all of the conditions contained therein are acceptable, (2) I have thoroughly examined and become familiar with the specifications and/or scope of services outlined in this solicitation and further, to the best of my knowledge the information contained in this bid proposal is accurate and complete and that (3) I have the legal authority to commit this firm to a contractual agreement.

Printed Name: christian Ramsey Title: Sales

Signature:  Date: 4/29/21

Exhibit F

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

All-State Utility Supply, Inc.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification; check only **one** of the following seven boxes:

- ☐ Individual/sole proprietor or single-member LLC
☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶
Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.
☐ Other (see instructions) ▶
- ☐ C Corporation ☒ S Corporation ☐ Partnership ☐ Trust/estate

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____
 Exemption from FATCA reporting code (if any) _____
(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.)

PO Box 102

6 City, state, and ZIP code

Santa Margarita, Ca. 93453

Requester's name and address (optional)

City of Palmdale
38300 Sierra Hightway
Palmdale, CA. 93550

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number

			-			-			
--	--	--	---	--	--	---	--	--	--

or

Employer identification number

7	7	-	0	4	5	4	7	3	4
---	---	---	---	---	---	---	---	---	---

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign
Here

Signature of
U.S. person ▶



Date ▶

4/29/21

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

EXHIBIT H



CITY OF PALMDALE

AFFIDAVIT OF NON-COLLUSION and NON-DISCRIMINATION

I hereby swear (or affirm) under the penalty of perjury:

- A. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/proposer or with any competitor;
- B. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder/proposer and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- C. No attempt has been made or will be made by the bidder/proposer to induce any other person, partnership or corporation to submit or not submit a bid proposal for the purpose of restricting competition.
- D. The Bidder/Proposer does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, age, sex, national origin, or disability, and that it complies with all applicable Federal, state and local laws and executive orders regarding employment.

In connection with the performance of work under this contract, the Bidder or Proposer agrees as follows:

- 1. The Bidder or Proposer agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, or ancestry. The Bidder or Proposer shall take affirmative action to insure that employees are treated without regard to their race, creed, color, national origin, sex, or ancestry.
- 2. In the event of the Bidder's or Proposer's non-compliance with this non-discrimination clause, the Bidder or Proposer may be canceled or terminated. The Bidder or Proposer may be declared ineligible for further contracts with the City of Palmdale until satisfactory proof of intent to comply shall be made by the Bidder or Proposer.
- 3. The contract agrees to include this non-discrimination clause in any sub-contracts connected with the performance of this agreement.

- I have read the above stated clauses and agree to abide by its requirements.

Authorized Signature: _____

Printed Name/Title: _____

Company Name: _____

Doing Business As: _____

EXHIBIT I - STATEMENT OF SUBCONTRACTORS

(IMPORTANT NOTE: This form MUST be returned with Respondent's bid proposal)

(This form may be duplicated to provide additional subcontractor information)

The Prime Contractor is required to state the name and address of each subcontractor who will perform work in an amount excess of one-half of one percent (0.5%) of the total contract price and the portion of the work that each subcontractor will do. The undersigned submits herewith this list of subcontractors whom they propose to employ on the work, with the proper firm name and business address of each and a statement of work or proposed item that will be done by each subcontractor.

Check if Subcontractor will be used: Yes ☐ No ☒

The following person(s) **will be** ☐ or ☐ **have been contracted** to furnish labor and/or materials for this project: _____

Subcontractor Company Name: _____

DIR Contractor Registration Number: _____

Federal ID Number: _____

Street Address: _____

City, State, Zip: _____

Office Phone: _____ Fax Number: _____

Primary Contact & Title: _____

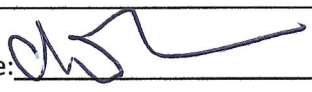
Email Address: _____

Contract Amount: _____

Type of work:

- | | | |
|--|--|--|
| ☐ Brickwork / Masonry | ☐ Carpentry / Millwork | ☐ Concrete |
| ☐ Electrical – Access Control | ☐ Electrical – Fire Alarm | ☐ Electrical – Telecommunications |
| ☐ Elevator | ☐ Excavation – Grading | ☐ Excavation – Grading (Site Utilities) |
| ☐ Fire Protection | ☐ Flooring | ☐ Heavy Construction |
| ☐ HVAC – Controls | ☐ HVAC – Duckwork | ☐ HVAC – Hydronic |
| ☐ Landscaping | ☐ Painting | ☐ Paving |
| ☐ Plumbing | ☐ Roofing /Siding/
Sheet Metal | ☐ Windows / Curtainwall |
| ☐ Wrecking / Demolition | ☐ Material Supplier Only | ☐ Other: Specify _____ |

Comments: _____

Authorized Signature:  _____

Printed Name/Title: Christian Ransey Sales

EXHIBIT J - DEVIATIONS and/or EXCEPTIONS FORM

☒ Specifications and/or Requirements

☐ Contract for Services Provisions

All deviations and/or exceptions to this solicitation must be noted below. **Please do not attach a company letterhead in lieu of any entry on the section below.** In the absence of any entry on the section below, the bidder assures the City of their full compliance with the specification and conditions as listed in this solicitation. The page number, paragraph, and item number should be referenced when deviating from the specification and must be included.

The City reserves the right to reject any or all bid proposals resulting from this IFB and to waive any informality or irregularity in any bid proposal received and to be the sole judge of the merits of the respective bid proposals received, and to accept or further negotiate cost, terms, or conditions of any bid proposal determined by the City to be in the best interest of the City even though not the lowest bid. **This form may be duplicated if additional pages are needed.**

Reference No.

Description

7.6

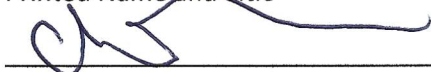
pricing firm for purchase of full
bill of material delivered as
needed.

All-State Utility Supply, Inc

Company Name

Christian Ramsey Sales

Printed Name and Title



Authorized Signature

EXHIBIT K - MINIMUM SPECIFICATIONS & COST PROPOSAL FORM
IFB No. 21-001-3100 REPLACEMENT POLES FOR STREETLIGHT POLES KNOCKED DOWN

Bidders are required to clearly and specifically indicate the product(s) being offered and to provide sufficient descriptive literature, catalog cuts, and technical detail to enable City to determine if the product(s) offered meet the requirements of this solicitation. Only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid non-responsive. Unless the bidder clearly indicates in its bid that the product(s) offered is an "equal" product, such bid will be considered to offer the brand name product referenced in the Solicitation.

Bidders providing, along with their bid response, detailed cut sheets/catalogs/descriptive literature shall identify each page of the product(s) being offered. All literature and specifications shall be marked with company name and bid item number. Failure to do so may cause the bid to be considered non-responsive. **It will not be the responsibility of the City to determine which product is being offered from the vendor catalog cut sheet that is not clearly identified.**

All quantities are shown in the lowest unit of measure. **Changes to specified City specifications and/or unit of measures are not allowed.** For Vendor-specific packaging purposes, vendors must convert both estimated quantities and unit(s) of measure to equate to City's specifications.

DOWNLOAD THE EXCEL PRICING FILE: Bidders can access and download the most current Excel Pricing File for this Invitation to bid by following the hyperlink provided below:

**Exhibit K – Minimum Specifications & Cost Proposal Form
Is provided in a separate document**

UNAPPROVED ALTERATIONS TO EXCEL PRICING FILE: Bidders who materially alter the original content of the Excel pricing file (e.g., specifications, formulas, etc.) issued by the CITY may be found non-responsive and ineligible for award of this Invitation for Bids.

ALL COMPONENTS THAT ARE REQUIRED TO INSTALL THE POLES INCLUDING SCREWS, STUDS, TOP MOUNTS, REMOVABLE CAST ALUMINUM TOP CAP, MOUNTING HARDWARE ARE TO BE INCLUDED.

Item No.	Annual Estimated Quantity	Description	Unit Price	Extended Price
1	40	Ameron 1c128 knockdown replacement pole OR equivalent	\$1,746.50	\$69,860.00
2	10	8 foot single arm assembly	\$308.10	\$3,081.00
3	40	6 foot single arm assembly	\$240.50	\$9,620.00

Item No.	Annual Estimated Quantity	Description	Unit Price	Extended Price
4	10	Ameron 1C123 knockdown replacement pole OR equivalent	~~\$1,239.50~~	~~\$12,395.00~~
5	50	Delivery and offloading of poles at City maintenance yard	~~\$230.00~~	~~\$11,500.00~~
Subtotal Item(s) 1 through 5:				\$106,456.00
California Sales Tax 9.5%				\$ 9,020.82
Specify any other applicable cost: _____				\$
Specify any other applicable cost: _____				\$
TOTAL COST TO THE CITY OF PALMDALE:				\$ 115,476.82

DELIVERY DAYS AFTER RECEIVING ORDER (ARO): 8 weeks or -

How are shipping charges calculated? ☐ Actual Weight ☐ Average Pole Weight: _____

☒ Other, specify Contract

☐ Specify type of shipping method: crane truck

BID TOTAL is indicated in words:

one hundred, fifteen thousand, four fifty six Dollars and
eighty two Cents. (\$ 115,476.82)

Company: All-state Utility Supply, Inc.

Authorized Company Official (Signature and Title): [Signature] Sales

Company Official Printed Name: christian Ramsey

Date: 4/29/21



City Council Staff Report

DATE: November 16, 2022
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: PUBLIC WORKS DEPARTMENT
MAINTENANCE DIVISION
DISTRICT: ALL
SUBJECT: APPROVE ADDITIONAL FUNDS OF \$69,000.00 ON PURCHASE ORDER NO. 20230013 WITH VULCAN MATERIALS COMPANY FOR AS NEEDED ASPHALT MATERIALS IN AN AMOUNT NOT TO EXCEED \$169,000.00

ISSUE

Approve additional funds of \$69,000.00 on Purchase Order No. 20230013 with Vulcan Materials Company for as needed asphalt materials in an amount not to exceed \$169,000.00.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve additional funds of \$69,000.00 on Purchase Order No. 20230013 with Vulcan Materials Company for as needed asphalt materials in an amount not to exceed \$169,000.00.
2. Authorize the Interim City Manager or her designee to authorize the increase to Purchase Order No. 20230013 with Vulcan Materials Company, including making minimal and/or non-substantive changes.

BACKGROUND

The City released Invitation for Bid No. 22-001-3300 for Asphalt Materials (As Needed) on April 21, 2022. Notification of the IFB release was sent electronically to 52 vendors in the City's PlanetBids vendor database. Vulcan Materials Company was the only responsive bidder as the result of the solicitation which closed on May 23, 2022.

Purchase Order No. 20230013 with Vulcan Materials Company was awarded and approved by City Manager under their signing authority on July 19, 2022 in the amount of \$100,000.00.

DISCUSSION

Asphalt materials are used in the Maintenance Division's daily operations. These materials are used for pothole patching, sidewalk ramping, and other pavement maintenance and repairs on citywide streets.

Additional funds on Purchase Order No. 20230013 are needed for the Musical Road Project. City Street Maintenance staff completed an overlay on 2,500 feet of east and westbound lanes along Avenue N between Sierra Highway and 10th Street West using 765 tons of hot mix asphalt. The overlay improved the existing condition of the roadway, providing a smooth surface in preparation for musical road stamp installation.

FISCAL IMPACT

Sufficient funds for the additional Purchase Order line are budgeted in Musical Road Project Account S0155158-724525. The blanket Purchase Order amount for Asphalt Materials for FY 2022-2023 will not exceed \$169,000.00.

STRATEGIC PLAN

Goal II: Ensure long-term fiscal health of the City and maintain funding for services.

- A. Manage resources, costs, and liabilities to ensure the City's long-term fiscal health.

Goal III: Invest in infrastructure to improve community livability.

- B. Seek innovative, cost effective, customer focused methods of service delivery.

Prepared by:	Lynn Glidden, Director of Public Works
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, Interim City Manager
Approved as to form:	Scott E. Porter, Interim City Attorney

ATTACHMENTS

1. Purchase Order No. 20230013 Vulcan Materials Company
2. IFB 22-001-3300 Asphalt Materials Cost Proposal

PURCHASING DIVISION
PHONE: (661) 267-5444 FAX (661) 267-5454
BILL TO: ACCOUNTS PAYABLE
38300 Sierra Highway
Palmdale, CA 93550
(661) 267-5460

Revisions 009
Expiration Date 06/30/2023

THIS NUMBER MUST APPEAR ON ALL INVOICES,
PACKAGES AND SHIPPING PAPERS.

Purchase Order #20230013

NO SUBSTITUTIONS WITHOUT APPROVAL OF
PURCHASING DIVISION. USE CITY OF PALMDALE
ADDRESS SPECIFIED BELOW. MERCHANDISE MUST
BE DELIVERED TO SPECIFIC DEPARTMENT.

VENDOR

VULCAN MATERIALS COMPANY
6851 EAST AVENUE T
LITTLEROCK, CA 93543
Fax: 661-533-9749

SHIP TO

JOEL KEFUSS
PUBLIC WORKS/MAINTENANCE
39110 3RD ST EAST
PALMDALE, CA 93550
Email: jkefuss@cityofpalmdale.org
Phone: 661-267-5338

Vendor Phone Number		Vendor Fax Number	Requisition Number		Buyer		
661-533-2127		661-533-9749	230044		Matthew Harris		
Date Ordered	Vendor Number	Date Required	Freight Method/Terms		Department/Location		
07/19/2022	20	07/28/2022	DESTINATION/NET 45		STREET MAINTENANCE		
Item#	Description/PartNo			QTY	UOM	Unit Price	Extended Price
1	ASPHALT, AC (ASPHALT/CEMENT) The Above Purchase Order Number Must Appear On All Correspondence - Packing Sheets And Bills Of Lading			1.0		\$100,000.00	\$100,000.00
	ASPHALT AND RAW MATERIALS SUPPLY; STREET MAINTENANCE THIS BLANKET PURCHASE ORDER FOR FY 2022-2023 IS PENDING CITY COUNCIL APPROVAL NOVEMBER 16, 2022. COMMENCING JULY 1, 2022 AND EXPIRING JUNE 30, 2023 IS THE RESULT OF IFB 22-001-3300 ASPHALT MATERIALS (AS- NEEDED). 20133001 - 738400						
2	ADDED: PROJECT S0155 - Overlay of 765 tons of hot mix on section of Avenue N between Sierra Highway and 10th Street West for installation of musical road. S0155158 - 724525			1.0		\$69,000.00	\$69,000.00

IMPORTANT: Read Terms and Conditions provided as part of this purchase order

By: _____
Approved City Representative

VENDOR COPY

Sales Tax	\$0.00
Order Total	\$169,000.00

1. **ACCEPTANCE** ACCEPTANCE OF THIS PURCHASE ORDER BY THE VENDOR IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN. ANY TERM OR CONDITION STATED BY THE VENDOR IN ANY PRIOR PROPOSAL, ON VENDOR'S ACKNOWLEDGEMENT FORM, OR IN OTHERWISE ACKNOWLEDGING OR ACCEPTING THIS ORDER IS DEEMED BY BUYER TO BE A MATERIAL ALTERATION OF THIS ORDER AND IS HEREBY OBJECTED TO BY THE BUYER. ANY SUCH TERM OR CONDITION SHALL BE INAPPLICABLE TO THIS ORDER UNLESS EXPRESSLY AGREED TO IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER. ACCEPTANCE OF THE MERCHANDISE COVERED BY THIS ORDER WILL NOT CONSTITUTE ACCEPTANCE BY BUYER OF VENDOR'S TERMS AND CONDITIONS. ANY OF THE FOLLOWING ACTS BY VENDOR SHALL CONSTITUTE ACCEPTANCE OF THIS OFFER AND ALL OF ITS TERMS AND CONDITIONS: SIGNING AND RETURNING A COPY OF THIS ORDER; DELIVERY OF ANY OF THE MERCHANDISE ORDERED; INFORMING THE BUYER OF COMMENCEMENT OF PERFORMANCE; OR RETURNING VENDOR'S OWN FORM OF ACKNOWLEDGEMENT.
2. **PRICE AND DELIVERY** Vendor shall furnish the merchandise covered by this order (which may consist of or include services of a non-technical and non-professional nature or construction work) in accordance with the prices and delivery schedule stated on the face of this order. If prices or delivery dates are not stated, Vendor shall offer its lowest prices or best delivery dates, both of which shall be subject to written acceptance by Buyer. All prices include all applicable taxes, except sales taxes which are separately shown where applicable. Vendor warrants that the prices charged for the merchandise ordered will be as low as the lowest price charged by the Vendor to any customers purchasing similar merchandise in the same or smaller quantities and under like circumstances.
3. **PAYMENT** Buyer shall pay to Vendor the full sales price within forty five (45) days of invoice date, or sooner if otherwise specified on the face of this order.
4. **PACKING AND SHIPPING** Vendor warrants that prices include all charges for packing, crating, and transportation to F.O.B. point. All merchandise shall be packaged, marked, and otherwise prepared in accordance with good commercial practices to obtain the lowest shipping rates and to assure adequate protection of the merchandise in shipment and storage and its arrival at F.O.B. point in undamaged condition. An itemized packing list shall accompany each shipment.
5. **F.O.B. TITLE AND RISK OF LOSS** Unless otherwise specified on the face of this order, the F.O.B. point shall be Buyer's location designated on the face of this order. If transportation is F.O.B. Vendor's location, Vendor shall bear all risk of loss or damage to the merchandise, and title shall not shift to Buyer, until delivery of the merchandise to Buyer's designated location.
6. **INVOICING** After shipping or otherwise providing merchandise under this order, Vendor shall send a separate invoice, in duplicate, including item numbers and accompanied by a bill of lading or express receipt. The time for payment of Vendor's invoices shall commence upon the date of actual receipt of merchandise and acceptable invoices consistent with the requirements of this order.
7. **ADVANCE SHIPMENTS AND COMMITMENTS** Buyer may, at its option, either merchandise received in advance of the delivery schedule set forth herein, or return it to Vendor at Vendor's risk and expense. If retained, time for payment and discount, if any, shall be based upon scheduled delivery dates. Vendor shall place all orders for, and schedule deliveries of materials necessary for its performance under this order at such times as will enable Vendor to meet, but not unreasonably anticipate, the stated delivery schedule. In the event of termination of or changes to this order, Buyer shall not be liable for any charges or costs arising from commitments by Vendor for the acquisition of materials, or work performed, in advance of the time necessary to meet the specified delivery schedule, unless Buyer has given its prior written consent to such advance commitments or work.
8. **CHANGES** Buyer may, by written change order, suspend performance in whole or in part, make changes in quantities, in drawings, designs or specifications, in the method of shipment or packing in the time or place of delivery, or require additional or diminished work. If any such change causes an increase or decrease in the cost of or the time required for, performance of this order, an equitable adjustment shall be made in the contract price or delivery dates, or both and this order shall be modified in writing accordingly. Any claim for adjustment under this Section 8 may, at Buyer's option, be deemed to be absolutely and unconditionally waived unless asserted in writing (including the amount of the claim) and delivered to Buyer within thirty (30) days from the date of receipt by Vendor of the change order. No change order will be binding on Buyer unless issued and signed by an authorized representative of Buyer's purchasing department. Nothing in this Section 8 shall excuse Vendor from proceeding with the order as changed.
9. **INSPECTION** Final inspection and acceptance of the merchandise shall be at the F.O.B. point unless otherwise specified in this order. Such inspection shall be in accordance with the customary established inspection procedures of Buyer at the location where the merchandise is received. Buyer reserves the right to use sampling procedures for the acceptance or rejection of any or all items ordered. If a lot is rejected by the sampling procedure, the entire lot may be returned to Vendor for screening at the Vendor's expense or, at the option of Buyer, the rejected lot may be screened by Buyer at Vendor's expense, and the costs thereof shall be deducted from Vendor's invoice. Buyer may reject any merchandise which contains defective materials or workmanship or does not conform to specifications or samples. In such event, Buyer may, at its option, and upon written notice to Vendor: (i) rescind this order as to such merchandise; (ii) accept such merchandise at an equitable reduction in price; or (iii) reject such merchandise and require the delivery of replacements. Deliveries of replacement merchandise shall be accompanied by a written notice specifying that such merchandise is a replacement. If Vendor fails to deliver required replacements promptly, Buyer may: (i) replace or correct such merchandise and charge the Vendor the cost thereby incurred by Buyer, or (ii) terminate this order for cause as provided in Section 16 hereof. The rights of Buyer under this Section 9 are in addition to any other rights or remedies herein or by law.
10. **WARRANTIES** In addition to all other warranties, expressed or implied, Vendor warrants that the merchandise will be: (i) free from defect in workmanship and materials; (ii) free from defects in design except to the extent that such merchandise complies with the specifications provided by Buyer, (iii) suitable for purposes, if any, which are stated on the face of this order or in any attachments hereto; and (iv) in conformity with all other requirements of this order. These warranties, and all other warranties, express or implied, shall survive delivery, inspection, acceptance and payment.

In addition to all other rights Buyer may have, if merchandise is determined not to be as warranted within a period of one (1) year acceptance by Buyer, Buyer may return such merchandise to Vendor, at Vendor's expense, for correction, replacement or credit, as Buyer may direct. Any merchandise corrected or furnished in replacement shall, from the date of delivery of such corrected or replacement merchandise, be subject to the provision of this Section 10 for the same period and to the same extent as merchandise initially furnished pursuant to this order.
11. **PROPRIETARY INFORMATION** All written information obtained by Vendor from Buyer concerning this order, and which is identified as proprietary by Buyer, shall be received in confidence and shall remain the property of the Buyer, and shall be used and disclosed by Vendor only to the extent necessary for performance of this order.
12. **COMPLIANCE WITH LAWS** Vendor shall comply with all federal, state and local laws, ordinances, rules and regulations in the manufacture and sale of the merchandise (including the performance of any services or construction work). Vendor will defend and hold Buyer harmless from any loss, damage or costs attributable to or arising out of any actual or alleged violation of any such law, ordinance, rule or regulation.
13. **USE OF VENDOR'S LITERATURE** Buyer shall have the right, at no additional charge, to use and reproduce the Vendor's applicable literature, such as operating and maintenance manuals, technical publications, prints, drawings, training manuals, and other similar supporting documentation and sales literature. Vendor shall advise Buyer in writing of any updated information relating to the foregoing literature and documentation.
14. **LIABILITY FOR INJURY** Vendor shall indemnify Buyer against any loss and liability for all personal injury and property damage caused by the merchandise sold or the services of construction work.
15. **ASSIGNMENT PROHIBITED** Vendor shall not assign this order, or any rights or obligations hereunder, without the prior written consent of Buyer, and no attempted or purported assignment by Vendor shall be binding on Buyer without such written consent.
16. **DEFAULT AND TERMINATION** Buyer may, by written notice of default to the Vendor, terminate this order, or any part thereof, under the following circumstances:
 - A. If Vendor fails to deliver the merchandise (or to commence performance of any services or construction work included therein) in accordance with the delivery schedule specified herein, or any extension thereof; or if vendor fails to perform any other provision of this order, or so fails to make progress as to endanger performance of this order in accordance with its terms, and any such failure or default is not cured within ten (10) days after written notice from the Buyer, or
 - B. In the event of the appointment of a trustee, receiver or liquidator for all or a portion of Vendor's property, or the institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Vendor, or any assignments by Vendor for the benefit of creditors.Upon any termination to this Section 16, Buyer may purchase similar merchandise elsewhere, or secure the delivery of the merchandise by contract, or otherwise and Vendor shall be liable to Buyer for any excess cost to Buyer; provided, however, that Vendor shall not be liable for such excess costs when the delay of Vendor in performing or in making deliveries is due to causes beyond the control and without fault or negligence on the part of the Vendor. No cause shall constitute a basis for excusable delay unless Vendor has notified Buyer in writing of the existence of such cause within ten (10) days from the commencement thereof. The rights and remedies of Buyer under this Section 16 shall not be exclusive and are in addition to all other rights and remedies provided by law or by the terms and condition of this order.
17. **WAIVER** Buyer's failure to insist upon the performance of any provision of this order, or to exercise any right or privilege granted to Buyer under this order, shall not be construed as a waiver of any provision of this order, and the same shall continue in full force and effect. If any provision of this order is determined by a court of competent jurisdiction to be void or otherwise unenforceable, the other provisions of this order shall not be affected thereby.
18. **DISPUTE RESOLUTION** Disputes regarding the interpretation or application of any provisions of this order shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties. If any action at law or in equity is brought to enforce or interpret any provisions of this order, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.
19. **GOVERNING LAW** The validity, performance and construction of the order, including all terms and conditions thereof, shall be construed in accordance with and governed by the laws of the State of California.
20. **ENTIRE AGREEMENT** This order, its terms and conditions, and any supplemental attachments, addenda or riders annexed hereto by Buyer, contain the entire agreement between the parties as to the subject matter hereof, and replace and supersede any prior or contemporaneous communications, representations or agreements, whether written oral, with respect to such subject matter, unless specifically provided otherwise herein.
21. **NOTICES** All notices, demands, requests or approvals to be given in connection with this order shall be in writing and delivered in person or by mail, postage prepaid, and addressed to the other party at the address set forth on the face of this order, or to such other address as may be subsequently be designated in writing by either party.
22. **SPECIAL PROVISIONS** Notwithstanding any terms or conditions herein above, to the contrary, the Special Provisions set forth in Attachment A, attached hereto, shall be deemed to be incorporated herein by reference and shall be binding on Vendor and shall supercede any provision of this Purchase Order set forth herein above which are in conflict therewith.

EXHIBIT J - MINIMUM SPECIFICATIONS & COST PROPOSAL FORM

IFB No. 22-001-3300

Title: Asphalt Materials (As-Needed)

The bid will be awarded to the lowest responsive, responsible bidder on an "all or none" basis. Bid Proposal Prices and/or Fee Schedules must remain firm for the first full purchase order contract period.

Any deviations from the written specification as shown in this IFB shall be noted on the City provided form, Exhibit I -Deviations and Exceptions Form. Any catalog, brand name or manufacturer's references in the specifications are descriptive and NOT restrictive, and are used to indicate type and quality level desired. Bids or brands of like nature and quality may be considered unless specifically excluded.

Bidders are required to clearly and specifically indicate the product(s) being offered and to provide sufficient descriptive literature, catalog cuts, and technical detail to enable City to determine if the product(s) offered meet the requirements of this solicitation. Only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid non-responsive.

Bidders providing, along with their bid response, detailed cut sheets/catalogs/descriptive literature shall identify each page of the product(s) being offered. All literature and specifications shall be marked with company name and bid item number. Failure to do so may cause the bid to be considered non-responsive. It will not be the responsibility of the City to determine which product is being offered from the vendor catalog cut sheet that is not clearly identified.

All quantities are shown in the lowest unit of measure. Changes to City specifications are not allowed. For Vendor-specific packaging purposes, vendors must convert both estimated quantities and unit(s) of measure to equate to City's specifications.

Specifications

No substitutions will be accepted, unless authorized by the Street Superintendent.

Climatic Region	Binder	Conventional Asphalt				
		Dense Graded			Open Graded	
		Typical	Special			
		PG	PG	PBA	PG	PBA ²
Desert		70-10	N/A	6a(mod), 7	70-10	6a(mod)

All materials less than 25 tons will be picked up by the City of Palmdale vehicles.

All materials over 25 tons will be delivered by Bidder.

Pickup locations must be within twenty-five (25) miles from City of Palmdale.

Materials must be available for pick up within twenty-four (24) hours from receipt of order.

Materials must be available for pick up Monday through Friday.

There must be at least 10' 6" clearance between the lowest portion of the discharge chute and the ground.

The contractor and product supplied will comply with the 2006 Edition of the Standard Specifications for Public Works Construction written by the Joint Cooperative Committee of the Southern California Chapter of the American Public Works Association and the Southern California District of the Associated General Contractors of California Section 203-6 in all respects.

All materials shall be bid F.O.B. Plant. Street address of bidder's plant where material will be picked up:

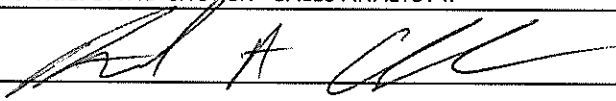
6851 E Ave T
Palmdale, CA 93552

Identify the return policy procedures, detailing company notification, method of return, and any other applicable information such as conditions or restocking fees:

Item No.	Description	Estimated Annual Quantity	Unit of Measure	Unit Price
1	Rock Size: B (3/4" Rock)	450 Tons	Ton	\$ 73.00
2	Rock Size: C (1/2" Rock)	600 Tons	Ton	\$ 73.00
3	Rock Size: D (3/8 Rock)	450 Tons	Ton	\$ 75.00
4	Rock Size: E (1/4" Rock)	70 Tons	Ton	\$ 78.00
5	Rock Size: F (Sand and Oil)	70 Tons	Ton	\$ 80.00
6	SC 800 Cold Mix	300 Tons	Ton	\$ 95.00
7	Sheet Mix	60 Tons	Ton	\$ 80.00
8	SS1H Emulsion for pick up	4,000 Gallons	Gallon	\$ 18.00
9	SS1H Emulsion	50 (5 Gal. Buckets)	4.5 Gallon Bucket	\$ 68.00
10	Fill Sand	150 Tons	Ton	\$ 8.50
11	Washed Material Sand	100 Tons	Ton	\$ 15.50
12	Class 1 Crushed Aggregate Base	350 Tons	Ton	\$ 11.00
13	Delivery Cost (Within City of Palmdale Limits)		Per Ton/Mile	\$ 15.00
Total				\$ 236,835.00

Company Name: VULCAN MATERIALS COMPANY

Authorized Company Official Printed Name and Title: DAVID CHURCH - SALES ANALYST II

Authorized Company Official Signature: 

Date: 5/23/22