



PALMDALE

a place to call home

**CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS
38300 SIERRA HIGHWAY
SUITE B
PALMDALE, CA 93550
WEDNESDAY, APRIL 19, 2023
5:00 PM**

www.cityofpalmdale.org

WELCOME

The Council Chamber is open for in-person public comment and seating.

How to observe the meeting:

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

How to Address the City Council

Any person who would like to address the Council regarding an item on the agenda, please fill out a Speaker's Form and submit it to the City Clerk **prior** to the agenda item you would like to discuss. You may address the Council once per meeting, per public comment section of the agenda on only those matters within the Council's jurisdiction. Please note that you are not required to complete this form or state your name and residence in order to speak. Each person addressing the Council is 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.

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. Please follow these simple rules so 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. CALL MEETING TO ORDER

***Note: All City Council memberships are reflected in their City Council titles.**

2. ROLL CALL

MAYOR BETTENCOURT, MAYOR PRO TEM ALARCÓN, COUNCILMEMBERS
BISHOP, LOA, OHLSEN

3. PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

4. 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. (Voice Vote - Requires a majority to waive.)

5. PUBLIC COMMENTS ON CONSENT CALENDAR ITEMS ONLY

This portion of the Agenda allows an individual the opportunity to address the Council on Consent Calendar items ONLY. If you wish to comment on any item(s) listed on the Consent Calendar, please come forward to the podium when called or acknowledged by the Chair and state the item number(s) and your comments. **PLEASE NOTE: A three-minute time limit** will be imposed on each speaker.

6. **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.

- 6.1 Approve Agreement No. A-8314 with Smarte Carte Inc. to install 172 keyless lockers and two self-service payment kiosks at DryTown Water Park.

[Staff Report Agreement No. A-8314 with Smarte Carte.docx](#)
[AGREEMENT A-8314 Smarte Carte Inc..pdf](#)

- 6.2 Approve First Amendment to Legal Services Agreement with Harper & Burns, LLP to increase the total amount of the Agreement by \$220,000, to increase the not to exceed amount to \$320,000 and amend the indemnity section.

[SR_-_Harper & Burns, LLP A-8232 Amend 1- 041923.docx](#)
[Harper & Burns, LLP - A-8232 Amendment 1 - 4-19-2023.pdf](#)
[Harper & Burns - Agreement 8232.pdf](#)

- 6.3 Approve First Amendment to Legal Services Agreement with Jones & Mayer to increase the total amount of the Agreement by \$302,000 not to exceed the sum of \$402,000.

[SR_-_Jones___Mayer_A-7578_Amend_1-_041923 \(2\).docx](#)
[Jones & Mayer - Agreement 7578 Amendment 1.pdf](#)
[Jones & Mayer - Agreement 7578.pdf](#)

- 6.4 Notice of Completion - Accept Public Improvements for Circle K, located at 3851 East Palmdale Blvd.

[SR-04192023 \(17-02\).docx](#)
[EXHIBIT A 17-02.docx](#)
[EXHIBIT B.docx](#)
[NOC_17-02 PC & SD IMPROVEMENTS.doc](#)

- 6.5 Approve additional funds of \$100,000 for Purchase Order No. 20230000 with Walsma Oil Company, Inc. for diesel and unleaded fuel, motor oil, and lubricants in an amount not to exceed \$550,000.

[SR Approve PO 20230000 Walsma Oil Additional Funds.docx](#)
[1. Purchase Order No. 20230000 Walsma Oil.pdf](#)

- 6.6 Approve Purchase Order No. 20230495 with Plumber's Depot for one (1) new GapVax MC1510-3S4S Combination Jet/Vacuum Truck, in an amount not to exceed \$604,991.89.

[SR Approve PO 20230495 Plumber's Depot - GapVax.docx](#)
[1. Purchase Order No. 20230495 Plumber's Depot.pdf](#)
[2. Sourcwell Contract No. 101221-GPV.pdf](#)
[3. Plumber's Depot Quote MC-1510-534 GapVax.pdf](#)

- 6.7 Approve the first amendment to the employment agreement between the City of Palmdale and Michael Miller, Assistant City Manager (Agreement No. A-7465).

[Staff_Report Miller Mike First Amendment to Agreement A 7465.docx](#)

[Exhibit 1 Miller Mike Agreement First Amendment 4.19.23.pdf](#)

[Exhibit 2 A 7465 First Amendment Assistant City Manager job description.pdf](#)

[Exhibit 3 A 7465.pdf](#)

- 6.8 Approve the minutes from the previous meetings.

CC - March 10, 2023

[CC Minutes 03 10 23.docx](#)

7. **NEW BUSINESS**

- 7.1 Adopt Resolution CC 2023-022, A Resolution of the City Council approving the Five-Year Public Art Work Plan for projects in the City of Palmdale in accordance with Chapter 15.01 of the Palmdale Municipal Code.

[Five-Year_Public_Art_Work_Plan_Staff_Report.docx](#)

[CC_Reso_2023-022_Five-Year_Work_Plan.docx](#)

[Five_Year_WorkPlan_FY23-24 \(002\) \(003\).docx](#)

[CC.Workshop.FiveYearWorkPlan.Presentation \(003\).pdf](#)

8. **PUBLIC COMMENTS ON NON-AGENDA ITEMS**

This portion of the Agenda allows an individual the opportunity to address the Council on any subject regarding City business not on the Agenda. Under state legislation, no action can be taken on items not specifically referenced on the Agenda and the Chair may refer you to the City Manager or staff to address your request. **PLEASE NOTE: A three-minute time limit** will be imposed on each speaker and your topic must remain relevant to items within the City's authority or purview.

9. **CITY COUNCIL ANNOUNCEMENTS AND REQUESTS FOR NEW AGENDA ITEMS**

10. **CITY MANAGER'S REPORT**

11. **PUBLIC COMMENTS ON CLOSED SESSION ITEMS**

This portion of the Agenda allows an individual the opportunity to address the Council on Closed Session items ONLY. **PLEASE NOTE: A three-minute time limit** will be imposed on each speaker.

12. PRESENTATION BY CITY ATTORNEY

- 12.1 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).
- 12.2 CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
Maithi 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).
- 12.3 CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
Ricky Thorstensen v. City of Palmdale, et al.
Los Angeles County Superior Court
Case No. 22STCV29463
This closed session is being held pursuant to the authority of California Government Code Section 54956.9(d)(1).
- 12.4 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Kenya Torres vs. City of Palmdale, et al.
Los Angeles County Superior Court
Case No. 22STCV37041
This closed session is being held pursuant to the authority of California Government Code Section 54956.9(d)(1).
- 12.5 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Edman Discua v. City of Palmdale, et al.
Los Angeles Superior Court
Case No. 21STCV45406
This closed session is being held pursuant to the authority of California Government Code Section 54956.9(d)(1).

13. ANNOUNCEMENT BY CITY ATTORNEY

14. **ADJOURN** meeting to May 3, 2023 at 5:00 p.m. in the City Hall Council Chamber located at 38300 Sierra Highway, Suite B, Palmdale, California.



City Council Staff Report

DATE: APRIL 19, 2023
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: PARKS AND RECREATION DEPARTMENT
DISTRICT: 3
SUBJECT: APPROVE AGREEMENT NO. A-8314 WITH SMARTE CARTE, INC.
TO INSTALL LEASED KEYLESS LOCKERS AND SELF-SERVICE
PAYMENT KIOSKS AT DRYTOWN WATER PARK.

ISSUE

Approve agreement No. A-8314 with Smarte Carte, Inc. to install leased keyless lockers and self-service payment kiosks at DryTown Water Park.

RECOMMENDATION

Staff recommends that the City Council:

1. Award Agreement No. A-8314 with Smarte Carte, Inc. to install leased keyless lockers and self-service payment kiosks at DryTown Water Park.
2. Authorize the City Manager, or her designee, to execute Agreement No. A-8314 with Smarte Carte, Inc. including minimal and/or non-substantive changes.

BACKGROUND

DryTown Water Park personnel currently manage lockers that are available for customers to rent. Renting lockers is a common theme park convenience, as renting a locker is not necessary to utilize and enjoy the park. Approximately 7% of park guests choose to rent a locker. Operating season 2022, the highest number of lockers rented in a day was 158, on that day we had 1,993 guests in the park.

Lockers were installed when the park opened in 2006 and are original to the park; lockers are well beyond their expected lifespan. In anticipation of replacement, staff have researched replacement options. Through our research, it has been determined that the existing locker handles are not ADA compliant. Approximately 15% of our inventory can no longer be repaired, are difficult to operate and their appearance is weathered. Much of our inventory is routinely out of service during the season, as we work to resolve lost keys and locker malfunctions.

Replace with Similar City Owned Keyed System

The current locker system requires a physical key to open and City staff to manage. Associated challenges include lost keys, keys taken home by mistake, keys found in the filtration system, or floating in attractions. These challenges lead to the inability to re-rent lockers, staff assistance to retrieve belongings, and eventual replacement of locking mechanism or rekey of the mechanism. Replacing with a similar keyed locker system does not eliminate the current operational challenges associated with keys and would still require City personnel to continue to manage and maintain the system, resulting in lost productivity.

Upfront costs include: Purchasing 172 lockers: \$80,000; Labor to remove and install the new lockers are unknown; Annual financials associated with this arrangement include personnel costs to manage and maintain the system: \$12,700; Processing fees: \$2,000.

Net revenue based upon current sales trends (7% of total guests) at the current rental rate (\$6) is \$18,900 annually. Approximately 4.2 seasons would be required to recover upfront cost, plus additional seasons for unknown cost to remove and install.

Replace with City Owned Electronic System

An electronic locker system is more convenient for guests, as self-service kiosks issue a code to unlock. Additional benefits include an easy re-rental process throughout the day and do not require City personnel to manage. These benefits result in gained staff productivity, a potential increase in rentals, and improved guest experience.

Upfront costs include: purchasing 172 lockers, and four (4) kiosks, \$150,000, labor to remove and install new lockers are unknown. Annual financials associated with this arrangement include: service, maintenance and licensing, \$15,000 after year one; processing fees, \$2,000.

Net revenue based upon current sales trends (7% of total guests) at the proposed rental rate range (\$8 - \$15) is \$47,400 annually. Approximately 3.2 seasons would be required to recover the cost of lockers, plus additional seasons for unknown cost to remove existing, install and eventually replace the units.

Replace with Leased Electronic System

A leased electronic locker system provides the same benefits as stated above. Additionally, the lessor is responsible for repairs, service and ultimately replacing units.

Upfront cost is zero. The annual financials associated with this arrangement include: maintenance and licensing, \$0; processing fees, \$0.

Net revenue based upon current sales trends (7% of total guests) at proposed rental rate range (\$8 - \$15), less 35% vendors share is \$41,860 annually. Leasing lockers is

approximately 10% less in annual revenue than owning electronic lockers, however, zero upfront and replacement cost.

DISCUSSION

Based upon associated costs and revenues, it is recommended that leasing lockers is the most cost-effective approach for the City. To secure a leased electronic locker system, an RFP was prepared and released on Planet Bids on March 7, 2023. The RFP was sent to a total of 35 vendors, and as a result, the City received two proposals.

Scoring was based on the following criteria: past performance, qualifications, and experience, ability to perform the work and meet timelines, references, cost to the City, and revenue share percentage. The proposal submitted by Smarte Carte, Inc. scored more points and offered 65% revenue share, compared to 35% from Best Lockers. Their proposal includes the following services at no cost to the City: installation of 172 keyless entry lockers and four (4) self-service payment kiosks, easy to use pin code locker access, PCI compliance, revenue and usage reports, maintenance, repair and replacement parts, and timely customer support. Smarte Carte, Inc. also has a technician living in Palmdale who can quickly respond to service requests.

FISCAL IMPACT

There is no expenditure impact associated with this item. Estimated annual net revenue to the City: \$41,860.

STRATEGIC PLAN

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

- A. Manage resources, costs, and liabilities to ensure the City's long-term fiscal health, or
- B. Pursue alternative financing opportunities for continued infrastructure improvements and quality community programs.

Goal III: Invest in infrastructure to improve community livability.

- C. Seek innovative, cost effective, customer focused methods of service delivery.

Prepared by:	Keri Smith, Director of Parks and Recreation
Certified as to availability of Funds:	Janelle Samson, Director of Finance
Approved by:	Ronda Perez, City Manager
Approved as to form:	William P. Curley, III, Interim City Attorney

ATTACHMENT

Agreement No. A-8314

**AGREEMENT NO. A-8314
CONTRACT FOR SERVICES
BETWEEN THE CITY OF PALMDALE AND SMARTE CARTE INC.**

This CONTRACT for services ("Contract" herein) is made and entered into by and between the City of Palmdale, a public body corporate and politic, (hereinafter called "CITY"), and SMARTE CARTE INC., a corporation, (hereinafter called "CONTRACTOR"). This Contract shall become effective on the date of the last signatory.

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 Keri Smith 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 and equipment in a manner satisfactory to CITY:

Self-service, electronic, PIN Code access, rentable, keyless lockers, payment kiosks and related equipment as a revenue share concession program at Dry Town Water Park 3850-B East Avenue S, Palmdale, CA 93550. See Exhibit C for locker sizing, count and location.

- Access Stations – SL3.5 Series PIN Code Access with credit card payment & cash & change making
- Regular Lockers - Locker Cabinet Model #2015 with Smarte Door TM Technology Locker Doors: 6-doors/column; compartment size (11"w x 12"h x 18"d)
- Large Lockers - Locker Cabinet Model #2015 with Smarte Door TM Technology Locker Doors: 4-doors/column; compartment size (11"w x 18"h x 18"d)
- Jumbo Lockers - Locker Cabinet Model #2015 with Smarte Door TM Technology Locker Doors: 3-doors/column; compartment size (14"w x 24"h x 18"d)
- Color: Grey Frame with blue doors

The locker equipment, associated software and improvements thereto, whether made by CITY or CONTRACTOR hereunder, shall remain the property of the CONTRACTOR.

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 90 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 will, at its expense, will provide raised cement pads, protective awning/covering, standard electrical power and internet service for credit card processing and data lines for communication to the pay points, in accordance with the CONTRACTOR specifications. The CITY will pay the monthly costs associated with the power lines, internet service and data lines. The locker facility and improvements thereto, whether made by CITY or CONTRACTOR hereunder, shall remain the property of the CITY.

2.7 CONTRACTOR will provide a local service manager who will provide cash and credit card management, all replacement parts & installation, bi-monthly preventative on-site maintenance and on-call phone &/or e-mail assistance as needed to service the account during the operating season.

2.8 CITY staff is responsible for executing the daily operational plan; resetting the lockers in preparation for rental, general cleaning and reviewing equipment. In the unlikely event of an equipment issue, the CITY Staff will contact CONTRACTOR's location manager via phone and/or e-mail, to notify of any repair issues for timely follow up and resolution.

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:

David White, Assistant Regional Manager
whited@smartecarte.com
(818) 738-3141

Craig Fredrickson, Director, Business Development-West Region
fredricksonc@smartecarte.com
(612) 203-4341

Greg Schultz, Chief Legal Officer
schultzg@smartecarte.com
(651) 653-3008

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 LOCKER RENTAL PRICE, COMPENSATION AND PAYMENT SCHEDULE

5.1 CONTRACTOR shall charge \$8 for regular, \$12 for large and \$15 for jumbo lockers per rental, in accordance with CITY fee resolution. All prices will be in whole dollars and will be inclusive of sales tax, if any. At the conclusion of each operating season CONTRACTOR and CITY will update rental prices if CITY fee resolution increases locker rental prices.

5.2 CONTRACTOR shall pay to CITY an amount calculated as:

- 65% of the first \$75,000 of net rental revenues per contract year, plus 75% of all net revenues about \$75,001 per contract year. Net rental revenues is defined as the total rental sales collected by the locker revenue share program, minus all sales, use, property, excise or other taxes imposed on such revenues, amount will be total rental sales not including refunds, credits or credit card processing fees.
- Contract year is defined as each twelve month period, beginning January 1, and ending December 31 during the term of the contract. Contract year is prorated at the beginning and end of the term period.

5.3 CONTRACTOR shall issue payment on, or before, the 20th day, following the end of each month from June-October.

5.4 Monthly detailed sales and reconciliation reports in accordance with the agreed upon payment schedule.

6 COMMENCEMENT AND COMPLETION OF WORK

6.1 The execution of this Contract by the parties does not constitute an authorization to proceed. The services of CONTRACTOR shall commence when CITY, acting by and through its Project Manager, has issued an Authorization to Proceed. CONTRACTOR shall complete all the work described in Section 1 and be ready for final acceptance of the work within Fifty-One (51) CALENDAR days following CONTRACTOR's receipt of Authorization to Proceed.

6.2 Time is of the essence. All of the time limits for Milestones, if any, and for completion of the work, are of the essence of this Contract.

6.3 Failure of CONTRACTOR to perform any covenant or condition contained herein within the time periods specified therein shall constitute a material breach of this Contract, entitling CITY to terminate this Contract, unless CONTRACTOR applies for and receives an extension of time in accordance with the procedures set forth herein.

6.4 The term of this contract is five (5) years, with CITY reserving the option to extend the agreement for two (2) additional terms of one (1) year each.

7 TAXES

7.1 CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with state and local laws.

7.2 CONTRACTOR is an independent contractor and shall have no power or authority to incur any debt, obligation, or liability on behalf of CITY. No person employed by CONTRACTOR or acting on its behalf, in connection with this Contract shall be considered the Agent or employee of CITY.

7.3 CONTRACTOR shall be required to obtain a current City of Palmdale business license, as required by the Palmdale Municipal Code, before an Authorization to Proceed is issued.

7.4 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.

8 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.

9 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.

10 INSURANCE

10.1 CONTRACTOR, at its expense, shall maintain in effect at all times during the performance of work under this Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers listed "A" or better in the Best's Insurance Guide and authorized to do business in the State of California.

Proof of Insurance, as identified in Section 10.8, must be reviewed and accepted by the City Attorney.

10.1.1 Workers' Compensation and Employer's Liability

- Workers' Compensation -- coverage as required by the State of California

- Employer’s Liability -- \$1,000,000.00 each accident
\$1,000,000.00 policy limit bodily injury
\$1,000,000.00 each employee bodily injury by disease

10.1.2 Commercial General Liability

- \$1,000,000.00 limit on a per occurrence basis
- \$2,000,000.00 general aggregate limit

10.1.3 Commercial Automobile Liability

- \$1,000,000.00 combined single limit including owned, non-owned and hired automobile coverage

10.1.4 Cyber Liability

- \$2,000,000.00 limit on a per occurrence basis

10.1.5 Crime Liability

- \$2,000,000.00 limit on a per occurrence basis

10.2 All of CONTRACTOR’s policies shall contain an endorsement providing that written notice shall be given to CITY at least thirty (30) calendar days prior to termination, cancellation, or reduction of coverage in the policy.

10.3 Policies providing for bodily injury and property damage coverage shall contain the following:

- A. An endorsement extending coverage to the City as an additional insured, as respects liability arising out of the performance of any work under the Contract. Such insurance shall be primary insurance, as respects the interest of the City, and any other insurance maintained by the City shall be considered excess coverage and not contributing insurance with the insurance required hereunder. The certificates shall state: “The City of Palmdale, Successor Agency to the Community Redevelopment Agency of the City of Palmdale, Palmdale Civic Authority, Housing Authority, Industrial Development Authority, Airport Authority, their officers, agents, employees and volunteers are named as additional insured”.
- B. “Severability of Interest” Clause.

10.4 Promptly upon execution of this Contract, and prior to commencement of any work, CONTRACTOR shall deliver to CITY certificates of insurance and endorsements to all required policies demonstrating that CONTRACTOR has the required coverage and showing the required named insured.

10.5 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.

10.6 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.

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

10.8 Acceptable Proof of Insurance:

10.8.1 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.

10.8.2 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.

10.8.3 When cyber and/or crime liability coverage is provided on a "claims made basis", CONTRACTOR will continue to renew the insurance for a period of five (5) years after this Agreement expires or is terminated. Such insurance will have the same coverage and limits as the policy that was in effect during the term of this Agreement, and will cover CONTRACTOR, or its officers, employees, or agents during the time this Agreement was in effect

10.9 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.

10.10 CONTRACTOR shall require any and all subcontractor's working on its behalf to provide insurance coverages and limits that are based on the scope of work and nature of risk being performed by the subcontractor. Any and all subcontractors working on behalf of CONTRACTOR shall be subject to all other insurance requirements that are stated herein.

Any deviation in this requirement will be CONTRACTOR's sole risk. CONTRACTOR's insurance requirements in Section 10 will not be impacted and/or limited by such deviation.

11 INTENTIONALLY OMITTED

12 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.

12.1 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.

12.2 Excluding confidential or proprietary information, 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.

12.3 If, after notice of termination of the Contract under the provisions of this Section 12, 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 11.

13 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.

14 INTENTIONALLY OMITTED

15 DELEGATION AND ASSIGNMENT

15.1 CONTRACTOR shall not delegate or assign its duties or rights hereunder, either in whole or in part, without the prior written consent of CITY; provided, however, that claims for money due or to become due to CONTRACTOR from CITY under this Contract may be assigned to a bank, trust company or other financial institution without such approval.

15.2 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.

16 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

16.1 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 including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sexual orientation, age, gender, gender identity, gender expression, genetic information, or military and veteran status.

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 including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sexual orientation, age, gender, gender identity, gender expression, genetic information, or military and veteran status. 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.

16.2 The provisions of subsection 16.1 above shall be included in all solicitations or advertisements placed by or on behalf of CONTRACTOR for personnel to perform any services under this Contract. CITY shall have access to all documents, data and records of CONTRACTOR and its subcontractors for purposes of determining compliance with the equal employment opportunity and non-discrimination provisions of this Section, and all applicable provisions of Executive Order No. 11246 which is incorporated herein by this reference. A copy of Executive Order No. 11246 is available for inspection at, and on file with, the Palmdale City Clerk's Office.

17 FINANCIAL INTEREST CERTIFICATION

17.1 CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no officer or employee of the CITY has any interest, financially or otherwise, in CONTRACTOR's firm.

17.2 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.

18 CONFLICT OF INTEREST

18.1 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.

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

18.3 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.

19 COMPLIANCE WITH LAW

19.1 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.

19.2 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.

19.3 If applicable, CONTRACTOR acknowledges and understands it must comply with the prevailing wage requirements as set forth in Exhibit "A" attached hereto and incorporated herein by reference, as well as the execution of a Worker's Compensation Certificate attached hereto as Exhibit "B" and incorporated herein by reference.

20 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.

21 ENTIRE AGREEMENT AND AMENDMENTS

21.1 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.

21.2 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.

21.3 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.

22 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:

NAME OF CONTRACTOR:

SIGNATURE AREA

SIGNATURE AREA

Ronda Perez
City Manager

Greg Schultz
Chief Legal Officer

SIGNATURE AREA

ADDRESS FOR NOTICE:
CITY OF PALMDALE
827 East Avenue Q-9
Palmdale, CA 93550

ADDRESS FOR NOTICE:
SMARTE CARTE INC.
4455 White Bear Parkway
St. Paul, MN 55110

APPROVE AS TO FORM:

SIGNATURE AREA

William P. Curley, III
Interim City Attorney

ATTEST:

SIGNATURE AREA

Roxanne Faber
Acting City Clerk

EXHIBIT "A"
PREVAILING WAGE REQUIREMENTS

1. This Contract calls for work to be performed constituting public works. Contractor and all subcontractors shall pay the general prevailing rate of per diem wages as determined and as published by the State Director of the Department of Industrial Relations pursuant to Article 2 of Chapter 1 of Part 7, of Division 2 of the State Labor Code, including, but not limited to, Sections 1770, 1771, 1773, 1773.2 and 1774.
2. This is a public work and requires the payment of prevailing wages for the work or craft in which the worker is employed for any public work done under the contract by Contractor or by any subcontractor pursuant to Section 1771 of the Labor Code. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this contract from the Director of the Department of Industrial Relations. These rates are on file with the City or may be obtained at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to the City, as a penalty, not more than \$200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Contract, by him or by any subcontractor under him, in violation of the provisions of this Agreement.
3. Contractors and subcontractors who are ineligible to bid for work on, or be awarded, a public works project pursuant to Labor Code Sections 1777.1 and 1777.7 are prohibited from bidding on, being awarded, or performing work as a subcontractor, on this Project pursuant to Public Contract Code Section 6109.
4. Contractor's attention is directed to the provisions in Sections 1774, 1775, 1776, 1777.5 and 1777.6 of the Labor Code. Contractor shall comply with the provisions in these Sections. The statutory provisions for penalties for failure to comply with the State's wage and hours laws will be enforced. Pursuant to Section 1775 of the Labor Code, the Contractor and any subcontractors, shall, as a penalty to the City forfeit the prescribed amounts per calendar day, or portion thereof, for each worker paid less than the prevailing wage rates.
5. Pursuant to Labor Code Section 1771.4, the Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
6. Each Contractor and subcontractor shall furnish the records specified in Labor Code Section 1776 directly to the State Labor Commissioner at least monthly in the format prescribed by the State Labor Commissioner.
7. Sections 1774 and 1775 require the Contractor and all subcontractors to pay not less than the prevailing wage rates to all workmen employed in the execution of

the Contract and specify forfeitures and penalties for failure to do so. The minimum wages to be paid are those determined by the State Director of the Department of Industrial Relations. Section 1776 requires the Contractor and all subcontractors to keep accurate payroll records, specifies the contents thereof, their inspection and duplication procedures and certain notices required of the Contractor pertaining to their location.

8. Section 1777.5 of the Labor Code requires Contractor or subcontractor employing workers in any apprenticeable occupation to apply to the Joint Apprenticeship Committee nearest the site of the public works project, which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen to be used in the performance of the Contract. The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade and if other contractors on the public works site are making such contributions. Information relative to apprenticeship standards, contributions, wage schedules and other requirements may be obtained from the State Director of Industrial Relations or from the Division of Apprenticeship Standards. Section 1777.6 of the Labor Code provides that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age.

9. Eight hours labor constitutes a legal day's work, as set forth in Labor Code Section 1810. The statutory provisions for penalties for failure to comply with the State's wage and hour laws will be enforced as set forth in Labor Code Section 1813.

----- INTERNAL USE ONLY -----

- ☐ Certificate(s) and Endorsement(s) attached
- ☐ Confirmed business name on contract with certificate(s)
- ☐ Attached Agreement Checklist and met all requirements



City Council Staff Report

DATE: APRIL 19, 2023
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: CITY MANAGER'S OFFICE
DISTRICT: ALL
SUBJECT: APPROVE FIRST AMENDMENT TO LEGAL SERVICES AGREEMENT WITH HARPER & BURNS, LLP TO INCREASE THE TOTAL AMOUNT OF THE AGREEMENT BY \$220,000 NOT TO EXCEED THE SUM OF \$320,000 AND AMEND THE INDEMNITY SECTION.

ISSUE

Approve First Amendment to Legal Services Agreement with Harper & Burns, LLP to increase the total amount of the Agreement by \$220,000 not to exceed the sum of \$320,000 and amend the indemnity section.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve the First Amendment to Legal Services Agreement with Harper & Burns, LLP to increase the total amount of the Agreement by \$220,000 not to exceed the sum of \$320,000;
2. Amend the indemnity in Section 7 to include additional language;
3. Authorize the City Manager or her designee to execute the First Amendment with Harper & Burns, LLP substantially in the same form as presented to the City Council.

BACKGROUND

Harper & Burns, LLP has provided legal services to the City of Palmdale and is currently representing the City in the role of Interim City Attorney

DISCUSSION

Harper & Burns, LLP would continue to provide legal services and act as Interim City Attorney on behalf of the City of Palmdale. The First Amendment to the Legal Services Agreement will increase the not-to-exceed agreement amount by \$220,000 to \$320,000 and amend the indemnity section. Staff proposes that the City Council authorize the City Manager to execute the Amendment and allow Harper & Burns, 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 \$220,000, 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: 10114001-721100; 10114001-721140; 15014101-721150.

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, City Manager
Approved as to form:	Matthew Silver, Special Counsel

ATTACHMENTS

First Amendment with Harper & Burns, LLP
Agreement with Harper & Burns, LLP (A-8232)

**FIRST AMENDMENT TO AGREEMENT A-8232
BETWEEN THE CITY OF PALMDALE AND HARPER & BURNS, LLP**

This First Amendment to Agreement No. A-8232 ("Agreement") is made and entered into by and between the City of Palmdale (hereinafter called "CITY") and Harper & Burns, LLP (hereinafter called "FIRM"). This Contract shall become effective on the date of the last signatory.

WHEREAS, CITY and FIRM entered into an Agreement on February 1, 2023 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 3(A) shall be amended to increase the total amount of the Agreement by Two-Hundred and Twenty Thousand Dollars (\$220,000.00) not to exceed the sum of Three-Hundred and Twenty Thousand Dollars (\$320,000.00).

2. Section 7, Indemnity, is hereby amended to read, in full, as follows:

The Firm does hereby agree to and hold the City, and its elected and appointed officers and officials, employees, and other agents free and harmless of any claim, demand, or judgment that may arise based on personal injury to damage to property arising out of any negligent error or omission, or intentional misconduct by Firm regarding the performance of services hereunder.

Firm and each attorney of the Firm, and Firm contractees shall be due and allowed to utilize all statutory, common law, and other applicable defenses, immunities, and causes of action due to a City employee under the California Government Code, common/case law and any other applicable law, regulation, or policy for any claim(s), demand(s), or judgment(s) that may arise based on the Firm's or Firm's contractees' performance of services hereunder. Further, the designated city attorney, assistant city attorney and associates are designated as public officials, public officers, or City officials for all purposes relating to any such claim(s), demand(s), or judgment(s) against such individuals or the Firm.

Nothing in this Section shall obligate the City to provide a defense or indemnity to the Firm, its attorneys or Firm contractees for any claim(s), demand(s), or judgment(s) arising out of its/their negligence or intentional misconduct in the performance of services hereunder.

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

HARPER & BURNS, LLP

SIGNATURE AREA

Ronda Perez
City Manager

SIGNATURE AREA

SIGNATURE AREA

William P. Curley, III
Managing Partner

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

ADDRESS FOR NOTICE:
HARPER & BURNS, LLP
453 S. Glassell St.
Orange, CA 92866

APPROVE AS TO FORM:

SIGNATURE AREA

Matthew Silver, Esq.
Special Counsel

ATTEST:

SIGNATURE AREA

Roxanne Faber
Acting City Clerk

----- INTERNAL USE ONLY -----

- Certificate(s) and Endorsement(s) attached
- Confirmed business name on contract with certificate(s)
- Original contract and previous amendment(s) (if any) are attached
- Attached Agreement Checklist and met all requirements

**AGREEMENT NO. A-8232
LEGAL SPECIAL COUNSEL SERVICES
AND INTERIM CITY ATTORNEY SERVICES**

THIS AGREEMENT is made and entered into by and between the City of Palmdale, a charter city (hereinafter the "City"), and the law firm of Harper & Burns, LLP (hereinafter the "Firm") and shall be deemed dated and effective as of February 1, 2023.

WITNESSETH:

The parties hereto agree as follows:

SECTION 1. RECITALS. This Agreement is made and entered into with respect to the following facts:

- A. City desires to engage the Firm and, as primary lead attorney, William P. Curley III, and the Firm to act as legal counsel for the City in various capacities and to perform all legal services requested; and,
- B. The Firm has agreed to provide the requested legal services in the time, manner, and for the compensation as hereinafter set forth:

SECTION 2. LEGAL SERVICES. The Firm shall perform the following legal services for the City:

- A. The lead attorney is designated as William P. Curley III.
- B. Provide legal advice when requested by the City Council, City Manager, or the City Manager's designee, except when prevented from doing so by a legal conflict; and
- C. Represent the City in personnel and related civil litigation to which the City is a party at the direction of the City Council or City Manager. At the outset of each matter of litigation assigned by the City the Firm shall cause a written estimate litigation budget to be prepared and presented to the City Manager. The Firm and City Manager (or City Manager's designee) shall monitor the expenditures and provide updates to the City Council at regular intervals to be determined on a case-by-case basis; and
- D. The City Manager is hereby authorized to meet with the Firm to discuss service and performance levels at any time during this Agreement, and to bind the attorneys to items including, but not limited to, a schedule of standard response times to service requests for specialty projects, expert advice from third parties and any action necessary or desirable for the health, safety, and welfare of the City. In addition, the Firm shall maintain a list of pending work assignments and shall provide progress reports thereon to the City

Manager, as directed by the City Manager.

E. The City Council and the City Manager retain the right to direct those attorneys other than the Firm perform legal work for the City or any of its related entities. Unless otherwise agreed by the Parties, the Firm shall be the sole firm representing the City as to its assigned cases.

SECTION 3. COMPENSATION. The Firm shall be compensated by City for the performance of such services as follows:

A. Rates. The Firm shall be compensated, apart from reimbursable expenses, as set forth on "Attachment I "hereto, which is incorporated by this reference. All fees, charges, costs and reimbursable items for the term of the Agreement shall not exceed a maximum of \$100,000, commencing from the effective date of this Agreement.

B. Legal Services Provided by the Attorneys other than Designated Lead. The Firm shall be compensated for the performance of legal services in accordance with this Agreement, and particular this Section 3.

C. Reimbursable Expenses. The Firm shall be entitled to reimbursement for all reasonable and necessary expenses incurred by it in the performance of legal services hereto. Reimbursable expenses to which Firm shall be entitled shall include, but are not limited to, third party legal service legal experts, legal consultants, legal specialist, duplication costs; word processing costs; mileage, in amounts as authorized for other City officers or employees; extraordinary telephone and telecommunication costs; extraordinary mail costs; messenger services; and other costs customarily made as part of the performance of legal services by Firm.

SECTION 4. PAYMENT FOR SERVICES. The Firm shall submit monthly invoices to the City for all services provided and costs incurred pursuant to the terms of this Agreement. Said statements shall clearly set forth by date the type of work performed, the time spent on a task and the attorney performing the task. Payment to Firm shall be made by the City within thirty (30) days of receipt of the invoice, except for those specific items on the billing which are contested or questioned and returned by the City with written response to any invoice contested or questioned and further, upon a request of City, provide City with any and all documents related to the service or costs.

No charge shall be made for time expended in providing this information to the City.

SECTION 5. TERM. The term of this Agreement shall commence on February 1, 2023, and shall continue to the final conclusion of all assigned matters or the decision to terminate this Agreement by either party hereto. Firm may terminate this Agreement on the

giving of thirty (30) days written notice to the City of such determination. If such determination notice is given, the same shall be effective on the thirtieth (30th) day after the giving of such notice. Firm will comply with all obligations required of it pursuant to the State Bar Act in connection with such termination and the transition to replacement counsel. City, via the City Manager, may terminate this contract at will and without cause or prior notice, and that thereafter the City shall pay all compensation and reimbursement due through and including the effective date of such termination.

SECTION 6. NOTICES. Notices required pursuant to this Agreement shall be given by personal service upon the party to be notified, or by delivery of same to the custody of the United States Postal Service, or its lawful successor, postage prepared and addressed as follows:

CITY: City of Palmdale
38300 Sierra Highway
Palmdale, CA 93550
Atten: City Manager

FIRM: Harper & Burns LLP
453 S. Glassell Street
Orange, CA 92866
Atten: Managing Partner

Service or notice by personal service shall be deemed to have been given as of the date of such personal service. Notices given by deposit with the United States Postal Service shall be deemed to have been given two (2) consecutive calendar days following the deposit of the same in the custody of said Postal Service.

SECTION 7. INDEMNITY. The Firm does hereby agree to and hold the City, and its elected and appointed officers and officials, employees, and other agents free and harmless of any claim, demand, or judgment that may arise based upon personal injury or damage to property arising out of any negligent omission or intentional misconduct by Firm regarding the performance of services hereunder.

Firm and each attorney of the Firm, and Firm contractees shall be due and allowed to utilize all statutory, common law, and other applicable defenses, immunities, and causes of action due to a City employee under the California Government Code, common/case law and any other applicable law, regulation, or policy. Further, the designated city attorney, assistant city attorney and associates are designated as public officials, public officers, or City officials for all purposes.

SECTION 8. INSURANCE REQUIREMENTS. The Firm shall procure and maintain for the duration of the contract the following insurance:

A. Insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees and professional errors and omissions insurance providing not less than two million dollars (\$2,000,000) coverage. Firm shall maintain such coverage for no less than three years following the termination of this Agreement. 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 commercial general liability insurance in an amount not less than \$1,000,000 per occurrence with a \$2,000,000 aggregate.

D. The Firm will obtain and maintain in full force and effect a commercial automobile liability policy in an amount not less than \$1,000,000 including owned (if any), non-owned and hired automobile coverage.

E. 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. Such insurance shall name the city as an additional insured and shall include a waiver of subrogation.

SECTION 9. GENERAL PROVISIONS.

A. The Firm shall not assign this Agreement, or any of the rights, duties, or obligations hereunder. It is understood and acknowledged by the parties that Firm is uniquely qualified to perform the services of this Agreement.

B. In the event an instance of conflict of interest arises with another client, the Firm will protect the best interests of the City and will take all necessary actions, to resolve or eliminate the conflict situation. If the circumstance cannot be lawfully avoided or resolved, the Firm will undertake to recommend substitute counsel to protect the interests of the City.

C. The Firm is and shall always remain as to the City a wholly independent contractor serving as a public official. Neither the City nor any of its officers, employees, servants, or agents shall have control over the conduct of Firm or any of Firm's officers, employees, or agents. The Firm, shall not at any time or in any manner, represent that it or any of its officers, employees, or agents are in any manner employees of the City. City acknowledges and agrees that the Firm and the Firm lawyers will need to represent to others their capacity and relationship to the City and shall enjoy and apply all rights, powers, and privileges attendant thereto. In the performance of this Agreement, the Firm shall not engage in discrimination in employment of persons because of the age, race, color, sex, sexual orientation, national origin, caste or ancestry, or religion of such persons.

D. Nothing contained in this Agreement shall be deemed, construed, or represented

by the City or the Firm to any third person to create a relationship of principal or agent, or of a partnership, or of a joint venture, or any other association of any kind or nature between the City and the Firm.

E. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements or understandings, oral or written, are hereby merged herein. This Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed, and acknowledged by both of the parties hereto.

F. Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

G. Firm, and lawyers, paralegals, administrative and support staff shall report to and take assignments only from the City Manager or the City Manager's designee. Each signatory to this Agreement, by execution of this Agreement, represents and warrants that they have lawful authority to bind their respective parties to the terms herein.

H. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

SECTION 10. OWNERSHIP OF DOCUMENTS.

A. The Firm shall maintain complete and accurate records with respect to costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. The Firm shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Firm shall provide free access to the representatives of City and/or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files,

surveys, notes, and other documents prepared while providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Firm. With respect to computer files, the Firm shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

SECTION 11. LICENSES. At all times during the term of this Agreement, the Firm shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement, at its own sole cost and expense.

SECTION 12. GOVERNING LAW. The City and the Firm understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement.

SECTION 13. LITIGATION. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Palmdale, California. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for further relief granted.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their representatives as follows:

CITY OF PALMDALE:

RONDA PEREZ
Interim City Manager

HARPER & BURNS LLP:



WILLIAM P. CURLEY, III
Managing Partner

ATTEST:

ROXANNE FABER
Acting City Clerk

APPROVED AS TO FORM:

MATTHEW SILVER, ESQ.
Special Counsel

**ATTACHMENT
"1"**

Firm Partner Attorney	\$350.00 /hr.
Attorney- Senior Counsel	\$315.00/hr.
Attorney-Associates	\$285.00 /hr.
Paralegal	\$250.00 /hr.
Administrative Assistant	\$200.00 /hr.
Computer Services	Actual Cost.
Third-Party Legal Services/Legal Support/Experts	Actual Cost, plus 5% of total
Legal Interns / Law Clerks	\$90.00 /hr.
All Other Services	Actual Cost, plus 5% of total



City Council Staff Report

DATE: APRIL 19, 2023
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: CITY ATTORNEY'S OFFICE
DISTRICT: ALL
SUBJECT: APPROVE FIRST AMENDMENT TO LEGAL SERVICES AGREEMENT WITH JONES & MAYER TO INCREASE THE TOTAL AMOUNT OF THE AGREEMENT BY \$302,000 NOT TO EXCEED THE SUM OF \$402,000.

ISSUE

Approve First Amendment to Legal Services Agreement with Jones & Mayer to increase the total amount of the Agreement by \$302,000 not to exceed the sum of \$402,000.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve the First Amendment to Legal Services Agreement with Jones & Mayer to increase the total amount of the Agreement by \$302,000 not to exceed the sum of \$402,000;
2. Authorize the City Manager or her designee to execute the First Amendment with Jones & Mayer substantially in the same form as presented to the City Council.

BACKGROUND

Jones & Mayer has provided legal services to the City of Palmdale for more than a decade in areas of land use, litigation and general advisory services related to municipal law.

DISCUSSION

By extending the maximum contract amount by \$302,000, it will allow payment of past and future services rendered by Jones & Mayer. The First Amendment to the Legal Services Agreement will increase the not-to-exceed agreement amount by \$302,000 to \$402,000. Staff proposes that the City Council authorize the City Manager to execute the Amendment and allow Jones & Mayer 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 \$302,000, 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: 10114001-721100; 10114001-721140; 15014101-721150; 101-263512.

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, City Manager
Approved as to form:	William Curley III, Special Counsel

ATTACHMENTS

First Amendment with Jones & Mayer
Agreement with Jones & Mayer (A-7578)

**FIRST AMENDMENT TO AGREEMENT A-7578
BETWEEN THE CITY OF PALMDALE AND JONES & MAYER**

This First Amendment to Agreement No. A-7578 ("Agreement") is made and entered into by and between the City of Palmdale (hereinafter called "CITY") and Jones & Mayer (hereinafter called "FIRM"). This Contract shall become effective on the date of the last signatory.

WHEREAS, CITY and FIRM entered into an Agreement effective on July 15, 2021 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 Three-Hundred and Two Thousand Dollars (\$302,000.00) not to exceed the sum of Four-Hundred and Two Thousand Dollars (\$402,000).
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

JONES & MAYER

Ronda Perez
City Manager

Richard D. Jones, Esq.

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

APPROVE AS TO FORM:

William P. Curley, III
Interim City Attorney

ATTEST:

Roxanne Faber
Acting City Clerk

CITY OF PALMDALE
OFFICE OF THE
CITY CLERK

MEMORANDUM

Date: August 4, 2021
To: (Name & Title) Lisa Guastella, Office Assistant
From: (Name & Title) Allison Markey, Office Assistant II

AGREEMENT TITLE/SCOPE OR ☐ SEE ATTACHED DESCRIPTION LIST:

Jones & Mayer

✓ #8579

Agreement for Legal Services

Provide legal services related to the areas of land use, litigation, as well as general advisory services related to municipal law.

AGREEMENT NO.	A-7578	TERM	July 15, 2021 - July 2023 or until terminated
AMOUNT	NTE : \$100,000.00	SIGNED BY	☒ CM ☐ Mayor ☐ Other -

PLEASE NOTE THE FOLLOWING:

- ☒ One (1) Original to return to the other party.
☐ Original(s) to return to the other party(s).
☐ Original(s) to return to the other party(s) for signature. NOTE: The Original stamped "City Clerk Original" **must be returned** to this department after signed by other party.
☒ One (1) Copy sent to Purchasing.
☐ Other: _____

Additional Note(s) if any:

☐ **FORM 700 REQUIRED:** Based on the Financial Disclosure signed by City Attorney's office on behalf of the City Manager and/or under the Conflict of Interest section of the contract, a Statement of Economic Interest (Form 700) is required. Pursuant to Assistant City Attorney Doran, it is the department's responsibility to contact the Consultant and make sure a Form 700 is filed with the City Clerk within 30 days. Attached is a Form 700 for your convenience. This form may also be accessed on the Fair Political Practice Commission website at www.fppc.ca.gov. Failure to file the Form 700 may constitute a breach of contract by the consultant. In addition, filing penalties may be assessed when a statement is filed late pursuant to Government Code Section 91013.

If you have any questions regarding the processing of this agreement, please do not hesitate to contact the City Clerk's Office. Thank you.

Attachments

8/9/2021
m

**AGREEMENT FOR LEGAL SERVICES BETWEEN
THE CITY OF PALMDALE AND JONES & MAYER**

AGREEMENT NO. A-7578

This Legal Services Agreement ("Agreement") is made and entered into by and between the City of Palmdale ("City") and Jones & Mayer ("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 land use, litigation, 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 areas of land use, litigation, as well as general advisory services related to municipal 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.**

Scott Porter, 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 3777 North Harbor Boulevard, Fullerton, CA 92835.

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 **\$100,000.00**.

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 in accordance with its commercial arbitration rules.

6. **Term of the Agreement.**

This Agreement will take effect on July 15, 2021 and will remain in full force and effect for a period of two (2) 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 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

JONES & MAYER



J.J. Murphy ICMA-CM
City Manager



Richard D. Jones, Esq.

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 Rate \$235.00

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: APRIL 19, 2023
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
DISTRICT: 5
SUBJECT: NOTICE OF COMPLETION – ACCEPT PUBLIC IMPROVEMENTS
FOR CIRCLE K, LOCATED AT 3851 EAST PALMDALE BLVD.

ISSUE

Notice of Completion – Accept Public Improvements for Circle K, located at 3851 East Palmdale Blvd.

RECOMMENDATION

Staff recommends that the City Council:

1. Accept the completed public improvements for Circle K, located at 3851 East Palmdale Blvd.
2. Authorize the City Manager or her designee to file a Notice of Completion and release the security for the completed public improvements.

BACKGROUND

This project constructed street improvements on Palmdale Blvd. and 40th Street East. The public improvements have been installed per the approved construction plan, inspected, and approved by City Public Works inspection staff.

DISCUSSION

The required public improvements for the project listed in Exhibit “A” and shown in Exhibit “B” have been completed to the satisfaction of the City Engineer as required in the Subdivision/Development Improvement Agreement between the developer and the City. This council action will accept the public improvements as complete and will begin a one-year period, thereafter transferring maintenance responsibility of these improvements from the developer to the City of Palmdale. This council action will also initiate the City’s release of applicable securities posted for this project in accordance with the City’s subdivision regulations. This action is being taken pursuant to Section 16.110.060 of the City’s Municipal Code.

FISCAL IMPACT

The City's maintenance costs will incrementally increase as a result of acceptance of these improvements.

STRATEGIC PLAN

Goal III: Invest in infrastructure to improve community livability.

- C. Plan and maintain safe and attractive neighborhoods, streets, facilities, and public spaces.

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

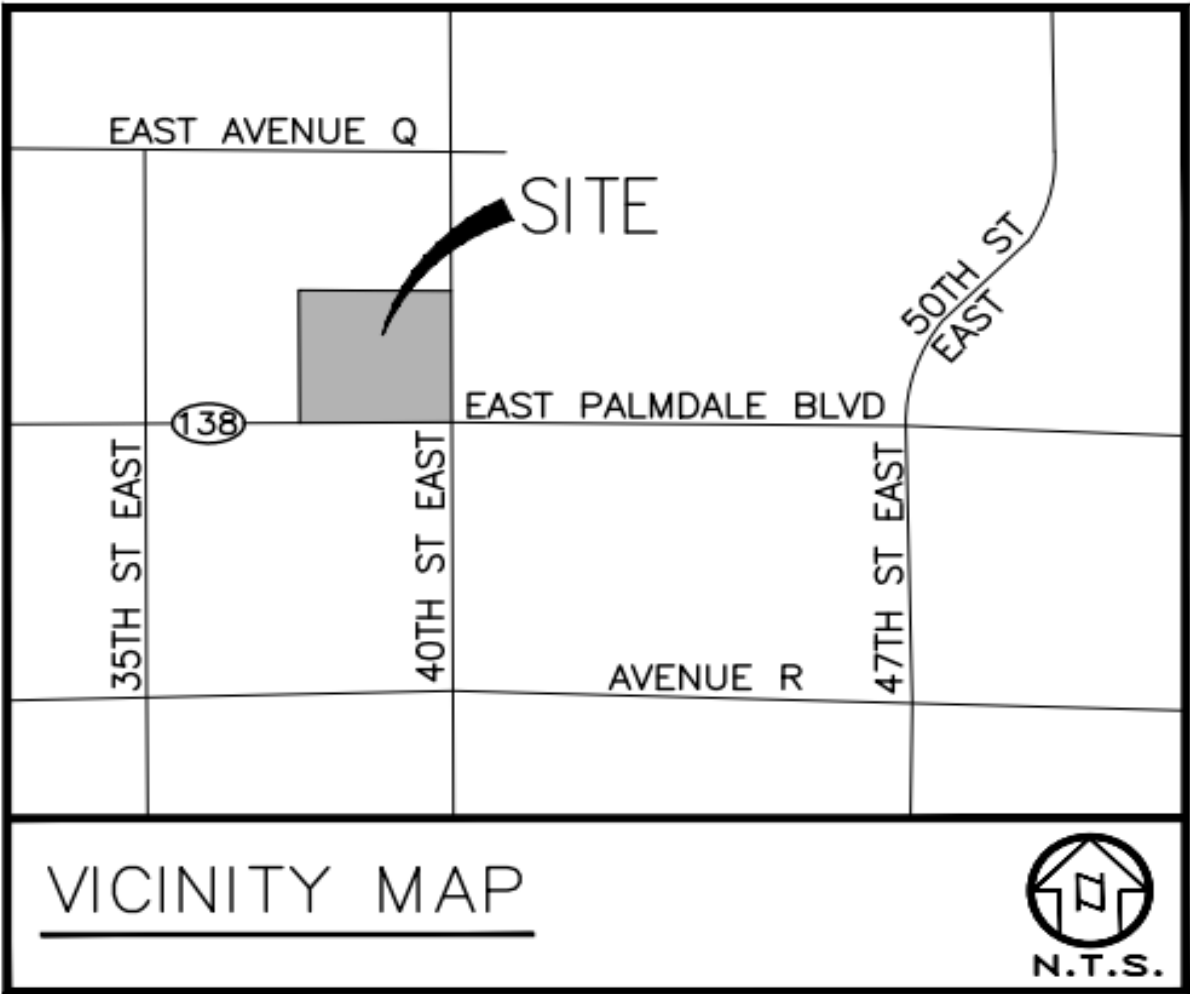
ATTACHMENTS

1. Exhibit A – List of Completed Public Improvements
2. Exhibit B – Site Map Location
3. Notice of Completion – Circle K Sewer and Drainage Improvements

EXHIBIT A
LIST OF COMPLETED PUBLIC IMPROVEMENTS

<u>Tract/Project</u>	<u>Plan #</u>	<u>Quantity</u>	<u>Security</u>
Circle K	PC 17-02	125 LF	\$39,600
Circle K	SD 16-15	2 Parkway Drains	\$133,400

EXHIBIT B
SITE MAP



RECORDING REQUESTED BY:

CITY OF PALMDALE

WHEN RECORDED MAIL TO:

**CITY OF PALMDALE
OFFICE OF THE CITY CLERK
38300 SIERRA HIGHWAY, SUITE C
PALMDALE, CA 93550**

Space above this line is for Recorder's Use

NOTICE OF COMPLETION

Notice pursuant to Civil Code Section 3093, is hereby given that:

1. The undersigned is owner or corporate officer of the interest or estate stated below in the property hereinafter described.
2. The full name of the owner is City of Palmdale, a Municipal Corporation.
3. The full address of the owner is 38300 Sierra Highway, Palmdale, CA 93550.
4. The nature of interest or estate of the owner is: **Sewer and Drainage Improvements-Circle K.**
5. A work of improvement on the property hereinafter described was completed on **March 08, 2023**
6. The work done was: **"Sewer and Drainage Improvements-Circle K",**
7. The name of the Contractor for such work of improvement: **Circle K Stores, Inc.**
8. The property on which said work of improvement was completed is in the City of Palmdale, County of Los Angeles, State of California, and is described as follows: **North of Palmdale Blvd. and 40th Street East.**
9. The address of said property is: **3851 East Palmdale Blvd.**

Dated: April 19, 2023

CITY OF PALMDALE

Guillermo I. Padilla, City Engineer

VERIFICATION

I, the undersigned, say: I am the City Engineer, the declarant of the foregoing notice of completion; I have read the said notice of completion and know the contents thereof; the same is true of my own knowledge. I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 19, 2023, in the City of Palmdale, California.

Guillermo I. Padilla, City Engineer



City Council Staff Report

DATE: APRIL 19, 2023
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: PUBLIC WORKS DEPARTMENT
MAINTENANCE DEPARTMENT
DISTRICT: ALL
SUBJECT: APPROVE ADDITIONAL FUNDS OF \$100,000 FOR PURCHASE ORDER NO. 20230000 WITH WALSMO OIL COMPANY, INC. FOR DIESEL & UNLEADED FUEL, MOTOR OIL, AND LUBRICANTS IN AN AMOUNT NOT TO EXCEED \$550,000.

ISSUE

Approve additional funds of \$100,000 for Purchase Order No. 20230000 with Walsma Oil Company, Inc. for diesel and unleaded fuel, motor oil, and lubricants in an amount not to exceed \$550,000.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve additional funds of \$100,000 for Purchase Order No. 20230000 with Walsma Oil Company, Inc. for Diesel & Unleaded Fuel, Motor Oil and Lubricants, in an amount not to exceed \$550,000.
2. Authorize the City Manager or her designee to authorize Purchase Order No. 20230000 with Walsma Oil Company, Inc. including non-substantive changes.

BACKGROUND

The City released Invitation for Bid No. 21-004-3300 on March 29, 2021, and awarded to Walsma Oil Company, Inc. at the June 1, 2021 City Council meeting. In Fiscal Year 2023, Purchase Order 2023000 was issued and approved by the City Council in the amount of \$450,000. As a result of inflationary pressure fuel prices have increased dramatically this fiscal year, resulting in a shortfall on the current purchase order. Staff is requesting an additional \$100,000, bringing PO 2023000 to a total amount of \$550,000.

DISCUSSION

Maintaining an on-site fueling station and bulk fuel deliveries are important for accessibility, product security, and best price economics. It is also advantageous in the event of emergency or disaster situations.

Report to Mayor and City Council

Re: Approve Additional Funds for Purchase Order No. 20230000 with Walsma Oil Company, Inc

April 19, 2023

Page 2

However, due to the continued demand and the drastic increase and volatility in fuel costs, additional funds are needed to cover the cost of fuel deliveries through the end of the fiscal year.

FISCAL IMPACT

Sufficient funds are budgeted in Fleet Maintenance Account 15433006-734100. Purchase Order amount for Diesel & Unleaded Fuel, Motor Oil, and Lubricants.

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:

Certified as to availability of Funds:

Approved by:

Approved as to form:

Lynn Glidden, Director of Public Works

Janelle Samson, Director of Finance

Ronda Perez, City Manager

William P. Curley, Interim City Attorney

ATTACHMENTS

1. Purchase Order No. 20230000 Walsma Oil Company, Inc.



CITY OF PALMDALE

Purchase Order

Page: 1 of: 1

PURCHASING DIVISION

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

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

Fiscal Code N
Revisions 007

Fiscal Period 01
Expiration Date 06/30/2023

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

Purchase Order # **20230000**

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

V
E
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R

WALSMA OIL CO INC
44141 N YUCCA AVE
PO BOX 17
LANCASTER, CA 93534
Fax: 661-723-0116

S
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ADAM DYER
PUBLIC WORKS/MAINTENANCE
39110 3RD ST EAST
PALMDALE, CA 93550
Email: ADYER@CITYOFFALMDALE.ORG
Phone: 661-267-5338

Vendor Phone Number		Vendor Fax Number	Requisition Number	Buyer		
661-945-4772 X200		661-723-0116	230000	Matthew Harris		
Date Ordered	Vendor Number	Date Required	Freight Method/Terms		Department/Location	
05/19/2022	4313		DESTINATION/NET 45		STREET MAINTENANCE	
Item#	Description/PartNo		QTY	Unit Price	Extended Price	
1	FUEL OIL, DIESEL The Above Purchase Order Number Must Appear On All Correspondence - Packing Sheets And Bills Of Lading MODIFIED: DIESEL & UNLEADED FUEL, MOTOR OIL AND LUBRICANTS THIS FY 2022-2023 BLANKET PURCHASE ORDER AS A RESULT OF IFB 21-004-3300 IS PENDING CITY COUNCIL APPROVAL JUNE 15, 2022. THE TERM IS ONE YEAR, COMMENCING JULY 1, 2022 WITH CITY RESERVING THE OPTION TO EXTEND THE CONTRACT FOR ONE (1) ADDITIONAL TERMS OF ONE YEAR. CHANGE ORDER IN THE AMOUNT OF \$100,000 FOR FY 2022-2023 BLANKET PURCHASE ORDER 20230000 PENDING CITY COUNCIL APPROVAL APRIL 19, 2023. 15433006 - 734100		1.0	DL \$550,000.00	\$550,000.00	
					\$550,000.00	



Partial Order



Purchase Order Complete

RECEIVING COPY

Sales Tax
Order Total

\$0.00
\$550,000.00

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, or 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.



City Council Staff Report

DATE: APRIL 19, 2023
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: PUBLIC WORKS DEPARTMENT
MAINTENANCE DIVISION
DISTRICT: ALL
SUBJECT: APPROVE PURCHASE ORDER NO. 20230495 WITH PLUMBER'S
DEPOT FOR ONE (1) NEW GAPVAX MC1510-3S4S COMBINATION
JET/VACUUM TRUCK IN AN AMOUNT NOT TO EXCEED \$604,992

ISSUE

Approve Purchase Order No. 20230495 with Plumber's Depot for one (1) new GapVax MC1510-3S4S Combination Jet/Vacuum Truck in an amount not to exceed \$604,992.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve Purchase Order No. 20230495 with Plumber's Depot for one (1) new GapVax MC1510-3S4S Combination Jet/Vacuum Truck, in an amount not to exceed \$604,992.
2. Authorize the City Manager or her designee to authorize Purchase Order No. 20230495 with Plumber's Depot, including non-substantive changes.

BACKGROUND

City Council approved the FY 2023 Mid-Year Budget Adjustments at the March 1, 2023, meeting. This included a budget adjustment for a second GapVax combination jet/vacuum truck for the Maintenance Division.

This new GapVax combination jet/vacuum truck will be an addition to the City's Fleet assigned to the Sewer Maintenance Department. Due to the California Air Resources Board's (CARB) new Clean Fleet Initiative, this vehicle may no longer be available after January 1, 2024, in California. Purchasing this vehicle ahead of this deadline will provide the needed time for the technology to improve and allow an equivalent unit to become available.

The City is utilizing cooperative pricing through Sourcewell Contract No. 101221-GPV with GapVax, Inc. for the purchase of this vehicle. The vehicle will be purchased from Plumber's Depot, who is the exclusive distributor of GapVax Combination Jet/Vacuum

Trucks for the lower region of California, including Southern California and the lower portions of Central California. The truck is currently available to pick up and should be operational within the next two months.

DISCUSSION

The new GapVax combination jet/vacuum truck will enable the Sewer Division to maintain two (2) independent cleaning crews to complete scheduled maintenance on the City's sewer system. Currently crews maintain around 750,000 linear feet (142 miles) of sewer mainlines per year and this purchase will allow the division to increase their annual production rates. Addition of this vehicle will also free up an existing hydro jetter which is used to prepare sewer lines for CCTV inspection and root abatement, thus increasing efficiency of both maintenance programs.

Staff recommends that the City Council Approve purchase order 20230495 with Plumber's Depot for a second GapVax MC1510-3S4S Combination Jet/Vacuum Truck in an amount not to exceed \$604,992.

FISCAL IMPACT

The purchase order amount for one (1) new GapVax MC1510-3S4S Combination Jet/Vacuum Truck for FY 2022-2023 will not exceed \$604,992. Sufficient funds are budgeted in Fleet Maintenance Account 15433006-774400.

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, City Manager
Approved as to form:	William P. Curley, Interim City Attorney

ATTACHMENTS

1. Purchase Order No. 20230495 Plumber's Depot
2. Sourcwell Contract No. 101221-GPV
3. Plumber's Depot Quote MC-1510-534 GapVax



CITY OF PALMDALE

Purchase Order

Page: 1 of: 1

PURCHASING DIVISION

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

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

Revisions 002

Expiration Date 06/30/2023

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

Purchase
Order #

20230495

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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PLUMBERS DEPOT INC
3921 W 139TH STREET
HAWTHORNE, CA 90250
Fax: 310 355-1711

S
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ADAM DYER
PUBLIC WORKS/MAINTENANCE
39110 3RD ST EAST
PALMDALE, CA 93550
Email: ADYER@CITYOFPALMDALE.ORG
Phone: 661-267-5338

Vendor Phone Number		Vendor Fax Number	Requisition Number	Buyer		
866-422-2156 X115		310 355-1711		Matthew Harris		
Date Ordered	Vendor Number	Date Required	Freight Method/Terms	Department/Location		
03/07/2023	3976		DESTINATION/NET 45	STREET MAINTENANCE		
Item#	Description/PartNo		QTY	UOM	Unit Price	Extended Price
	GAPVAX 2024 MC1510-3S4S COMBINATION JET/VAC The Above Purchase Order Number Must Appear On All Correspondence - Packing Sheets And Bills Of Lading					
1	2024 MC1510-3S4S COMBINATION JET/VAC QUOTE ID: MC-1510-534 SOURCEWELL CONTRACT NO. 101221-GPV PURCHASE ORDER 20230495 IS PENDING CITY COUNCIL'S APPROVAL ON APRIL 19, 2023.		1.0	DL	\$548,845.46	\$548,845.46
	15433006 - 774400					\$548,845.46
2	SALES TAX		1.0	DL	\$56,146.43	\$56,146.43
	15433006 - 774400					\$56,146.43

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

By: _____
Approved City Representative

VENDOR COPY

Sales Tax \$0.00
Order Total \$604,991.89

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.

**Solicitation Number: RFP #101221****CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and GapVax Inc., 575 Central Avenue, Johnstown, PA 15902 (Supplier).

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

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

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires November 29, 2025, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.
- C. **SURVIVAL OF TERMS.** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above.

Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

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

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

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

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

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

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

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be

returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

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

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

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

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

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

4. PRODUCT AND PRICING CHANGE REQUESTS

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

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;

- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

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

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

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

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

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

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

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell

contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

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

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

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

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

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

7. CUSTOMER SERVICE

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

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

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

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcewell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

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

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

The Supplier will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased

by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

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

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

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

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

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

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

B. **ASSIGNMENT.** Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

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

D. **WAIVER.** Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

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

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

12. GOVERNMENT DATA PRACTICES

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

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:
 - a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.
 - b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.
2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers,

resellers, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. *Use; Quality Control.*

- a. Neither party may alter the other party's trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.
- b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's trademarks only in good faith and in a dignified manner consistent with such party's use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. As applicable, Supplier agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Supplier in violation of applicable patent or copyright laws.

5. **Termination.** Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

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

C. **MARKETING.** Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

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

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

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

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

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

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

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

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

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

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

18. INSURANCE

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

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

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

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

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

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

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for Products-Completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms

no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

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

4. *Umbrella Insurance*. During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Network Security and Privacy Liability Insurance*. During the term of this Contract, Supplier will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Supplier's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

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

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

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

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is

primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. **WAIVER OF SUBROGATION.** Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

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

19. COMPLIANCE

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

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

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

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

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

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

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier’s Equipment, Products, or Services with United States federal funds.

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

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

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

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

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

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names

of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

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

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

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

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

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation

and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier not use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by an Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

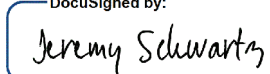
S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

22. CANCELLATION

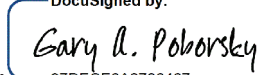
Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's Proposal. Cancellation of this Contract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

Sourcewell

DocuSigned by:

By: C0FD2A139D06489...

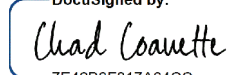
Jeremy Schwartz
Title: Chief Procurement Officer
Date: 11/23/2021 | 8:50 PM CST

GapVax Inc.

DocuSigned by:

By: 97DECE6A2796467...

Gary A. Poborsky
Title: President
Date: 12/20/2021 | 11:24 AM CST

Approved:

DocuSigned by:

By: 7E42B8F817A64CC...

Chad Coauette
Title: Executive Director/CEO
Date: 12/20/2021 | 11:25 AM CST

RFP 101221 - Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies

Vendor Details

Company Name: GapVax Inc
Address: 575 Central Ave.
Johnstown, PA 15902
Contact: Matt Hughes
Email: mhughes@gapvax.com
Phone: 814-535-6766 357
Fax: 814-539-3617
HST#: 25-1633228

Submission Details

Created On: Wednesday September 01, 2021 09:42:15
Submitted On: Tuesday October 12, 2021 14:06:26
Submitted By: Matt Hughes
Email: mhughes@gapvax.com
Transaction #: 8fa7ef9f-d273-42c6-9d49-164f2c639801
Submitter's IP Address: 207.255.5.150

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	GapVax Inc.
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	There are no subsidiary entities.
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	There are no assumed names or DBA names.
4	Proposer Physical Address:	GapVax Inc. 575 Central Avenue Johnstown, PA 15902
5	Proposer website address (or addresses):	www.gapvax.com
6	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Gary A. Poborsky President GapVax Inc. 575 Central Ave. Johnstown, PA 15902 gary@gapvax.com M 814-242-4140
7	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Matt Hughes Senior Vice President, Sales GapVax Inc. 575 Central Ave. Johnstown, PA 15902 mhughes@gapvax.com M 814-322-7724
8	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Betty Smith Vice President, Administration GapVax Inc. 575 Central Ave. Johnstown, PA 15902 betty@gapvax.com 814-535-6766 x322

Table 2: Company Information and Financial Strength

Line Item	Question	Response *
9	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	GapVax Inc. can trace its history back to one of the worst natural disasters in Pennsylvania's history. The Johnstown Flood of 1977 resulted from 11 ½ inches of rain falling in 10 hours and the failure of 6 area dams, pouring 128 million gallons of water into the small steel town. Not long after the devastating flood, a soon-to-be entrepreneur named Gary Poborsky sprang into action. He quit his job, purchased a used septic pumper truck, and went to work in his hometown helping clean flooded factories and churches, cleaning storm and sanitary sewers, and assisting with other clean-up work within Johnstown's residential and industrial community. Gary's modest venture eventually became GAP Pollution & Environmental Control, Inc. Through tireless effort and unwavering support from his wife Rose, Gary turned his one-truck start-up into an entire fleet of industrial vacuum and municipal sewer cleaning trucks. To this day, GAP Pollution & Environmental Control is an industry leader offering wet/dry vacuuming, hydro excavation, and sewer cleaning throughout North America. Several years after starting their service business, Gary and Rose were so frustrated with maintenance issues and costly downtime associated with the products they were purchasing, they decided to try their hand at building a better mousetrap. As a result, in 1989, the first GapVax vacuum truck was introduced to the market. By 1994, GapVax Inc. was a full-fledged corporation. Since its inception, Gary has operated GapVax with this business philosophy: We will design and build the highest quality hydro excavation and sewer cleaning equipment that requires the least maintenance costs and the lowest long-term ownership cost. As Gary and Rose approach their 45th year in business, they remind their employees, dealers, vendors, and family members that every company will succeed if they focus on the people -- not just our valued employees and customers, but the people in our community -- just like Gary did after the Johnstown flood. So as we continue to grow into new markets and develop new products, we do so with the corporate mission of "Being good stewards of the communities where we work, live, and play."

10	What are your company's expectations in the event of an award?	We expect current and future Sourcewell members to purchase GapVax products to add industry-leading equipment to their fleet and achieve their goals of safely exposing and cleaning underground utilities, storm sewers, and sanitary sewers. Our ever-growing dealer network stands ready to support Sourcewell members with a standard of excellence that aligns with our corporate mission. By doing so, we expect to create new relationships with Sourcewell members and grow our government and education market share.
11	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Please see the GapVax Financial Information file that has been uploaded as part of our proposal.
12	What is your US market share for the solutions that you are proposing?	As a privately held, family-owned business, GapVax considers our market data confidential. However, we are very proud of the growth we've experienced since our first Sourcewell contract in 2018 and feel this is vital information to share. Before 2017, we manufactured between 60 to 90 machines a year and were at maximum capacity due to facility constraints. To help with our goal of continued growth, we completed two major capital expansion projects, one in 2017 and another in 2020. This investment gained a total of 160,000 sq. ft. of additional manufacturing space. As a result, our sales increased an average of 17.3% each year from 2017 to 2020. We attribute this growth to two main factors: 1) The sales acceleration from our initial Sourcewell contract award, and 2) The manufacturing space added to support the increased sales.
13	What is your Canadian market share for the solutions that you are proposing?	As a privately held, family-owned business, GapVax considers our market data confidential. However, we are very proud of the growth we've experienced since our first Sourcewell contract in 2018 and feel this is vital information to share. Before 2017, we manufactured between 60 to 90 machines a year and were at maximum capacity due to facility constraints. To help with our goal of continued growth, we completed two major capital expansion projects, one in 2017 and another in 2020. This investment gained a total of 160,000 sq. ft. of additional manufacturing space. As a result, our sales increased an average of 17.3% each year from 2017 to 2020. We attribute this growth to two main factors: 1) The sales acceleration from our initial Sourcewell contract award, and 2) The manufacturing space added to support the increased sales.
14	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No, GapVax Inc. never petitioned for bankruptcy.
15	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	b) GapVax Inc. is the manufacturer of GapVax branded equipment. Our dealers are independently owned and operated, not owned by GapVax Inc. The dealers handle most of the sales process, including equipment demonstrations, quotation, fulfillment, and all service work associated with GapVax products.
16	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	The Commonwealth of Pennsylvania licenses GapVax Inc. as a "VEHICLE MANUFACTURER" and a "VEHICLE DEALER." In addition, our Pennsylvania-based sales force has "VEHICLE REPRESENTATIVE" licenses also issued by the Commonwealth of Pennsylvania. Other licenses include State Sales Tax License, Business Privilege License, Pennsylvania State Vehicle Inspection License, State of Texas Converters License, State of Texas Vehicle Dealer License, Florida Manufacturer License, Louisiana Converter License, Kentucky Motor Vehicle Component License, National Association of Trailer Manufacturers Certificate of Compliance, and a Minnesota Workforce Certificate of Compliance. GapVax Inc. is registered with the Secretary of State in each state that is required.
17	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	GapVax Inc. has no Suspension or Disbarment notices to report.

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *	
18	Describe any relevant industry awards or recognition that your company has received in the past five years	2021 - Ralph Macchio Lifetime Achievement Award - The pumping industry's highest honor was awarded this year during the WEQ Fair in York, Pennsylvania, recognizing Gary Poborsky, owner of GapVax, for his 44 years of dedication and commitment to the industry. This award epitomizes the saying, "The best compliment any professional can receive is praise from another within their discipline." More information can be found at https://www.plumbermag.com/how-to-articles/gapvax-weq-fair-inc/macchio-achievement-award-to-be-presented-at-upcoming-weq-fair 2016 - Gary & Rose Poborsky, Cambria Regional Chamber of Commerce Business Hall of Fame Inductees - The Cambria Regional Chamber of Commerce, and Junior Achievement of Western Pennsylvania sponsor an annual award ceremony to celebrate the lives of extraordinary leaders whose achievements have enhanced the cultural, civic and economic growth of our region. The following link is the video submitted for their induction ceremony https://youtu.be/5plz7v45LsU	*
19	What percentage of your sales are to the governmental sector in the past three years	Our percentage of sales in the last three years to the government sector is: 2018 = 34% 2019 = 28% 2020 = 44% Average 35%	*
20	What percentage of your sales are to the education sector in the past three years	GapVax Inc. chooses to combine the education sector into government sales. Our percentage of sales in the last three years to the government sector is: 2018 = 34% 2019 = 28% 2020 = 44% Average 35%	*
21	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	Please see our GapVax Cooperative Purchasing Contract list that has been uploaded as part of our proposal.	*
22	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	GapVax Inc. does not currently hold a GSA Contract. However, we have a dealer that holds a GSA multiple award schedule that we utilize.	*

Table 4: References/Testimonials

Line Item 23. Supply reference information from three customers who are eligible to be Sourcwell participating entities.

Entity Name *	Contact Name *	Phone Number *	
City of Ventura	Frank Palmer	805-652-4573	*
City of Santa Ana	Edwin Sosa	714-472-7106	*
Santa Margarita Water District	Bill Webster	949-289-3327	*
Cape May County MUA	John Reardon Jr.	609-465-3968	*

Table 5: Top Five Government or Education Customers

Line Item 24. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
City in TX	Government	Texas - TX	Sewer Cleaner, Hydro-Excavation	Avg \$338,350.00	\$1,015,054.00	*
County in CA	Government	California - CA	Sewer Cleaner	Avg \$316,962.00	\$950,888.00	*
State Transportation Agency, PA	Government	Pennsylvania - PA	Sewer Cleaner	Avg \$306,000.00	\$918,005.00	*
City in OH	Government	Ohio - OH	Sewer Cleaner	Avg \$290,248.00	\$870,745.00	*
City in KY	Government	Kentucky - KY	Hydro-Excavation	Avg \$244,730.00	\$489,461.00	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcwell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *	
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25	Sales force.	The GapVax sales team relies heavily on government markets to achieve corporate sales goals. Our teams consist of 6 Regional Sales Managers that oversee 22 Municipal Government dealers and two Federal Government dealers in the North American market. The Regional Sales Managers (RSM) go through an extensive factory training program that includes a minimum of 30-days on the shop floor, shadowing various disciplines. They spend most of their time working with the Quality Control team learning deep-dive inspection techniques that include testing, verification, adjustment, validation, test drives, and standard field repairs. Our customers and dealers value our rigorous internal training program and often refer to our RSM's as the most knowledgeable Subject Matter Experts in the industry. After training, the RSM's are deployed into the government sector to develop relationships with city, county, and state fleet managers, sewer, water, and wastewater department heads, and customers in the federal and educational markets. The RSM's also work with GapVax dealers to provide product training and a greater understanding of the Sourcewell sales process. The GapVax dealer is ultimately responsible for promoting and supporting the GapVax products they sell. In reference to the potential Sourcewell Sewer, Vacuum, Hydro-Excavation Equipment contract, the RSM's would promote the contract to state and local government officials who either do not have their own state purchasing contract or have limited products in their existing state contracts. If awarded, the RSM's will promote these resources to their dealers and partners throughout North America: 1) Sourcewell Sales Accelerator Seminar 2) Sourcewell University 3) Sourcewell New & Reclaimed Participating Agency Update	*
26	Dealer network or other distribution methods.	GapVax dealers are known for their dedication to providing best-in-class sales and customer service. Our ever-growing dealer network stands ready to support Sourcewell members with a standard of excellence that aligns with our corporate mission of "Being good stewards of the communities where we work, live, and play." GapVax dealers are privately-owned companies that are the link between GapVax and the end-user. Our dealers' sales managers oversee a team of representatives responsible for selling and marketing in their exclusive territories. In addition, each dealer is required to stock replacement parts and provide in-house and (or) on-site service and repair. GapVax dealer Tina and Cory McDonough of One.7 in Ravensdale, WA, are excellent examples of "Being good stewards of the communities where we work, live, and play." Their tireless pursuit of cancer awareness led them to start the Valley Girls & Guys foundation. Their once-small endeavor has grown into a thriving community service organization in the pacific northwest. More information on their public service can be found at: https://www.1point7.com/breast-cancer-awareness-wa-ca-az-nv-ak-nj-ut--three-day and https://valleygirlsandguys.org/ Having 22 GapVax dealer locations across North America, the likelihood of each of them establishing a thriving non-profit charity is not realistic, but that doesn't stop us from promoting the success of Cory and Tina McDonough and using community service as criteria for evaluating dealer success. For a complete list of Dealers, please reference the attached file GAPVAX DEALER AND SERVICE MAP. For more information on our dealer One.7 please see file GAPVAX MEET THE DEALER - ONE7	*
27	Service force.	In addition to two factory-owned service centers, one in Pennsylvania and the other outside of Houston, TX, GapVax uses channel partners as our service force to provide service, repair, and warranty support to our end-user customers. Our government sales sector has 22 dealers in the United States and Canada to meet the vast needs of Sourcewell members. We also utilize 16 factory-authorized service and repair facilities to offer added support outside our dealer network. The independently owned facilities provide in-house and (or) on-site service, repair, warranty, and equipment rental. Often our service force will act as a "force-multiplier" by identifying additional sales opportunities while providing first class service, repair, and warranty. For a complete list of service providers, please reference the attached file GAPVAX DEALER AND SERVICE MAP.	*
28	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	Sourcewell members will follow our Dealer-to-Government order process. The order process begins with the GapVax quote document. It is available on our web-based GapVax dealer portal and updated as needed. The dealer will download the current document revision and work with the Sourcewell member to develop a quotation that best suits their needs. Next, the finalized quotation is sent to GapVax Inc for engineering review. After engineering's final approval, the quote is logged into our document control system, awaiting the purchase order. Finally, the Sourcewell member or GapVax dealer is notified of engineering approval and submits the purchase order to the GapVax Regional Sales Manager for processing, noting the Sourcewell contract number on the PO. After the product is built, the dealer or GapVax Inc. will coordinate the delivery to the Sourcewell member. Upon final acceptance of the product, GapVax Inc., at its discretion, can invoice the Sourcewell member directly or elect to have the dealer invoice them (referencing the Sourcewell contract number.) Having all PO's sent to our Regional Sales Managers ensures the orders are correctly entered and monitored for accurate quarterly reporting.	*

29	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	Unless the Sourcewell member is within the geographic parameters of our two factory-direct service centers, the support of GapVax equipment occurs at our nationwide dealer network or our 16 factory-authorized service, warranty, and repair centers. The preferred method for scheduling warranty, service, or repair is to call ahead. Some locations offer drive-in service, and some provide field service capabilities that allow service work at the customer's site. Our directive is to respond within 24 hours of the customer's initial contact. Turnaround time is based on the scope of work required for the repair or service. The corporate office has trained service representatives on-call 24 hours a day, seven days a week, to support the customer, dealer, or service centers. While the post-sale customer service ultimately falls to the dealer or service network, the around-the-clock support offered by GapVax to our service and repair technicians ensures each member receives a consistent customer experience. When appropriate, customer service issues are elevated to the Regional Sales Managers, General Manager of Warranty and Service, Vice President of Sales, and, if necessary, the company President for resolution. For a complete list of dealers and service centers, please reference the attached file GAPVAX DEALER AND SERVICE MAP.	*
30	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	As described in some of the earlier questions, the GapVax government sales team utilizes 6 Regional Sales Managers that oversee 22 Municipal Government dealers and two Federal Government dealers. GapVax will promote the awarded Sourcewell contract to all current and future members of the government and educational sectors across North America. GapVax also utilizes factory-authorized service and repair facilities to offer added support outside our dealer network. Often our service force will act as a "force-multiplier" by identifying additional sales opportunities while providing first class service, repair, and warranty.	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	As described in some of the earlier questions, the GapVax government sales team utilizes 6 Regional Sales Managers that oversee 22 Municipal Government dealers and two Federal Government dealers. GapVax will promote the awarded Sourcewell contract to all current and future members of the government and educational sectors across North America. Pre-pandemic, GapVax was negotiating with dealers in Canada to promote the Canoe Procurement Group, a Sourcewell partner in Canada. Unfortunately, international travel restrictions have temporarily sidelined the project. However, we fully intend to move forward with this plan and look forward to improving our coverage in Canada.	*
32	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	GapVax will promote the use of the awarded Sourcewell contract to all current and future members in the United States, including Alaska and Hawaii, and Canada.	*
33	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	GapVax will promote the use of the awarded Sourcewell contract to all current and future members in all participating entity sectors.	*
34	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	GapVax will serve all current and future Sourcewell members and market segments in Hawaii, Alaska, US Territories, and Canada. Factory freight will be calculated at quoting and will be included on the quote to the Sourcewell member.	*

Table 7: Marketing Plan

Line Item	Question	Response *
35	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	GapVax will market the proposed Sourcewell contract through: a) Marketing staff and dedicated budget for marketing material and collateral items b) Internal and external staff communicating with government, end-users, and dealers c) Marketing campaigns using print media, digital media, online display ads, online and print buyers guides, e-blasts, e-newsletter, and social media (samples uploaded) d) Training of GapVax staff and dealers at annual dealer meeting, regional dealer meetings, corporate open house, and GapVax dealer's open house e) Maintaining a robust GapVax presence at tradeshow and association events such as WWETT, APWA Regional Shows, CWEA, WJTA, WEQ, Utility Expo, PA Safety Days, Tri State Seminar, NASTT No-Dig Show, TWUA, and TML, etc. f) Continued GapVax dealer network expansion g) GapVax dealer-only portal to access government sales tools such as the Sourcewell Contract, explanation of benefits, product offering and who to contact with quoting or ordering questions. h) GapVax.com public website to access Sourcewell Contract video and general description of cooperative purchasing advantages. Visit www.gapvax.com/purchasing i) Marketing material and literature with product offerings to include Sourcewell logos and contract numbers (samples uploaded)
36	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	GapVax Inc's marketing department, Regional Sales Managers, dealers, and partner contributors will continue to use social media platforms, including Facebook, Instagram, LinkedIn, TikTok, and Twitter, to build brand awareness, display customer affinity, communicate best-in-class value, and drive leads to our channel partners who sell and support our products locally. In addition, we will utilize Digital Media, Online Display Ads, E-Blasts, E-newsletters, and other digital communications to deliver our message to Sourcewell members. For a sample of our digital communications, please reference the attached file GAPVAX E-NEWSLETTER SAMPLE.
37	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	Our view of Sourcewell's role in promoting contracts from this RFP includes a broad-coverage PR event announcing the contract award. Additionally, for optimum coverage, Sourcewell should issue individual news releases to each contract holder so they can distribute them through their PR channels. The integration of Sourcewell into our sales process is an ongoing activity that currently exists today. Sourcewell plays a key role in supporting our Regional Sales Managers in their pursuit of capturing new Sourcewell members, supporting existing Sourcewell members, and continuously educating our dealer network. If awarded, we will include the following tools in our plan: 1) Sourcewell Sales Accelerator Seminar 2) Sourcewell University 3) Sourcewell New & Reclaimed Participating Agency Update Further, we will invite our Sourcewell Contract Administrator to present Sourcewell's advantages at our annual dealer meeting, regional dealer meetings, and corporate open house.
38	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	GapVax products are currently not available through e-procurement for government and education customers. However, we expect technology to advance to the degree that e-procurement platforms will one day easily adapt to our customer's procurement systems and have the capacity to configure very complex equipment combinations. When it comes to GapVax equipment, there are thousands of equipment configurations that could potentially overwhelm the end-user without the aid of a knowledgeable GapVax dealer. For the most part, government agencies still feel that working directly with the dealer will ensure they're getting equipment that best suits their needs.

Table 8: Value-Added Attributes

Line Item	Question	Response *
39	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	A large portion of our government sales occurs through our dealer network. These dealers are independent business owners and offer varying degrees of training. The minimum training included with purchase is one day on-site. However, most dealers provide an additional day of classroom training. Sourcewell members needing phone support can call GapVax 24 hours a day. Calls received after standard business hours are answered by an answering service. The answering service will contact an "on-call" GapVax employee to help attend to any pressing customer needs. GapVax also offers in-depth factory training at a reasonable cost to the end-user. This training takes place in our newly expanded training department at GapVax's Headquarters in Johnstown, PA. The dates vary year by year. Topics include the following: - Operator Basic Maintenance - Operator Basic Troubleshooting - Mechanic Basic Maintenance - Mechanic Basic Troubleshooting When necessary, this training can be provided at the end-user's location. Please see the file GAPVAX TRAINING ANNOUNCEMENT for information on our newly expanded training department.

40	Describe any technological advances that your proposed products or services offer.	GapVax's most advanced technological offering is based on the "less is more" concept. Today's agencies are constantly pushed to save water. Seeing this as the wave of the future, GapVax partnered with German-based manufacturer Wiedemann Enviro-Tec, the inventors of water recycling technology for sewer cleaning equipment, to bring the GapVax Recycle JetVac to North America. Our Recycle JetVac is the only sewer cleaning recycling truck on the market that does not use mechanical filter screens or disposable filter cartridges as part of the water cleaning system. Instead, by using Wiedemann's tried-and-true "sedimentation system" for recycling the collected water, operators can work without interruptions from filter cleaning or filter failure from grease, sand or clay. As a result, pipe cleaning that once took several hours and wasted countless gallons of water can now be accomplished fast and efficiently. New to the GapVax product line is our VHX hydro excavator. Much like our GapVax HV, the most significant difference of the VHX is its ability to haul payload over the road legally. For example, government agencies can now legally move 15,000 pounds of wet or dry excavation spoils in states that strictly adhere to federal bridge laws. This ultra-light solution, combined with onboard weight scale technology, allows the operator to achieve maximum legal payload, reduce inefficiency from transporting partial loads, and ensures over-the-road safety by eliminating dangerously overweight loads.	*
41	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	By following our corporate mission of "Being good stewards of the communities where we work, live, and play," our decision to utilize brownfield sites for our expansion plan was an easy one. According to the Johnstown Redevelopment Authority, "Cleaning up and reinvesting in brownfields increases the local tax base, facilitates job growth, utilizes existing infrastructure, takes development pressures off of undeveloped open land, and improves and protects the environment. Brownfield redevelopment is particularly critical in Johnstown because of the city's unique geography as a landlocked municipality. Adaptive reuse of Johnstown's limited available sites prevents urban sprawl and the destruction of one of Pennsylvania's biggest assets, its natural landscape." By one estimate, for every one acre of redeveloped brownfields, we save 4.5 acres of open space! Our capital expansion projects, one in 2017 and the other in 2020, reused turn-of-the-century steel mill buildings that were in disrepair, converting them into state-of-the-art manufacturing facilities encompassing 160,000 sq. ft. Several green initiatives, starting from the ground up, were considered when planning these projects. We designed our shop floors with radiant heat fed by high-efficiency 95% AFUE boilers that use significantly less energy than traditional methods. Radiant heat is also more efficient and requires less energy during winter, especially in manufacturing environments that utilize large overhead doors to reposition trucks. Any Pennsylvania trout fisherman will tell you the role that cool, clean water plays in the life cycle of our once-prolific State Fish, the native Brook trout. When choosing our roofing material, GapVax considered the impact of water runoff temperature and its harmful effect on the historic Stonycreek River that runs behind our facility. Using light-colored roofing material creates less heat; less heat means cooler water outflow from rainfall captured on our factory roofs. The Stonycreek, a once-damaged river that fell victim to decades of coal mining, steel making, and logging, is now making a comeback. In a report published by the Somerset Conservation District, the impact of public and private conservation initiatives are starting to pay off. "The comeback of water quality in the Stonycreek River watershed is one of Pennsylvania's greatest conservation success stories. The effort has taken nearly two decades, millions of dollars, and untold numbers of hours from professionals and volunteers alike to restore significant portions of the 486 square mile watershed. The public-private partnerships established to accomplish the task stand as a testament to innovation and determination in the broad field of resource conservation." Other efforts include a plant-wide use of energy-efficient LED lighting, a 4 million dollar investment in a high efficiency, state-of-the-art paint system designed to reduce VOC emissions, a computer-controlled paint mixing system that reduces waste by mixing precise quantities of paint, converting outdated cranes from inefficient DC power to highly efficient AC power, and a closed-loop water system designed to capture and reuse water in our QC test bays.	*
42	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	All GapVax products offered will be compliant with the EPA (Environmental Protection Agency) Tier 4 requirements and CARB (California Air Resource Board), including products offered on clean-burning CNG (compressed natural gas) as an alternative to diesel engines.	*
43	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	GapVax does not qualify as a WMBE, SBE, or veteran-owned business. However, most of our distributor/dealer partners are designated Small Businesses. Our support of Woman/Minority-owned business is evident in our partnership with Anna Johnson from AQUIP LLC. AQUIP was founded in October of 2018 and is the first and only known independently female-owned vacuum truck and environmental products dealership in the United States. You can learn more about AQUIP at https://www.aquipco.com/about Gary And Rose Poborsky founded GapVax Inc as an equal business partnership. Though the legal definition of Woman-Owned does not apply, Rose has played an active role in GapVax's success and will continue to guide our organization into the future. For more information on dealer AQUIP, please see the attached file GAPVAX MEET THE DEALER - AQUIP	*
44	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	Our most unique attribute that will appeal to Sourcewell members is that our ownership structure is now and always has been a family-owned business. We are also proud to promote that GapVax employees have partial ownership of the company through our ESOP program. This program incentivizes our employees to have a "customer-first" mentality while doing their jobs. Unlike most of our competition, GapVax is not owned and managed by an equity group or publicly traded company. This unique position allows us to change direction quickly based on our customer's needs. This flexibility, combined with our passionate pursuit of "Being good stewards of the communities where we work, live, and play," is how we've continued to grow in a highly competitive space. These beliefs may get overlooked at companies with absentee investors or a board of directors who have a "bottom line first" mentality when making decisions about customers and employees.	*

Table 9A: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
45	Do your warranties cover all products, parts, and labor?	Yes, our warranty covers all the products we are proposing within the specified warranty period. Warranty coverage on GapVax products sold through our dealers includes parts and labor (or partial labor in some circumstances.) In addition, optional extended warranties are available to meet the needs of current and future Sourcewell members. For a sample of our warranty policy, please reference the attached file GAPVAX WARRANTY.	*
46	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	The standard municipal equipment warranty covers the equipment for one year. Optional extended warranties are available to meet the needs of current and future Sourcewell members. The limited warranty does not cover chassis components, defects due to misuse, abuse, and neglect, nor does it supersede the warranty of an original component manufacturer.	*
47	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Warranty on GapVax products sold through our dealers covers parts and labor or partial labor, depending on the claim. The labor and travel reimbursement varies from dealer to dealer.	*
48	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	Certain areas of North America do not have dealer coverage. These areas function as factory-direct regions. In these regions, parts associated with warranty claims are covered, but labor is not. There are certain instances that GapVax will dispatch a factory technician to a customer's site. GapVax evaluates each instance on a case-by-case basis. For a complete list of dealers and service centers, please reference the attached file GAPVAX DEALER AND SERVICE MAP.	*
49	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	The standard municipal equipment warranty covers the equipment for one year. The limited warranty does not supersede the warranty of an original component manufacturer. Note: all items offered in response to this RFP will be covered by the warranty of GapVax Inc.	*
50	What are your proposed exchange and return programs and policies?	To date, no exchanges or returns have occurred on GapVax products ordered from a government entity. However, if the situation arises, GapVax Inc. will work with the customer and dealer on a case-by-case basis. We intend to provide the customer with the best-in-class value that is synonymous with GapVax products. In the event that a new and unused GapVax is shipped and delivered to a Sourcewell member and it is found that the unit does not meet the customer's intent, and the unit was quoted and ordered per the Sourcewell member's request or quote, GapVax Inc. may initiate up to a 30% restocking fee on the new and unused unit to cover additional transportation and costs associated with reselling the unit.	*
51	Describe any service contract options for the items included in your proposal.	GapVax dealers and service partners offer a variety of maintenance programs depending on the need of the Sourcewell member. Plans range from preventive maintenance contracts, full-service maintenance and repair contracts, or customer-specific service intervals based on the region of operation. Dealers and service partners provide pricing for these programs on a local level. Therefore, GapVax Inc. is not including service contract options with our proposal.	*

Table 9B: Performance Standards or Guarantees

Describe in detail your performance standards or guarantees, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your performance materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
52	Describe any performance standards or guarantees that apply to your services	GapVax Inc is offering manufactured goods only. Therefore, no services are being quoted in this RFP, and service performance standards and guarantees do not apply.	*
53	Describe any service standards or guarantees that apply to your services (policies, metrics, KPIs, etc.)	GapVax Inc is offering manufactured goods only. Therefore, no services are being quoted in this RFP, and service performance standards and guarantees do not apply.	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
54	Describe your payment terms and accepted payment methods?	GapVax Inc's payment terms are NET 30 with authorized municipal, government, or dealer purchase orders. We accept bank checks, ACH, and wire transfers.	*
55	Describe any leasing or financing options available for use by educational or governmental entities.	GapVax Inc. does not directly finance or lease equipment; we utilize third-party finance companies to assist our customers with their financing needs. When a finance need arises with a Sourcewell member, we try to partner with Sourcewell contract holders like NCL Government Capital.	*
56	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	The GapVax quote document is the beginning of the purchase process for a Sourcewell member. Document revision control is facilitated through the GapVax dealer portal, which is password protected for dealer-only access. The GapVax dealer portal ensures that the dealer presents the Sourcewell member with the most up-to-date quote version and avoids rejection due to an out-of-date document. To begin the quotation, the dealer selects the "Yes box" next to the question asking if the purchase occurs through Sourcewell. By selecting yes, the custom program populates the Sourcewell contract number on the cover page and automatically chooses the Sourcewell discounted price column, ensuring the Sourcewell member receives the preferred pricing promised. From there, the quotation process is relatively simple, and the Sourcewell member has a bonafide, binding, quote document in a matter of minutes. In addition, the opportunity for human error is significantly reduced because the custom-programmed quote document has unique identifiers alerting the GapVax Regional Sales Manager and accounting team to invoice and report all Sourcewell contract sales accurately. For a sample of our quote document, please reference the attached file GAPVAX QUOTE DOCUMENT.	*
57	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	GapVax Inc. currently does not accept the P-card procurement and payment process.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *	
58	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	The GapVax Inc. pricing model is ceiling based with Sourcewell members receiving a percentage discount off of MSRP for each product category. For a complete price list, please reference the attached file GAPVAX SOURCEWELL PRICE LIST.	*
59	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	The percentage of discount for Sourcewell members is 2% off MSRP. In addition, GapVax dealers understand that the Sourcewell contract is ceiling price based and may offer additional discounts throughout the contract's life.	*
60	Describe any quantity or volume discounts or rebate programs that you offer.	GapVax dealers understand that the Sourcewell contract is ceiling price based and may offer additional discounts based on unit quantity.	*
61	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	GapVax will utilize open market pricing for the chassis portion of our equipment. The chassis is a sourced good that we will offer at Invoice + 3%. GapVax will also consider customization requests by Sourcewell members as open market or sourced goods negotiated between the GapVax dealer and Sourcewell member.	*
62	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	Outside of the chassis cost (as identified in question #61 regarding sourced goods), the other cost not included in the price list is delivery. Factory freight to the Sourcewell member is known at quoting and will be listed on their quote. Government agency requirements vary significantly from one agency to the next, as do the costs associated with these requirements. As a result, GapVax dealers may be required to offer pre-delivery inspections, on-site training, extended warranties, and service and repair contracts, which will be priced to the Sourcewell member at the time of quoting.	*
63	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	Freight costs from the factory to customers in the contiguous United States and adjoining Canadian provinces will be itemized on the quote and paid by the customer. GapVax may charge up to \$4.00 per loaded mile to deliver the equipment. The dealer decides if the product will ship directly to the customer or the dealer's location. The dealer will be responsible for making contact with the customer to arrange final delivery and start-up training. Exceptions to this delivery fee are GapVax units built on truck chassis powered by CNG (compressed natural gas.) They require unique transportation methods and will be quoted at the time of the proposal.	*
64	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	When deliveries are made to Alaska, Hawaii, Canadian territories, or offshore, the customer is responsible for the freight costs. GapVax Inc. and the customer will review these charges at the time of quoting. It is common for GapVax to work with the customer and utilize any specific delivery methods that work best for them.	*
65	Describe any unique distribution and/or delivery methods or options offered in your proposal.	Other than the delivery methods mentioned in #63 and #64, if a unique delivery situation exists that is better overall for the Sourcewell member, GapVax will work closely with them to attain the best possible solution.	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
66	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	Pricing offered in response to this Sourcewell RFP is similar or is better than some pricing offered to other cooperative procurement organizations or state purchasing departments. In addition, our discount structure offered will allow for best value, more flexibility, and volume discount considerations provided through our dealers because of the ceiling-based pricing.

Table 13: Audit and Administrative Fee

Line Item	Question	Response *	
67	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	GapVax will be paying Sourcewell directly for all administrative fees associated with this contract. Pricing and discounts will be loaded into the GapVax quote document as detailed in our response to question #56. This document is controlled on a password-protected website known as the GapVax Dealer Portal. Dealers are required to submit all orders using the quote document they download from the dealer portal. Submitted orders will be verified against the customer's PO and processed by the GapVax Regional Sales Manager to ensure consistency and process compliance. Opportunity for error is significantly reduced because the custom-programmed quote document includes unique identifiers that alert the GapVax Regional Sales Manager, the order management team, and the accounting team that the order is through the Sourcewell contract, which ultimately triggers quarterly reporting and remittance activity. For a sample of the quote document mentioned above, please reference the attached file GAPVAX QUOTE DOCUMENT	*
68	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	As with most businesses, GapVax projects its yearly sales forecast at the beginning of our fiscal year. This forecast includes a Government sales budget listed by month and quarter. The executive team reviews our sales budgets monthly, including sales through our cooperative purchasing contracts. A few examples of KPI's used to measure success are "quote to close ratio," "government sales budget vs. actual" and "Sourcewell sales budget vs. actual." We also review our dealers every year and evaluate them on their use of cooperative purchasing contracts.	*
69	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	If we are awarded a contract, GapVax will pay Sourcewell a 2% administrative fee for facilitating, managing, and promoting the Sourcewell Contract.	*

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *
70	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	Unlike many cookie cutter-type manufacturers, GapVax Inc. is known as a customer-focused builder of industrial and municipal equipment. We pride ourselves in our ability to address a customer's needs and create a solution (that's often customized) to meet those needs. The following products were born from a passionate pursuit of building equipment "the way we'd want it" if we were the customer: The GapVax MC is a combination vacuum and sewer flushing machine designed to wash and remove debris from sewer drains. With a wide variety of sizes available, this is an ideal candidate for any size municipality, water and sewer district, or government agency that is cleaning storm drains, catch basins, and sewers. GapVax offers truck-mounted configuration available on a single-axle and a double-axle chassis. The single-axle gives you the choice of a 4-8 cubic yard debris body and a water tank capacity of 500-1,200 gallons. The Double Axle MC ranges from 8-13 cubic yards, and water tank sizes up to 2,000 gallons. In addition, our custom-configured units allow for various arrangements not currently available through our competition. GapVax VHE hydro excavators use non-destructive pressurized water combined with an industrial-strength vacuum to safely expose buried utilities or excavate near objects easily damaged by traditional mechanical digging. The operator directs the pressure stream to the ground to break up the soil, positions the vacuum hose at the excavation area, and conveys the loosened soil into the debris body through the vacuum hose. The hydro excavation process results in safe, fast, precise excavations that require less backfill and site restoration, and has less environmental impact than traditional excavation techniques. This system is ideal for any size municipality, water and sewer district, public or private utility, or contractor that needs to locate buried objects or safely excavate around underground utilities. The GapVax HV is a "next level" hydro excavator compared to the VHE. The HV series is a true wet and dry unit that offers high-pressure water and compressed air for excavating. The use of compressed air is becoming more common for unearthing buried utilities. Unlike water, compressed air does not increase the waste stream, and the excavated soil can be quickly backfilled into the same hole. However, unlike wet-only units, a very stringent filtration system is required to protect the truck's vacuum pump when vacuuming dry product. The HV uses cyclone and baghouse technology to provides ultimate vacuum pump protection. New to the GapVax product line is our VHX hydro excavator. Much like our GapVax HV, the most significant difference of the VHX is its ability to haul payload over the road legally. For example, government agencies can now legally move 15,000 pounds of wet or dry excavation spoils in states that strictly adhere to federal bridge laws. The GapVax GJET is a truck-mounted high-pressure water Jet designed to remove sand, dirt, grease, detergents, and materials typically found in sanitary and storm drain pipes. The GJET's single-engine design uses the chassis engine to power all functions. The hydraulically powered water pump pressurizes the onboard water supply and conveys the water into the sewer through a high-pressure hose. The hose is spooled in and out by a hydraulically powered hose reel mounted on the truck's front. The GJET's efficient design surpasses competitive units that utilize multiple engines by reducing weight, fuel costs, emissions, and maintenance costs. Our G7 is a trailer-mounted version of our GJET. It has a distinct non-cdl weight advantage over truck-mounted jetters, making it an ideal pipe cleaning solution for government agencies that struggle to find drivers with a commercial driver's license. Its compact design is an added benefit for tight, hard-to-reach areas. GapVax's most advanced technological offering is based on the "less is more" concept. Today's agencies are constantly pushed to save water. Seeing this as the wave of the future, GapVax partnered with German-based manufacturer Wiedemann Enviro-Tec, the inventors of water recycling technology for sewer cleaning equipment, to bring the GapVax Recycle JetVac to North America. Our Recycle JetVac is the only sewer cleaning recycling truck on the market that does not use mechanical filter screens or disposable filter cartridges as part of the water cleaning system. Instead, by using Wiedemann's tried-and-true "sedimentation system" for recycling the collected water, operators can work without interruptions from filter cleaning or filter failure from grease, sand or clay. As a result, pipe cleaning that once took several hours and wasted countless gallons of water, can now be accomplished fast and efficiently.
71	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	"RFP 101221 - Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies" accurately describes the products GapVax Inc. is offering. Therefore, no subcategories are needed for our submission.

Table 14B: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments	
72	Sewer vacuums or combination sewer cleaners	☒ Yes ☐ No	GapVax MC JetVac GapVax Recycle JetVac Please reference the attached file GAPVAX SOURCEWELL LITERATURE	*
73	Hydro or air excavation equipment	☒ Yes ☐ No	GapVax VHE, Hydro Excavation GapVax VHX, Hydro/Air Excavation GapVax HV, Hydro/Air Excavation Please reference the attached file GAPVAX SOURCEWELL LITERATURE	*
74	Jetters and rodders	☒ Yes ☐ No	GapVax GJET Jetter Truck GapVax G7 Jetter Trailer Please reference the attached file GAPVAX SOURCEWELL LITERATURE	*
75	Dewatering, mud, trash, and centrifugal pumps	☐ Yes ☒ No	Not applicable to GapVax Inc. product offerings.	*
76	Pumps used in lift stations, sewage treatment, water treatment, or water collection facilities	☐ Yes ☒ No	Not applicable to GapVax Inc. product offerings.	*
77	Accessories, supplies and replacement or wear parts related to the offerings above.	☐ Yes ☒ No	Accessories, supplies and replacement or wear parts related to the offerings above will be supplied at the local level through GapVax dealers and service centers and are not included in this RFP.	

Table 15: Industry Specific Questions

Line Item	Question	Response *
78	Describe any product or equipment features that improve operator safety.	Several improvements have been made to GapVax models that improve operator's safety. These items include: 1) Standard chassis requirements to include additional entry grab handles, wider entry steps, and a two-speed or viscous engine fan drive to reduce noise in the cab and at the front operator station. 2) MC Front hose reel operation to include remote hose reel in/out options, front reel power articulation upgrade, remote or cab controls for front reel articulation upgrade, new and improved autowinder mounting for increased ground clearance, and hose tracking, and a new digital footage counter with very accurate hose measurement 3) New vacuum pump mounting and noise reduction silencers, mid-ship gearbox mounting, and ergonomic controls. 4) More accessible operator daily checks with ground-level cyclone and filter cleanouts, ground-level remote lubrication manifolds, and options for auto lube systems for the vacuum module, chassis, or both. 5) Camera system options to include single to quad-camera packages and new mounting positions to reduce/eliminate blind spots. 6) Simplified systems engagement, disengagement, console layout, and operational features with the GapVax G2 logic control system. 7) Improved wireless control systems, including charging stations, spare transmitters, and failsafe interlocks. Also, the new wireless transmitter safety features include LED indicators, feedback displays, integrated remote body dump options, remote body wash-out options, and remote water flow/pressure control options. 8) Better HX Water systems to include new hydraulically driven packages, new mounting arrangements to enclose all moving parts and reduce hoses, reduce the number of operation valves, and the development of a new multi-flow HX water system that is integrated with the new wireless remote system. 9) LED lighting options to illuminate perimeter work areas, operation controls, dumping / clean out areas, and SAE or CA Title 13 compliant beacon lights, directional lights, and flashers. 10) Ergonomic storage boxes, changing over to swing forward doors where possible in place of fold-down doors. In addition, pump enclosures now have an option to upgrade to a roll-up style door to keep the open door out of the operator work area. 11) Enhanced connectivity of the electrical controls with improved sunlight, oil, and abrasion-resistant engineered cord sets and over-molded, weather-tight electrical connectors. 12) New and improved hydraulic hose, water hose, electrical cord, and control wire routing and clipping on the frame and body. Also, a new hydraulic hose and wire support has been developed for the rear-mounted loading boom. 13) Improved operator manuals by customizing each manual to the system controls of each exact unit. 14) Air-actuated MC body safety prop that is safely engaged and disengaged at a safe distance from an elevated collector body 15) Rear-mounted MC float shut-offs eliminating the operator's need to enter the tank
79	Describe any product or equipment innovations that increase uptime and operator productivity.	GapVax's most advanced technological offering is based on the "less is more" concept. Today's agencies are constantly pushed to save water. Seeing this as the wave of the future, GapVax partnered with German-based manufacturer Wiedemann Enviro-Tec, the inventors of water recycling technology for sewer cleaning equipment, to bring the GapVax Recycle JetVac to North America. Our Recycle JetVac is the only sewer cleaning recycling truck on the market that does not use mechanical filter screens or disposable filter cartridges as part of the water cleaning system. Instead, by using Wiedemann's tried-and-true "sedimentation system" for recycling the collected water, operators can work without interruptions from filter clogging or filter failure from grease, sand or clay. As a result, pipe cleaning that once took several hours and wasted countless gallons of water can now be accomplished fast and efficiently. New to the GapVax 2021 product line is our VHX hydro excavator. Much like our GapVax HV, the most significant difference of the VHX is its ability to haul payload over the road legally. For example, government agencies can now legally move 15,000 pounds of wet or dry excavation spoils in states that strictly adhere to federal bridge laws. This ultra-light solution, combined with onboard weight scale technology, allows the operator to achieve maximum legal payload, reduce inefficiency from transporting partial loads, and ensures over-the-road safety by eliminating dangerously overweight loads.

Table 16: Exceptions to Terms, Conditions, or Specifications Form

Line Item 80. NOTICE: To identify any exception, or to request any modification, to the Sourcwell template Contract terms, conditions, or specifications, a Proposer must submit the exception or requested modification on the **Exceptions to Terms, Conditions, or Specifications Form** immediately below. The contract section, the specific text addressed by the exception or requested modification, and the proposed modification must be identified in detail. Proposer's exceptions and proposed modifications are subject to review and approval of Sourcwell and will not automatically be included in the contract.

Contract Section	Term, Condition, or Specification	Exception or Proposed Modification
N/A	N/A	N/A

Documents

Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
 2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.
 3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.
 4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."
- [Pricing](#) - GAPVAX SOURCEWELL PRICE 2022.xlsx - Tuesday October 12, 2021 12:51:15
 - [Financial Strength and Stability](#) - GAPVAX FINANCIAL INFORMATION AND COOPERATIVE PURCHASING CONTRACT LIST.zip - Thursday October 07, 2021 12:37:04
 - [Marketing Plan/Samples](#) - GAPVAX SOURCEWELL MARKETING.zip - Thursday October 07, 2021 17:31:10
 - [WMBE/MBE/SBE or Related Certificates](#) - GAPVAX LITERATURE.zip - Tuesday October 12, 2021 14:02:44
 - [Warranty Information](#) - GAPVAX WARRANTY.pdf - Thursday October 07, 2021 12:19:03
 - [Standard Transaction Document Samples](#) - GAPVAX QUOTE DOCUMENT.pdf - Thursday October 07, 2021 12:19:45
 - [Upload Additional Document](#) - GAPVAX DEALER AND SERVICE MAP -TRAINING.zip - Thursday October 07, 2021 17:31:50

Addenda, Terms and Conditions**PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE**

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
 1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
 2. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or
 3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☒ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Gary Poborsky, President, GapVax Inc.

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

☒ Yes ☐ No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_3_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Thu September 30 2021 03:29 PM	☒	2
Addendum_2_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Fri September 10 2021 02:40 PM	☒	2
Addendum_1_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Thu August 26 2021 05:40 PM	☒	1

SOURCEWELL CONTRACT NO. 101221-GPV



PREPARED BY

Plumber's Depot 1-18-2023

PREPARED FOR

Adam Dyer
City of Palmdale

QUOTE

GapVax[®]



QUOTE ID
MC-1510-534

PRICING FROM
1/5/2023



2024 MC1510-3S4S COMBINATION JET/VAC

QUOTE ID: MC-1510-534

March 7, 2023

NOTE: THE GAPVAX VHE UNIT MAY EXCEED FEDERAL BRIDGE ALLOWABLE WEIGHTS WHEN LOADED WITH WATER, OR DEBRIS, AND/OR BOTH WATER AND DEBRIS COMBINED. PLEASE CONSULT FACTORY.

	OPTION DESCRIPTION	NOTES	QTY
CHA001	WESTERN STAR 4700SF 6X4 - 455 HP - 66,000 LB. GVWR - AUTO	MODEL YEAR 2022	1
STD	10 USABLE YARD DEBRIS TANK MADE OF 3/16" ASTM A-572 GRADE 50 EXTEN STEEL		STANDARD
STD	FULL-OPENING REAR TAILGATE		STANDARD
STD	STAINLESS STEEL TAILGATE SEALING ROD		STANDARD
STD	FOUR HYDRAULIC REAR DOOR LOCKS		STANDARD
STD	DUAL TAILGATE LIFT CYLINDERS		STANDARD
STD	THREE TIE-OFF ANCHORS ON TOP OF BODY		STANDARD
STD	FIVE YEAR WARRANTY ON DEBRIS TANK AGAINST RUST THROUGH, DISTORTION AND CRACKS		STANDARD
STD	THREE TIE-OFF ANCHORS ON TOP OF THE BODY 6' APART		STANDARD
A1B	STAINLESS DEBRIS BODY FLUSH OUT SYSTEM		1
A2C	DRAIN AT BOTTOM OF TAILGATE - 6" BRASS KNIFE VALVE WITH PNEUMATIC ACTUATOR	VALVE IS NOT 100% LEAK PROOF	1
A3-CS	FLOAT TYPE LIQUID LEVEL INDICATOR ON SIDE OF DEBRIS TANK		1
A5	TRASH PUMP - STANLEY 3" 450 GPM WITH LAY-FLAT HOSE AND CAM-LOC FITTINGS	NOT RECOMMENDED FOR CONTINUOUS USE	1
A12A	FILTER SCREEN FOR DRAIN VALVE (LONG BOX)	REQUIRES A2	1
A17	UPGRADE TO STAINLESS STEEL DEBRIS TANK		1
A20	UPGRADE TO 1/4" DEBRIS TANK		1
A21	CURBSIDE LADDER TO PORT INSPECTION AREA		1
A18	PURGE VALVE AT GRAVITY DRAIN (1-1/4" BALL VALVE)		1
A22A	GALVANIZED BOLT ON TAILGATE SPLASH SHIELDS		1
STD	1500 GALLON WATER TANK MADE OF 3/16" 304 STAINLESS STEEL		STANDARD
STD	4" HIGH ANTI-SIPHON RING WITH (4) 2-1/2" HOLES		STANDARD
STD	WATER TANK LEVEL SIGHT TUBE ON CURBSIDE		STANDARD
STD	DRAIN VALVE AT BOTTOM OF WATER TANK		STANDARD
STD	3" FILL LINE WITH 2-1/2" FIRE HOSE CONNECTION CURBSIDE		STANDARD
STD	3" WATER STRAINER WITH STAINLESS STEEL SCREEN ON WATER TANK FILL LINE		STANDARD
STD	3" SUPPLY LINE TO WATER PUMP MOUNTED AT REAR HINGE PIN		STANDARD
STD	FIVE YEAR WARRANTY ON WATER TANK AGAINST RUST THROUGH, DISTORTION AND CRACKS		STANDARD
B10	ADDITIONAL 3" FILTER BETWEEN TANK AND PUMP (3" Y-STRAINER)	NOT COMPATIBLE WITH J14	1
B23A	GALVANIZED BAFFLES IN THE WATER TANK		1
B30	UPGRADE TO BUTTERFLY VALVE IN 3" SUPPLY LINE		STANDARD
STD	DUAL STAINLESS STEEL SHUTOFF FLOAT BALLS		STANDARD
STD	NOISE & VIBRATION DAMPENING MOUNTS		STANDARD
STD	STAINLESS STEEL VEE-WIRE SAFETY SCREEN		STANDARD

STD	6" SAFETY VACUUM RELIEF	STANDARD
STD	PANIC SWITCH FUNCTION FOR VACUUM	STANDARD
C17	UPGRADE TO HIBON 840 XL VACUUM PUMP 4,000 CFM AND 27" HG	REQUIRES A20 1
STD	TRI-PLEX WATER PUMP SYSTEM	STANDARD
STD	800 PSI WASHDOWN CIRCUIT WITH 50' X 1/2" HOSE	STANDARD
STD	AIR PURGE SYSTEM FOR PRIMARY CIRCUIT	STANDARD
STD	LOW POINT DRAIN VALVES ON WATER LINES	STANDARD
STD	SET WASHDOWN CIRCUIT TO FULL WORKING PRESSURE	1
D3A	GIANT GP8000 SERIES WATER PUMP RATED 80 GPM @ 2,500 PSI	1
D7A	50' X 1/2" HAND GUN REEL FOR WASHDOWN CIRCUIT	1
STD	8" FRONT MOUNTED TELESCOPING BOOM WITH 26' REACH AND 180 DEG. ROTATION	STANDARD
STD	180 DEGREE POWER ROTATION VIA WORM DRIVE	STANDARD
STD	DUAL 4" LIFT CYLINDERS	STANDARD
STD	CAB PROTECTION RACK	STANDARD
E6	REMOTE LUBE FOR BOOM LIFT AND ROTATION	1
STD	FRONT FRAME MOUNTED HOSE REEL WITH 180 DEGREE ARTICULATION	STANDARD
STD	HOSE REEL RATED FOR 800' OF HOSE AND 4,000 PSI	STANDARD
STD	EXTERIOR HOSE EXPANSION RIBS	STANDARD
F1A	FOOTAGE COUNTER ON SIDE OF SPOOL	1
F6	UPGRADE FRONT HOSE REEL TO POWER ARTICULATE VIA HYDRAULICS	1
F11	AUTOMATIC HOSE LEVEL WINDER (INCLUDES "J-HOOK" STLYE HOSE GUIDE)	1
STD	CAB-MOUNTED AIR SHIFT CONTROLS FOR BLOWER, HYDRAULICS, AND WATER PUMP	STANDARD
STD	CONTROL PANEL MOUNTED AT FRONT HOSE REEL	STANDARD
STD	OPERATOR CONTROL PANEL INCLUDES GUAGES FOR ENGINE, HYDRAULICS, VACUUM, AND WATER PUMP	STANDARD
STD	PANIC SWITCH TO RELIEVE WATER PRESSURE AND VACUUM	STANDARD
STD	30' PENDANT REMOTE WITH BOOM FUNCTIONS	STANDARD
G2E	G2E CONTROL SYSTEM WITH PV780 DISPLAY INCLUDES:	1
	LOW WATER SHUTDOWN PROTECTION	1
	HIGH WATER TEMPERATURE SHUTDOWN PROTECTION	1
	ENGINE OVERSPEED PROTECTION	1
	ON-SCREEN DIAGNOSTICS FOR WATER, PTO AND ENGINE LEVELS	1
	TEMPERATURE AND PRESSURE LEVELS FOR VACUUM, WATER, HYDRAULICS	1
	PROVISION FOR INCLUDING DIGITAL FOOTAGE COUNTER ON SCREEN	F1C NOT INCLUDED 1
	E-STOP FOR WATER VACUUM AND HYDRAULICS	1
	TRANSMISSION CONTROL FOR SHIFTING OUTSIDE OF THE CAB	1
	OMNEX TD1140 WIRELESS SYSTEM WITH INTEGRAL 50' PENDANT INCLUDES:	1
	HOSE SPOOL IN/OUT WITH SPEED CONTROL	1
	FRONT HOSE REEL WATER ON/OFF, PRESSURE ON/OFF	1
G4	HIGH DEBRIS LEVEL LIGHT & ALARM	REQUIRES A3 1
STD	TRUCK-LITE LED RUNNING (MARKER) LIGHTS	STANDARD
STD	LED STOP/TAIL/TURN LIGHT WITH POLISHED STAINLESS STEEL BOXES	STANDARD

H5B	(2) BOOM WORK LIGHTS - HELLA LED WORK LIGHTS (PN: LHT022429)	1
H6B	(2) REAR WORK LIGHTS - HELLA LED WORK LIGHTS (PN: LHT022429)	1
H7BA	(2) SIDE WORK LIGHTS - HELLA LED WORK LIGHTS (PN: LHT022429) (1 PER SIDE)	1
H15C	WHELEN ION SUPER LED FLASHERS - 8 LIGHT HEADS	1
	2 ON EACH SIDE FRONT @ 90 DEGREES, 2 ON EACH SIDE REAR	1
H22	REAR ARROW LIGHT - LOW PROFILE LED ARROW STICK	1
H39B	TWO HIGH INTENSITY LED WORK LIGHTS (HELLA PB1500) ON FRONT HOSE REEL TO SHINE INTO MANHOLE	1
STD	25' FIRE HOSE BASKET	STANDARD
I6E-CS	ALUMINUM, 36" WIDE X 24" TALL X 24" DEEP, MOUNTED ON THE CURBSIDE	1
I7B-CS	36" TOOL BOX - ALUMINUM, 36" WIDE X 24" TALL X 24" DEEP, MOUNTED ON THE CURBSIDE	1
I14	TRAFFIC CONE HOLDER ON DRIVER'S SIDE	1
I14C	TRAFFIC CONE HOLDER ON CURBSIDE	1
I22	UPGRADE TUBE TRAYS TO POLISHED STAINLESS STEEL	1
I26B	TWO BUMPER TOOL BOXES - ALUMINUM, 16" HIGH X 12" WIDE X 18" DEEP WITH FOLD DOWN DOOR	1
STD	DOT LIGHTING / FENDERS / MUD FLAPS / TAILGATE SAFETY PROP, ICC LIGHTS	STANDARD
STD	REMOTE ACTUATED BODY SAFETY PROP	STANDARD
STD	70 GALLONS AW-46 HYDRAULIC OIL, LEVEL/TEMPERATURE GAUGE, SHUTOFF ON SUCTION	STANDARD
STD	REAR BUMPER, TRIANGLE KIT, FIRE EXTINGUISHER, BACKUP ALARM	STANDARD
STD	ALLISON 10-BOLT PTO UPGRADE	STANDARD
STD	PAINTED WITH PPG URETHANE PAINT	STANDARD
STD	PAINT BODY WHITE	STANDARD
STD	PAINT FRAME AND PARTS BLACK	STANDARD
STD	PAINT HOSE REEL AND BOOM BLACK	STANDARD
STD	FLEET FINISH	STANDARD
STD	25 FEET OF VACUUM TUBING (5) AND CLAMPS	STANDARD
STD	TIGER TAIL HOSE GUIDE	STANDARD
STD	TWO BLUE STAR SEWER CLEANING NOZZLES	STANDARD
M3	FILL HOSE 25' X 2 1/2"	1
M5C	LEADER HOSE 25' X 1"	1
M9H	1" PIRANHA SEWER HOSE - 3,000 PSI X 800 FT PLASTIC (BLUE) (PN: CAT022382)	1
M29D	FOUR CAMERA - BACK-UP CAMERA SYSTEM WITH 9" COLOR MONITOR - INCLUDES FRONT, REAR, AND SIDES. SIDES TO ACTIVATE WITH TURN SIGNALS - (1) TV-905 A, (1)	1
**	2022 MODEL YEAR CHASSIS Serial # MC-1510-534	1



PRICING SUMMARY

PRICE OF BASE UNIT WITH OPTIONS

\$ 548,845.46

DELIVERY

ESTIMATED SUBTOTAL:

\$ 548,845.46

SALES TAX

\$ 56,146.43

TOTAL PRICE (PER UNIT)

\$ 604,991.89

DUE TO EXTREME MARKET VOLATILITY AND PENDING U.S. GOVERNMENT SECTION 232 TRADE CASES ALL PRICES AND AVAILABILITY ARE SUBJECT TO CHANGE WITHOUT NOTICE, ALL QUOTES TO BE CONFIRMED AT TIME OF ORDER

*** FOB DESTINATION *** TERMS - NET, 15% DOWN ***

SIGNATURE

DATE

Please return a signed copy to betty@gapvax.com

QUOTE ID

MC-1510-534

PRICING FROM

6/17/2020

GapVax Incorporated

Terms and Conditions of Sale

1. **ORDERS.** All orders are subject to acceptance by an officer of GapVax Inc. Orders for products not regularly carried in stock or requiring special engineering or manufacture are in every case subject to approval by an officer of GapVax.
2. **PERFORMANCE.** GapVax Inc. shall not be liable for failure to complete the contract in accordance with its terms if failure is due to wars, strikes, fires, floods, accidents, delays in transportation or other causes beyond its reasonable control.
3. **EXPERIMENTAL WORK.** Work performed at customer's request such as sketches, drawings, design, testing, fabrication and materials shall be charged at current rates.
4. **SKETCHES, ENGINEERING DRAWINGS, MODELS** and all preparatory work created or furnished by GapVax Inc. shall remain its exclusive property; and no use of same shall be made, nor may ideas obtained therefrom be used, except with the consent of and on terms acceptable to GapVax Inc.
5. **CANCELLATION.** Orders regularly entered cannot be canceled except upon terms that will compensate GapVax Inc. for any loss or damage sustained.
6. **SHIPMENT.** All proposals are based on continuous and uninterrupted delivery of the order upon completion, unless specifications distinctly state otherwise. In the event that agreement is reached for GapVax Inc. to store completed items, they will be immediately invoiced to the customer and become due and payable. Storage shall be at the risk of the customer and GapVax Inc. shall be liable only for ordinary care of the property.
7. **CUSTOMER'S PROPERTY.** GapVax Inc. shall charge the customer at current rates, for handling and storing customer's property (e.g. truck chassis) held for more than thirty (30) days after notification of availability for shipment. All customer's property, or third party's property, that is stored by GapVax Inc. is at the customer's or other party's risk. GapVax is not liable for any loss or damage thereto caused by fire, water, corrosion, theft, negligence, or any cause beyond its reasonable control.
8. **PRICES.** All orders are subject to current prices in effect at the time of order acknowledgment.
9. **F.O.B. POINT.** Unless otherwise stated, all prices listed are F.O.B. point of manufacture.
10. **TAXES.** Unless specifically stated, prices listed do not include Federal, State, City or other excise occupation, sales, use or similar taxes which are extra and are to be added at rates in effect at time of shipment. If federal Excise Taxes are included or listed on the reverse side of this paper, they are stated at the rates and regulations in effect at the time this order is written, and are subject to revision in accordance with rates and regulations in effect at time of shipment.
11. **PRODUCT IMPROVEMENT.** GapVax Inc. reserves the right to change manufacturing specifications and procedures without incurring any responsibility for modifying previously shipped products.
12. **MOUNTING PRICES.** Mounting prices assumes normal factory installation on a truck chassis suitable for the unit purchased. Relocation of batteries, gas tanks, mufflers, air tanks, etc. will be an additional charge, billed at the standard factory labor rate.
13. **WARRANTY.** GapVax Inc. warrants its products to be free from defects in material and workmanship, subject to the limitations and conditions set forth in its current published warranty but makes no warranty of merchantability or fitness for any particular purpose. GapVax Inc. does not assume liability for any loss of product, time or any direct, indirect, or consequential damage, losses or delay or any nature whatsoever. No warranty, express or implied, is made or authorized to be made and no obligation is assumed or authorized to be assumed with respect to products of GapVax Inc. other than that set forth in the current, published warranty. It is to be understood that the acceptance this order is expressly conditioned upon your acceptance of GapVax Inc. standard written warranty for the products sold hereunder GapVax Inc. hereby disclaims any responsibility or liability for any consequential losses delays or downtime resulting from orders hereunder the use of its products. GapVax does not and will not warranty any tank coating or tank lining. PTO damage is not covered when the PTO protection system or low water shut down system is not selected / installed / and operational.
14. This agreement shall be construed according to the laws of the State of Pennsylvania. Our failure at anytime to exercise any right we may have under the agreement shall not constitute a waiver thereof nor prejudice our right to enforce same thereafter.
15. This order, including the above terms and conditions contains the complete and final agreement between the parties hereto and no other agreement in any way modifying any of said terms and conditions will be binding on us unless in writing and agreed to by authorized representative of this company.



City Council Staff Report

DATE: April 19, 2023
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: CITY MANAGER'S DEPARTMENT
DISTRICT: ALL
SUBJECT: APPROVE THE FIRST AMENDMENT TO THE EMPLOYMENT AGREEMENT BETWEEN THE CITY OF PALMDALE AND MICHAEL MILLER, ASSISTANT CITY MANAGER (AGREEMENT NO. A-7465)

ISSUE

Approve the First Amendment to the Employment Agreement between the City of Palmdale and Michael Miller, Assistant City Manager (Agreement No. A-7465).

RECOMMENDATION

Staff recommends that the City Council:

1. Approve the First Amendment to the Employment Agreement between the City of Palmdale and Michael Miller, Assistant City Manager (Agreement No. A-7465).

BACKGROUND

Michael Miller (Employee) was hired by the City of Palmdale on April 16, 1997. He became the Director of Neighborhood Services on August 26, 2013. On September 6, 2022 he became Interim Assistant City Manager.

This amendment to Mr. Miller's employment agreement appoints him Assistant City Manager, thus removing the Interim title.

DISCUSSION

In general, the amendment to the Employment Agreement with Mr. Miller provides for the following:

1. The Employee is appointed the Assistant City Manager.
2. Compensation shall be paid at an annual rate of \$264,722.
3. The Employee is currently enrolled in the California Public Employees' Retirement System (CalPERS) at the 2.7% @ age 55 formula. The Employee shall continue to pay the full employee contribution.

Report to Mayor and City Council

Re: First Amendment to the Employment Agreement between the City of Palmdale and Michael Miller, Assistant City Manager (Agreement No. A-7465)

April 19, 2023

Page 2

4. The amendment is effective February 2, 2023.

Staff recommends the City Council approve the First Amendment to the Employment Agreement between the City of Palmdale and Michael Miller, Assistant City Manager (Agreement No. A-7465).

FISCAL IMPACT

Sufficient funding is budgeted in the FY 2022-23 Annual Operating Budget.

STRATEGIC PLAN

Goal IV: Maintain a desirable community where everyone wants to live, work and play.

Objective:

C. Invest in staff and other human resource strategies to attract and retain a highly qualified, diverse, and creative workforce.

Prepared by:

Certified as to availability of Funds:

Approved by:

Approved as to form:

Garrett Rickert, Sr Human Resources Analyst

Janelle Samson, Director of Finance

Ronda Perez, City Manager

William P. Curley, III, Interim City Attorney

ATTACHMENTS

1. First Amendment to Agreement No. A-7465
2. Job Description – Assistant City Manager
3. Agreement No. A-7465

Agreement No. A-7465 - Amendment 1

**FIRST AMENDMENT TO THE EMPLOYMENT AGREEMENT BETWEEN THE CITY
OF PALMDALE AND MICHAEL MILLER, ASSISTANT CITY MANAGER**

Dated February 2, 2023

Pursuant to Section 19 D of the "Employment Agreement between the City of Palmdale (hereinafter referred to as "City") and Michael Miller (hereinafter referred to as "Miller" or "Employee") (collectively referred to as "Parties"), Director of Neighborhood Services (A-7465)", a copy of which is attached hereto as Exhibit A (hereinafter the "Agreement"), the Agreement may be amended in writing and signed by the Parties thereto. Accordingly, the Parties herein amend the Agreement (hereinafter referred to as "Amendment") as follows:

RECITALS

WHEREAS, Employee was hired on April 16, 1997, as a full time City employee in the position of Housing Coordinator and, along with other benefits offered to City employees, became a member of the California Public Employees' Retirement System ("CalPERS") on his hire date;

WHEREAS, on August 26, 2013, Employee was appointed Director of Neighborhood Services;

WHEREAS, under the authority of the City Manager and the approval of the City Council, all City Directors entered into employment agreements and, effective April 26, 2021, Employee entered into an Agreement as Director of Neighborhood Services;

WHEREAS, on September 6, 2022, Employee was appointed as an Interim Assistant City Manager and was provided, consistent with the City's "Classification and Pay Plan for FY 2022-2023", an increase in salary compensation;

WHEREAS, effective February 2, 2023, Employee shall be promoted as Assistant City Manager.

NOW, THEREFORE, in consideration of the mutual covenants herein contained herein, Employee's Agreement is hereby amended as follows:

1. **Recitals**: The Recitals as set forth above are true and correct and are incorporated into this Amendment.

Agreement No. A-7465 - Amendment 1
February 2, 2023
Page 2 of 3

2. **Section 1(a)**: Section 1(A) of the Agreement, Duties, is amended as follows: "City hereby employs Employee as Assistant City Manager to perform the function and duties of this position as specified in the job description for this position, and to perform such other legally permissible and proper functions and duties as the City Manager shall, from time-to-time, direct or assign. Employee shall perform these functions and duties in an efficient competent, and ethical manner and shall devote his best efforts and full-time attention thereto. The City Manager has the right to modify or alter Employee's position, with or without cause or advance notice, through actions other than termination, such as demotion or transfer."

3. **Section 1(d)**: Replace any reference to "Department Head" with "Assistant City Manager". Except as modified herein, the remaining terms as set for in this paragraph shall remain in effect.

4. **Section 1(h)**: Replace any reference to "Department Head" with "Assistant City Manager". Except as modified herein, the remaining terms as set for in this paragraph shall remain in effect.

5. **Section 2**: Section 2 Compensation, is amended as follows: "In accordance with the City Council adopted "Classification and Pay Plan for FY 2022-2023", Employee shall be paid an annual salary of two hundred and sixty-four thousand, seven hundred and twenty-two dollars (\$264,722), payable in the same manner and time as to all other City employees."

6. **Section 3(a)**: Section 3(a) Commencement & Effective Date, is amended as follows: "Employee shall commence his services as Assistant City Manager on February 2, 2023, and such date shall be deemed the effective date of this Amendment ("Effective Date").

7. **Section 3(d)**: Replace any reference to "Department Head" with "Assistant City Manager". Except as modified herein, the remaining terms as set for in this paragraph shall remain in effect.

8. **Section 3(g)**: Section 5(g) Medical, Dental, and Vision Insurance, is amended as follows: "Employee shall receive medical, dental, and vision benefits that are established by the City for management employees."

9. **Section 5 (j)**: The following section is added to Section 5, Fringe Benefits: "CalPERS Retirement. The City shall continue its employer contribution to the CalPERS system for Employee's retirement fund. Employee's current retirement formula is 2.7%

Agreement No. A-7465 - Amendment 1
February 2, 2023
Page 3 of 3

@ 55. Employee will continue to contribute 8% ("employee contribution") to his retirement fund; however, Employee will be responsible for any increases to the CalPERS employee contribution rate as may be directed by CalPERS."

10. **Section 6 (b):** Section 6(b), Performance Evaluations, Timing, shall be replaced as follows: "The City Manager may evaluate Employee's performance after the first six (6) months of his employment and thereafter on or about the anniversary date of the Effective Date of this Amendment. Every year the City Manager and Employee may, in addition, set goals and objectives for the ensuing year. The City Manager may also evaluate performance more frequently, if necessary."

Except as otherwise stated herein, the remaining terms and conditions of the Agreement shall remain in full force and effect.

APPROVED BY THE CITY COUNCIL, CITY OF PALMDALE at a regularly scheduled City Council meeting on April 19, 2023.

ATTEST:

CITY OF PALMDALE:

Roxanne Faber
Acting City Clerk

Laura Bettencourt
Mayor

APPROVED AS TO FORM:

EMPLOYEE:

William P. Curley, III
Interim City Attorney

Michael Miller
Assistant City Manager

CITY OF PALMDALE

ASSISTANT CITY MANAGER

DEFINITION

Under administrative direction, assists the City Manager in managing and directing citywide departmental activities and operations; assists City Manager in providing administrative guidance to executive staff; relieves the City Manager of day-to-day duties associated with municipal operations; performs responsible and complex administrative work; acts for the City Manager in his/her absence.

DISTINGUISHING CHARACTERISTICS

The Assistant City Manager is an administrative management level class, which assists the City Manager in the overall operations of meeting the City's established mission and goals. The incumbent is responsible for the day-to-day coordination and administration of assigned functions including supervision over assigned departments. The Assistant City Manager acts for the City Manager in his or her absence. This class is distinguished from the next higher classification of City Manager, which serves as the Chief Executive Officer over all City departments and program activities. This is a one incumbent classification.

SUPERVISION RECEIVED/EXERCISES

Receives administrative direction from the City Manager. Exercises direct and indirect supervision over assigned areas, including professional, technical and support personnel.

EXAMPLES OF DUTIES – Duties may include, but are not limited to the following:

Assists and participates in the development and implementation of the City's strategic plan and goals and objectives as a result of the strategic plan.

Assists the City Manager in managing and directing the activities of City departments and in providing administrative guidance to executive staff.

Reviews, interprets, develops, modifies and implements City administrative policies and their application to specific situations in departments; and resolves conflicts involving multiple departments in matters/issues not addressed by existing City policies and procedures.

Manages the coordination and preparation of the budgets, funding mechanisms, and budget control activities; reviews and approves funding reporting; makes recommendations to the City Manager on funding opportunities.

Assistant City Manager

- 2 -

Represents the City in City Council meetings, special commissions, and boards, the community at large, and at professional meetings, trainings and conferences as required.

Assists and advises the City Manager; relieves the City Manager of administrative detail; serves as Acting City Manager as assigned.

Establishes positive working relationships with representatives of community organizations, state/local agencies and associations, City management and staff, and the public.

Performs other related duties as required.

MINIMUM QUALIFICATIONS

Knowledge of:

Principles and practices of municipal administration, organizations, and functions.

Current social, political, and economic trends and operating challenges and responsibilities of municipal government.

Principles and practices of municipal budgeting and finance.

Local and state legislative processes.

Methods of assessing municipal operating requirements.

Principles of effective public relations and interrelationships with community groups and agencies, private businesses and firms, and other levels of government.

Principles of leadership, strategic planning and organizational management.

Methods and techniques of supervision, training, and motivation.

Applicable federal, state and local laws, codes and regulations.

Ability to:

Assist the City Manager in managing overall City operations through implementation of the strategic plan.

Provide effective leadership in a diverse workplace and community.

Assistant City Manager
- 3 -

Prepare and analyze budgets and long term financial forecasts.

Serve effectively as the administrative agent of the City Manager and City Council.

Manage, plan, organize, train, evaluate, and direct work of assigned staff.

Delegate effectively.

Work independently and as part of a team.

Make sound decisions within established guidelines.

Analyze complex issues and develop and implement appropriate responses.

Communicate clearly and concisely, both orally and in writing.

Establish and maintain effective working relationships.

Meet the physical requirements necessary to safely and effectively perform assigned duties. This includes on an intermittent basis, sit at desk for long periods of time; intermittently walk, stand, bend, and reach; use telephone and use a keyboard to communicate through written means.

Experience and Training

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

Ten years of increasingly responsible administrative or managerial experience in a public administration setting, including three years of management or supervisory experience at the department director level.

Training:

A bachelor's degree in public administration, business administration, or a related field. A master's degree is highly desirable.

**EXECUTIVE MANAGEMENT EMPLOYMENT AGREEMENT
DIRECTOR OF NEIGHBORHOOD SERVICES (Non-Classified Executive Management)**

THIS AGREEMENT is made and entered into this 26th day of April, 2021, by and between the CITY OF PALMDALE, a Charter City and municipal corporation of the State of California, hereinafter referred to as "City", and MICHAEL MILLER, hereinafter referred to as "Employee", both of whom agree as follows:

RECITALS

WHEREAS, section 2.04.060 (C) of the Palmdale Municipal Code gives the City Manager authority to appoint, promote, discipline and remove any officers of the City except the City Attorney, City Clerk, and the City Treasurer; and

WHEREAS, the City Manager desires to employ Employee as Director of Neighborhood Services; and

WHEREAS, Employee desires to serve in the capacity of the Director of Neighborhood Services; and

WHEREAS, it is the desire of the parties hereto to provide the terms and conditions by which City shall receive and retain the services of Employee.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

SECTION 1. EMPLOYMENT & DUTIES.

(a) Duties. City hereby employs Employee as Department Head to perform the functions and duties of the Director of Neighborhood Services as specified in the job description for this position attached hereto as Exhibit "A", and to perform such other legally permissible and proper functions and duties as the City Manager shall, from time-to-time, direct or assign. Employee shall perform these functions and duties in an efficient, competent, and ethical manner and shall devote his best efforts and full-time attention thereto. The City Manager has the right to modify or alter Employee's position, with or without cause or advance notice, through actions other than termination, such as demotion or transfer.

(b) Work Schedule. It is recognized that Employee is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at all times, and must devote a great deal of time outside the normal office hours to the business of the City. Employee acknowledges that proper performance of the duties of the Department Head position will require Employee to generally observe normal business hours, as set by the City and as may be duly revised from time-to-time (currently 7:30 a.m. to 6:00 p.m., Monday through Thursday), and will also often require the performance of necessary services outside of normal business hours. Notwithstanding the foregoing, the City will permit Employee such reasonable "time off" as is customary for exempt employees of the City, so long as the time off does not

interfere with normal business. Employee's compensation (whether salary or benefits or other allowances) is not based on hours worked, and Employee shall not be entitled to any compensation for overtime.

(c) Other Activities. Employee shall focus all professional time, ability, and attention to City business during the term of this Agreement. Employee shall not engage, without the express prior written consent of the City Manager, in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, that is or may be competitive with the City, that might cause a conflict-of-interest with the City, or that otherwise might interfere with the business or operation of the City or the satisfactory performance of the functions and duties of the Department Head position.

(d) Employment Status. Upon appointment to the Department Head position, Employee shall serve at the will and pleasure of the City Manager and understands that they shall be an at-will employee without recourse to bumping or other demotion rights and shall be subject to summary dismissal without any right of notice, hearing, and/or appeal, including any due process property rights (commonly referred to as *Skelly* rights), except as expressly provided in this Agreement. The City may terminate Employee at any time in accordance with Section 3 below.

(e) City Documents. All data, studies, reports and other documents prepared by Employee while performing his duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee to the extent permitted by applicable law, except as may be required by any governmental agency or court of competent jurisdiction. Such materials shall not be used by Employee, without the prior written consent of the City Manager, for any purposes other than the performance of his duties. Additionally, no such materials may be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by (a) law, (b) any governmental agency, (c) subpoena, or (d) an order issued by a court of competent jurisdiction. In the event this Agreement is terminated, Employee agrees to immediately surrender any and all writings containing information relating to the conduct of the City's business prepared, owned, used or retained by Employee regardless of physical form or characteristics; and any and all equipment, tools, or other materials of whatever nature provided to Employee by City in Employee's capacity as Department Head.

(f) Exclusion from Classified Service. Employee understands, acknowledges, and agrees that he is exempt from the City's classified service system.

(g) FLSA Exempt Status. Employee agrees that his position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

(h) Human Resources Rules and Regulations. The Human Resources Rules and Regulations apply to Department Head, except (i) to the extent the Human Resources Rules and Regulations conflict with this Agreement, in which case this Agreement will control, or (ii)

the Human Resources Rules and Regulations exclude Department Heads from a provision, or (iii) the Human Resources Rules and Regulations exclude at-will employees or employees who are exempt from the classified service from a provision.

SECTION 2. COMPENSATION.

(a) Compensation. City agrees to pay Employee pursuant to the salary range of the classification "Director of Neighborhood Services" an annual salary of One Hundred Seventy Nine Thousand Five Hundred Eighty Seven Dollars (\$179,587) payable in the same manner and time as to all other employees of City.

(b) COLA. Employee shall be entitled to a COLA only when approved for unrepresented employees by action of the Palmdale City Council.

SECTION 3. TERM.

(a) Commencement & Effective Date. Employee shall commence his services as Director of Neighborhood Services in accordance with this Agreement on April 26, 2021, and such date will be deemed the effective date of this Agreement ("Effective Date").

(b) Term. The City hereby employs Employee until his services are terminated as provided for herein. The City will provide Employee with reasonable notice of this date in writing.

(c) Termination by Employee. Employee may terminate this Agreement at any time, provided Employee provides the City Manager with at least fourteen (14) days' advance written notice, unless the parties agree to an alternative timeframe or agree to waive the timeframe requirement. At the discretion of the City Manager, Employee may be assigned to the status of paid administrative leave for all or some of the 14 days' notice period. In the event Employee terminates this Agreement, Employee expressly agrees that they shall not be entitled to any severance pay.

(d) Termination by City. The City Manager or someone acting in the capacity of City Manager may terminate this Agreement at any time with or without cause, by providing written notice of the reason(s). The City Manager's right to terminate Employee pursuant to this section shall not be subject to or in any way limited by the City's the Human Resources Rules and Regulations or past City practices related to the employment, discipline, or termination of the City's employees. Except as expressly provided in this section, Employee expressly acknowledges that they are not entitled to any expressly waives any rights provided for Employee under the City's Human Resources Rules and Regulations, Municipal Code, or under other state or federal law to any other form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination, except when Employee has a California or federal constitutional right to a name-clearing hearing. Nothing herein, however, shall be construed to create a property interest, where one does not exist by rule of law, in the position of Department Head. Notwithstanding this section, Employee remains an at-will employee serving at the pleasure of the City Manager.

(e) Termination by City for Cause. The City may terminate this Agreement for cause at any time by providing Employee written notice of the termination for cause and the facts

and grounds constituting such cause. The term "cause" shall be defined to include any misconduct materially related to performance of official duties, including but not be limited to any of the following: 1) Breach of this Agreement, 2) Willful or persistent material breach of duties, 3) Résumé fraud or other acts of material dishonesty, 4) Unauthorized absence or leave, 5) Conviction of a misdemeanor involving moral turpitude (*i.e.*, offenses contrary to justice, honesty, or morality) or conviction of a felony under California law, 6) Violation of the City's anti-harassment policies and/or a finding that legally prohibited personal acts of harassment against a City official or employee or legally prohibited personal acts of discrimination against a City official or employee has occurred, 7) Violation of the Municipal Code, Ordinances, Rules, and Regulations, including but not limited to the City's Human Resources Rules, 8) Use or possession of illegal drugs, 9) Engaging in conduct bringing embarrassment or disrepute to the City, 10) Any illegal or unethical act involving personal gain, 11) A pattern of repeated, willful, and intentional failure to carry out materially significant and legally constituted direction of the City Manager or the policy decisions of the City Council, 12) Gross misfeasance or gross malfeasance, and 13) "abuse of office or position" as defined in Government Code Section 53243.4 (*i.e.*, waste, fraud, and violation of the law under color of authority and crimes against public justice, including crimes involving bribery and corruption). For any of the foregoing, the City may, in its discretion, place Employee on paid or unpaid administrative leave until resolution. If the City terminates for cause this Agreement and the services of Employee hereunder, the City shall have no obligation to pay the Severance Pay described in Section 4 below.

(f) Termination by City Manager Without Cause. The City may terminate Employee without cause at any time providing Employee with written notice of the termination. In the event Employee is terminated without cause, Employee expressly agrees that they shall not be entitled to any severance pay as the result of the termination of this Agreement except as provided in Section 4 below. Furthermore, Employee and City mutually agree to forbear from making, causing to be made, publishing, ratifying or endorsing any and all disparaging remarks, derogatory statements or comments made to any party with respect to either of them.

SECTION 4. SEVERANCE PAY.

(a) Severance Pay. In the event Employee is terminated without cause and does not challenge such termination, including but not limited to by means of appeal or civil or administrative claim, then City shall pay to Employee severance in an amount of six (6) months' salary, less applicable deductions and excluding deferred compensation or the value of any other benefits, conditioned upon the Employee's execution of a severance agreement and waiver of rights and release of claims against the City. Employee shall also be entitled to any accrued compensable leave as Employee may have accumulated, subject to Section 5 of this Agreement. Accumulated sick leave is not paid to Employee upon termination of employment in accordance with the City's Human Resources Rules & Regulations.

Notwithstanding the foregoing, Government Code Section 53260 provides that all contracts of employment with a city must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly salary (excluding benefits) multiplied by the number of months left on the unexpired term, but not more than 18 months if the unexpired term exceeds 18 months. Accordingly, should such proposed severance payment exceed the amount authorized to

be paid under Government Code Section 53260, then the amount paid to Employee shall be reduced in the amount necessary to comply with such statute.

(b) No Severance Pay if Termination for Cause or Initiated by Employee. As provided in Section 3(e), should Employee be terminated for cause, the City shall have no obligation to pay the severance provided for in this section. As provided in Section 3(c), should Employee initiate termination of this Agreement, the City shall have no obligation to pay the severance provided for in in this section.

(c) Sole Rights. The severance rights provided in this section shall constitute the sole and only entitlement of Employee with respect to severance pay in the event of the termination, other than for cause. Employee expressly waives any and all other rights with respect to severance pay except as provided herein. Any and all severance rights are conditioned upon and in consideration for execution of a severance agreement and waiver of rights and release of claims against the City.

SECTION 5. FRINGE BENEFITS.

(a) Vacation. Employee shall accrue vacation leave at the rate of 6.15 hours per pay period (160 hours annually) as said pay periods are established by City.

(b) Sick Leave. Employee shall accrue sick leave at the rate of 3.7 hours per pay period (96 hours annually) as said pay periods are established by City.

(c) Administrative Leave. Employee shall accrue administrative leave at the rate of 3.7 hours per pay period (96 hours annually) as said pay periods are established by City.

(d) Technology/Cell Phone Allowance. City shall provide Employee with a City cell phone for the conduct of City business only, paid by the City or Employee may elect to receive a cell phone allowance in accordance with the City's Administrative Policy A-4.

(e) Vehicle Allowance. City shall provide Employee with a vehicle allowance of Two Hundred Dollars (\$200) per month for the Employee's travel for City business both during and outside of normal business hours.

(f) Professional Development. City agrees to budget and pay for professional dues, subscriptions, trainings and other associated costs, such as travel, room and board, on behalf of the Employee which are reasonably necessary for professional growth.

(g) Medical, Dental, and Vision Insurance.

(h) Long-Term Disability Insurance. The City will pay one hundred percent (100%) of the premium for long-term disability insurance for Employee.

(i) Life Insurance. The City will pay one hundred percent (100%) of the premium for Employee and dependent term life insurance coverage contracted by the City.

(j) Deferred Compensation. Employee will have access to the City's Deferred Compensation 457(b), subject to City Council modification of the plan as authorized by federal and state laws. The City shall contribute five thousand dollars (\$5,000) annually, equally distributed per pay period as said pay periods are established by City.

(k) Other Benefits Established in Human Resources Rules and Regulations. Employee will have access to the fringe benefits for Department Heads and Executive Management as established in the Human Resources Rules and regulations.

SECTION 6. PERFORMANCE EVALUATION.

(a) Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to Employee. Nothing herein shall be deemed to alter or change the employment status of Employee, nor shall this section be construed as requiring "cause" to terminate this Agreement, or the services of Employee hereunder.

(b) Timing. The City Manager or Assistant City Manager may evaluate Employee's performance after the first six (6) months of his employment and thereafter on or about the anniversary date of the Effective Date of this Agreement. Every year the City Manager or Assistant City Manager and Employee may, in addition, set goals and objectives for the ensuing year. The City Manager or Assistant City Manager may also evaluate performance more frequently, if necessary.

SECTION 7. GENERAL TERMS.

(a) Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to Employee's employment by the City and contains all of the covenants and agreements between the parties with respect to such employment. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement or promises not contained in this Agreement shall be valid or binding upon either party.

(b) Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

(c) Conflicts Prohibited. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Employee's duties under this Agreement. Employee shall comply with all requirements of law, including but not limited to, Sections 87100 et seq., Section 1090 and Section 1125 of the Government Code, and all other similar statutory and administrative rules.

(d) Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of

any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

(e) Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

(f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution and delivery by each party hereto.

(g) Independent Legal Advice. The City and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement, or had the opportunity to do so, and the City and Employee further represent and warrant that each has carefully reviewed this entire Agreement and that each and every term thereof is understood and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the party or its representatives who drafted it or who drafted any portion thereof.

(h) AB 1344. Assembly Bill 1344, which was subsequently enacted as Government Code §§ 53243 - 53243.4, sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. These statutes also require that contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of his office or position to provide reimbursement to the local agency for the following forms of payment: (i) paid leave salary; (ii) criminal defense costs; (iii) cash settlement payments; and (iv) any non-contractual settlement payments. Accordingly, the Parties agree that it is their mutual intent to fully comply with these Government Code sections and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and hereby incorporated by this Agreement:

§53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

§53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

§53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

§53243.3. Reimbursement of noncontractual payments upon conviction or crime involving office or position.

§53243.4. "Abuse of office or position" defined.

Employee represents that Employee has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Employee, including

that Employee agrees that any cash settlement or severance related to the termination that Employee may receive from the City shall be fully reimbursed to the local agency if Employee is convicted of a crime involving an abuse of his office or position. The Government Code provisions referenced in this section are attached hereto in Exhibit "B".

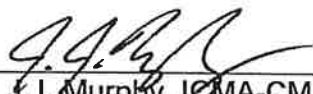
(i) Notices. Any notice required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given when served upon the other party as sent by United States Postal Service, postage prepaid and addressed as follows:

To City:
City Manager
City of Palmdale
38300 Sierra Highway
Palmdale, CA 93550

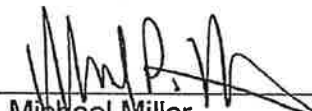
To Employee:
Michael Miller
1140 Hernandez Drive
Palmdale, CA 93551

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

IN WITNESS WHEREOF, the City of Palmdale has caused this Agreement to be signed and executed on its behalf by its City Manager, and duly attested by its officers thereunto duly authorized, and Employee has signed and executed this Agreement, all in triplicate.



J.J. Murphy, ICMA-CM
City Manager



Michael Miller
Employee

Approved as to form:

Attest:



Christopher Beck
City Attorney



Shanae S. Smith
City Clerk

DIRECTOR of NEIGHBORHOOD SERVICES

DEFINITION

The Director of Neighborhood Services provides highly responsible professional, administrative direction in the administration and management of the Neighborhood Services Department, which includes Crime Prevention, S.A.V.E.S., Code Enforcement, Community Service Officers, Parking Enforcement, Public Security, and Housing; plans, directs, coordinates, manages and supervises field operations activities for the Department; and takes a leadership role in implementation of the goals and objectives of the Neighborhood Services department.

SUPERVISION RECEIVED AND EXERCISED

Receives administrative direction from the City Manager.

This position exercises direct supervision over program managers, professional and technical staff.

EXAMPLES OF ESSENTIAL DUTIES:

Essential and other important responsibilities and duties may include, but are not limited to, the following:

- Develop and implement departmental goals, objectives, policies, and priorities; develop strategies to build a sustainable organization and meet city strategic objectives.
- Assume full management responsibility for all Neighborhood Services Department programs, facilities, services, and activities including public safety, crime prevention, S.A.V.E.S., code enforcement, parking enforcement, public security, community service officers, housing, and Community Block Grant Funding.
- Manage and participate in the development and administration of the Neighborhood Services department's annual budget; direct the forecast of additional funds needed for staffing, equipment, materials, and supplies; direct the monitoring of and approves expenditures; direct and implement adjustments as necessary.
- Select, train, motivate, and direct department personnel; evaluate and review work for acceptability and conformance with department and city standards; coaches, counsels, implements progressive discipline and termination procedures; responds to staff questions and concerns.

City of Palmdale

Director of Neighborhood Services

- Develop and implement community engagement strategies; develop and evaluate the effectiveness of community engagement goals, objectives, policies, programs and procedures; develop programs and projects utilizing extensive community participation.
- Act as liaison to City-sponsored community groups in evaluating community engagement needs and issues; represent the City at community planning, inter-agency and professional meetings and conferences.
- Present recommendations to City Council, City Manager, Executive Management Team, Commissions, City departments, governmental organizations and professional associations; attend professional meetings and conferences and advise City representatives as to important trends and developments.
- Plan, develop, organize and direct a variety of programs related to neighborhood and housing preservation, code compliance, property management, neighborhood revitalization, community engagement, volunteerism, neighborhood organization and empowerment, and community-based human services.
- Administer application and compliant procedures for residents, property owners, realtors and others seeking services regarding property maintenance, code compliance and related areas; respond to appeals and facilitate complaint and dispute resolution, consistent with applicable standards and guidelines.
- Act as liaison to neighborhood organizations, citizen advisory groups, and elected officials to resolve issues and to assist in the planning and implementation of neighborhood improvement projects.
- Administer the writing of grant applications in accordance with funding regulations and City policies; monitors and evaluates projects to assure compliance with grant restrictions.
- Formulate and recommend plans to meet the current and future community service needs.
- Develop and implement methods for crime prevention activities, including addressing neighborhood crime, blight, vandalism, and nuisance abatement.
- Oversee code enforcement methods and review and resolve difficult and complex code enforcement issues, including neighborhood disputes and complaints.
- Make in-person presentations to various groups, including neighborhood associations, business groups, and others related to code enforcement goals and activities.

- Oversee parking enforcement methods, including complaints per adjudication procedures; administrative reviews and hearings, as needed.
- Oversee security at City facilities including the Palmdale Transportation Center, city parks, library, and park and ride lots.
- Oversee SAVES program including providing clients access to food, transportation and shelter.
- Respond to difficult and sensitive public inquiries and complaints and assists with resolutions and alternative recommendations.
- Function as a member of the City's management team and participate actively in addressing issues of concern to the City, which at times may not have a direct impact on area of specialization.
- Perform related duties as assigned.

EXPERIENCE AND TRAINING:

Any combination of experience and training that would provide the required knowledge and abilities is qualifying. A typical way to obtain the required knowledge and abilities would be:

Experience:

Five years of progressively responsible management experience with program and policy development in the area of neighborhood services.

Training:

A Bachelor's degree from an accredited college or university with major course work in public administration, recreation administration, business administration, or a related field.

A Master's degree preferred.

MINIMUM QUALIFICATIONS:

Knowledge of:

- Extensive knowledge of administrative principles and practices, including goal setting, program development, implementation, and evaluation, and supervision of staff, either directly or through subordinate levels of supervision.
- Public agency budgetary, contract administration, citywide administrative practices, and general principles or risk management related to the functions of the assigned areas.

City of Palmdale

Director of Neighborhood Services

- Theories, principles, practices, law and current trends in neighborhood empowerment and revitalization, housing preservation and property assistance, basic land use and building codes, and human service delivery.
- Principles of lease negotiation and compliance.
- Real estate terminology, laws and practices related to property acquisition, relocation, development, abatement, demolition and renewal.
- Housing, financing, and development practices.
- Goals and objectives of State and Federal funded emergency service programs.
- Community organizations and resources available to those in need of emergency services.
- Advanced principles, methods and practices used in the design and implementation of community outreach programs and customer relations programs and management systems.
- Principles and practices of crime prevention methods and education.
- Partners Against Crime (PAC) and Partners for a Better Palmdale programs.
- Pertinent codes, rules and procedures related to parking enforcement, code enforcement and administrative citations.
- Principles of research and effective report preparation.

Ability to:

- Plan, direct and coordinate the work of the Department.
- Prepare and administer a department budget.
- Deal effectively with complex and sensitive issues.
- Communicate clearly and concisely, both orally and in writing.
- Interpret, apply, and ensure compliance with Federal, State, and local policies, procedures, laws, and regulations.
- Plan, organize and direct a community-wide engagement program; analyze and resolve community needs and issues.
- Work effectively with neighborhood groups, developers, property owners, architects, engineers, community service organizations, other public agencies and the general public.
- Facilitate neighborhood and community services planning, coordination and service delivery in a multicultural environment.

- Solicit community and organization involvement in housing programs. Make public presentations to promote housing programs and elicit community support.
- Identify and analyze community development needs and interests of the community and develop and implement programs to meet community and departmental concerns.
- Build strong interpersonal relations within the community, particularly amongst an ethnically diverse population.
- Foster the principles of parking enforcement, code enforcement and administrative citation review.
- Represent the interests of the City with a variety of boards, committees, commissions, outside agencies, and the public.
- Establish and maintain effective working relationships with those contacted in the course of work.
- Manage, supervise, train and evaluate assigned staff.
- Make sound and effective decisions regarding operational and personnel functions.
- Respond to emergency and problem situations in an effective manner.
- Understand, explain and apply policies and procedures.
- Analyze unusual situations and resolve them through application and management and principles and practices.
- Develop comprehensive plans to meet future City needs/services.
- Deal constructively with conflict and develop effective resolutions.
- Develop new policies impacting divisional operations/procedures.
- Attend meetings and/or events on evenings and/or weekends.

LICENSE OR CERTIFICATE:

Possession of a valid California driver's license.

PHYSICAL AND MENTAL REQUIREMENTS

Mobility: frequent use of keyboard; frequent sitting for long periods of time; occasional climbing, bending and squatting. **Lifting:** frequently up to 10 pounds; occasionally up to 40 pounds. **Vision:** constant use of overall vision; frequent reading and close-up work; occasional color and depth vision. **Dexterity:** frequent repetitive motion;

City of Palmdale

Director of Neighborhood Services

frequent writing; frequent grasping, holding, and reaching. **Hearing/Talking:** frequent hearing and talking, in person and on the phone. **Emotional/Psychological:** frequent decision-making and concentration; frequent public and/or coworker contact; occasional working alone. **Environmental:** frequent exposure to noise.

WORKING CONDITIONS:

Work is performed in a typical temperature controlled office environment subject to typical office noise and environment. Position regularly requires work outside normal business hours including after hours and, weekend work and travel is occasional.

Adopted

Revised

November 2015

FLSA:

Overtime exempt

**MINUTES
CITY COUNCIL - 03/10/2023 – 8:30AM
EDWARDS FEDERAL CREDIT UNION
COMMUNITY ROOM
39963 10TH STREET WEST
PALMDALE, CALIFORNIA
MARCH 10, 2023**

www.cityofpalmdale.org

8:30 A.M.

1) CALL MEETINGS TO ORDER

Mayor Bettencourt called the meetings to order at 9:00 a.m.

*Note: All City Council memberships are reflected in their City Council titles.

2) PLEDGE OF ALLEGIANCE

3) ROLL CALL MAYOR BETTENCOURT, MAYOR PRO TEM ALARCÓN,
COUNCILMEMBERS BISHOP, LOA, OHLSEN

PRESENT: Laura Bettencourt, Andrea Alarcón, Austin Bishop, Richard Loa, Eric Ohlsen,

4) PUBLIC COMMENTS

There were no public comments.

5) PRESENTATION

5.1 City Council Strategic Planning Workshop. (Staff Reference: City Manager Perez)

City Manager Perez went over the agenda for the day and introduced our new Sheriff Liaison Jason Hill and Attorney, Colin Burns.

Attorney Burns presented a PowerPoint presentation on Rules and Decorum. He discussed agenda deadlines, who can place items on an agenda and how to agendize an item requested by Council.

Attorney Burns went over Roberts Rules of Order, Rosenberg's Rules of Order, various Parliamentary procedures, and Decorum. Council asked questions regarding the Brown Act, public comments, and engaging citizens. Attorney Burns responded.

City Manager Perez spoke regarding Goal Setting and played a short video “*What makes life worth living.*” She asked everyone to write down one thing that they would like to get out of the work session. There was discussion regarding district needs and wants, building relationships, roles and responsibilities.

Councilmembers shared their top priorities, which included film, beautification, green space, ownership of Palmdale Boulevard, transportation (Brightline, High Speed Rail), regionalism, Public Safety, and the future of the Chimbole Cultural Center. There was additional discussion amongst Council regarding alternative power sources, and the regional recreation center.

Councilmember Ohlsen spoke regarding economic opportunity zones. Mayor Bettencourt spoke regarding the need for a public Cemetery and Veterans Cemetery. Councilmember Bishop shared his thoughts on film, city beautification, illegal dumping and taking over Animal Care & Control. Mayor Pro Tem Alarcón spoke regarding Social Equity and a Pediatric Trauma Center for Palmdale. Councilmember Loa spoke regarding mental health, the resiliency center,

A recess was called at 11:50 a.m. and the meeting reconvened at 12:05 p.m.

Attorney Burns spoke regarding Councilmembers being able to meet with various entities and stated that they could as long as they are not representing the City, but in the capacity of an individual Councilmember.

There was consensus among Council that additional conversations needed to take place regarding Animal Care and Control, the current Sheriff’s contract, and the resiliency center.

City Manager Perez thanked Council for the input and providing staff with a starting point to begin focusing in on the top priorities for the city.

Mayor Bettencourt adjourned the meeting at 1:28 p.m.

PASSED, APPROVED, and ADOPTED this 19th day of April 2023

Laura Bettencourt, Mayor

ATTEST:

Rochelle Scott, Acting City Clerk



City Council Staff Report

DATE: APRIL 19, 2023
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: PARKS & RECREATION DEPARTMENT
DISTRICT: ALL
SUBJECT: ADOPT RESOLUTION NO. CC 2023-022, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE APPROVING THE FIVE-YEAR PUBLIC ART WORK PLAN FOR PROJECTS IN THE CITY OF PALMDALE IN ACCORDANCE WITH CHAPTER 15.01 OF THE PALMDALE MUNICIPAL CODE.

ISSUE

Adopt Resolution No. CC 2023-022, a Resolution of the City Council of the City of Palmdale approving the Five-Year Public Art Work Plan for projects in the City of Palmdale in accordance with Chapter 15.01 of the Palmdale Municipal Code.

RECOMMENDATION

Staff recommends that the City Council adopt Resolution No. CC 2023-022 approving the Five-Year Public Art Work Plan.

BACKGROUND

The Palmdale City Council approved Resolution No. CC 2020-084, adopted the Public Art Master Plan, and directed staff to diligently work to implement the recommendations included in the Public Art Master Plan, one of which is to adopt a work plan annually. The Commission is required to develop an annual Public Art Work Plan that charts current and future public art projects and determines resources and funding priorities. The Five-Year Work Plan strategy will be updated annually to include City-funded projects, public/private partnerships, maintenance, and a conservation plan. The City Council will annually approve the Public Art Work Plan proposed by the Commission and staff.

DISCUSSION

The Public Art Work Plan sets the course for the implementation of all municipal public art projects, including artwork scope, concept, location, budget, and timeline. The projected Public Art Fund balance on June 30, 2023, is \$799,182. The majority of these funds were allocated from the City's General Fund to initiate the program. Currently, the public art contribution fee assessed to applicable private and municipal projects is not increasing at the same rate as the program expenses.

The Five-Year Public Art Work Plan draft was reviewed by the Public Art Commission at the January 24, 2023 meeting. The work plan was presented in its final form to the commission at their March 28, 2023, meeting. After discussion, the commission adopted Resolution No. PAC 2023-001, recommending the Five-Year Public Art Work Plan for City Council approval in accordance with Chapter 15.01 of the Palmdale Municipal Code. The Five-Year Public Art Work Plan is provided herewith for reference.

FISCAL IMPACT

\$0; there is no fiscal impact associated with approval of the Five-Year Public Art Work Plan. The proposed expenditures for Fiscal Year 2023-24 total are \$435,302 and are expected to be funded by Public Art Fee revenues. Below is a breakdown of costs:

<u>PROJECT TYPE</u>	<u>PUBLIC ART FUND 156 EXPENSES</u>
Public Art Projects	\$200,000
Conservation and Maintenance	\$60,000
Sam Yellen Park Phase II Contribution	\$175,302

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:	George Davis, Public Art Program Manager
Approved by:	Keri Smith, Director of Parks and Recreation
Approved by:	Ronda Perez, City Manager
Approved by:	Janelle Samson, Director of Finance
Approved as to form:	William P. Curley, III, Interim City Attorney

ATTACHMENT

1. Resolution CC 2023-022
2. Exhibit A: Five-Year Public Art Work Plan
3. Five-Year Public Art Work Plan Presentation

CITY COUNCIL
CITY OF PALMDALE, CALIFORNIA
RESOLUTION NO. CC 2023-022

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMDALE
APPROVING THE FIVE-YEAR PUBLIC ART WORK PLAN RECOMMENDED BY
THE PUBLIC ART COMMISSION IN ACCORDANCE WITH CHAPTER 15.01 OF
THE PALMDALE MUNICIPAL CODE

A. RECITALS

WHEREAS, on March 28, 2023, the Public Art Commission adopted Resolution No. PAC 2023-001 recommending the Five-Year Public Art Work Plan, attached as Exhibit A, for City Council approval in accordance with Chapter 15.01 of the Palmdale Municipal Code; and

WHEREAS, the Public Art Commission, of the City of Palmdale shall develop an annual Public Art Work Plan that charts current and future public art projects and determines resources and funding priorities in accordance with Section 3, Item 10 of the Public Art Commission Bylaws; and

WHEREAS, the Five-Year Public Art Work Plan sets the course for the implementation of all municipal public art projects, and

WHEREAS, the Five-Year Public Art Work Plan determines resources and funding priorities, and

WHEREAS, the Five-Year Public Art Work Plan will be updated annually to include all proposed projects that meet City of Palmdale Public Art Fund criteria as specified in Chapter 15.01 of the Palmdale Municipal Code, and

WHEREAS, Public art in Palmdale has the power to express Palmdale's identity through the built environment and provide equitable access to a diversity of artists and artistic experiences, elevating the role of the artist and the creative process plays in connecting people and place.

B. RESOLUTION

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 City Council hereby specifically finds that all of the facts set forth in the Recitals are true and correct.

SECTION 2. In accordance with Section 15.01.050, Section D, of Palmdale's Municipal Code, the Public Art Commission shall present annually to the City Council for approval a public art work plan that recommends the use of public art fund monies.

SECTION 3. In accordance with Section 15.01.070, Section C, Item 10, of Palmdale's Municipal Code, the Public Art Commission will develop an annual public art work plan that charts current and future public art projects and determines resources and funding priorities.

SECTION 4. In accordance with Section 15.01.110, Section B, the City Council will approve the annual public art work plan as part of the City's annual budget adoption process, which outlines the projects and expenses the public art program will undertake each year.

SECTION 5. Based on the findings and conclusions set forth above, the City Council hereby approves of the Five-Year Public Art Work Plan recommended by the Public Art Commission and staff.

SECTION 6. The Acting City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED and ADOPTED this 19th day of April 2023.

Approved as to form: _____
Laura Bettencourt, Mayor

ATTEST:

William P. Curley, III
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 19th day of April, 2023 by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____ ABSENT: _____

Date: _____
Rochelle Scott, Acting City Clerk

EXHIBIT A



FIVE-YEAR PUBLIC ART WORK PLAN (FY23-28)

OUTSTANDING BUDGETED PUBLIC ART PROJECTS FY22-23

PROJECT	FUNDING	PROJECT PERIOD	NOTES	STATUS
Plein Air Alcoves	\$5K Public Art Fund	FY22-23	Location: Palmdale City Library Three alcoves to feature local landscapes by Rich Gallego	Anticipated completion in FY22-23
Repair and Maintenance	\$10K (\$9K still available) Public Art Fund Contract Services	FY22-23	Remaining funds recommended for refresh of Peace Together at DryTown (\$2K), Cosmo sculpture repair from wind damage (\$7K available); \$1K previously used for small repairs to public art pieces	Anticipated completion in FY22-23
TOTAL PUBLIC ART FUND EXPENSES	\$15K			
McAdam Cultural Art Project - NEA Our Town Grant	\$75K Public Art Fund	FY23-24 & FY24-25	Location: McAdam Park public art components and park section redesign; cost share/matching; additional \$75K from Park Development Fund	NEA will announce grant award or rejection in summer 2023; if awarded, costs are to be expended during 1-2 year project period; earliest start date is July 1, 2023
ADDITIONAL PUBLIC ART FUND EXPENSES (IF AWARDED)	\$75K			

PROPOSED UPCOMING PUBLIC ART PROJECTS FY23-24

PROJECT	FUNDING	PROJECT PERIOD	NOTES	STATUS
Palmdale Amphitheater Entertainment Themed Mural	\$28K Public Art Fund	FY23-24	Small boom lift required; design to emanate from small tree dedicated to Kevin R. Henisey; includes funds to prep and primer surface, and apply anti-graffiti coating	Anticipated completion in FY23-24
Temporary artwork to be featured at Kaleidoscope	\$10K Public Art Fund	FY23-24	Location: Palmdale Amphitheater Researching compatible temporary public art options	Event scheduled October 7, 2023
Sculpture for roundabout	\$50K Public Art Fund	FY23-24	Location: Avenue S-8 and 40 th St. E Previously envisioned as temporary sculpture installation	CIP construction April – December 2023; sculpture to be selected and installed after completion of construction
Antelopes on Parade	\$3K Public Art Fund	FY23-24	Location: Final presentation locations TBD Funding includes artist fee and supplies, and presentation materials	Anticipated completion in FY23-24
Small Mural Mentor Program	\$9K Public Art Fund	FY23-24	Locations: Several locations in Palmdale TBD Teams experienced muralist with 3 novice artists for small murals throughout Palmdale; includes funds to prep and primer surface, and apply anti-graffiti coating	Anticipated completion in FY23-24
Palmdale Playhouse Mural	\$100K Public Art Fund	FY23-24	Location: Palmdale Playhouse Includes funds to prep and primer surface, and apply anti-graffiti coating	Anticipated completion in FY23-24
PUBLIC ART FUND EXPENSES FY23-24 TOTAL	\$200K			

PROPOSED PUBLIC ART CONSERVATION AND MAINTENANCE PROJECTS FY23-24

PROJECT	FUNDING	PROJECT PERIOD	NOTES	STATUS
Basketball court art restoration or replacement	\$50K Public Art Fund Contract Services	FY23-24	Locations: Marie Kerr Park and Domenic Massari Park Seeking partnership with the Paul George Foundation, the L.A. Clippers Foundation, ArtMobb, and 2K Foundations	Anticipated completion of Domenic Massari Park in FY23-24
Undetermined maintenance and repair projects	\$9K Public Art Fund Contract Services	FY23-24	Various locations, as required	
“Back Home” sculpture deaccession and removal	\$1K Public Art Fund Contract Services	FY23-24	Location: Palmdale Transportation Center NOTE: Amount is estimate for disposal and may change	Anticipated completion in FY23-24
PUBLIC ART FUND - CONTRACT SERVICES EXPENSES FY22-23	\$60K			
TOTAL PUBLIC ART FUND EXPENSES FY22-23	\$260K			

PROPOSED UPCOMING PUBLIC ART PROJECT FY23-24 THROUGH FY24-25

MUNICIPAL PROJECT WITH PUBLIC ART FUND CONTRIBUTION (1% OF CIP CONSTRUCTION COSTS)

PROJECT	FUNDING	PROJECT PERIOD	NOTES	STATUS
Sam Yellen Park (Phase II)	\$175,302 Public Art Fund	FY 23-24 & FY24-25	Location: Sam Yellen Park Direction needed on potential art element	Estimated completion FY24-25 Recommendations from staff requested

PROPOSED PUBLIC ART PROJECTS FY24-25 THROUGH FY27-28, PENDING FUTURE BUDGET ADOPTION

PROJECT	FUNDING	PROJECT PERIOD	NOTES	STATUS
Courson Park Mural Project and Plaza Public Art Installation	\$41.5K On-site installation in-lieu of fee	FY24-25	Location: Courson Park \$37,350 State Grant Funded; \$4,150 Public Art Fund	Park Renovation project funded by state grant (\$4.1M)
Amargosa Temporary Sculptures	\$30K Public Art Fund	FY24-25	Location: Amargosa Creek Trail Funding includes installation and maintenance of three sculptures on 2-year loans from artists	CIP construction January – November 2024; sculptures to be installed after completion
Sculpture for PTC Roundabout	\$100K Public Art Fund	FY25-26	Location: Palmdale Transportation Center	TBD
Avenue M Interchange Sculptures, Retaining Wall Designs, and ailing Designs	\$250K Measure R Funding	Timeline dependent of partner agency funding	Location: SR14 Avenue M Exits Partnership with City of Lancaster, LA County, Caltrans CIP NOTE: Could be shelved due to funding and inflation concerns	City of Palmdale has Measure R funding; project pending partner agency funding



DEPARTMENT OF PARKS AND RECREATION

P A L M D A L E
PUBLIC ART

FIVE-YEAR PUBLIC ART WORK PLAN
FY23-28



INTRODUCTION

The Public Art Commission is required to develop an annual Public Art Work Plan that charts current and future public art projects and determines resources and funding priorities.

The five-year work plan strategy will be updated annually to include City-funded projects, public/private partnerships, maintenance, and a conservation plan.

Our meeting today is to get City Council feedback on the work plan proposed by the Public Art Commission and staff, to be included and approved as part of the City's annual budget adoption process.

A decorative graphic of a laurel wreath, composed of stylized leaves and branches, is positioned in the bottom right corner of the slide. It is rendered in a lighter shade of blue than the background.

PUBLIC ART PROJECTS COMPLETED FY22-23

TOTAL PUBLIC ART FUND EXPENSES: \$216,675



RVP Kinetic Sculpture
Cosmo
by Roger Heitzman

\$30K

Completed:
August 2022



Antelope Valley Walls
Four murals:
Kim Sielbeck
Sean Banister
Tina Dille
Christopher Minsal

\$25K

Completed:
September 2022



Kaleidoscope
Art & Music Festival:
Living Butterfly Vines,
Plein Air Demo, Cellograph
Artist, Chalk Artists (5)

\$6,675

Completed:
October 2022



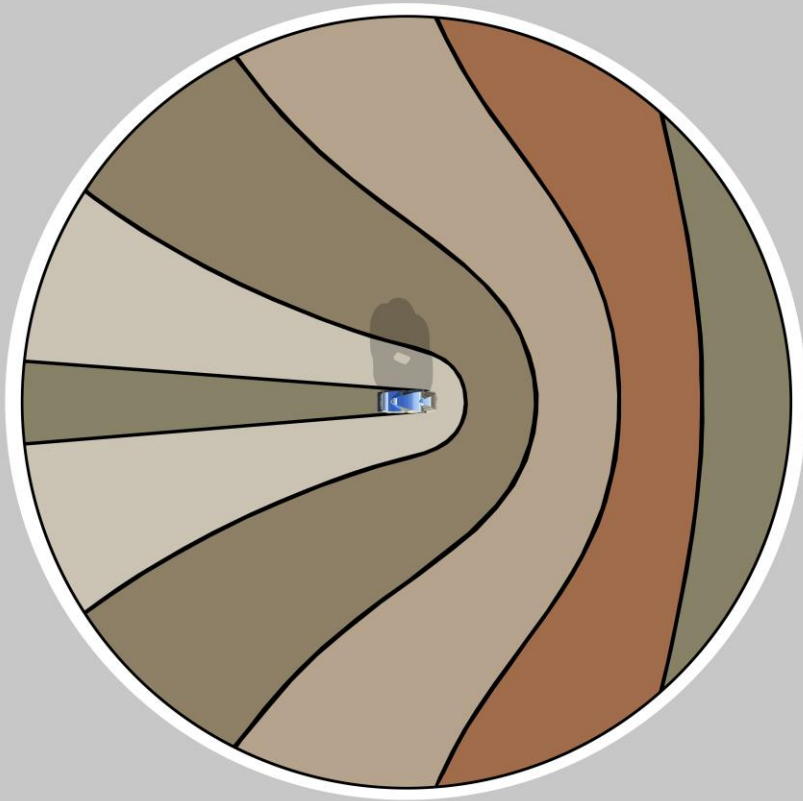
Auto Mall Sculpture
Revolution
by Heath Satow

\$155K
(+\$30K from Economic
Development)

Completed:
December 2022

AUTO MALL ROUNDABOUT FOR SCULPTURE ARTIST'S DESIGN FOR BEST SATELLITE IMAGERY

(paid for and executed by Auto Dealers)



CURRENT PUBLIC ART PROJECTS ANTICIPATED COMPLETION FY22-23

TOTAL PUBLIC ART FUND EXPENSES: \$15,000



Palmdale City Library
Plein Air Alcoves*
by Richard Gallego

\$5K

Anticipated Completion:
FY 22-23

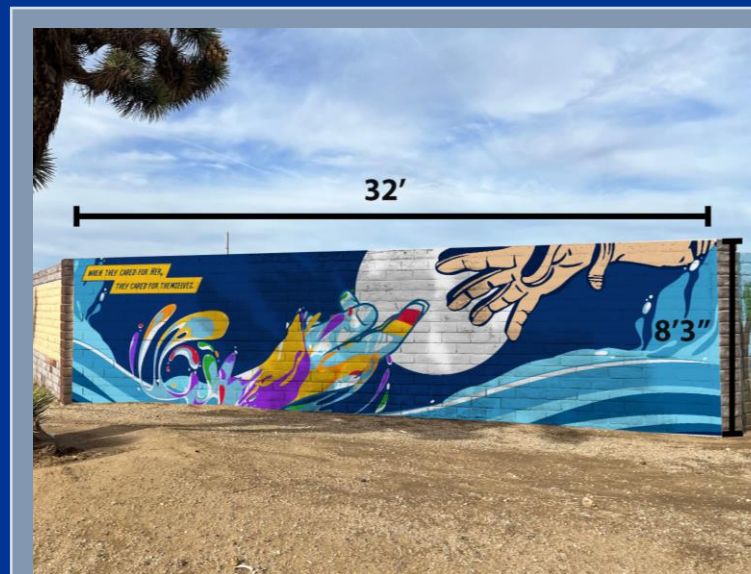


DryTown
Peace Together refresh

\$2K (Contract Services)

Anticipated Completion:
May 2023

Contract Services
Maintenance and Repairs
Budget: \$10K (\$7K available)

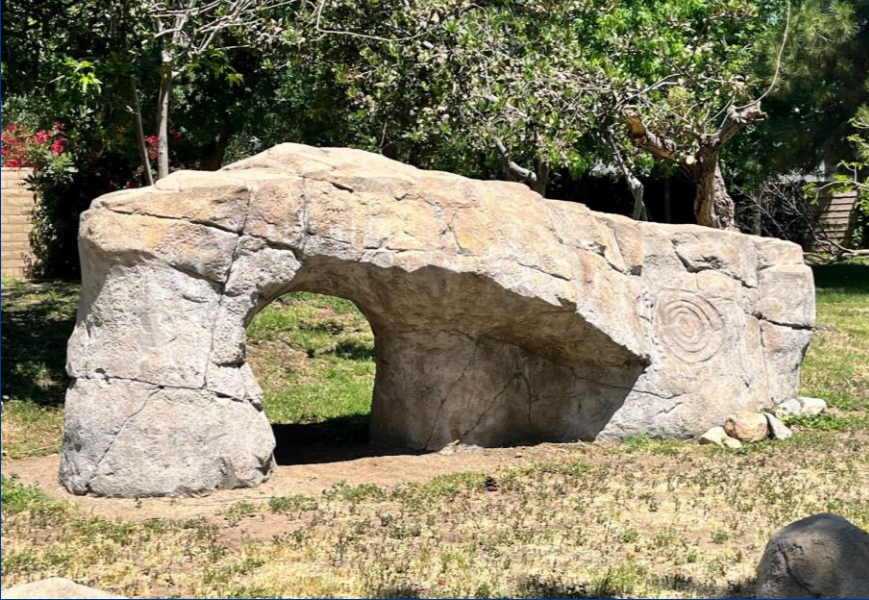


Maintenance Yard
Waste Minimization Themed Mural

\$5.5K (funded by Innovation and
Environmental department,
not Public Art fund)

Anticipated completion:
April 2023

PUBLIC ART PROJECT FY22-23 DEPENDENT ON GRANT FUNDING
TOTAL PUBLIC ART FUND EXPENSES: \$75K
(NEA WILL ANNOUNCE GRANT AWARD OR REJECTION IN SUMMER 2023)



McAdam Park
NEA Our Town Grant
Proposal Concept*

\$75K

Dependent on Grant Funding;
Anticipated completion:
FY23-25



TRIBAL GOVERNMENT PARTNERS
Fernandeno Tataviam Band of Mission Indians
Morongo Band of Mission Indians
San Fernando Band of Mission Indians
San Manuel Band of Mission Indians
Tejon Indian Tribe

NON-PROFIT PARTNERS
Art-In-Residence

*Images from similar park project concept

PROPOSED UPCOMING PUBLIC ART PROJECTS FY23-24

PUBLIC ART FUND EXPENSES SUBTOTAL: \$91K (PENDING ADOPTION)



Palmdale Amphitheater
Entertainment Themed
Mural

\$28K

Anticipated Completion:
FY23-24

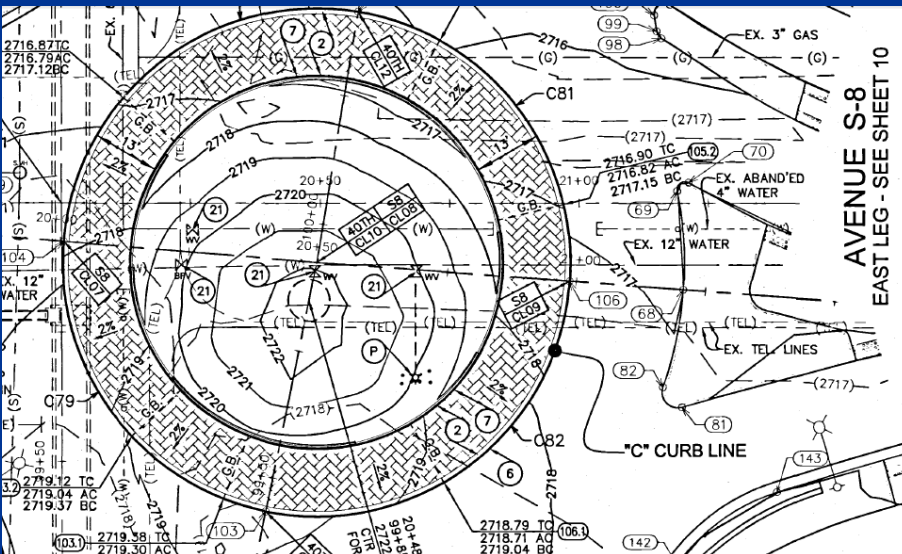


Researching
Compatible
Projects

Temporary Artwork
for Kaleidoscope

\$10K

Event scheduled:
October 7, 2023



Sculpture for
Ave. S-8 and 40th St. E
Roundabout

\$50K

Anticipated completion:
FY23-24



Antelopes on Parade

\$3K

Anticipated Completion:
FY23-24

PROPOSED UPCOMING PUBLIC ART PROJECTS FY23-24

PUBLIC ART FUND EXPENSES SUBTOTAL: \$100K (PENDING ADOPTION)



Small Mural
Mentor Program
(3 murals)

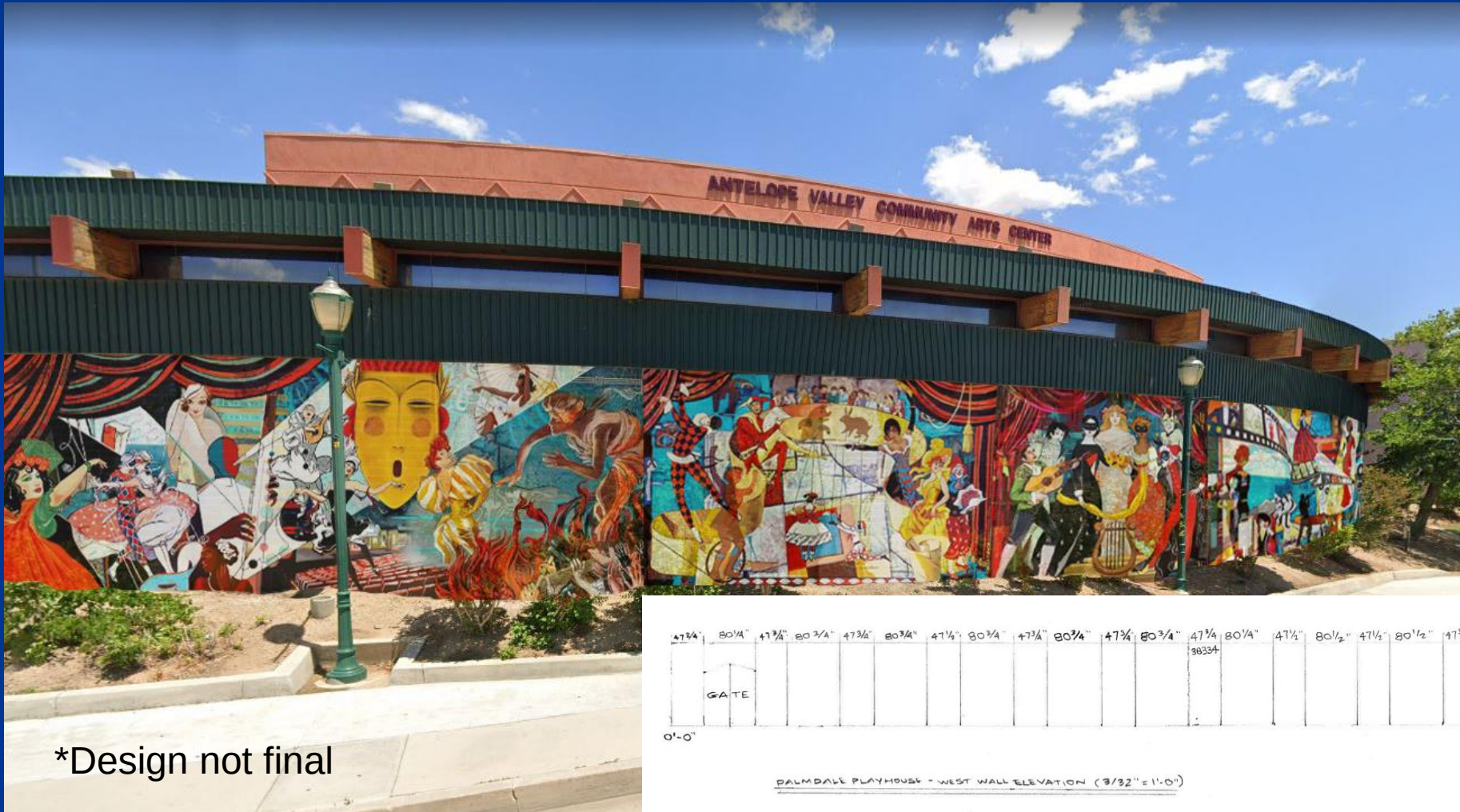
\$9K

Anticipated Completion:
FY23-24

Teams experienced muralists with three novice artists for small murals throughout Palmdale.



PROPOSED UPCOMING PUBLIC ART PROJECTS FY23-24
TOTAL PUBLIC ART FUND EXPENSES: \$200K (PENDING ADOPTION)

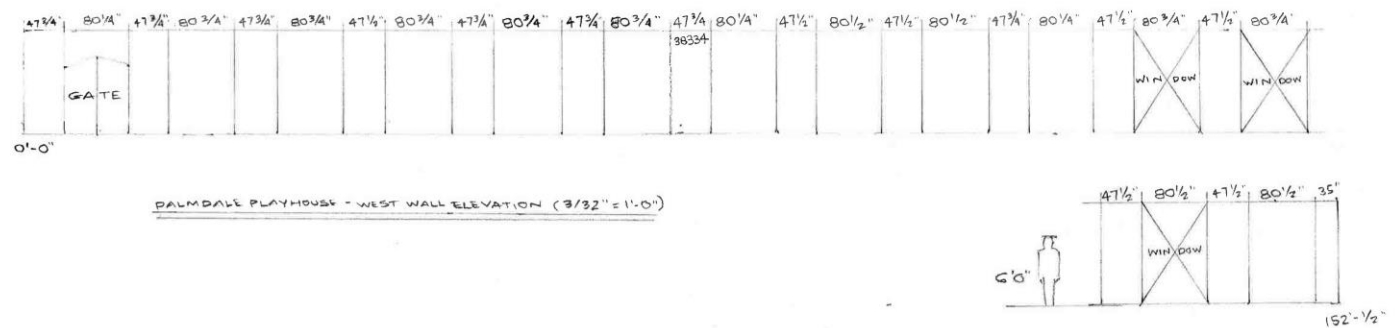


Palmdale Playhouse
Mural

\$100K

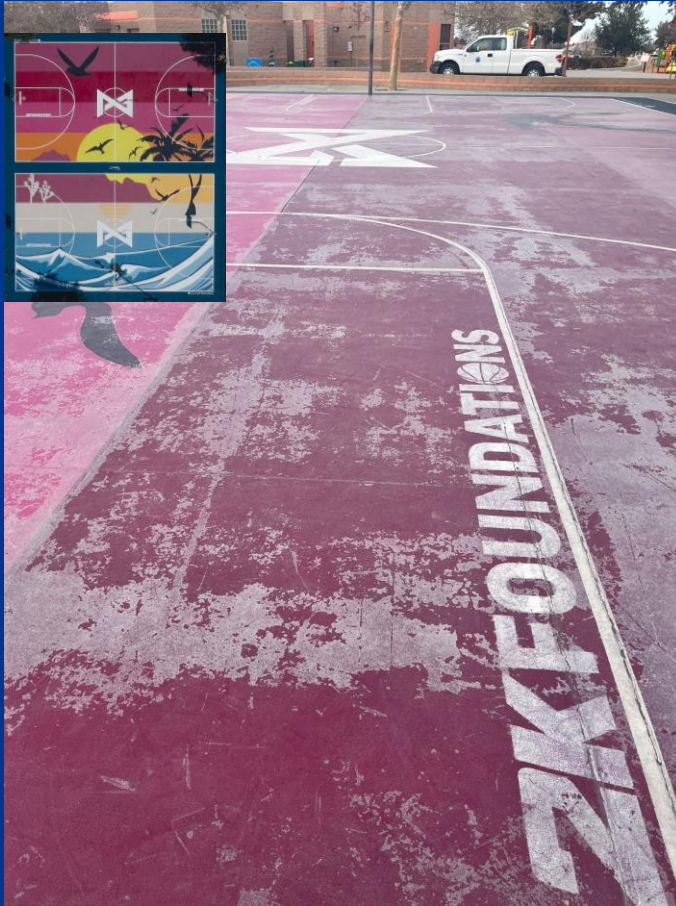
Anticipated Completion:
FY23-24

*Design not final



PROPOSED UPCOMING MAINTENANCE AND REPAIR PROJECTS FY23-24

TOTAL PUBLIC ART FUND EXPENSES: \$60,000 (PENDING ADOPTION)



Basketball Court Art
Restoration or
Replacement

\$50K

Seeking partnership with
Paul George Foundation,
L.A. Clippers, ArtMobb,
And 2K Foundations

Anticipated completion:
FY23-24



Back Home sculpture
Deaccession and removal

\$1K

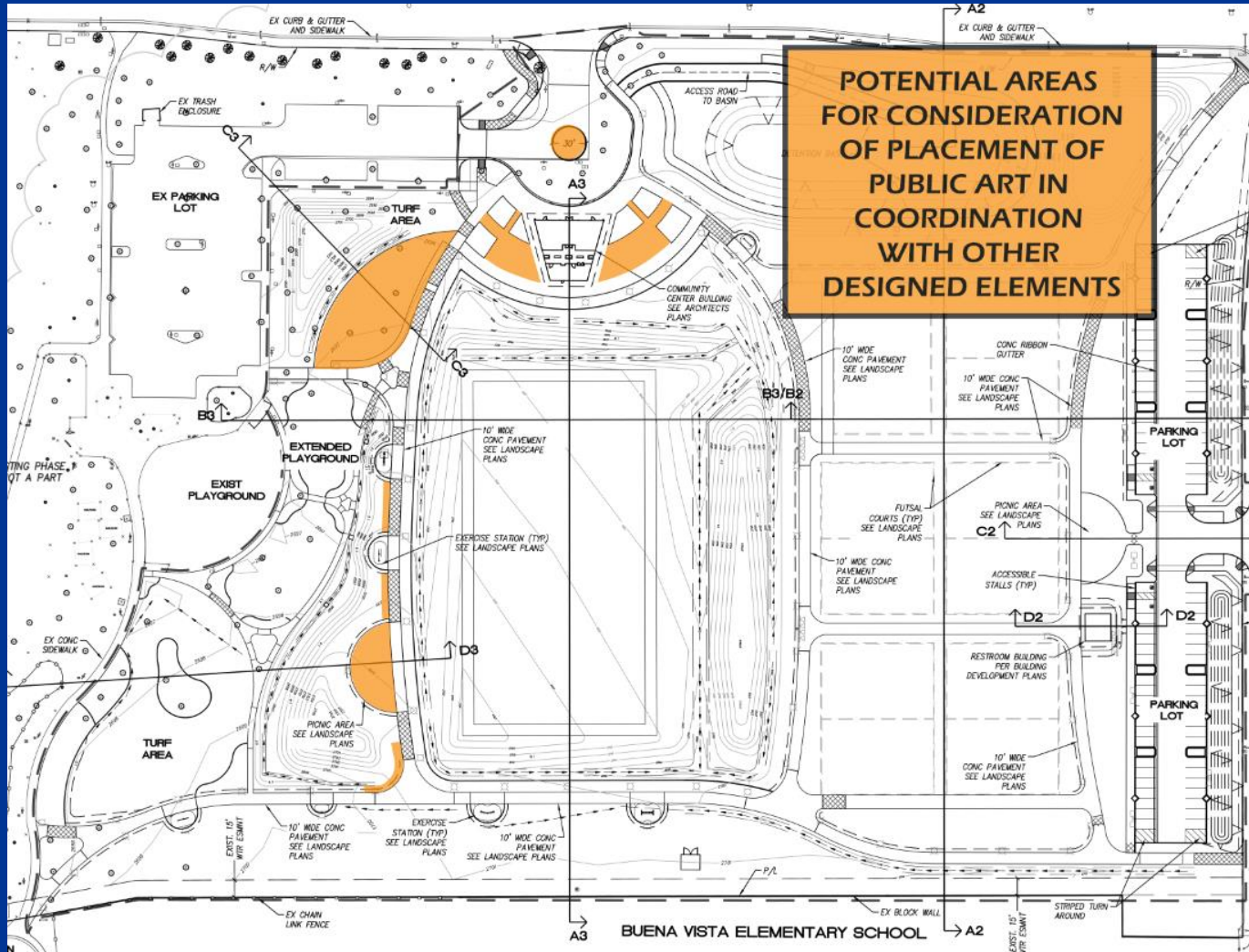
Anticipated completion:
FY23-24

Undetermined maintenance
and repair projects

\$9K

PROPOSED UPCOMING PUBLIC ART PROJECT FY23-24

PUBLIC ART FUND CONTRIBUTION (1% OF CIP CONSTRUCTION COSTS): \$175,302



Sam Yellen Park (Phase II)
Potential art element

\$175,302

Anticipated Completion:
FY24-25



\$100K Sculpture Example



\$175K Sculpture Example



\$50-75K Sculpture Example

PROPOSED UPCOMING PUBLIC ART PROJECTS FY24-25 THROUGH FY27-28 PENDING FUTURE BUDGET ADOPTION



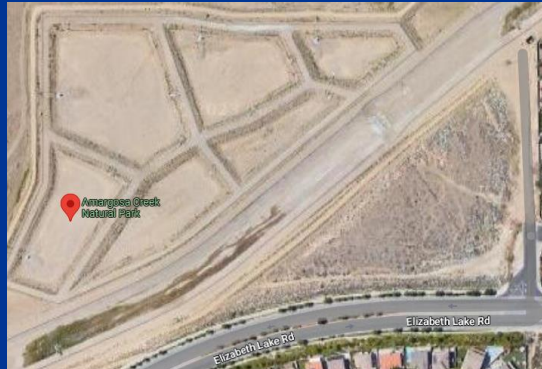
Courson Grant Mural Project and Plaza Public Art Installation

\$41.5K
(Prop 68 Statewide Park Development and Community Revitalization Program)



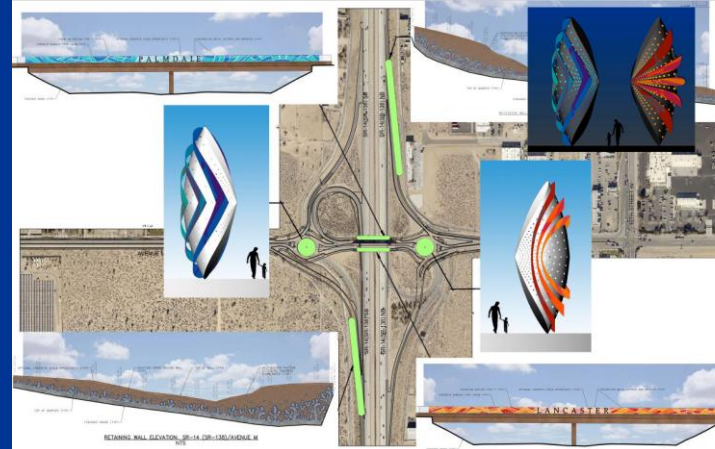
Palmdale Transportation Center Roundabout Sculptures

\$100K



Amargosa Temporary Sculptures

\$30K



Avenue M Interchange

\$250K Measure R Funding
(Project design and construction postponed until 2024)

CONCLUSION

FISCAL IMPACT

\$0; there is no fiscal impact directly associated with the approval of the Five-Year Public Art Work Plan. The proposed expenditures for Fiscal Year 2023-24 total are \$435,302 and are expected to be funded by Public Art Fee revenues. Below is a breakdown of costs:

<u>PROJECT TYPE</u>	<u>PUBLIC ART FUND 156 EXPENSES</u>
Public Art Projects	\$200,000
Maintenance and Repair	\$60,000
Municipal Project Pending Public Art Contribution	\$175,302

The Public Art Work Plan is developed annually with public art project and funding recommendations. The Public Art Commission and will return in Spring 2024 to review the Five-Year Public Art Work Plan, including proposed fiscal impact for FY24-25.