

# CITY OF ARCADIA

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## City Council Regular Meeting Agenda



**Tuesday, November 1, 2022, 6:00 p.m.**

**Location: City Council Conference Room, 240 W. Huntington Drive, Arcadia**

Pursuant to the Americans with Disabilities Act, persons with a disability who require a disability related modification or accommodation in order to participate in a meeting, including auxiliary aids or services, may request such modification or accommodation from the City Clerk at (626) 574-5455. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to the meeting.

根据《美国残障人法案》，需要调整或提供便利设施才能参加会议的残障人士（包括辅助器材或服务）可与市书记官办公室联系（电话：(626) 574-5455）。请在会前 48 小时通知市书记官办公室，以便作出合理安排，确保顺利参加会议。

Pursuant to the City of Arcadia's Language Access Services Policy, limited-English proficient speakers who require translation services in order to participate in a meeting may request the use of a volunteer or professional translator by contacting the City Clerk's Office at (626) 574-5455 at least 72 hours prior to the meeting.

根据阿凯迪亚市的语言便利服务政策，英语能力有限并需要翻译服务才能参加会议的人可与市书记官办公室联系（电话：(626) 574-5455），请求提供志愿或专业翻译服务，请至少在会前 72 小时提出请求。

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### How to Submit Public Comment:

Members of the Public who wish to submit public comment may do so using one of the following methods. Public comment is limited to the time and words allotted.

1. **In-Person:** Complete a Speaker Card, indicating the agenda item number and submit it to the City Clerk prior to the meeting, or simply come to the podium when the Mayor asks for those who wish to speak. Speakers shall be limited to five (5) minutes per person. At the Mayor's discretion, the time limit may be shortened to allow all speakers to address the City Council.

Electronic submission of Public Comment is also available via the City's website or by email as noted below. Public Comment submitted electronically will not be read into the record at the posted meeting time but are forwarded to the City Council prior to the meeting for consideration.

1. **Website:** Please submit your comments using our online public comment form at [ArcadiaCA.gov/comment](https://ArcadiaCA.gov/comment). Your comments must be received at least 30 minutes prior to the posted meeting time.
2. **Email:** Please submit your comments via email to [CityClerk@ArcadiaCA.gov](mailto:CityClerk@ArcadiaCA.gov). Your comments must be received at least 30 minutes prior to the posted meeting time.

### 如何提交公众评论意见:

公众成员可以使用以下任何一种方法提交公众评论意见。请在时间和字数的限制范围内提交公众评论意见。

1. **亲自出席:** 填写一张发言人卡片, 注明议程项目编号, 然后在会议开始前提交给市书记官, 或者在市长询问公众发言时, 直接到讲台上发言。每位发言人的发言时间不得超过五(5)分钟。市长可自行决定缩短发言限制时间, 以便允许所有发言人向市议会表达自己的意见。

亦可按照以下方法在本市网站上或通过电子邮件以电子方式提交公众评论意见。以电子方式提交的公众评论意见不会在公布的会议期间读入记录, 但会在会议开始前转交给市议会, 供市议会考虑。

1. **网站:** 请使用以下网站中刊载的在线公众评论意见表提交您的评论意见: [ArcadiaCA.gov/comment](http://ArcadiaCA.gov/comment)。必须在公布的会议时间前至少提前 30 分钟提交评论意见。
2. **电子邮件:** 请将您的评论意见通过电子邮件发送至: [CityClerk@ArcadiaCA.gov](mailto:CityClerk@ArcadiaCA.gov)。必须在公布的会议时间前至少提前 30 分钟提交评论意见。

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## CALL TO ORDER

### ROLL CALL OF CITY COUNCIL MEMBERS

Tom Beck, Mayor  
Paul P. Cheng, Mayor Pro Tem  
Michael Danielson, Council Member  
Sho Tay, Council Member  
April A. Verlato, Council Member

### PUBLIC COMMENTS (5-minute time limit each speaker)

Any person wishing to speak before the City Council is asked to complete a Speaker Card and provide it to the City Clerk prior to the start of the meeting. Each speaker is limited to five (5) minutes per person, unless waived by the City Council. Under the Brown Act, the City Council is prohibited from discussing or taking action on any item not listed on the posted agenda.

### CLOSED SESSION

- a. Pursuant to Government Code Section 54957.6 to confer with labor negotiators.

City Negotiators: City Manager Dominic Lazzaretto, Assistant City Manager/Development Services Director Jason Kruckeberg, and Administrative Services Director Hue Quach.

Employee Organizations: Arcadia Public Works Employees Association, Arcadia City Employees Association, Arcadia Police Civilian Employees Association, Arcadia Police Officers' Association, Arcadia Firefighters' Association, and unrepresented employees: Department Heads, Division Managers, Supervisors, and part-time employees.

**Regular Meeting**  
**City Council Chambers, 7:00 p.m.**

**1. CALL TO ORDER**

**2. INVOCATION**

Reverend Eva Thai-Erwin, Church of the Good Shepherd

**3. PLEDGE OF ALLEGIANCE**

**4. ROLL CALL OF CITY COUNCIL MEMBERS**

Tom Beck, Mayor  
Paul P. Cheng, Mayor Pro Tem  
Michael Danielson, Council Member  
Sho Tay, Council Member  
April A. Verlato, Council Member

**5. REPORT FROM CITY ATTORNEY REGARDING CLOSED/STUDY SESSION ITEMS**

**6. SUPPLEMENTAL INFORMATION FROM CITY MANAGER REGARDING AGENDA ITEMS**

**7. MOTION TO READ ALL ORDINANCES AND RESOLUTIONS BY TITLE ONLY AND WAIVE THE READING IN FULL**

**8. PRESENTATIONS**

- a. Presentation of adoptable dog by the Pasadena Humane Society.
- b. Presentation of Arcadia Festival of Bands Proclamation.
- c. Presentation of the San Gabriel Valley Council of Government's Efficient San Gabriel Valley ("ESGV") Program.

**9. PUBLIC COMMENTS (5-minute time limit each speaker)**

Any person wishing to speak before the City Council is asked to complete a Speaker Card and provide it to the City Clerk prior to the start of the meeting. Each speaker is limited to five (5) minutes per person, unless waived by the City Council. Under the Brown Act, the City Council is prohibited from discussing or taking action on any item not listed on the posted agenda.

**10. REPORTS FROM MAYOR, CITY COUNCIL AND CITY CLERK (*including reports from the City Council related to meetings attended at City expense [AB 1234]*).**

**11. CONSENT CALENDAR**

All matters listed under the Consent Calendar are considered to be routine and can be acted on by one roll call vote. There will be no separate discussion of these items unless a member of the City Council, staff, or the public requests that a specific item be removed from the Consent Calendar for separate discussion and action.

- a. Special and Regular Meeting Minutes of October 18, 2022.  
Recommended Action: Approve
- b. Resolution No. 7467 amending the Fiscal Year 2022-23 General Fund Budget and authorizing a budget appropriation for the Police Department Chiller Replacement Project in the amount of \$247,605, offset by a reduction in the General Fund Reserve; and approving a contract with Carrier Corporation for the Police Department Chiller Replacement Project in the amount of \$247,605.  
Recommended Action: Adopt and Approve
- c. Professional Services Agreements for On-Call Engineering Services with HR Green Pacific, Inc., Kreuzer Consulting Group, and Psomas.  
Recommended Action: Approve
- d. Extension to the Professional Services Agreement with ABM Industry Groups, LLC. for Janitorial and Porter Services at various City facilities in an amount not to exceed \$398,360.49.  
Recommended Action: Approve
- e. Service Agreement with Motorola Solutions Inc., for the Police Department Radio Consoles for Fiscal Year 2022-2023 through 2027-28 in an amount not to exceed \$191,795.  
Recommended Action: Waive the Formal Bid Process and Approve
- f. Reject low bid from Bluesky Diversified dba Puente Hills Ford and approve Purchase Order with Ernie's Auto Parts for the purchase of automotive repair parts for City vehicles in an amount not to exceed \$60,677.06.  
Recommended Action: Approve
- g. Accept all work performed by Ramona, Inc. for the Sewer Main Replacement Program as complete.  
Recommended Action: Approve

**12. CITY MANAGER**

- a. Allowable hours and rules of operation for noise related to gardening/landscaping and use of gas-powered leaf blowers in residential areas.  
Recommended Action: Provide Direction
- b. Resolution No. 7468 revising Resolution No. 7407 (Sixth Cycle Housing Element Adoption) with a categorical exemption under the California Environmental Quality Act ("CEQA").  
Recommended Action: Adopt

**13. ADJOURNMENT**

The City Council will adjourn this meeting to November 15, 2022, 6:00 p.m. in the City Council Conference Room.

## Welcome to the Arcadia City Council Meeting!

The City Council encourages public participation, and invites you to share your views on City business.

**MEETINGS:** Regular Meetings of the City Council are held on the first and third Tuesday of each month at 7:00 p.m. in City Council Chambers. A full City Council agenda packet with all backup information is available at City Hall, the Arcadia Library, and on the City's website at [www.ArcadiaCA.gov](http://www.ArcadiaCA.gov)<http://www.arcadiaca.gov/>. Copies of individual Agenda Reports are available via email upon request ([CityClerk@ArcadiaCa.gov](mailto:CityClerk@ArcadiaCa.gov)). Documents distributed to a majority of the City Council after the posting of this agenda will be available for review at the Office of the City Clerk, 240 W. Huntington Drive, Arcadia, California. Live broadcasts and replays of the City Council Meetings are on cable television. Your attendance at this public meeting may result in the recording and broadcast of your image and/or voice as previously described.

**PUBLIC PARTICIPATION:** Your participation is welcomed and invited at all City Council meetings. Time is reserved at each regular meeting for those in the audience who wish to address the City Council. The City requests that persons addressing the City Council refrain from making personal, slanderous, profane, or disruptive remarks. Where possible, please submit a **Speaker Card** to the City Clerk prior to your comments, or simply come to the podium when the Mayor asks for those who wish to speak, and state your name and address (optional) for the record. Please provide the City Clerk with a copy of any written materials used in your address to the City Council as well as 10 copies of any printed materials you would like distributed to the City Council. The use of City equipment for presentations is not permitted.

**MATTERS NOT ON THE AGENDA** should be presented during the time designated as "PUBLIC COMMENTS." In general, each speaker will be given five (5) minutes to address the City Council; however, the Mayor, at his/her discretion, may shorten the speaking time limit to allow all speakers time to address the City Council. **By State law, the City Council may not discuss or vote on items not on the agenda. The matter will automatically be referred to staff for appropriate action or response or will be placed on the agenda of a future meeting.**

**MATTERS ON THE AGENDA** should be addressed when the City Council considers that item. Please indicate the Agenda Item Number(s) on the **Speaker Card**. Your name will be called at the appropriate time and you may proceed with your presentation within the five (5) minute time frame. The Mayor, at his/her discretion, may shorten the speaking time limit to allow all speakers to address the City Council.

**PUBLIC HEARINGS AND APPEALS** are items scheduled for which public input is either required or desired. Separate and apart from the applicant (who may speak longer in the discretion of the City Council), speakers shall be limited to five (5) minutes per person. The Mayor, at his/her discretion, may shorten the speaking time limit to allow all speakers to address the City Council. The applicant may additionally submit rebuttal comments.

**AGENDA ITEMS:** The Agenda contains the regular order of business of the City Council. Items on the Agenda have generally been reviewed and investigated by the City Staff in advance of the meeting so that the City Council can be fully informed about a matter before making its decision.

**CONSENT CALENDAR:** Items listed on the Consent Calendar are considered to be routine by the City Council and will be acted upon by one motion. There will be no separate discussion on these items unless a member of the City Council, Staff, or the public so requests. In this event, the item will be removed from the Consent Calendar and considered and acted on separately.

**DECORUM:** While members of the public are free to level criticism of City policies and the action(s) or proposed action(s) of the City Council or its members, members of the public may not engage in behavior that is disruptive to the orderly conduct of the proceedings, including but not limited to, conduct that prevents other members of the audience from being heard when it is their opportunity to speak or which prevents members of the audience from hearing or seeing the proceedings. Members of the public may not threaten any person with physical harm or act in a manner that may reasonably be interpreted as an imminent threat of physical harm. All persons attending the meeting are expected to adhere to the City's policy barring harassment based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, sexual orientation, or age. The Chief of Police, or such member or members of the Police Department, shall serve as the Sergeant-at-Arms of the City Council meeting. The Sergeant-at-Arms shall carry out all orders and instructions given by the presiding official for the purpose of maintaining order and decorum at the meeting. Any person who violates the order and decorum of the meeting may be placed under arrest and such person may be prosecuted under the provisions of Penal Code Section 403 or applicable Arcadia Municipal Code section.

# 欢迎参加阿凯迪亚市议会会议!

市议会鼓励公众参与，并邀请您分享对城市管理的看法。

**会议：**市议会定期会议于每个月第一个和第三个星期二下午七时在市议会会议厅举行。在市政厅、阿凯迪亚图书馆和市政府网站 ([www.ArcadiaCa.gov](http://www.ArcadiaCa.gov)) 可以找到包含所有相关信息的完整市议会议程。单独的议程报告可应请求通过电子邮件索取 ([CityClerk@ArcadiaCa.gov](mailto:CityClerk@ArcadiaCa.gov))。至于在发布该议程后向市议会多数成员分发的文件，公众可在阿凯迪亚市书记官办公室查阅，地址：240 W. Huntington Drive, Arcadia, California。市议会会议实况将通过有线电视进行现场直播和回放。如在以往的通知中所提示，如果您参加这次公开会议，您的图像和/或声音可能被录下并播出。

**公众参与：**市议会欢迎并邀请您参加市议会的所有会议。在每次定期会议上都为那些希望在会上发言的市民留出时间。市政府要求在市议会发言的人杜绝个人攻击、诽谤、亵渎或破坏性言论。如有可能，请在发表意见之前向市书记官提交一张**发言卡**，亦可在市长宣布自由发言时直接上台发言，并说出您的姓名和地址（如果您愿意），以便制作会议记录。请向市书记官提供一份您在发言中使用的任何书面材料，以及 10 份您希望分发给市议会的任何印刷材料。不允许把市政府设备用于准备发言内容。

**议程之外的事项**应当在指定的“公众评议”时间提出。在一般情况下，每位发言者将有五（5）分钟时间向市议会陈述意见，但市长可酌情缩短发言时限，以便让所有希望发言的人都有机会发言。**根据州法，市议会不得讨论或表决未列入议程的事项。此类事项将自动转给工作人员采取适当行动或作出回应，或将其列入未来会议的议程。**

**列入议程的事项**应当在市议会审议该事项时讨论。请在**发言卡**上标明事项的议程编号。在适当的时间会叫到您的名字，您可以在五（5）分钟时限内发言。市长可酌情缩短发言时限，以便让所有希望发言的人都有机会发言。

**公开听证和上诉**是为需要或希望征求公众意见的事项安排的日程。除申请人外（市议会可酌情决定延长申请人的发言时间），每位发言人的发言不得超过五（5）分钟。市长可酌情缩短发言时限，以便让所有希望发言的人都有机会发言。申请人还可以另外提交反驳意见。

**议程事项：**议程包含市议会的例行议题。一般而言，由市政府工作人员在会议前对议程中的事项进行审查和调查，以便市议会在作出决定之前能够充分了解情况。

**同意日历：**在同意日历上列出的事项被市议会视为例行公事，并将通过一项动议采取行动。除非市议员、工作人员或公众提出请求，否则不会对这些事项进行单独讨论。如果有人提出请求，该事项将从同意日历中删除，单独进行审议和采取行动。

**行为规范：**尽管市民可对市政府的政策和市议会或其成员的行动或拟议行动自由地提出批评，但不得出现干扰会议正常秩序的行为，包括但不限于在别人的发言时间内阻止别人发言，或妨碍公众听到发言内容或看到议程进展状况。市民亦不得威胁进行身体伤害或以可能被合理理解为作出身体伤害紧迫威胁的方式行事。所有出席会议的人都必须遵守市政府的反骚扰政策，禁止基于个人种族、宗教信仰、肤色、原国籍、祖籍、身体残障、疾病、婚姻状况、性别、性取向或年龄骚扰他人。警察局长或警察局其他成员将担任维持市议会会议秩序的保安官。保安官将执行会议主持人的一切命令和指示，以维持会议秩序和行为规范。对任何违反会议秩序和行为规范的人可执行拘捕，并可能根据《刑法典》第 403 条或《阿凯迪亚市政法典》相关条款提出起诉。



# City of Arcadia

## PROCLAMATION

*WHEREAS*, the Arcadia Music Club is proud to sponsor the 69th Annual Arcadia Festival of Bands, the longest running Band Review in the State of California; and

*WHEREAS*, this year's theme is "Generations of Service" and;

*WHEREAS*, the annual parade is hosted by the four marching bands of the Arcadia Unified School District – Arcadia High School, Dana Middle School, First Avenue Middle School, and Foothills Middle School; and

*WHEREAS*, more than 30 high school bands, and over 5,000 student musicians will attend this event and compete in the band review and field show; and

*WHEREAS*, the Arcadia Festival of Bands is one of the few band competitions in Southern California that consistently attracts the very best in competitors, and is widely considered to be the finest competition of its kind; and

*WHEREAS*, the Arcadia Festival of Bands will take place on November 19, 2022, as a signature event of our community, open to all who love marching bands and music.

*NOW, THEREFORE*, I, Tom Beck Mayor of the City of Arcadia, do hereby proclaim the month of November 2022 as:

## **ARCADIA FESTIVAL OF BANDS MONTH**

and encourage all Arcadia residents to support this outstanding and entertaining Arcadia tradition, as we welcome the marching bands and visitors to our beautiful community.

*Dated this  
1<sup>st</sup> Day of November, 2022*

*Tom Beck, Mayor*

**ARCADIA CITY COUNCIL  
SPECIAL MEETING MINUTES  
TUESDAY, OCTOBER 18, 2022**

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**CALL TO ORDER** – Mayor Beck called the Special Meeting to order at 5:00 p.m.

**ROLL CALL OF CITY COUNCIL MEMBERS**

PRESENT: Danielson, Tay, Cheng, and Beck

ABSENT: Verlato

Mayor Beck noted that due to a conflict of interest regarding both Study Session items, Council Member Verlato recused herself from the discussion.

A motion was made by Mayor Beck and seconded by Council Member Tay to excuse Council Member Verlato.

**PUBLIC COMMENTS** – No one appeared.

**STUDY SESSION**

- a. Report, discussion, and direction concerning the Downtown Alley Improvement Project Design  
Recommended Action: Provide Direction

Deputy Development Services Director/City Engineer Wray presented the Staff Report.

After discussion, the City Council provided staff with general direction on how to proceed with the design, materials, and implementation of the Downtown Alley Improvement Project Design.

- b. Report, discussion, and direction concerning the scope of work for the American Rescue Plan Act (“ARPA”) Funded Broadband Study.  
Recommended Action: Provide Direction

Economic Development Manager Schwehr presented the Staff Report.

After discussion, the City Council directed staff to bring back an agreement with a consultant who would perform a Broadband study for Downtown Arcadia; and to proceed with scoping a Citywide Broadband Installation project.

The Study Session ended at 6:16 p.m.

Council Member Verlato arrived for this portion of the meeting.

**CLOSED SESSION**

- a. Confer with legal counsel regarding anticipated litigation

Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2)

Facts and Circumstances: Written threat of litigation (Government Code Section 54956.9(e)(3))

After discussion, a motion was made by Council Member Verlato, seconded by Mayor Pro Tem Tay to enter into a certain Tolling Agreement regarding a potential complaint that may be filed against the City.

AYES: Verlato, Cheng, Danielson, Tay, and Beck  
NOES: None  
ABSENT: None


- b. Pursuant to Government Code Section 54957, Public Employee Performance Evaluation: City Attorney.

The Closed Session recessed to the Regular Meeting at 6:56 p.m.

The City Council reconvened to the Closed Session at 8:15 p.m.

No reportable action was taken on Closed Session Item b.

The Special meeting ended at 8:30 p.m.

  
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Linda Rodriguez  
Assistant City Clerk

**ARCADIA CITY COUNCIL  
REGULAR MEETING MINUTES  
TUESDAY, OCTOBER 18, 2022**

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1. **CALL TO ORDER** – Mayor Beck called the Regular Meeting to order at 7:02 p.m.
2. **INVOCATION** – Religious Director Riaz Khan, Mosque of San Gabriel
3. **PLEDGE OF ALLEGIANCE** – Assistant City Manager/Development Services Director Kruckeberg
4. **ROLL CALL OF CITY COUNCIL MEMBERS**

PRESENT: Danielson, Tay, Verlato, Cheng, and Beck  
ABSENT: None

5. **REPORT FROM CITY ATTORNEY REGARDING CLOSED/STUDY SESSION ITEMS**

City Attorney Deitsch announced that prior to the Regular Meeting the City Council met in a Special Meeting to consider the two items listed on the posted agenda under Study Session; he reported that regarding Item a., Downtown Alley Improvement Project Design, City staff reported that the City received a \$1.75 million dollar grant from the San Gabriel Valley Council of Governments to improve alleyways in downtown Arcadia; he indicated that the City Council provided general direction to City staff on how to proceed with the project; he stated that regarding Item b. concerning the scope of work for the American Rescue Plan Act (“ARPA”) Funded Broadband Study for downtown Arcadia, the City Council directed staff to: 1. bring back an agreement with the consultant who would perform a Broadband study for Downtown Arcadia; and 2. proceed to consider performing a Citywide Broadband Installation project.

City Attorney Deitsch furthered announced that the City Council convened in Closed Session to consider the two items on the posted agenda; he reported that regarding Item a., anticipated litigation, on motion by Council Member Verlato, seconded by Mayor Pro Tem Cheng, the City Council unanimously agreed to enter into a certain Tolling Agreement regarding a potential complaint against the City; he stated that regarding Item b., consideration of the performance evaluation of the City Attorney, the City Council commenced that discussion and will continue it after the conclusion of the Regular Meeting; and recommended the City Council recess the Regular meeting to a continued Closed Session.

6. **SUPPLEMENTAL INFORMATION FROM CITY MANAGER REGARDING AGENDA ITEMS**

City Manager Lazzaretto had nothing to report.

7. **MOTION TO READ ALL ORDINANCES AND RESOLUTIONS BY TITLE ONLY AND WAIVE THE READING IN FULL**

A motion was made by Council Member Verlato and seconded by Mayor Pro Tem Cheng to read all ordinances and resolutions by title only and waive the reading in full.

## 8. PRESENTATIONS

- a. Presentation to Margaux Gibson in appreciation of her significant contributions to the City of Arcadia.
- b. Presentation by Clean Power Alliance (“CPA”) regarding CPA rates and the content of their updated rate products.

## 9. PUBLIC COMMENTS

Florencia Larraloun, an Arcadia resident, appeared and expressed her frustration regarding noise caused by leaf blowers in the early morning hours; she explained the various side-effects caused by noise pollution; and urged the City Council to consider an alternative solution

Gerri Lyn, an Arcadia resident, appeared and expressed her frustration with the Development Services Department; and stated her unsuccessful attempts to reclassify her property to a single-family residence.

Kevin Kuo; an Arcadia resident, appeared and requested the City approve new plans modifying his existing front yard; he offered his rationale for previously replacing the landscape in his yard with concrete; and indicated he is seeking approval for his new plans.

City Manager Lazzaretto clarified that Mr. Kuo’s front yard, which was overlaid with concrete, did not meet City codes; he indicated that the Development Services Department is working with Mr. Kuo to find an acceptable solution to balance the hardscape and landscape of the front yard; and encouraged Mr. Kuo to continue working with Development Services to reach a solution.

## 10. REPORTS FROM MAYOR, CITY COUNCIL AND CITY CLERK *(including reports from the City Council related to meetings attended at City expense [AB 1234]).*

City Clerk Glasco participated by phone and explained his inability to attend the City Council Meeting in person.

Council Member Danielson announced that on October 5, he attended the Arcadia Woman’s Club Celebration for the unveiling of the plaque designating the Club as a Historic Landmark; on October 8, he attended the Asian Fall Fest; on October 12, the “Then & Now” Art Program; that he attended “Coffee with the Mayor” and a luncheon at the Arcadia Gardens Retirement Hotel honoring seniors celebrating their 100<sup>th</sup> birthday; he announced that October 28 is the Halloween Haunting; that October 29 is the Chinese Health Fair and the Arcadia History Makers celebration hosted by the Arcadia Historical Society; that October 30 is the Arcadia Chinese Association’s 40<sup>th</sup> Annual Fundraiser Gala; and that October 31 is the Senior Boo Bash.

Council Member Tay announced that on November 5 the Arcadia Police Foundation is hosting its “Evening with our Blue Heroes” fundraising event; he encouraged everyone to attend; and that the USC Arcadia Hospital Foundation is hosting its 32<sup>nd</sup> Annual Crystal Ball on that same evening.

Mayor Pro Tem Cheng announced that the Mary Hansen Library Garden Dedication & Ribbon Cutting Ceremony will occur on November 15; and he offered comments on balancing stress and life struggles with success.

Council Member Verlato announced that she attended the Arcadia Woman’s Club’s first dedication as a historic landmark; the Asian Fall Fest; the San Gabriel Economic Partnership Awards Gala on behalf of the San Gabriel Valley Council of Governments; the Gilb Museum of

Arcadia Heritage's 21<sup>st</sup> Anniversary Open House; the Derby's 100<sup>th</sup> Anniversary Celebration; the Rancho Santa Anita Property Owner's HOA Meeting; she shared photos of these events; she also shared a video promoting the upcoming Halloween Haunting; and she noted that November 8 is election day and encouraged everyone to vote.

Mayor Beck announced that he hosted "Coffee with the Mayor" at the Community Center; that he attended the luncheon at the Arcadia Gardens Retirement Hotel; he shared photos of the honorees celebrating their 100<sup>th</sup> birthday; that on November 12 the City is hosting a free Shred Event for Arcadia residents at the Arcadia Public Library's parking lot; that November 5 is the 2022 Community Cleanup Day at Orange Grove Park; that on October 22 the League of Women Voters will present "Ballot Measures Pros & Cons" at the Arcadia Public Library ; that October 28 is the Mayor's Community Breakfast; and he thanked the Seaver Family for their donation to the Arcadia Public Library.

## 11. CONSENT CALENDAR

- a. Regular Meeting Minutes of October 3, 2022.  
Recommended Action: Approve
- b. Resolution No. 7462 adding the Baldwin Avenue Streetscape Improvement Project to the Fiscal Year 2022-23 Capital Improvement Program Budget and authorizing an appropriation in the amount of \$2,100,000 offset by a reduction in the Measure M fund of \$500,000 and the Measure R fund of \$1,600,000.  
Recommended Action: Adopt
- c. Resolution No. 7466 amending Fiscal Year 2022-23 General Fund, authorizing a budget appropriation for the purchase of rifle rated ballistic shields and Kinetic Breaching Tool Kits in the amount of \$57,750, offset by a reduction in the General Fund Reserve; and approving the purchase of the Kinetic Breaching Tool Kits through the Governor's Office of Emergency Services' California 1122 Program in an amount not to exceed \$32,490.  
Recommended Action: Adopt and Approve
- d. Donation in the amount of \$5,000 from the Seaver Endowment for the purchase of books for the Arcadia Public Library.  
Recommended Action: Accept
- e. Contract with Mohawk Commercial, Inc., for the Fire Station 105 and Fire Station 106 Carpet Replacement Project in the amount of \$79,929.96.  
Recommended Action: Approve
- f. Contract with Select Electric, Inc., for the Colorado Complete Streets Traffic Signal Improvements Project at the intersections of Colorado Street and Baldwin Avenue, Colorado Street/Colorado Place and Colorado Boulevard, and Colorado Boulevard and First Avenue in the amount of \$248,985, plus a 10% contingency.  
Recommended Action: Approve
- g. Purchase Order with McCain, Inc. for the purchase of 11 new traffic signal cabinets for the Colorado Complete Streets Traffic Signal Project, Huntington Drive Traffic Signal Improvement Project, and the Baldwin Avenue Arterial Rehabilitation Project in the amount of \$221,576.04.  
Recommended Action: Approve

- h. Grant Award from the Office of Traffic Safety – Selective Traffic Enforcement Program for reimbursement of costs related to various traffic enforcement operations in the amount of \$50,000.  
Recommended Action: Accept
- i. Reject all bids received for the Baseball Field Bleacher Project and direct staff to re-bid the project.  
Recommended Action: Approve

It was moved by Council Member Tay, seconded by Council Member Verlato, and carried on a roll call vote to approve Consent Calendar Items 11.a through 11.i.

AYES: Tay, Verlato, Danielson, Cheng, and Beck  
 NOES: None  
 ABSENT: None

**12. CITY MANAGER**

- a. Adoption of the California Building and California Fire Codes

Ordinance No. 2394 amending Article VIII of the Arcadia Municipal Code relating to building regulations and adopting by reference the 2022 Edition of the California Building Code, Volumes 1 and 2, and Appendix J, the 2022 California Residential Code, the 2022 California Green Building Standards Code, the 2022 California Plumbing Code, the 2022 California Electrical Code, the 2022 California Mechanical Code, the 2022 California Existing Buildings Code, the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, and the Los Angeles County Grading Code with additions, amendments, and deletions.  
 Recommended Action: Introduce Ordinance No. 2394 and set the public hearing for November 15, 2022

Building Official Fields presented the Staff Report.

A motion was made by Council Member Verlato, seconded by Council Member Cheng, and carried on a roll call vote to introduce Ordinance No. 2394 amending Article VIII of the Arcadia Municipal Code relating to building regulations and adopting by reference the 2022 Edition of the California Building Code, Volumes 1 and 2, and Appendix J, the 2022 California Residential Code, the 2022 California Green Building Standards Code, the 2022 California Plumbing Code, the 2022 California Electrical Code, the 2022 California Mechanical Code, the 2022 California Existing Buildings Code, the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, and the Los Angeles County Grading Code with additions, amendments, and deletions; and set the public hearing for November 15, 2022.

AYES: Verlato, Cheng, Danielson, Tay, and Beck  
 NOES: None  
 ABSENT: None

Ordinance No. 2395 amending Article III of the Arcadia Municipal Code relating to fire regulations and adopting by reference the 2022 Edition of the California Fire Code in its entirety, including appendices Chapter 4, B, C, D, K, and O based on the 2021 Edition of the International Fire Code published by the International Code Council; together with certain additions, insertions, deletions and changes thereto.

Recommended Action: Introduce Ordinance No. 2395 and set the public hearing for November 15, 2022.

Fire Marshal Krikorian presented the Staff Report.

A motion was made by Council Member Verlato, seconded by Council Member Tay, and carried on a roll call vote to introduce Ordinance No. 2395 amending Article III of the Arcadia Municipal Code relating to fire regulations and adopting by reference the 2022 Edition of the California Fire Code in its entirety, including appendices Chapter 4, B, C, D, K, and O based on the 2021 Edition of the International Fire Code published by the International Code Council; together with certain additions, insertions, deletions and changes thereto; and set the public hearing for November 15, 2022.

AYES: Verlato, Cheng, Danielson, Tay, and Beck  
NOES: None  
ABSENT: None

### **13. ADJOURNMENT**

This City Council recessed to Closed Session at 8:15 p.m.

The City Council adjourned at 8:30 p.m. to Tuesday, November 1, 2022, at 6:00 p.m. in the City Council Conference Room.



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Linda Rodriguez  
Assistant City Clerk



# STAFF REPORT

Public Works Services Department

**DATE:** November 01, 2022

**TO:** Honorable Mayor and City Council

**FROM:** Paul Cranmer, Public Works Services Director  
By: Dave McVey, Acting General Services Superintendent

**SUBJECT:** RESOLUTION NO. 7467 AMENDING THE FISCAL YEAR 2022-23 GENERAL FUND BUDGET AND AUTHORIZING A BUDGET APPROPRIATION FOR THE POLICE DEPARTMENT CHILLER REPLACEMENT PROJECT IN THE AMOUNT OF \$247,605, OFFSET BY A REDUCTION IN THE GENERAL RESERVE FUND; AND APPROVING A CONTRACT WITH CARRIER CORPORATION FOR THE POLICE DEPARTMENT CHILLER REPLACEMENT PROJECT IN THE AMOUNT OF \$247,605

**Recommendation: Adopt and Approve**

## **SUMMARY**

The Public Works Services Department (“PWSD”) is responsible for the maintenance and repair of all City facilities, which includes Heating, Ventilation, and Air Conditioning (“HVAC”) units throughout the City. While the City’s HVAC units are included as part of a preventative maintenance replacement program, one of the Police Department (“PD”) Chillers developed a freon leak that is beyond repair and needs to be replaced at this time. Utilizing Sourcewell, a national cooperative purchasing program enables the City to streamline the process of procuring and installing a new water chiller at the best price possible.

It is recommended that the City Council adopt Resolution No. 7467 amending the Fiscal Year 2022-23 General Fund Budget, authorizing a budget appropriation for the Police Department Chiller Replacement Project in the amount of \$247,605, offset by a reduction in the General Fund Reserve, and approving a contract with Carrier Corporation for the Police Department Chiller Replacement Project in the amount of \$247,605.

## **BACKGROUND**

The Police Department chiller plant consists of two 112-ton water cooled chillers. The chillers are responsible for the cooling of the Police Department, lower City Hall, and upper City Hall. Both chillers are the original equipment installed when the Police Department was built. The building is now 19 years old, and the HVAC equipment is showing its age. The PD chillers are serviced every month for proper operation and any foreseeable repairs. During the summer months, it was apparent that facilities were not

being properly cooled. An inspection of the chillers was conducted, and staff found that Chiller 1 developed a freon leak in the piping welded to the chiller barrel. The piping was covered with insulation and the leak was not physically detected until a freon leak check was performed. Insulation covering the freon lines was removed and it was found that the weld broke connecting the freon line to the barrel due to corrosion over the years. The line could not be repaired due to the chance of rupturing the tubes inside the chiller barrel. Chiller 1 is currently only running at 50% cooling capacity due to the leak. To properly cool the Police Department, lower City Hall, and upper City Hall, both chillers are required to run at 100%. Due to lead time in ordering necessary parts to replace Chiller 1, it is necessary to request an appropriation to award a contract for the PD Chiller Replacement in Fiscal Year 2022-23.

Due to the failure of Chiller 1, it can be anticipated that Chiller 2 will experience the same problem with the freon line in the short term. As such, a 112-ton chiller will be budgeted to replace Chiller 2 in the Fiscal Year 2023-24 Capital Improvement Program. Currently Chiller 2 is fully operational.

## **DISCUSSION**

Utilizing Sourcewell, a national cooperative purchasing program, enables the City to streamline the procurement process for construction services and receive the best price possible. The California Government Code authorizes public agencies to participate in cooperative purchase agreements such as those established by Sourcewell while remaining within the City's adopted rules and procedures for purchasing. By utilizing a cooperative purchasing program, the City can streamline the procurement process for these services at a lower cost than the traditional competitive bidding process. Sourcewell awarded a contract to Carrier Corporation for a series of specialized HVAC related services, including those needed for the PD Chiller replacement. A copy of the agreement between Sourcewell and Carrier Corporation is attached. The bidding process and the contract with Carrier Corporation have been reviewed by the Public Works Services Department and it has been determined to meet the City's procurement requirements. The City has previously contracted with Carrier Corporation and has been satisfied with their service.

When the new chiller and all related piping are being installed, a temporary trailered chiller plant will be connected to the existing air handlers to provide cooling for the Police Department and City Hall.

## **ENVIRONMENTAL ANALYSIS**

The proposed action is exempt under the California Environmental Quality Act ("CEQA") under Section 15301(a), Categorical Exemption for Interior and Exterior alterations to existing facilities involving such things as interior partition, plumbing and electrical conveyances.

**FISCAL IMPACT**

The total cost for the PD Chiller Replacement Project is \$247,605 and was not budgeted as part of the General Fund budget for Fiscal Year 2022-23; therefore, a budget appropriation from the General Fund Reserve balance in the amount of \$247,605 is requested for the PD Chiller Replacement.

**RECOMMENDATION**

It is recommended that the City Council determine that this action is exempt under the California Environmental Quality Act ("CEQA"); and adopt Resolution No. 7467 amending the Fiscal Year 2022-23 General Fund Budget and authorizing a budget appropriation for the Police Department Chiller Replacement Project in the amount of \$247,605, offset by a reduction in the General Fund Reserve; and approving a contract with Carrier Corporation for the Police Department Chiller Replacement Project in the amount of \$247,605.

Approved:

  
\_\_\_\_\_  
Dominic Lazzaretto  
City Manager

Attachments: Resolution No. 7467  
Sourcewell Contract  
Proposed Construction Contract

RESOLUTION NO. 7467

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARCADIA, CALIFORNIA, AMENDING THE FISCAL YEAR 2022-23 GENERAL FUND BUDGET AND AUTHORIZING A BUDGET APPROPRIATION FOR THE POLICE DEPARTMENT CHILLER REPLACEMENT PROJECT IN THE AMOUNT OF \$247,605, OFFSET BY A REDUCTION IN THE GENERAL RESERVE FUND

WHEREAS, the Public Works Services Department (“PWSD”) is responsible for the maintenance and repair of all City facilities, which include Heating, Ventilation, and Air Conditioning (“HVAC”) units throughout the City; and

WHEREAS, an inspection of the Police Department (“PD”) Chillers was conducted, which determined that Chiller 1 developed a freon leak in the piping welded to the chiller barrel; and

WHEREAS, the freon leak on PD Chiller 1 is beyond repair and needs to be replaced at this time; and

WHEREAS, the total amount of \$247,605 is necessary to repair the chiller; and

WHEREAS, this project was not budgeted as part of the General Fund budget for Fiscal Year 2022-23; therefore, a budget appropriation from the General Reserve Fund in the amount of \$247,605 is needed for repairs; and

WHEREAS, the City Manager has certified that there are sufficient reserves available in the General Reserve Fund for appropriation.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ARCADIA, CALIFORNIA, DOES FIND, DETERMINE AND RESOLVE AS FOLLOWS:

SECTION 1. The sum of Two Hundred Forty-Seven Thousand Six Hundred Five Dollars (\$247,605) is hereby appropriated in the 2022-23 General Fund Budget, offset with an equal reduction in the General Reserve Fund.

SECTION 2. The City Clerk shall certify to the adoption of this Resolution.

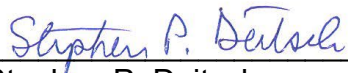
Passed, approved and adopted this 1st day of November, 2022.

\_\_\_\_\_  
Mayor of the City of Arcadia

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Stephen P. Deitsch  
City Attorney

**Solicitation Number: RFP #070121****CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Carrier Global Corporation, 5900-H Northwoods Bus Pkwy., Charlotte, NC 28269 (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 HVAC Systems and Related Services 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 August 12, 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 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 Sourcwell 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. Sourcwell, 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 Sourcwell for this Contract and must provide prompt notice to Sourcwell if that person is changed. The Account Representative will be responsible for:

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

B. BUSINESS REVIEWS. Supplier must perform a minimum of one business review with Sourcwell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, 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 Sourcwell 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;
- Sourcwell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcwell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

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

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

by Participating Entities under this Contract during each calendar quarter. Payments should note the 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 third-party 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.

Under no circumstances will Supplier be liable for any incidental, special, liquidated or consequential damages, including loss of revenue, loss of use of equipment or facilities, or economic damages based on strict liability or negligence.

### **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) authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance of 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 listed below:

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.

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 as 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.

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.

Limits:

\$2,000,000 per occurrence and in aggregate

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.

Limits:

\$2,000,000 per claim

\$2,000,000 annual aggregate

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

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcwell 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 Sourcwell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcwell 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 Sourcwell, 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 Sourcwell 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, except such rights as Supplier has to proceeds. 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. Any order requiring Buy American provisions will not be accepted until Supplier confirms in writing it can comply with the specific applicable Buy American clause cited. 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.

U. FEDERAL GOVERNMENT REQUIREMENTS STIPULATION. Supplier is a commercial entity and the components, equipment and services to be included by Supplier in its proposal and to be provided in the event of an award are offered on the basis that they constitute commercial items as defined in the Federal Acquisition Regulations ("FAR"). Similarly, the prices to be offered by Supplier in its proposal, and which would be offered in any resulting contract and any modifications or changes to such contract are based on Supplier's standard commercial accounting policies and practices. Supplier's accounting practices comply fully with U.S. GAAP, but do not take into account any additional or special requirements of Cost Accounting Standards, nor meet the requirements of FAR Part 31 or any similar procurement regulations, including those of the U.S. Department of Defense. Accordingly, Supplier makes its proposal based on its belief that an award can be made to Supplier consistent with FAR Part 12 - "Acquisition of Commercial Items," and that submission of cost and pricing data consistent with CAS/FAR Part 31 will not be required. Supplier does not accept and will not be held liable for any flow down requirements unless specifically agreed to in writing.

**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

Carrier Global Corporation

DocuSigned by:  
*Jeremy Schwartz*  
C0FD2A139D06489...

DocuSigned by:  
*Simon C. Walls*  
F1B5CDFCEE8A47B...

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

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

Jeremy Schwartz

Simon C. Walls

Title: Chief Procurement Officer

Title: Global Strategic Accounts Leader

10/7/2021 | 9:30 PM CDT

10/7/2021 | 11:01 AM CDT

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

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

Approved:

DocuSigned by:  
*Chad Coauette*  
7E42B8F817A64CC...

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

Chad Coauette

Title: Executive Director/CEO

10/7/2021 | 9:34 PM CDT

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

# RFP 070121 - HVAC Systems and Related Services

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## Vendor Details

Company Name: Carrier Global Corp  
Does your company conduct business under any other name? If yes, please state: Carrier Corporation  
Address: 5900-H Northwoods Bus Pkwy  
Charlotte, NC 28269  
Contact: Alex Relf  
Email: alex.l.relf@carrier.com  
Phone: 704-521-6443  
HST#: 06-0991716

## Submission Details

Created On: Tuesday June 15, 2021 15:26:02  
Submitted On: Wednesday June 30, 2021 15:43:18  
Submitted By: Alex Relf  
Email: alex.l.relf@carrier.com  
Transaction #: 0278eeef-41a2-4fbe-a881-901b9690436a  
Submitter's IP Address: 104.129.206.103

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## 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):	Carrier Global Corporation
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	Carrier Corporation
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	Carrier Corporation
4	Proposer Physical Address:	5900-H Northwoods Bus Pkwy, Charlotte, N.C. 28269
5	Proposer website address (or addresses):	www.carrier.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):	Meredith Emmerich, Vice President, North America, Commercial HVAC, 5900-B Northwoods Bus Pkwy, Charlotte, NC. 28269. meredith.emmerich@carrier.com
7	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Alex Relf, Strategic Account Manager, 5900-H Northwoods Bus Pkwy, Charlotte, N.C. 28269, 704-521-6443, alex.l.relf@carrier.com
8	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Joe Ison, Strategic Accounts Manager, 5900-H Northwoods Bus Pkwy, Charlotte, N.C. 28269, 501-529-9688, joseph.e.ison@carrier.com

**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.	Carrier Engineering Corporation was incorporated in New York on June 26, 1915 by seven engineers led by Willis Carrier. In 1930, Carrier Air Conditioning was formed through the merger of Carrier Engineering Corporation with Brunswick-Kroeschell Company and York Heating & Ventilating Corporation. In 1978, Carrier Corporation, a corporation organized in the State of Delaware, became a wholly owned subsidiary of United Technologies Corporation, and was subsequently spun off as a stand alone company in April of 2020. Carrier Corporation is the leading manufacturer of heating, ventilation and air conditioning equipment and service in the United States with sales totaling approximately \$19 Billion in 2020.
10	What are your company's expectations in the event of an award?	Carrier is currently an incumbent vendor of Sourcewell. Upon award, Carrier will schedule a roll out meeting with the customer to plan and prepare for the execution of the awarded contract, as needed.
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.	Carrier Global Corporation is an American multinational home appliances corporation based in Palm Beach Gardens, Florida. Carrier was founded in 1915 as an independent company manufacturing and distributing heating, ventilating and air conditioning (HVAC) systems, and has since expanded to include manufacturing commercial refrigeration and foodservice equipment, and fire and security technologies.  As of 2020, it was an \$18.6 billion company with over 53,000 employees serving customers in 160 countries on six continents. Carrier's Moody rating is Baa3, and the outlook is stable. Carrier's Baa3 senior unsecured rating reflects its long-established leadership position in the global equipment industry. Carrier's significant scale positions it as one of the largest competitors in the sector. The business is exposed to cyclicalities with about 70% of revenue derived from new equipment sales. The ratings consider sizeable debt levels and high financial leverage following the spinoff from United Technologies Corporation in early 2020.  Refer to annual report for full financial statements.
12	What is your US market share for the solutions that you are proposing?	Carrier is a leading manufacturer of HVAC equipment in both North America and globally. Specific market share information is confidential. Please refer to our website for HVAC applications and installation.
13	What is your Canadian market share for the solutions that you are proposing?	N/A
14	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No
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?	Manufacturer and service provider. a) N/A b) Carrier Commercial Service self performs most work, or will serve as a general if specialty sub-contractors are needed on a project. Carrier has 99 service offices throughout North America, and may procure product or materials through our corporate owned warehouses, or through local distribution centers.
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.	Carrier is subject to various registration and licensing requirements in the states and local jurisdictions where it does business and has hundreds of licenses in place in the United States, and Canada.
17	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	N/A

**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	<p>The OptiClean™ Dual-Mode Air Scrubber &amp; Negative Air Machine, Carrier's pioneering solution to help provide healthier indoor air, has been crowned Air Conditioning Innovation of the Year in the RAC Cooling Industry Awards, one of the UK's top building technology awards.</p> <p>The recognition follows the OptiClean unit being named one of TIME's 100 Best Inventions of 2020. The product, currently available in North America and Asia, is expected to launch in Europe this year. Carrier is part of Carrier Global Corporation (NYSE: CARR), a leading global provider of healthy, safe and sustainable building and cold chain solutions.</p> <p>As an air scrubber, the OptiClean unit can improve the indoor air quality of classrooms, restaurants, dental offices, commercial buildings and more, by pulling in air, scrubbing it using a HEPA filter, and then exhausting cleaner air back into the room. It has a footprint of less than three square feet and can plug into a standard wall outlet.</p>
19	What percentage of your sales are to the governmental sector in the past three years	Carrier Corporation is a 19 billion dollar, global entity. Less than 1% of those sales were recognized from the government sector.
20	What percentage of your sales are to the education sector in the past three years	Carrier Corporation is a 19 billion dollar, global entity. Less than 1% of those sales were recognized from the education sector.
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?	Carrier is a leading manufacturer of HVAC equipment in both North America and globally. Specific market share information is confidential. Please refer to our website for HVAC applications and installation.
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?	Carrier is a leading manufacturer of HVAC equipment in both North America and globally. Specific market share information is confidential. Please refer to our website for HVAC applications and installation.

**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 *
County of Passaic	Steve Orsini	201-937-2576
Mount Olive Board of Education	Glenn Miller	973 691-4008 x8505
Rutgers University	Glen Vliet	848 445-3714

**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 *
Houston Independent School District	Education	Texas - TX	HVAC preventive maintenance, retrofits, repairs, energy saving upgrades.	Carrier is a leading manufacturer of HVAC equipment in both North America and globally. Specific market share information is confidential. Please refer to our website for HVAC applications and installation.	Carrier is a leading manufacturer of HVAC equipment in both North America and globally. Specific market share information is confidential. Please refer to our website for HVAC applications and installation.
Redondo Beach School District	Education	California - CA	HVAC capital chiller installations and retrofits, to include boilers, air handlers, and controls systems.	Carrier is a leading manufacturer of HVAC equipment in both North America and globally. Specific market share information is confidential. Please refer to our website for HVAC applications and installation.	Carrier is a leading manufacturer of HVAC equipment in both North America and globally. Specific market share information is confidential. Please refer to our website for HVAC applications and installation.
BIRMINGHAM BOARD OF EDUCATION	Education	Alabama - AL	HVAC preventive maintenance, retrofits, repairs, energy saving upgrades.	Carrier is a leading manufacturer of HVAC equipment in both North America and globally. Specific market share information is confidential. Please refer to our website for HVAC applications and installation.	Carrier is a leading manufacturer of HVAC equipment in both North America and globally. Specific market share information is confidential. Please refer to our website for HVAC applications and installation.
Elk Grove School District	Education	California - CA	Supply HVAC equipment, perform startup, and warranty repairs.	Carrier is a leading manufacturer of HVAC equipment in both North America and globally. Specific market share information is confidential. Please refer to our website for HVAC applications and installation.	Carrier is a leading manufacturer of HVAC equipment in both North America and globally. Specific market share information is confidential. Please refer to our website for HVAC applications and installation.
University of Central Florida	Education	Florida - FL	HVAC capital chiller installations and retrofits, to include boilers, roof top units, and controls systems.	Carrier is a leading manufacturer of HVAC equipment in both North America and globally. Specific market share information is confidential. Please refer to our website for HVAC applications and installation.	Carrier is a leading manufacturer of HVAC equipment in both North America and globally. Specific market share information is confidential. Please refer to our website for HVAC applications and installation.

**Table 6: Ability to Sell and Deliver Service**

Describe your company's capability to meet the needs of Sourcewell 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 *
25	Sales force.	In North America, Carrier Commercial Service is geographically managed through the Service Center of Excellence, in Charlotte, NC. This centralized location works with 99 field offices that cover the entire continental United States, Hawaii, and Canada.
26	Dealer network or other distribution methods.	Carrier has both company owned direct sales offices, independent distributors and joint venture distributors. In May 1999 Carrier and Watsco, Inc. formed a joint venture to distribute Carrier, Bryant, Payne equipment and Totaline parts. The new name for this distribution network is Carrier Enterprises. These distributors were previously owned 100% by Carrier.
27	Service force.	Commercial Service employs over 2,000 management, professional, clerical personnel, service technicians and technical engineers. We have over 30 million man-hours of service experience. Service technicians belong to local pipefitters unions (optional in right-to-work states), which are part of the United Association of Plumbers and Steamfitters.
28	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.	When you partner with Carrier, you will work with a single source, dedicated Service Account Team that will provide 360 degrees of comprehensive solutions. Carrier will work with our client to develop a smart, effective and customized plan, designed to deliver the most value for the equipment and facility. Service options are matched to your required level of coverage; from inspections and annual maintenance, to planned and full maintenance options. When it comes to predictive maintenance services, Carrier is proactive, keeping your equipment at its operating peak performance. In-depth analysis, with our proprietary diagnostic tools, increases reliability and minimizes downtime. Carrier Commercial Service will notify you of any potential issues long before you realize there is a problem. In the event of an emergency outage, Carrier's response time to "tech on site" is typically 4 hours. For routine calls, the response time is generally 8 hours.
29	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	Carrier Corporation is a proud incumbent provider to Sourcewell. Carrier will continue to respond to requests from current, and prospective, members of the Sourcewell program.
30	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	Carrier Commercial Service in Canada currently provides services to governmental facilities. Our Canada team will respond accordingly to all requests for Sourcewell services.
31	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	Carrier has over 900 dispatch points operating out of 99 service offices in the US and Canada. Carrier Commercial Service provides services to all regions of the US, except Alaska.
32	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?	Carrier can, and will, service all sectors throughout the US and Canada (except Alaska) via the Sourcewell program.
33	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	Carrier Commercial Service provides services to all regions of the US and Canada, to include Hawaii. Carrier does not service Alaska.

**Table 7: Marketing Plan**

Line Item	Question	Response *
34	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.	Carrier sends quarterly and annual email correspondence to customers associated with these markets. In addition to our email marketing campaign, Carrier annually attends and participates in the NIGP Forum and trade show. Carrier looks forward to partnering with Sourcewell in a strategic relationship at the show. Examples of Carrier's marketing materials for market solutions may be found at <a href="http://www.carrier.com">www.carrier.com</a> . Included with the submission package is Carrier Strategic Accounts Marketing brochure.
35	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	Carrier's web site <a href="http://www.carrier.com">www.carrier.com</a> is an effective platform for communicating our offerings to the general public, and prospective clients alike. The site allows us to showcase products and services, sustainable building solutions, and newly developed innovations. Carrier is also active in LinkedIn and Twitter, as a means of communicating current news, and during times of emergency, to alert our customers of our temporary solutions for heating, cooling and power supply.
36	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?	Carrier will encourage Sourcewell to facilitate introductions on behalf of Carrier with parties that represent a match to our service offerings. The master services agreement will be introduced to the national sales team during the award rollout, and will be accessible to all service personnel on our internal, National Accounts web site.
37	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.	N/A

**Table 8: Value-Added Attributes**

Line Item	Question	Response *
38	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.	At the customer's option, Carrier may provide equipment operation training at the customer's facility. This training generally lasts several hours in duration, and encompasses unit operation, weekly routine operations checks, and minor troubleshooting. In addition, the customer may attend factory training at the Service Center of Excellence in Charlotte, N.C.
39	Describe any technological advances that your proposed products or services offer.	Carrier® SMART Service is a dynamic, proactive strategy for enhanced equipment and system management. Through the identification and analysis of chiller and system operating trends, more informed decisions can now be made relative to meeting comfort demands, implementing service, maintenance or repair events and improving a building's financial performance. The benefits include insight into chiller operation and trends, early indication of equipment problems, maximum operating efficiency, mitigating risks by identifying and correcting minor problems before they lead to expensive repairs.
40	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.	One of the U.S. Government's testing agencies recently found that Carrier's variable-speed screw chiller consumed less energy and offered a greater range of operating conditions than alternative water-cooled chiller technology. Overseen by the General Services Administration, the Green Proving Ground program appointed Oak Ridge National Laboratory to perform real-world testing of two chillers: one with variable-speed screw technology and the other with maglev centrifugal technology. The findings showed variable-speed screw technology, like that in Carrier's AquaEdge® 23XRV water-cooled chiller, was more efficient, more versatile and required less maintenance than the maglev centrifugal and at a lower installed cost. When compared across a broad range of operating conditions, the variable-speed screw chiller consumed 11 percent less energy than the maglev centrifugal chiller. Based on the data, the variable-speed screw chiller also has an equipment price that is more than 30 percent lower than the maglev centrifugal chiller with the same cooling capacity.
41	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.	With Weather Series Rooftop Units featuring EcoBlue™ Technology, Carrier is proving that not all rooftops are created equal. EcoBlue™ Technology includes a more compact vane axial fan, which is an industry first for packaged rooftop units, along with a simplified design that helps lower installation and maintenance costs. Turn to the experts today to learn more and see how we've put a whole new spin on rooftops. Silver award winner of Consulting - Specifying Engineer 2019 Product of the Year.
42	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.	Carrier is a publicly traded, fortune 500 corporation and is not minority owned.
43	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?	When you partner with Carrier, you'll work with recognized HVAC professionals – all with a clear focus on the importance of every aspect of your investment. Our technicians are certified as Carrier Specialists or Masters - each trained on our products, customer service and thoroughly tested to our standards. Carrier's Tech360 Certification Program is the most progressive learning program in the industry. As Carrier's own servicing entity, we have access to the latest engineering advancements and the most advanced technical servicing tools. Our expansive OEM service network has strategically-located offices in the United States and Canada. Translation: we'll be there whenever you need us... 24/7/365. Environmental Health and Safety (EH&S) is rooted in our culture. We support a multi-faceted EH&S management system which ensures a focused approach to safety every day. On all levels, we adhere to the most stringent safety standards, which translate to safety on your jobsite. Our Achieving Competitive Excellence (ACE) operating system brings you standardized solutions, no guesswork, no variables. We focus on quality, efficiency and consistency at your jobsite and in all our day-to-day business practices.

**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 *
44	Do your warranties cover all products, parts, and labor?	Carrier warrants that all equipment manufactured by Carrier Corporation and all Carrier equipment, parts or components supplied hereunder will be free from defects in material and workmanship. Carrier shall at its option repair or replace, F.O.B. point of sale, any equipment, part or component sold by Carrier and determined to be defective within one (1) year from the date of initial operation or eighteen (18) months from date of shipment, whichever is earlier. Carrier does not warrant products not manufactured by Carrier Corporation, but it does pass on to Customer any available manufacturer's warranty for those products. Carrier warrants that all service provided by Carrier hereunder shall be performed in a workmanlike manner. In the event any such service is determined to be defective within ninety (90) days of completion of that service, Carrier shall at its option re-perform or issue a credit for such service. Carrier's obligation to repair or replace any defective equipment, parts or components during the warranty period shall be Customer's exclusive remedy. Carrier shall not be responsible for labor charges for removal or reinstallation of defective equipment, parts or components, for charges for transportation, handling and shipping or refrigerant loss, or for repairs or replacement of such equipment, parts or components, required as a consequence of faulty installation, misapplication, vandalism, abuse, exposure to chemicals, improper servicing, unauthorized alteration or improper operation by persons other than Carrier.
45	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	No
46	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Yes
47	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?	No
48	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?	Carrier will warranty products per the manufacturer's guidelines.
49	What are your proposed exchange and return programs and policies?	No items will be accepted for return without prior written authorization. Returned goods may be subject to a restocking charge. Special order and non-stock items cannot be returned.
50	Describe any service contract options for the items included in your proposal.	Carrier offers its customers long-term service agreements providing them with knowledge on new cost-saving and environmental technologies, preventive maintenance, and recommendations on current controls systems. In addition, Carrier has a unique remote diagnostic monitoring tool that can detect potential service problems before they occur.  Carrier seeks to reduce the clients operating costs through equipment optimization, equipment baseline analysis, building management solutions, energy savings solutions, equipment modernization, including: retrofit and upgrades and turnkey replacement solutions. Other key resources include: Field service engineers, standard work instructions, expedited parts availability and CarrierROLE®, remote online experts

**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 *
51	Describe any performance standards or guarantees that apply to your services	<p>Carrier warrants that all equipment manufactured by Carrier Corporation and all Carrier equipment, parts or components supplied hereunder will be free from defects in material and workmanship. Carrier shall at its option repair or replace, F.O.B. point of sale, any equipment, part or component sold by Carrier and determined to be defective within one (1) year from the date of initial operation or eighteen (18) months from date of shipment, whichever is earlier. Carrier does not warrant products not manufactured by Carrier Corporation, but it does pass on to Customer any available manufacturer's warranty for those products. Carrier warrants that all service provided by Carrier hereunder shall be performed in a workmanlike manner. In the event any such service is determined to be defective within ninety (90) days of completion of that service, Carrier shall at its option re-perform or issue a credit for such service, Carrier's obligation to repair or replace any defective equipment, parts or components during the warranty period shall be Customer's exclusive remedy. Carrier shall not be responsible for labor charges for removal or reinstallation of defective equipment, parts or components, for charges for transportation, handling and shipping or refrigerant loss, or for repairs or replacement of such equipment, parts or components, required as a consequence of faulty installation, misapplication, vandalism, abuse, exposure to chemicals, improper servicing, unauthorized alteration or improper operation by persons other than Carrier.</p>
52	Describe any service standards or guarantees that apply to your services (policies, metrics, KPIs, etc.)	<p><b>Quality Assurance of Products &amp; Services</b></p> <p>In early 1990, Carrier's Service Marketing Division developed a process for Service Product Design and Implementation. Once a concept is established, it progresses through a feasibility study, where customers are consulted via focus groups or questionnaires. If management approval is obtained, a multi-functional team selected from marketing and operations is formed to undertake the project.</p> <p>Consequently, field training must take place for the proper delivery of the service product. This can be a concurrent activity with the technical training that must accompany each product. Training sessions are held at the region or district offices, with all office personnel involved. This includes the clerical people who administer the product, the engineers who may be called upon to install the product, the managers who manage the product's introduction, and the technicians who are involved in product installation and delivery.</p> <p>In product introduction, the project manager meets with quality review teams and suppliers to assure that the final product meets the initial goals for the product. Once the product is field implemented, the Customer Service Report (CSR) provides the means to communicate product deficiencies. Service marketing compiles the data via statistical analysis and the information is passed on to the appropriate suppliers.</p> <p>What service was sold versus what service was performed is a key indicator in the service business. Method of documentation of this indicator includes a computerized scheduling system, and the Customer Service Report (CSR) time tickets.</p> <p>The Customer Service Report (CSR), is a critical document for conformity. The CSR consists of several sections. The equipment information, model and serial numbers are recorded to identify the machine. A task code is used to identify the work done. Additionally, operating log readings are taken to verify the proper operation of the machine within design conditions. Calculations are done by the mechanic to confirm that operation is within the design specifications. Space on the form is dedicated to parts used, written description of work done and abnormalities discovered by the servicing mechanic. Finally, after all service is performed, customer signatures are obtained to verify that the work was done to the customer's satisfaction.</p> <p>The service performance key indicators are measured monthly by management. If any discrepancies are noted, the next level of management meets with the entity, determines the root cause of the existing performance as a comparison to plan and develop action plans to rectify the situation. These action plans detail specific areas of concern, outlining actions to be taken, timing, and responsibilities. Monthly follow-ups are conducted and actual results compared to planned results. Further corrective actions are taken as required.</p> <p>For product hardware, statistics and data compiled by the CSR Report feedback process determines product deficiencies. Its purpose is to allow the mechanic to receive technical assistance during startup, to give feedback to engineering on problems encountered with the unit. This information is shared with the components supplier and action items implemented to correct the situation. Management makes a required vendor visit to assure that the proper actions are implemented.</p> <p>In a distributed technical organization, there is the need to communicate service instructions across the nation. The principle vehicles for these transfers of information are the Service Bulletin and Equipment Technical Manuals.</p> <p>The need to generate technical bulletins is created by the input received from the field service organization through Customer Service Report (CSR) documents which are reviewed by U.S Field Operations (USFO) customer assurance personnel and field requests for assistance.</p> <p>Carrier uses both formal and informal approaches to assess the quality of its systems, processes, practices, products and services. Formally, Carrier Systems and Services assess the quality of the above with measurements. Some of the measurements include yearly audits (i.e., policies, procedures, purchasing, signature authority, safety), product failure rates on a monthly basis, service agreement cancellations, customer surveys (customer satisfaction index), and customer complaints.</p> <p>There are Product Management Councils set up to monitor, review and take action for specific products. Examples are the chiller, airside products, and controls products quality councils which meet on a quarterly basis or as required.</p> <p>Carrier is committed to delivering a quality product or service at an appropriate price. We have or are implementing processes that allow us to measure the quality of our current offerings, assess opportunities for improvement and implement changes, when needed, to improve our quality or modify our products to meet new customer requirements.</p>

**Table 10: Payment Terms and Financing Options**

Line Item	Question	Response *
53	Describe your payment terms and accepted payment methods?	Net 30. Payment is accepted via check, credit card, or wire.
54	Describe any leasing or financing options available for use by educational or governmental entities.	N/A
55	Briefly describe your proposed order process. Include enough detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template. For example, indicate whether your dealer network is included in your response and whether each dealer (or some other entity) will process the Sourcewell participating entities' purchase orders.	Rather than utilize a dealer network, Carrier Corp directly employs its sales and service force. As a Sourcewell incumbent, Carrier has successfully provided quarterly reports since 2017.
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.	Carrier has created a pricing template which details contract labor rates, material markups, and equipment discounts from master pricing. This document is distributed to our field upon contract award, and stored on a shared drive for all company employees to access. Template uploaded to this RFP as a reference.
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?	Yes, and at no additional costs.

**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.	See attached pricing template.
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.	See attached pricing template.
60	Describe any quantity or volume discounts or rebate programs that you offer.	None.
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.	Sourced Parts are generally marked up using a pre-negotiated Mark up schedule. See attached pricing template for rates.
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.	Trip charges and consumable charges apply to every visit.
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.	All shipments shall be F.O.B. shipping point, freight prepaid and allowed to the job site. Shipment dates quoted are approximate. Carrier does not guarantee a particular date for shipment or delivery.  Carrier shall have the right to ship any portion of the equipment included in this Agreement and invoice Customer for such partial shipment.
64	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	Same as above.
65	Describe any unique distribution and/or delivery methods or options offered in your proposal.	Any unique requirements will be discussed on a customer by customer basis.

**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.	

**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.	Carrier Corporation utilizes a pricing tool that can be pre-loaded with Sourcewell's pre-negotiated rates, and markups. This ensures that users are compliant while creating competitive bids for Sourcewell members. A National Account Manager will review all bids prior to submission to ensure consistency, and correctness.
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.	The Carrier National Account Manager will use two tools to track the Sourcewell contract usage. One is a tracking list maintained by the National Account Manager, and the equipment team. The second resides in our service-sales software, which will track and report quoted or sold jobs throughout the life of the contract.
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.)	2%

**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.	Heating, ventilation, air-conditioning and refrigeration systems, controls, services, and sustainable solutions for commercial, industrial, and transportation applications.
71	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	Parts sales, new equipment factory startup, turnkey product installations, upgrades, indoor air quality solutions.

**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	HVAC, IAQ, and water heating or treatment infrastructure, equipment, components, products, parts, and related technology	<input checked="" type="radio"/> Yes <input type="radio"/> No	Carrier offers a full line of products and solutions for building occupants' comfort, health, and well being, and industrial cooling. This includes new equipment, parts, labor, warranty, and turnkey installations.
73	Sensors, controls, thermostats, gauges, and system automation or management products and technology	<input checked="" type="radio"/> Yes <input type="radio"/> No	Carrier sells a full line of OEM replacement components, and can source parts from all other HVAC manufacturers as well.
74	Services related to the offering of the solutions described in Lines 72 and 73 of Table 14B above, including installation, maintenance, repair, refurbishment, replacement, system upgrades, emergency or short-term HVAC equipment rental, assessment, integration, training, support, and customization	<input checked="" type="radio"/> Yes <input type="radio"/> No	Carrier seeks to reduce the clients operating costs through equipment optimization, equipment baseline analysis, building management solutions, energy savings solutions, equipment modernization, including: retrofit and upgrades and turnkey replacement solutions. Other key resources include: Field service engineers, standard work instructions, expedited parts availability and CarrierROLE®, remote online experts

**Exceptions to Terms, Conditions, or Specifications Form**

**Only those Proposer Exceptions to Terms, Conditions, or Specifications that have been accepted by Sourcewell have been incorporated into the contract text.**

**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](#) - Sourcewell RFP 5-19-21 Carrier Equipment Products and Pricing.xlsx - Wednesday June 30, 2021 15:03:46

[Financial Strength and Stability](#) - Carrier-2020-Annual-Report.pdf - Monday June 21, 2021 10:32:55

[Marketing Plan/Samples](#) - Strategic Accounts Overview.pdf - Monday June 28, 2021 09:17:40

WMBE/MBE/SBE or Related Certificates (optional)

[Warranty Information](#) - Carrier Warranty and Terms.pdf - Monday June 21, 2021 10:33:20

[Standard Transaction Document Samples](#) - Sourcewell RFP 5-19-21 Carrier Equipment Products and Pricing.xlsx - Wednesday June 30, 2021 15:04:38

[Upload Additional Document](#) - RFP\_070121\_HVAC\_Systems\_Services\_Contract\_Template Sourcewell redline for Carrier 5.25.2021.docx - Monday June 21, 2021 10:33:43

**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. - Alex Relf, Strategic Account Manager, Carrier Global Corp

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_4_HVAC_Systems_Services_RFP_070121 Tue June 22 2021 04:10 PM	<input checked="" type="checkbox"/>	1
Addendum_3_HVAC_Systems_Services_RFP_070121 Wed May 26 2021 04:55 PM	<input checked="" type="checkbox"/>	1
Addendum_2_HVAC_Systems_Services_RFP_070121 Tue May 18 2021 03:45 PM	<input checked="" type="checkbox"/>	1
Addendum_1_HVAC_Systems_Services_RFP_070121 Mon May 17 2021 01:50 PM	<input checked="" type="checkbox"/>	1

**CITY OF ARCADIA  
CONSTRUCTION CONTRACT  
POLICE DEPARTMENT CHILLER REPLACEMENT PROJECT**

**1. PARTIES AND DATE.**

This Contract is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Arcadia, a public agency of the State of California ("City") and Carrier Corporation, a Delaware Corporation, with its principal place of business at 2478 Peck Road, City of Industry, CA 90601 ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Contract.

**2. RECITALS.**

2.1 City. City is a public agency organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Contractor. Contractor desires to perform and assume responsibility for the provision of certain construction services required by the City on the terms and conditions set forth in this Contract. Contractor represents that it is duly licensed and experienced in providing HVAC related construction services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California, and that it is familiar with the plans of City. The following license classifications are required for this Project: **C-20 and C-10**.

2.3 Project. City desires to engage Contractor to render such services for the **Police Department Chiller Replacement Project** ("Project") as set forth in this Contract.

2.4 Project Documents & Certifications. Contractor has obtained, and delivers concurrently herewith, a performance bond, a payment bond, and all insurance documentation, as required by the Contract.

**3. TERMS**

3.1 Incorporation of Documents. This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Services/Schedule (Exhibit "A")
- Plans and Specifications (Exhibit "B")
- Special Conditions (Exhibit "C")
- Contractor's Certificate Regarding Workers' Compensation (Exhibit "D")
- Public Works Contractor Registration Certification (Exhibit "E")
- Payment and Performance Bonds (Exhibit "F")
- Federal Requirements (Exhibit "G")
- Addenda
- Change Orders executed by the City
- Current Edition of the Standard Specifications for Public Works Construction (The Greenbook), Excluding Sections 1-9
- Notice Inviting Bids, if any
- Instructions to Bidders, if any
- Contractor's Bid

3.2 Contractor's Basic Obligation; Scope of Work. Contractor promises and agrees, at its own cost and expense, to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"), for a Total Contract Price as specified pursuant to this Contract. All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference. The plans and specifications for the Work are further described in Exhibit "B" attached hereto and incorporated herein by this reference. Special Conditions, if any, relating to the Work are described in Exhibit "C" attached hereto and incorporated herein by this reference.

3.2.1 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in writing by a valid change order executed by the City. Should Contractor request a change order due to unforeseen circumstances affecting the performance of the Work, such request shall be made within five (5) business days of the date such circumstances are discovered or shall waive its right to request a change order due to such circumstances. If the Parties cannot agree on any change in price required by such change in the Work, the City may direct the Contractor to proceed with the performance of the change on a time and materials basis.

3.2.2 Substitutions/"Or Equal". Pursuant to Public Contract Code Section 3400(b), the City may make a finding that designates certain products, things, or services by specific brand or trade name. Unless specifically designated in this Contract, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal."

Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in this Contract. However, the City may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

The City has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. Data required to substantiate requests for substitutions of an "or equal" material, process or article shall include a signed affidavit from Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted "or equal" material, process or article, and substantiates that it is an "or equal" to the material, process or

article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the City in a timely fashion will result in the rejection of the proposed substitution.

Contractor shall bear all of the City's costs associated with the review of substitution requests. Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

3.3 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Work under this Contract within **Sixty (60) CALENDAR days**, beginning the effective date of the Notice to Proceed ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the City. Such schedules or milestones may be included as part of Exhibits "A" or "B" attached hereto, or may be provided separately in writing to Contractor. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages the sum of **Seven Hundred Ninety Dollars and Nine Cents (\$790.09) per day** for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule or Project milestones established pursuant to the Contract.

3.4 Standard of Performance; Performance of Employees. Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the City, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

3.5 Control and Payment of Subordinates; Contractual Relationship. City retains Contractor on an independent contractor basis and Contractor is not an employee of City. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

3.6 City's Basic Obligation. City agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract, the City shall pay to Contractor, as full consideration for the satisfactory performance by Contractor of the services and obligations required by this Contract, the below-referenced compensation in accordance with compensation provisions set forth in the Contract.

### 3.7 Compensation and Payment.

3.7.1 Amount of Compensation. As consideration for performance of the Work required herein, City agrees to pay Contractor the Total Contract Price of **TWO HUNDRED FORTY-SEVEN THOUSAND, SIX HUNDRED FIVE DOLLARS AND NO CENTS (\$247,605.00)** ("Total Contract Price") provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the City.

3.7.2 Payment of Compensation. If the Work is scheduled for completion in thirty (30) or less calendar days, City will arrange for payment of the Total Contract Price upon completion and approval by City of the Work. If the Work is scheduled for completion in more than thirty (30) calendar days, City will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the City an itemized application for payment in the format supplied by the City indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the City may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the City and in such detail and form as the City shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments.

3.7.3 Prompt Payment. City shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. However, no progress payments will be made for Work not completed in accordance with this Contract. Contractor shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others.

3.7.4 Contract Retentions. From each approved progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder will be paid to Contractor. All Contract retention shall be released and paid to Contractor and subcontractors pursuant to California Public Contract Code Section 7107.

3.7.5 Other Retentions. In addition to Contract retentions, the City may deduct from each progress payment an amount necessary to protect City from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the City in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by City during the prosecution of the

Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Contract; and (11) any other sums which the City is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

3.7.6 Substitutions for Contract Retentions. In accordance with California Public Contract Code Section 22300, the City will permit the substitution of securities for any monies withheld by the City to ensure performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in California as the escrow agent, and thereafter the City shall then pay such monies to Contractor as they come due. Upon satisfactory completion of the Contract, the securities shall be returned to Contractor. For purposes of this Section and Section 22300 of the Public Contract Code, the term "satisfactory completion of the contract" shall mean the time the City has issued written final acceptance of the Work and filed a Notice of Completion as required by law and provisions of this Contract. Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this Section shall be in the form provided by the City.

3.7.7 Title to Work. As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to the City at the time of payment. To the extent that title has not previously been vested in the City by reason of payments, full title shall pass to the City at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by the City, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to items.

3.7.8 Labor and Material Releases. Contractor shall furnish City with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by City.

3.7.9 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$25,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Contract. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor

and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

3.7.10 Apprenticeable Crafts. If the Total Contract Price exceeds \$35,000 and if Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor. The Contractor or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

3.7.11 Hours of Work. If the Total Contract Price exceeds \$25,000, Contractor is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Contractor shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

3.7.12 Payroll Records. If the Total Contract Price exceeds \$25,000, Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, Contractor shall, as a penalty to City, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Contractor. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.7.13 Contractor and Subcontractor Registration. If the Total Contract Price exceeds \$25,000, then pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Contractor is directed to review, fill out and execute the Public Works Contractor Registration Certification attached hereto as Exhibit "E" prior to contract execution. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.7.14 Labor Compliance; Stop Orders. If the Total Contract Price exceeds \$25,000, Contractor acknowledges that it is aware that this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

### 3.8 Performance of Work; Jobsite Obligations.

#### 3.8.1 Water Quality Management and Compliance.

3.8.1.1 Water Quality Management and Compliance. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); local ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

3.8.1.2 Compliance with the Statewide Construction General Permit. Contractor shall comply with all conditions of the most recent iteration of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, issued by the California State Water Resources Control Board ("Permit"). It shall be Contractor's sole responsibility to file a Notice of Intent and procure coverage under the Permit for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. Prior to initiating work, Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through different phases of construction and is subject to different weather conditions. It shall be Contractor's sole responsibility to update the SWPPP as necessary to address conditions at the project site.

3.8.1.3 Other Water Quality Rules Regulations and Policies. Contractor shall comply with the lawful requirements of any applicable municipality, drainage City, or local agency regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

3.8.1.4 Cost of Compliance. Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the

Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

3.8.1.5 **Liability for Non-Compliance.** Failure to comply with the Permit is a violation of federal and state law. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to defend, indemnify and hold harmless the City and its officials, officers, employees, volunteers and agents for any alleged violations. In addition, City may seek damages from Contractor for any delay in completing the Work in accordance with the Contract, if such delay is caused by or related to Contractor's failure to comply with the Permit.

3.8.1.6 **Reservation of Right to Defend.** City reserves the right to defend any enforcement action brought against the City for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse the City for the costs (including the City's attorney's fees) associated with, any settlement reached between the City and the relevant enforcement entity.

3.8.1.7 **Training.** In addition to the standard of performance requirements set forth in paragraph 3.4, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.8.1. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in paragraph 3.8.1 as they may relate to the Work provided under this Agreement. Upon request, City will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

3.8.2 **Safety.** Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

3.8.3 **Laws and Regulations.** Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the City in

writing. Any necessary changes shall be made by written change order. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Contract to the same extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.8.4 Permits and Licenses. Contractor shall be responsible for securing City permits and licenses necessary to perform the Work described herein, including, but not limited to, any required business license. While Contractor will not be charged a fee for any City permits, Contractor shall pay the City's business license fee, if any. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

3.8.5 Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for City's review and approval a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

3.8.6 Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify City of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by City; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, City shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

3.8.7 Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, City shall compensate Contractor for the costs of: (1) locating and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of City to provide for removal or relocation of such utility facilities.

3.8.8 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Although CARB limits and requirements are more broad, Contractor shall

specifically be aware of their application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.8.9 State Recycling Mandates. Contractor shall comply with State Recycling Mandates. Any recyclable materials/debris collected by the contractor that can be feasibly diverted via reuse or recycling must be hauled by the appropriate handler for reuse or recycling.

3.9 Completion of Work. When Contractor determines that it has completed the Work required herein, Contractor shall so notify City in writing and shall furnish all labor and material releases required by this Contract. City shall thereupon inspect the Work. If the Work is not acceptable to the City, the City shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a reinspection by the City. Once the Work is acceptable to City, City shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which City may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code.

### 3.10 Claims; Government Code Claim Compliance.

3.10.1 Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

3.10.2 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the terms of this Contract has been denied by the City, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the City. Claims governed by this Section may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than fourteen (14) days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

3.10.3 Supporting Documentation. The Contractor shall submit all claims in the following format:

3.10.3.1 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

3.10.3.2 List of documents relating to claim:

- (A) Specifications
- (B) Drawings
- (C) Clarifications (Requests for Information)
- (D) Schedules
- (E) Other

3.10.3.3 Chronology of events and correspondence

3.10.3.4 Analysis of claim merit

3.10.3.5 Analysis of claim cost

3.10.3.6 Time impact analysis in CPM format

3.10.3.7 If Contractor's claim is based in whole or in part on an allegation of errors or omissions in the Drawings or Specifications for the Project, Contractor shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.

3.10.3.8 Cover letter and certification of validity of the claim, including any claims from subcontractors of any tier, in accordance with Government Code section 12650 *et seq.*

3.10.4 City's Response. Upon receipt of a claim pursuant to this Section, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the public entity issues its written statement.

3.10.4.1 If City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, City shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

3.10.4.2 Within 30 days of receipt of a claim, City may request in writing additional documentation supporting the claim or relating to defenses or claims City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor.

3.10.4.3 City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days (if the claim is less than \$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

3.10.5 Meet and Confer. If the Contractor disputes City's written response, or City fails to respond within the time prescribed, the Contractor may so notify City, in writing, either within 15 days of receipt of City's response or within 15 days of City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

3.10.6 Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after City issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with City and the Contractor sharing the associated costs equally. City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

3.10.6.1 If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

3.10.6.2 For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the Parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

3.10.6.3 Unless otherwise agreed to by City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

3.10.6.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

3.10.7 Procedures After Mediation. If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation.

3.10.8 Civil Actions. The following procedures are established for all civil actions filed to resolve claims subject to this Section:

3.10.8.1 Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of these procedures.. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

3.10.8.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

3.10.8.3 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

3.10.9 Government Code Claims. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City. A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

3.10.10 Non-Waiver. City's failure to respond to a claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the claim being deemed rejected in its entirety. City's failure to respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

3.11 Loss and Damage. Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Work until the same is fully completed and accepted by City. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City may terminate this Contract pursuant to Section

3.17.3; provided, however, that the City needs to provide Contractor with only one (1) day advanced written notice.

### 3.12 Indemnification.

3.12.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons.

3.12.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and authorized volunteers.

### 3.13 Insurance.

3.13.1 Time for Compliance. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

3.13.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Contract 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 Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage:

3.13.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) OR Insurance Services Office Owners and Contractors Protective Liability Coverage Form (CG 00 09 11 88) (coverage for operations of designated contractor); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.

3.13.2.2 Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence and \$1,000,000 aggregate for bodily injury, personal injury and property damage; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 each accident, policy limit bodily injury or disease, and each employee bodily injury or disease. Defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the parties required to be named as additional insureds pursuant to this Contract.

3.13.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions to the insurance policies:

3.13.3.1 General Liability. (1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 10 01 plus CG20 37 10 01, or endorsements providing the exact same coverage, with respect to the Work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it.

3.13.3.2 Automobile Liability. (1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

3.13.3.3 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

3.13.3.4 All Coverages. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and authorized volunteers.

3.13.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and authorized volunteers.

3.13.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.13.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

3.13.7 Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.13.8 Subcontractors. All subcontractors shall meet the requirements of this Section before commencing Work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

3.13.9 Reporting of Claims. Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Work under this Contract.

### 3.14 Bond Requirements.

3.14.1 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Payment Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.2 Performance Bond. If specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Performance Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the effected bond within (ten) 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the Total Contract Price is increased in accordance with the Contract, Contractor shall, upon request of the City, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. If Contractor fails to furnish any required bond, the City may terminate the Contract for cause.

3.14.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.15 Warranty. Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the

Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

### 3.16 Employee/Labor Certifications.

3.16.1 Contractor's Labor Certification. By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Work. A certification form for this purpose, which is attached to this Contract as Exhibit "D" and incorporated herein by reference, shall be executed simultaneously with this Contract.

3.16.2 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.16.3 Verification of Employment Eligibility. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors and sub-subcontractors to comply with the same.

### 3.17 General Provisions.

3.17.1 City's Representative. The City hereby designates the General Manager, or his or her designee, to act as its representative for the performance of this Contract ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.17.2 Contractor's Representative. Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the City ("Contractor's Representative"). Following approval by the City, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to the City, shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to the City, shall be made for emergency

Work which may be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain the City's written approval.

3.17.3 Termination. This Contract may be terminated by City at any time, either with or without cause, by giving Contractor three (3) days advance written notice. In the event of termination by City for any reason other than the fault of Contractor, City shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, City may terminate the Contract immediately without notice, may reduce payment to Contractor in the amount necessary to offset City's resulting damages, and may pursue any other available recourse against Contractor. Contractor may not terminate this Contract except for cause. In the event this Contract is terminated in whole or in part as provided, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, City may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract.

3.17.4 Contract Interpretation. Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from City, the matter shall be referred to City's Representative, whose decision shall be binding upon Contractor.

3.17.5 Anti-Trust Claims. This provision shall be operative if this Contract is applicable to California Public Contract Code Section 7103.5. In entering into this Contract to supply goods, services or materials, Contractor hereby offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time the City tender final payment to Contractor, without further acknowledgment by the Parties.

3.17.6 Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

**CONTRACTOR:**

Carrier Corporation  
2478 Peck Road  
City of Industry, California 90601  
Attn: Dan Marquez, Account Executive

**CITY:**

City of Arcadia  
240 West Huntington Drive  
Arcadia, California 91066  
Attn: Dave McVey, Acting General Services Superintendent

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail as stated above and addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.17.7 Time of Essence. Time is of the essence in the performance of this Contract.

3.17.8 Assignment Forbidden. Contractor shall not, either voluntarily or by action of law, assign or transfer this Contract or any obligation, right, title or interest assumed by Contractor herein without the prior written consent of City. If Contractor attempts an assignment or transfer of this Contract or any obligation, right, title or interest herein, City may, at its option, terminate and revoke the Contract and shall thereupon be relieved from any and all obligations to Contractor or its assignee or transferee.

3.17.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.17.10 Laws, Venue, and Attorneys' Fees. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Los Angeles, State of California.

3.17.11 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original.

3.17.12 Successors. The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

3.17.13 [Reserved]

3.17.14 Solicitation. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to terminate this Contract without liability.

3.17.15 Conflict of Interest. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Contract, no official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom. In addition, Contractor agrees to file, or to cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Work.

3.17.16 Certification of License.

3.17.16.1 Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.

3.17.16.2 Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

3.17.17 Authority to Enter Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

3.17.18 Entire Contract; Modification. This Contract contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Contract may only be modified by a writing signed by both Parties.

3.17.19 Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

3.17.20 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project or other projects.

**[SIGNATURES ON NEXT PAGE]**

**SIGNATURE PAGE FOR CONSTRUCTION CONTRACT  
BETWEEN THE CITY OF ARCADIA  
AND CARRIER CORPORATION**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF ARCADIA

**CARRIER CORPORATION**

By: \_\_\_\_\_  
Dominic Lazaretto  
City Manager

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

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

ATTEST:

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

By: \_\_\_\_\_  
City Clerk

Its: \_\_\_\_\_

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

## EXHIBIT "A"

### SERVICES / SCHEDULE

The project proposal, Carrier Quote Number 00704479, are incorporated into this Contract. Services shall include but not limited to the following:

#### **Scope of Work**

- Coordinate scheduling and planning with customer
- Perform Lock out / Tag out on power related sources to chiller #1
- **Provide Temporary Chiller while work is being performed – 1 month rental fee included**
- Note: should additional rental time be required, the following rates will apply:  
Per Week \$6,250.00 / Per Month \$18,750.00 Isolate piping and drain condenser and cooler vessels
- Disconnect piping, electrical and controls
- Remove chiller (Carrier to properly dispose of)
- Furnish (1) Carrier 30HXC chiller **(same capacity, voltage and design specifications as existing chiller)**
- Secure chiller onto existing housekeeping pad
- Reconnect chilled and condenser supply and return piping
- Provide insulation for new chilled water piping (supply and return) Reconnect
- Perform Factory Startup and verify operation; clean work area Please note: new chiller is only Title24 Path A compliant Equipment lead time: 40 weeks

**EXHIBIT "B"**

**PLANS AND SPECIFICATIONS**

All service and unit specifications are listed in Exhibit "A".

**EXHIBIT "C"**

**SPECIAL CONDITIONS**

**ARTICLE 1. BONDS**

Within ten (10) calendar days from the date the Contractor is notified of award of the Contract, the Contractor shall deliver to the City four identical counterparts of the Performance Bond and Payment Bond on the forms supplied by the City and included as Exhibit "F" to the Contract. Failure to do so may, in the sole discretion of City, result in the forfeiture of Contractor's bid security. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Contract Price.

**EXHIBIT "D"**

**CERTIFICATION  
LABOR CODE - SECTION 1861**

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

**CARRIER CORPORATION**

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

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title (Print)

**EXHIBIT “E”**

**PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION**

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor’s and subcontractors’ current registration with the Department of Industrial Relations to perform public work.

Contractor hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.<sup>1</sup>

Name of Contractor: \_\_\_\_\_

DIR Registration Number: \_\_\_\_\_

DIR Registration Expiration: \_\_\_\_\_

Small Project Exemption: \_\_\_\_\_ Yes or \_\_\_\_\_ No

Unless Contractor is exempt pursuant to the small project exemption, Contractor further acknowledges:

- Contractor shall maintain a current DIR registration for the duration of the project.
- Contractor shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
- Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Contractor \_\_\_\_\_

Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Dated \_\_\_\_\_

<sup>1</sup> If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark “Yes” in response to “Small Project Exemption.”

**EXHIBIT "F"**  
**PAYMENT AND PERFORMANCE BONDS**

**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Arcadia (hereinafter referred to as "City") has awarded to **Carrier Corporation**, (hereinafter referred to as the "Contractor") an agreement for **Police Department Chiller Replacement Project** (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor and \_\_\_\_\_ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of **TWO HUNDRED FORTY-SEVEN THOUSAND, SIX HUNDRED FIVE DOLLARS AND NO CENTS (\$247,605.00)**, said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_).

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate) Title \_\_\_\_\_

The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charges, \$\_\_\_\_\_.  
(The above must be filled in by corporate attorney.)

**THIS IS A REQUIRED FORM**

Any claims under this bond may be addressed to:

(Name and Address of Surety) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Agent or Representative for service of process in California, if different from above) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Telephone number of Surety and Agent or Representative for service of process in California) \_\_\_\_\_  
\_\_\_\_\_

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

# Notary Acknowledgment

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

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### CAPACITY CLAIMED BY SIGNER

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)  Limited
- General

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_

### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

## PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Arcadia (hereinafter designated as the "City"), by action taken or a resolution passed \_\_\_\_\_, 20\_\_\_\_ has awarded to **Carrier Corporation** hereinafter designated as the "Principal," a contract for the work described as follows:

**Police Department Chiller Replacement Project** (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto the City in the penal sum of **TWO HUNDRED FORTY-SEVEN THOUSAND, SIX HUNDRED FIVE DOLLARS AND NO CENTS (\$247,605.00)** lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any

rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-in-Fact

Title \_\_\_\_\_

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

## Notary Acknowledgment

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

STATE OF CALIFORNIA  
 COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public \_\_\_\_\_

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

\_\_\_\_\_ Title(s)

\_\_\_\_\_ Title or Type of Document

- Partner(s)                       Limited
- General

\_\_\_\_\_ Number of Pages

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

\_\_\_\_\_ Date of Document

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_ Signer(s) Other Than Named Above

## **EXHIBIT "G"**

### **FEDERAL REQUIREMENTS**

[\*\*\*(READ AND DELETE THIS BLOCK BEFORE USING MODER): IF THERE ARE FEDERAL REQUIREMENTS AS A RESULT OF FEDERAL FUNDING ON THE PROJECT, INSERT THEM HERE. IF NO FEDERAL FUNDING INSERT "NOT APPLICABLE"\*\*\*]



# STAFF REPORT

Development Services Department

**DATE:** November 1, 2022

**TO:** Honorable Mayor and City Council

**FROM:** Jason Kruckeberg, Assistant City Manager/Development Services Director  
Phil Wray, Deputy Development Services Director/City Engineer  
By: Johnathan Doojphibulpol, Associate Civil Engineer

**SUBJECT:** PROFESSIONAL SERVICES AGREEMENTS FOR ON-CALL ENGINEERING SERVICES WITH HR GREEN PACIFIC, INC., KREUZER CONSULTING GROUP, AND PSOMAS  
**Recommendation: Approve**

## **SUMMARY**

The Development Services Department is requesting authorization to execute Professional Services Agreements with HR Green Pacific, Inc. (“HR Green”), Kreuzer Consulting Group (“KCG”) and Psomas for engineering design services for projects in the City’s Capital Improvement Program (“CIP”). Having access to on-call engineering services at an agreed-upon rate expedites projects and keeps costs lower overall. It is recommended that the City Council authorize and direct the City Manager to execute on-call Professional Services Agreements with all three firms for a term of three years, with the option to extend the agreements for two additional years, to end on June 30, 2027.

## **BACKGROUND**

Projects in the City’s Capital Improvement Program (“CIP”) frequently require detailed engineering design. In the past, the Development Services Department has designed engineering drawings in-house or sent out requests-for-proposals for design services and entered into Professional Service Agreements (“PSAs”) on a project-by-project basis. Over time, this approach was sufficient to keep pace with the number of CIP projects. However, when evaluating the current and near future capital project needs, along with overall workloads and responsibilities, it was determined that a more efficient way to assign work and administer projects is needed to keep pace with the number and size of expected future projects.

There are four projects currently budgeted in the CIP in need of engineering design as follows:

- First Avenue and Second Avenue Pavement Rehabilitation - Between Huntington Drive and Duarte Road
- Downtown Parking Lot Improvements Conceptual Design Alternatives
- Colorado Street/Boulevard Complete Streets Conceptual Design
- Baldwin Avenue Streetscape Improvements

While these are the largest projects in the CIP in need of design services, there are other technical analyses that will be needed to keep projects on track in the years ahead. As a result, on-call engineering services would be useful to provide City staff with a more efficient, advantageous, and business-friendly approach to consultant services. By having pre-approved and qualified engineering firms under contract, the City will be able to quickly select a consultant and expedite project design. This is the same approach the City uses for environmental consultants for California Environmental Quality (“CEQA”) work, and assistance with architectural design services.

## **DISCUSSION**

In July 2022, a request-for-proposal (“RFP”) was prepared, noticed in the newspaper, posted on the City’s website, and sent to eight qualified engineering consulting firms. A total of 10 proposals were received, but two firms’ proposals were disqualified because they were received after the submission deadline. Proposals were received from the following firms:

<b>FIRM</b>	<b>LOCATION</b>
Civiltec Engineering, Inc.	Monrovia, CA
HR Green Pacific, Inc.	Corona, CA
IDS Group, Inc.	Irvine, CA
IMEG Corp.	Pasadena, CA
Kimley Horn and Associates, Inc.	Los Angeles, CA
Kreuzer Consulting Group	Seal Beach, CA
Psomas	Los Angeles, CA
RKA Consulting Group	Walnut, CA
General Technologies & Solutions (Disqualified)	Los Angeles, CA
KOA (Disqualified)	Monterey Park, CA

The eight qualifying proposals were evaluated according to the rating criteria of responsiveness to the RFP, depth of experience relative to Arcadia’s needs,

qualifications, composition, skills and experience of the team, ability to perform the work in a timely manner, and hourly rates. Subsequent to the initial submittals, design work samples were requested of each firm and reviewed for presentation, quality, and attention to detail. As a result, Kreuzer Consulting Group (“KCG”), Psomas, and HR Green Pacific, Inc. (“HR Green”), were selected as the top three candidates.

KCG was selected because of their quality proposal, an experienced team that has worked together on past Arcadia projects, and their high-quality work. KCG has successfully designed several projects for the City of Arcadia including the Westbound Huntington Drive Sidewalk and Curb Ramp improvements, Citywide Bike Lanes, and Live Oak Avenue Rehabilitation Improvements. They are a small firm of 12 employees that provide excellent services at competitive prices, and they are currently providing on-call engineering services to the Cities of Anaheim, Irvine, Brea, Long Beach, and others.

Psomas was selected because of their quality proposal, their vast history of major project work similar to Arcadia’s request, a broad spectrum of expertise within the firm, and their team’s strength and experience. Psomas is a well-known and respected firm that has been in business for over 70 years with multiple offices in Southern California and approximately 200 employees. Their proposal emphasizes delivering quality services, completing projects on time and within budget, and maintaining ideal client and contractor relationships. Psomas currently provides on-call engineering services to the Cities of Pasadena, West Hollywood, Beverly Hills, and others, and the County of Los Angeles. They also currently provide on-call Environmental Consulting Services to the City of Arcadia.

HR Green was selected because of their quality proposal, their history of project work similar to Arcadia’s request, their team’s experience, and their history of similar services to neighboring San Gabriel Valley cities. They are a large national firm, but a medium sized firm in Southern California, with about 60 employees. With an office in Corona, HR Green exclusively serves public agencies in California and specializes in multi-faceted engineering and design services. HR Green currently provides on-call engineering services to the Cities of Glendora, Claremont, Pomona, Diamond Bar, and Rancho Cucamonga.

Although other proposing firms are certainly capable, these three firms were the highest rated in the categories mentioned above, and their work examples were exceptional. The other firms either focused on other engineering concentrations like utilities, facilities, and structures, or they didn’t have the depth of relevant experience that the top three proposals demonstrated.

Cost was evaluated as part of all proposals as it is the City’s directive to always receive quality pricing along with quality work product. All the firms reviewed had pricing proposals that are competitive, fair, and within the range of what is expected for these

services. The top three firms bring different strengths and capabilities to the City to fulfill the City's different design needs. Psomas and HR Green have comparable and competitive hourly rates. KCG's hourly rates are lower due to lower overhead costs, but their small workforce limits the size and complexity of projects they can reasonably perform in a timely manner. Since the firms were not bidding on specific projects, there is no final cost to use for comparison. All three firms will enter into Professional Services Agreements ("PSAs") for a three-year term, renewable for two additional years. Their hourly rates, shown in the attached PSAs will be fixed for the entire five-year period.

When the services of an on-call consultant are required, the firm best suited to provide the services based on their qualifications for a particular project and their ability to meet the project schedule will be asked to submit a proposal for the work. More than one firm may be requested to propose on a given project depending on the type and magnitude of the project. Staff will review the proposal(s) to make sure the scope of work and schedule are acceptable, and the cost for services is in line with the hourly rates submitted and at a reasonable scale for Engineering design costs. Proposals selected for these services in this manner will be administratively approved, and a purchase order prepared without any further PSAs needed at that time. The proposals will not require subsequent City Council approval if the project was already approved by the City Council through the operating budget, Capital Improvement Program, and/or through grants that the Council has accepted. This will streamline the development process and keep inflationary costs down during the term of the PSAs.

### **ENVIRONMENTAL ANALYSIS**

The proposed action does not constitute a project under the California Environmental Quality Act ("CEQA"), as it can be seen with certainty that it will have no impact on the environment. Thus, this matter is exempt under CEQA.

### **FISCAL IMPACT**

All work through this proposal will be for projects that have already been approved by the City Council through the operating budget and Capital Improvement Program. Any costs incurred will be paid within the proposed budget of the approved project.

### **RECOMMENDATION**

It is recommended that the City Council determine that this action does not constitute a project and is therefore exempt under the California Environmental Quality Act ("CEQA"); and authorize and direct the City Manager to execute Professional Services Agreements for On-Call Engineering Design Services with HR Green Pacific Inc., Kreuzer Consulting Group, and Psomas, for a term of three years with the option to extend an additional two years, to end in 2027.

Agreement for On-Call Engineering Design Services

November 1, 2022

Page 5 of 5

Approved:



Dominic Lazzaretto  
City Manager

Attachment No. 1: Proposed Professional Services Agreement (HR Green)

Attachment No. 2: Proposed Professional Services Agreement (Kreuzer Consulting Group)

Attachment No. 3: Proposed Professional Services Agreement (Psomas)

**Attachment No. 1**

**CITY OF ARCADIA  
PROFESSIONAL SERVICES AGREEMENT REGARDING  
ON-CALL ENGINEERING SERVICES WITH HR GREEN PACIFIC, INC.**

This Agreement is made and entered into as of November \_\_\_\_\_, 2022 by and between the City of Arcadia, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 240 West Huntington Drive, Arcadia, California 91066 ("City"), and HR GREEN PACIFIC, INC., a corporation with its principal place of business at 1260 Corona Pointe Court, Suite 305, Corona, California 92879 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**RECITALS**

A. City is a public agency of the State of California and is in need of professional services for the following project:

**ON-CALL ENGINEERING SERVICES WITH HR GREEN PACIFIC, INC.**, (hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

**AGREEMENT**

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A."

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."

b. All work performed by HR Green Pacific, Inc. and its employees shall be paid for at an hourly rate. This Agreement will be based on a fixed hourly rate schedule. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Term.

The term of this Agreement shall be from November \_\_\_\_, 2022 to November \_\_\_\_, 2025, with an option to extend the Agreement for two (2) additional years, to end on June 30, 2027. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Project. Consultant shall perform its services in a prompt and timely manner within the term of this Agreement and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury

- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project

or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. To the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's obligations under the above indemnity shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, but shall not otherwise be reduced. If Consultant's obligations to defend, indemnify, and/or hold harmless arise out of Consultant's performance of "design professional services" (as that term is defined under Civil Code section 2782.8), then upon Consultant obtaining a final adjudication that liability under a claim is caused by the comparative active negligence or willful misconduct of the City, Consultant's obligations shall be reduced in proportion to the established comparative liability of the City and shall not exceed the Consultant's proportionate percentage of fault.

### 13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$15,000 or more for maintenance or \$25,000 or more for construction, alteration, demolition, installation, or repair, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1).

b. If the services are being performed as part of an applicable "public works" or "maintenance" project and if the total compensation is \$15,000 or more for maintenance or \$25,000 or more for construction, alteration, demolition, installation, or repair, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole

responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Los Angeles, State of California.

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

17. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign Chase Keys as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:	CONSULTANT:
City of Arcadia	HR Green Pacific, Inc.
240 West Huntington Drive	1260 Corona Pointe Court, Suite 305
Arcadia, CA 91066	Corona, CA 92879
Attn: Philip A. Wray, Deputy Director of Development Services/City Engineer	Attn: Timothy Hartnett, Vice President and Principal-In-Charge

and shall be effective upon receipt thereof.

21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

22. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

27. Time of Essence

Time is of the essence for each and every provision of this Agreement.

28. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

29. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF ARCADIA  
AND HR GREEN PACIFIC, INC.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ARCADIA

HR GREEN PACIFIC, INC.

By: \_\_\_\_\_  
Dominic Lazzaretto  
City Manager

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

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

Its: \_\_\_\_\_

ATTEST:

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

By: \_\_\_\_\_  
City Clerk

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

APPROVED AS TO FORM

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

By: \_\_\_\_\_  
Stephen P. Deitsch  
City Attorney

Its: \_\_\_\_\_

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

## EXHIBIT A

### Scope of Services

The consulting firm will effectively provide the following:

- A. Survey and design services for entire projects or share project design with either City staff or other consultant(s). The types of services are described in more detail below.
- B. Regular interface with City staff and other City consultants, including attendance at regularly scheduled coordination meetings as necessary when work is in progress.
- C. Communicate and function as a team with City staff and other City consultants as necessary.
- D. Manage all assigned elements of projects to assure completion in a timely manner, within budget, and in keeping with the City's schedule.

Engineering services are more specifically described as follows, but not limited to:

#### Survey, Research, and Data Gathering

- Topographic and boundary surveying, and right-of-way documentation research as necessary to accurately layout and display the project limits (Excel file format with cogo points)
- Utility research to accurately locate all utilities within the project area. Consultants to coordinate directly with utility companies.
- Base map preparation to show all existing infrastructure including, but not limited to, streets, ADA curb ramps, curb & gutter, driveway approaches, sidewalk, property lines, and utilities. Other items may be required to create an accurate representation of the project area. (AutoCad in DWG file format)
- Visual survey of the existing infrastructure in the project area to document the condition and note the need for repairs or replacements in the project scope. (PDF and Word/Excel file format)
- Research of any available as-built plans for additional information.

#### Conceptual Design / Preliminary Engineering

- Conceptual design shall be provided where necessary to consider alternative project scopes, evaluate funding needs, and better define the project details. Conceptual design will include preliminary cost estimates and back-up information as requested to assist the City in selecting a final scope of work.

#### Final Design / PS&E preparation

- Construction drawing preparation (PDF and DWG file format)
- All necessary construction details/diagrams (PDF and DWG file format)
- Signing & Striping plans, if applicable (PDF and DWG file format)
- Traffic control plans, if applicable (PDF and DWG file format)
- Preparation of special provisions and bid sheets (PDF and Word/Excel file format)
- Preparation of an engineer's cost estimate (PDF and Word/Excel file format)

Typical plan submittals will be required at 65%, 80% and 95% completion. Additional plan reviews may be necessary depending on the extent of changes during the plan review process. Cost estimates will be required at 65% submittal and completion.

Unless specifically requested of the Consultants, the City will be responsible for:

- Public outreach and correspondence
- Stakeholder/Community Meetings
- Preparation of bid packages, including bid documents and general provisions
- Bid, administration and contract award
- Project management and inspection

### **ADDITIONAL CONSULTANT RESPONSIBILITIES**

The consultant shall also be available for responding to requests for information (RFI's) and/or discussion (by phone and email) as necessary to achieve a successful outcome of any of the above items listed in the scope of services and shall be responsible for completing the specified services in accordance with the City's Professional Services Agreement (enclosed). All services provided by the consultant(s) shall be performed by individuals that meet the qualification, education, and certification/licensing requirements for the tasks.

## EXHIBIT B

### Schedule of Charges/Payments



▶ 1260 Corona Pointe Court | Suite 305  
Corona, CA 92879  
Main 855.900.4742 + Fax 713.965.0044  
▶ [HRGREEN.COM](http://HRGREEN.COM)

#### Hourly Fee Schedule Effective Through December 31, 2027

Personnel Classification	Billing Rate Range
Principal-in-Charge	\$225-\$360
QA/QC	\$195-\$270
Program Manager/Asst. Program Manager	\$190-\$260
Project Manager	\$180-\$250
Senior Professional/Project Engineer	\$175-\$265
Traffic Engineer	\$185-\$280
Professional Engineer	\$160-\$225
Associate Engineer	\$145-\$210
Assistant Engineer	\$125-\$185
Senior Design Technician	\$145-\$205
Design Technician	\$115-\$155
GIS Specialist	\$110-\$180
Administrative Assistant	\$ 75-\$120
Permit Technician	\$ 70-\$115

#### Notes:

1. Other classifications are available based upon the needs of the agency.
2. All general engineering tasks will be negotiated on a case by case basis using the hourly rates provided for personnel assigned to the contract.

**Professional Reimbursement / Hourly and Overtime Rates:** The hourly billing rates include the cost of salaries of the HR Green employees, plus sick leave, vacation, holiday and other fringe benefits. The percentage added to salary costs includes indirect overhead costs and fee (profit). All employees classified as "non-exempt" by the U.S. Department of Labor will be compensated at 1.5 times salary, as per state and Federal wage and hour for overtime hours. Billing rates will be calculated accordingly for overtime hours.

**Direct/Reimbursable Expenses and Subconsultants:** Reimbursement for direct expenses, as listed below, incurred in connection with the work, will be at cost plus 10% for items such as:

- Subconsultants and other outside services, if needed.
- Special fees, insurance, permits, and licenses applicable to the work.
- Mileage and vehicle costs directly related to agency services.

EXHIBIT C

**Project Schedule**

There is no project schedule as this is an “On-Call Professional Service Agreement.”

DRAFT

## Attachment No. 2

### CITY OF ARCADIA PROFESSIONAL SERVICES AGREEMENT REGARDING ON-CALL ENGINEERING SERVICES WITH KREUZER CONSULTING GROUP

This Agreement is made and entered into as of November \_\_\_\_\_, 2022 by and between the City of Arcadia, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 240 West Huntington Drive, Arcadia, California 91066 ("City"), and KREUZER CONSULTING GROUP ("KCG"), a corporation with its principal place of business at 320 Main Street, Unit D, Seal Beach, California 90740 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

#### RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

**ON-CALL ENGINEERING SERVICES WITH KREUZER CONSULTING GROUP ("KCG")**  
(hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

#### AGREEMENT

##### **NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A."

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."

b. All work performed by HR Green Pacific, Inc. and its employees shall be paid for at an hourly rate. This Agreement will be based on a fixed hourly rate schedule. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Term.

The term of this Agreement shall be from November \_\_\_\_, 2022 to November \_\_\_\_, 2025, with an option to extend the Agreement for two (2) additional years, to end on June 30, 2027. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Project. Consultant shall perform its services in a prompt and timely manner within the term of this Agreement and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury

- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project

or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. To the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's obligations under the above indemnity shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, but shall not otherwise be reduced. If Consultant's obligations to defend, indemnify, and/or hold harmless arise out of Consultant's performance of "design professional services" (as that term is defined under Civil Code section 2782.8), then upon Consultant obtaining a final adjudication that liability under a claim is caused by the comparative active negligence or willful misconduct of the City, Consultant's obligations shall be reduced in proportion to the established comparative liability of the City and shall not exceed the Consultant's proportionate percentage of fault.

### 13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$15,000 or more for maintenance or \$25,000 or more for construction, alteration, demolition, installation, or repair, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1).

b. If the services are being performed as part of an applicable "public works" or "maintenance" project and if the total compensation is \$15,000 or more for maintenance or \$25,000 or more for construction, alteration, demolition, installation, or repair, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole

responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Los Angeles, State of California.

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

17. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign Rick Kreuzer as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Arcadia

240 West Huntington Drive

Arcadia, CA 91066

Attn: Philip A. Wray, Deputy Director of Development Services/City Engineer

CONSULTANT:

Kreuzer Consulting Group

320 Main Street, Unit D

Seal Beach, CA 90740

Attn: Rick Kreuzer, President

and shall be effective upon receipt thereof.

21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

22. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

27. Time of Essence

Time is of the essence for each and every provision of this Agreement.

28. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

29. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF ARCADIA  
AND KREUZER CONSULTING GROUP**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ARCADIA

KREUZER CONSULTING

By: \_\_\_\_\_  
Dominic Lazzaretto  
City Manager

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

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

Its: \_\_\_\_\_

ATTEST:

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

By: \_\_\_\_\_  
City Clerk

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

APPROVED AS TO FORM

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

By: \_\_\_\_\_  
Stephen P. Deitsch  
City Attorney

Its: \_\_\_\_\_

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

## EXHIBIT A

### Scope of Services

The consulting firm will effectively provide the following:

- A. Survey and design services for entire projects or share project design with either City staff or other consultant(s). The types of services are described in more detail below.
- B. Regular interface with City staff and other City consultants, including attendance at regularly scheduled coordination meetings as necessary when work is in progress.
- C. Communicate and function as a team with City staff and other City consultants as necessary.
- D. Manage all assigned elements of projects to assure completion in a timely manner, within budget, and in keeping with the City's schedule.

Engineering services are more specifically described as follows, but not limited to:

#### Survey, Research, and Data Gathering

- Topographic and boundary surveying, and right-of-way documentation research as necessary to accurately layout and display the project limits (Excel file format with cogo points)
- Utility research to accurately locate all utilities within the project area. Consultants to coordinate directly with utility companies.
- Base map preparation to show all existing infrastructure including, but not limited to, streets, ADA curb ramps, curb & gutter, driveway approaches, sidewalk, property lines, and utilities. Other items may be required to create an accurate representation of the project area. (AutoCad in DWG file format)
- Visual survey of the existing infrastructure in the project area to document the condition and note the need for repairs or replacements in the project scope. (PDF and Word/Excel file format)
- Research of any available as-built plans for additional information.

#### Conceptual Design / Preliminary Engineering

- Conceptual design shall be provided where necessary to consider alternative project scopes, evaluate funding needs, and better define the project details. Conceptual design will include preliminary cost estimates and back-up information as requested to assist the City in selecting a final scope of work.

#### Final Design / PS&E preparation

- Construction drawing preparation (PDF and DWG file format)
- All necessary construction details/diagrams (PDF and DWG file format)
- Signing & Striping plans, if applicable (PDF and DWG file format)
- Traffic control plans, if applicable (PDF and DWG file format)
- Preparation of special provisions and bid sheets (PDF and Word/Excel file format)
- Preparation of an engineer's cost estimate (PDF and Word/Excel file format)

Typical plan submittals will be required at 65%, 80% and 95% completion. Additional plan reviews may be necessary depending on the extent of changes during the plan review process. Cost estimates will be required at 65% submittal and completion.

Unless specifically requested of the Consultants, the City will be responsible for:

- Public outreach and correspondence
- Stakeholder/Community Meetings
- Preparation of bid packages, including bid documents and general provisions
- Bid, administration and contract award
- Project management and inspection

### **ADDITIONAL CONSULTANT RESPONSIBILITIES**

The consultant shall also be available for responding to requests for information (RFI's) and/or discussion (by phone and email) as necessary to achieve a successful outcome of any of the above items listed in the scope of services and shall be responsible for completing the specified services in accordance with the City's Professional Services Agreement (enclosed). All services provided by the consultant(s) shall be performed by individuals that meet the qualification, education, and certification/licensing requirements for the tasks.

EXHIBIT B

Schedule of Charges/Payments



SCHEDULE OF HOURLY BILLING RATES  
Rates Effective through December 31, 2027

**OFFICE PERSONNEL:**

Typists, Word Processors .....	\$50
Technician .....	\$75
Design Engineer / CADD.....	\$110
Project Engineer .....	\$140
Principal / Project Manager .....	\$210

**FIELD PERSONNEL:**

Two-Man Survey Party, including Truck and Equipment .....	\$235
Three-Man Survey Party, including Truck and Equipment .....	\$275

**SUPPORT & MISCELLANEOUS COSTS:**

Other Vehicles .....	\$0.60/mi.
Copies – Black & White .....	\$0.10/pg.
Copies – Color.....	\$0.50/pg.
Plotting – Black & White .....	\$2.00/ft <sup>2</sup>
Plotting – Color .....	\$4.00/ft <sup>2</sup>

EXHIBIT C

**Project Schedule**

There is no project schedule as this is an “On-Call Professional Service Agreement.”

DRAFT

### Attachment No. 3

## CITY OF ARCADIA PROFESSIONAL SERVICES AGREEMENT REGARDING ON-CALL ENGINEERING SERVICES WITH PSOMAS.

This Agreement is made and entered into as of November \_\_\_\_\_, 2022 by and between the City of Arcadia, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 240 West Huntington Drive, Arcadia, California 91066 ("City"), and PSOMAS, a corporation with its principal place of business at 555 South Flower Street, Suite 4300, Los Angeles, California 90071 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

### RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

**ON-CALL ENGINEERING SERVICES WITH PSOMAS**, (hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

### AGREEMENT

#### NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A."

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."

b. All work performed by Psomas and its employees shall be paid for at an hourly rate. This Agreement will be based on a fixed hourly rate schedule. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Term.

The term of this Agreement shall be from November \_\_\_\_, 2022 to November \_\_\_\_, 2025, with an option to extend the Agreement for two (2) additional years, to end on June 30, 2027. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Project. Consultant shall perform its services in a prompt and timely manner within the term of this Agreement and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury

- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project

or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. To the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's obligations under the above indemnity shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, but shall not otherwise be reduced. If Consultant's obligations to defend, indemnify, and/or hold harmless arise out of Consultant's performance of "design professional services" (as that term is defined under Civil Code section 2782.8), then upon Consultant obtaining a final adjudication that liability under a claim is caused by the comparative active negligence or willful misconduct of the City, Consultant's obligations shall be reduced in proportion to the established comparative liability of the City and shall not exceed the Consultant's proportionate percentage of fault.

### 13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$15,000 or more for maintenance or \$25,000 or more for construction, alteration, demolition, installation, or repair, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1).

b. If the services are being performed as part of an applicable "public works" or "maintenance" project and if the total compensation is \$15,000 or more for maintenance or \$25,000 or more for construction, alteration, demolition, installation, or repair, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole

responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Los Angeles, State of California.

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

17. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign Cecilia S. Mokler as the Officer-In-Charge/Contract Manager. The Officer-In-Charge/Contract Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Arcadia

240 West Huntington Drive

Arcadia, CA 91066

Attn: Philip A. Wray, Deputy Director of  
Development Services/City Engineer

CONSULTANT:

Psomas

555 South Flower Street, Suite 4300

Los Angeles, CA 90071

Attn: Cecilia S. Mokler, Officer-In-  
Charge/Contract Manager

and shall be effective upon receipt thereof.

21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

22. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

27. Time of Essence

Time is of the essence for each and every provision of this Agreement.

28. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

29. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF ARCADIA  
AND PSOMAS.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ARCADIA

PSOMAS

By: \_\_\_\_\_  
Dominic Lazzaretto  
City Manager

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

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

Its: \_\_\_\_\_

ATTEST:

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

By: \_\_\_\_\_  
City Clerk

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

APPROVED AS TO FORM

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

By: \_\_\_\_\_  
Stephen P. Deitsch  
City Attorney

Its: \_\_\_\_\_

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

## EXHIBIT A

### Scope of Services

The consulting firm will effectively provide the following:

- A. Survey and design services for entire projects or share project design with either City staff or other consultant(s). The types of services are described in more detail below.
- B. Regular interface with City staff and other City consultants, including attendance at regularly scheduled coordination meetings as necessary when work is in progress.
- C. Communicate and function as a team with City staff and other City consultants as necessary.
- D. Manage all assigned elements of projects to assure completion in a timely manner, within budget, and in keeping with the City's schedule.

Engineering services are more specifically described as follows, but not limited to:

#### Survey, Research, and Data Gathering

- Topographic and boundary surveying, and right-of-way documentation research as necessary to accurately layout and display the project limits (Excel file format with cogo points)
- Utility research to accurately locate all utilities within the project area. Consultants to coordinate directly with utility companies.
- Base map preparation to show all existing infrastructure including, but not limited to, streets, ADA curb ramps, curb & gutter, driveway approaches, sidewalk, property lines, and utilities. Other items may be required to create an accurate representation of the project area. (AutoCad in DWG file format)
- Visual survey of the existing infrastructure in the project area to document the condition and note the need for repairs or replacements in the project scope. (PDF and Word/Excel file format)
- Research of any available as-built plans for additional information.

#### Conceptual Design / Preliminary Engineering

- Conceptual design shall be provided where necessary to consider alternative project scopes, evaluate funding needs, and better define the project details. Conceptual design will include preliminary cost estimates and back-up information as requested to assist the City in selecting a final scope of work.

#### Final Design / PS&E preparation

- Construction drawing preparation (PDF and DWG file format)
- All necessary construction details/diagrams (PDF and DWG file format)
- Signing & Striping plans, if applicable (PDF and DWG file format)
- Traffic control plans, if applicable (PDF and DWG file format)
- Preparation of special provisions and bid sheets (PDF and Word/Excel file format)
- Preparation of an engineer's cost estimate (PDF and Word/Excel file format)

Typical plan submittals will be required at 65%, 80% and 95% completion. Additional plan reviews may be necessary depending on the extent of changes during the plan review process. Cost estimates will be required at 65% submittal and completion.

Unless specifically requested of the Consultants, the City will be responsible for:

- Public outreach and correspondence
- Stakeholder/Community Meetings
- Preparation of bid packages, including bid documents and general provisions
- Bid, administration and contract award
- Project management and inspection

### **ADDITIONAL CONSULTANT RESPONSIBILITIES**

The consultant shall also be available for responding to requests for information (RFI's) and/or discussion (by phone and email) as necessary to achieve a successful outcome of any of the above items listed in the scope of services and shall be responsible for completing the specified services in accordance with the City's Professional Services Agreement (enclosed). All services provided by the consultant(s) shall be performed by individuals that meet the qualification, education, and certification/licensing requirements for the tasks.

## EXHIBIT B

### Schedule of Charges/Payments

# REVISED COST PROPOSAL

P S O M A S

Balancing the Natural and Built Environment

#### Civil Engineering Fee Schedule

Effective Through FY 2022 to 2027

Classification	Hourly Billing Rates
QA/QC Manager or Director	\$285
Contract Manager or Senior Project Manager	\$275
Project Manager II / Constructability Reviewer	\$260
Project Manager I	\$240
Assistant Project Manager or Senior Project Engineer	\$230
Project Engineer II	\$200
Project Engineer I	\$190
Professional Engineer	\$175
Engineering Designer III	\$160
Engineering Designer II	\$150
Engineering Designer I	\$140
Project Assistant/Administration	\$125

#### Survey and SUE Fee Schedule

Effective Through FY 2022 to 2027

Classification	Hourly Billing Rates
QA/QC Manager or Director	\$285
Contract Manager or Senior Project Manager	\$275
Survey Manager	\$260
Survey Designer III	\$170
Survey Designer II	\$165
Survey Designer I	\$150
Three-Person Survey Party	\$475
Two-Person Survey Party	\$375
One-Person Survey Party	\$255
Survey Field Supervisor	\$205
Subsurface Utility Manager	\$225
Two-Person SUE Crew	\$335
Two-Person CCTV Crew	\$335
One-Person SUE Crew	\$225
Survey Project Assistant/Administration	\$135
SUE Project Assistant/Administration	\$100

# REVISED COST PROPOSAL

PSOMAS

Balancing the Natural and Built Environment

## Environmental Fee Schedule Effective Through FY 2022 to 2027

Classification	Hourly Billing Rates
Principal/Supervisor / Administrator / QA/QC Manager	\$285
Principal Environmental Planner/Sr. Project Manager III	\$255
Senior Environmental Planner / Technical Specialist Manager / Principal Regulatory Permitting Specialist / Sr. Project Manager II	\$235
Senior Project Manager I / Principal Archaeologist/Paleontologist/Ecologist/Restoration Ecologist	\$215
Project Manager III / Senior Air/Noise Specialist/Cultural Resources Project Manager	\$200
Environmental Planner / Cultural Resources Project Manager	\$185
Project Manager II / Senior Ecologist/Restoration Ecologist/Regulatory Permitting Specialist/ Archaeologist/Paleontologist	\$178
Project Manager I / Senior Biologist/Wildlife/Air/Noise/GIS/CAD/Regulatory Permitting Specialist	\$168
Assistant Project Manager / Biologist/Wildlife Biologist/Botanist/Ecologist/Restoration Ecologist/ Associate Cultural Resources Specialist/Regulatory Permitting Specialist/Air Specialist/Noise Specialist/Certified Arborist	\$147
Assistant Environmental Planner / Associate Ecologist/Restoration Ecologist/Archaeologist/ Paleontologist/Biologist/Wildlife Biologist, Botanist/Assistant Cultural Resources Project Manager	\$135
Biological Field Monitor / Archaeologist / Paleontologist / Assistant Air/Noise Specialist / Administrative Assistant / Word Processor	\$120
Assistant Archaeologist/Paleontologist / GIS/CAD Specialist / Archaeological/Paleontological Field Monitor / Technical Writer/Editor	\$107

*Mileage and parking expenses incurred by office employees are charged based on published IRS mileage reimbursement rate or at cost. Prints, plot media, CD's, messenger service, subsistence, air travel, and other direct expenses will be charged at cost plus ten percent. The services of outside consultants will be charged at cost plus fifteen percent. Standard computer and technology costs are incorporated into the above hourly rates.*

*Hourly rates for SUE crews include normal usage of field equipment and are fully equipped rates.*

### Special Equipment and Other Costs

*Standard computer and technology costs are incorporated into the hourly rates shown above. The above schedule is for straight time. Overtime will be charged at 135 percent of the standard hourly rates. Sundays and holidays will be charged at 170 percent of the standard hourly rates. Minimum of four (4) hours will be charged per SUE crew deployment.*

EXHIBIT C

**Project Schedule**

There is no project schedule as this is an “On-Call Professional Service Agreement.”

DRAFT



# STAFF REPORT

Public Works Services Department

**DATE:** November 1, 2022

**TO:** Honorable Mayor and City Council

**FROM:** Paul Cranmer, Public Works Services Director  
By: Dave Thompson, Streets Superintendent

**SUBJECT:** EXTENSION TO THE PROFESSIONAL SERVICES AGREEMENT WITH ABM INDUSTRY GROUPS, LLC. FOR JANITORIAL AND PORTER SERVICES AT VARIOUS CITY FACILITIES IN AN AMOUNT NOT TO EXCEED \$398,360.49

**Recommendation: Approve**

## **SUMMARY**

On September 21, 2021, the City Council approved a Professional Services Agreement with ABM Industry Groups, LLC., for janitorial and porter services at various City facilities in an amount not to exceed \$375,811.78, with the option of three one-year extensions. ABM has reached the end of their initial agreement term and has submitted a written offer to extend for an additional year. The contractor's offer reflects a 6%, or \$22,548.71, cost of living adjustment to offset an increase in the State minimum wage effective January 1, 2023. This will be ABM's first contract extension. All other terms and conditions will remain in effect.

It is recommended that the City Council approve, authorize, and direct the City Manager to execute a one-year extension to the Professional Services Agreement with ABM Industry Groups, LLC. for Janitorial and Porter Services at various City facilities in an amount not to exceed \$398,360.49.

## **DISCUSSION**

The Public Works Services Department is responsible for the maintenance of all City facilities and utilizes contract services to provide janitorial and porter services. Janitorial services include nightly cleaning of all common areas, restrooms, and offices at various City facilities. Daily porter services include cleaning and replacement of the light fixtures, helping office staff with routine services such as setting up for special events, and cleaning and stocking public restrooms. Janitorial and porter services are performed at City Hall, the Community Center, Gilb Museum, Floretta K. Lauber Museum Education Center, Library, Public Works Services, Police Department, Fire Station 105, Civic Center Soccer Field, Dana Gym, and restrooms at Bonita and Eisenhower parks.

On September 21, 2021, the City Council approved a Professional Services Agreement with ABM Industry Groups, LLC., for janitorial and porter services in an amount not to exceed \$375,811.78, with the option of three one-year extensions. ABM has reached the end of their initial agreement term and has submitted a written offer to extend for an additional year, with a cost of living adjustment. The proposed 6% contract increase in the amount of \$22,548.71 is in response to an anticipated increase in the State's minimum wage, beginning on January 1, 2023. In 2023, the minimum wage applied to employers of all sizes will increase to \$15.50/hr., instead of the \$15.00/hr. rate that was previously scheduled to take effect January 1, 2023. An analysis of the proposed contract increase indicates that the impact to Departments' budgets will be minimal. All other terms and conditions of the contract will remain the same.

ABM has provided quality janitorial and porter services to the City and is a stable corporation with a long-standing history in the cleaning industry, including extensive experience in serving government agencies. Some of their current municipal contracts include the Cities of Long Beach and Cerritos.

### **ENVIRONMENTAL IMPACT**

The proposed action does not constitute a project under the California Environmental Quality Act ("CEQA"), and it can be seen with certainty that it will have no impact on the environment. Thus, this matter is exempt under CEQA.

### **FISCAL IMPACT**

Funds are budgeted in each Department's Contract Services accounts in the Fiscal Year 2022-23 Operating Budget. The Public Works Services Department will conduct a mid-year budget review of the janitorial and porter services agreement and recommend any budget adjustments, at that time. Otherwise, each department's Fiscal Year 2022-23 budget for janitorial and porter services will be adjusted to reflect the actual cost of providing these services.

### **RECOMMENDATIONS**

It is recommended that the City Council determine that this action does not constitute a project and is therefore, exempt under, the California Environmental Quality Act ("CEQA"); and approve, authorize, and direct the City Manager to execute a one-year extension to the Professional Services Agreement with ABM Industry Groups, LLC. for Janitorial and Porter Services at various City facilities in an amount not to exceed \$398,360.49.

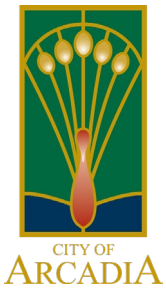
Extension to the Professional Services Agreement  
for Janitorial and Porter Services  
November 1, 2022  
Page 3 of 3

Approved:



Dominic Lazzaretto  
City Manager

Attachment: Proposed Amendment No. 1 to the Professional Services Agreement



**AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT  
REGARDING JANITORIAL & PORTER SERVICES AT VARIOUS CITY  
FACILITIES BY AND BETWEEN THE CITY OF ARCADIA  
AND ABM INDUSTRY GROUPS, LLC**

This Amendment No. 1 (“Amendment No. 1”) is hereby entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between the City of Arcadia, a municipal corporation of the State of California, and **ABM Industry Groups, LLC**, a Limited Liability Company, with respect to that certain Professional Services Agreement between the parties dated December 15, 2021 (“Agreement”).

The Parties agree as follows:

1. Pursuant to Section 5 of the Agreement “Term”, the Term is hereby amended by extending the term from December 21, 2022 through and including December 21, 2023, as set forth in the attached Exhibit “C”.
2. Pursuant to Section 2(b) of the Agreement “Compensation”, the Compensation is hereby amended to provide that the total compensation due and payable to the Contractor for the Extended Term shall not exceed Three Hundred Ninety-Eight Thousand, Six Hundred Forty Dollars and Forty-Nine Cents (\$398,640.49). The Contractor shall perform work during the Extended Period in accordance with the pricing schedule set forth in Exhibit “B” attached hereto and incorporated herein by reference.
3. All terms and provisions of the Agreement not amended by this Amendment No. 1 are hereby reaffirmed.

In witness whereof the Parties have executed this Amendment No. 1 on the date set forth below.

CITY OF ARCADIA

ABM INDUSTRY GROUPS, LLC

By: \_\_\_\_\_  
Dominic Lazzaretto  
City Manager

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTEST:  
  
\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

APPROVED AS TO FORM:

CONCUR:

\_\_\_\_\_  
Stephen P. Deitsch  
City Attorney

\_\_\_\_\_  
Paul Cranmer  
Public Works Services Director

**Exhibit "B"**

Schedule of Charges/Payments

For the term of this Agreement, the Compensation shall not to exceed the total amount listed below:

The schedule of prices is attached as attachment "A" to this Exhibit "B"

Janitorial & Porter Services at Various City Facilities	-	\$398,640.49
Total Compensation	-	\$398,640.49

The total compensation shall not exceed the total listed without written authorization in accordance with Section 2 (b) of the Agreement.

## Attachment to Exhibit "B"

## City of Arcadia

## New contract extension costs 1/1/2023-12/31/2023

Site	Monthly Cost	Annual Cost
Community Center Porter	\$ 3,588.19	\$ 43,058.25
Community Center Janitorial	\$ 943.07	\$ 11,316.88
Community Center Special Cleanings	\$ 828.21	\$ 9,938.56
<b>Total</b>	<b>\$ 5,359.47</b>	<b>\$ 64,313.69</b>
Public Works Janitorial	\$ 1,064.12	\$ 12,769.42
Public Works Special Cleanings	\$ 693.35	\$ 8,320.15
<b>Total</b>	<b>\$ 1,757.46</b>	<b>\$ 21,089.57</b>
City Hall/Council Chamber Porter	\$ 2,459.80	\$ 29,517.60
City Hall/Council Chamber Janitorial	\$ 2,836.13	\$ 34,033.58
City Hall/Council Chambers Special Cleanings	\$ 719.38	\$ 8,632.56
<b>Total</b>	<b>\$ 6,015.31</b>	<b>\$ 72,183.73</b>
Fire Station 105 Porter	\$ 906.08	\$ 10,872.94
<b>Total</b>	<b>\$ 906.08</b>	<b>\$ 10,872.94</b>
Library Porter	\$ 3,562.78	\$ 42,753.40
Library Janitorial	\$ 2,521.96	\$ 30,263.48
Library Special Cleanings	\$ 1,840.41	\$ 22,084.95
<b>Total</b>	<b>\$ 7,925.15</b>	<b>\$ 95,101.83</b>
Museum Janitorial	\$ 294.12	\$ 3,529.49
Museum Special Cleanings	\$ 126.81	\$ 1,521.78
<b>Total</b>	<b>\$ 420.94</b>	<b>\$ 5,051.27</b>
MEC Janitorial	\$ 206.42	\$ 2,476.99
MEC Special Cleanings	\$ 144.31	\$ 1,731.67
<b>Total</b>	<b>\$ 350.72</b>	<b>\$ 4,208.66</b>
Police Station Porter	\$ 7,033.64	\$ 84,403.63
Police Station Special Cleanings	\$ 356.60	\$ 4,279.17
<b>Total</b>	<b>\$ 7,390.23</b>	<b>\$ 88,682.80</b>
Bonita Park Restrooms	\$ 632.98	\$ 7,595.71
Eisenhower Park Restrooms	\$ 955.57	\$ 11,466.86
<b>Total</b>	<b>\$ 1,588.55</b>	<b>\$ 19,062.56</b>
Civic Center Athletic Field	\$ 656.38	\$ 7,876.53
<b>Total</b>	<b>\$ 656.38</b>	<b>\$ 7,876.53</b>
Dana Gym	\$ 632.98	\$ 7,595.71
<b>Total</b>	<b>\$ 632.98</b>	<b>\$ 7,595.71</b>
1st Ave Basketball Courts	\$ 193.43	\$ 2,321.20
<b>Total</b>	<b>\$ 193.43</b>	<b>\$ 2,321.20</b>
	<b>\$ 33,196.71</b>	<b>\$ 398,360.49</b>

## **Exhibit “C”**

### Activity Schedule

All work shall be completed in accordance with the following schedule:

The Term of this Agreement shall be for one year from December 15, 2022 through and including December 15, 2023.



# STAFF REPORT

Police Department

**DATE:** November 1, 2022  
**TO:** Honorable Mayor and City Council  
**FROM:** Roy Nakamura, Chief of Police  
By: Amber Abeyta, Management Analyst

**SUBJECT:** SERVICE AGREEMENT WITH MOTOROLA SOLUTIONS INC., FOR THE POLICE DEPARTMENT RADIO CONSOLES FOR FISCAL YEARS 2022-23 THROUGH 2027-28 IN AN AMOUNT NOT TO EXCEED \$191,795

**Recommendation: Waive the Formal Bid Process and Approve**

## **SUMMARY**

To maintain the Police Department's Dispatch Center radio consoles and to ensure regional compatibility, the Department has purchased a standard commercial warranty from Motorola Solutions, Inc. ("Motorola"). In 2019, the City became a subscribing agency to the Interagency Communications Interoperability ("ICI") Joint Powers Authority ("JPA"). At the request of the ICI JPA, Motorola has provided a six-year firm offer (beginning FY 2022-23) to subscribing agencies for Advanced Plus Services consisting of Advanced Services and System Upgrade Agreement ("Service Agreement"). The Service Agreement provides the warranty coverage needed to maintain and upgrade the radio consoles and the capability to function as part of the ICI system at a price that is lower than the current individual warranty agreement. Therefore, it is recommended that the City Council waive the formal bid process and approve the Service Agreement with Motorola Solutions Inc., for the Police Department radio consoles in an amount not to exceed \$191,795 over the six-year term of the Agreement.

## **BACKGROUND**

The Police Department's current Dispatch Center radio consoles were purchased in 2017 and required an annual extended warranty to ensure their reliability over time. The annual warranty is purchased from Motorola and covers the following services: network monitoring, onsite system support, preventative maintenance, remote security update service management, repair and return, system technical support, and advance

exchange. This warranty is imperative because the City cannot risk the current radios failing during dispatch operations and disrupt emergency communications.

Recently, the ICI JPA requested Motorola provide a proposal for an Advanced Service and System Upgrade Agreement to better service ICI and its members. ICI is a regional Land Mobile Radio system that provides coverage throughout the Los Angeles County region to member, subscriber, and affiliated agencies. To govern the system, a Joint Powers Authority was formed with the Governance Board consisting of a representative from each member entity. Functional Committees of personnel from each of the member agencies were then formed to provide additional support (operational, legislative, technical) to keep the system working smoothly.

In response to ICI's request, Motorola provided a six-year firm offer for Advanced Plus Services consisting of Advanced Services and a System Upgrade Agreement. The Service Agreement provides a breakdown of individual pricing for each participating agency, and Motorola provided the City with a service agreement based on the proposal. This proposal benefits both the City and ICI by not only ensuring that the ICI infrastructure functions properly, but also providing the warranty coverage needed to maintain the Department's Dispatch radio consoles. In addition, Motorola's multi-agency proposal includes discounted services for all ICI member agencies, including Arcadia.

## **DISCUSSION**

The difference between the previous warranty and the new six-year Agreement is the addition of the System Upgrade Agreement ("SUA"), whereby Motorola will update the entire ICI system including all the consoles at every agency. The costs of the SUA are included in the annual Service Agreement costs quoted below. The SUA offers a volume discount for both hardware and software system upgrades and ensures that the system is working at optimum levels with state-of-the-art components and operating systems. The entire system network must be upgraded and migrated as one, so coordination with all ICI member and subscriber entities is essential, not optional.

Since the Department purchases a standard commercial warranty on an annual basis from Motorola, funds for this effort have been included in the FY 2022-23 budget in the amount of \$29,000. The Service Agreement negotiated by ICI, including the added console upgrade component, provides the City with a discounted cost below the previous warranty amount; therefore, the funds budgeted in FY 2022-23 are sufficient and no additional funds are required. A breakdown of the cost allocated to the City for the six-year Agreement is provided below.

<b>Motorola Six-Year Service Agreement</b>	
Year 1 – FY 2022-23	\$28,853.06
Year 2 – FY 2023-24	\$29,799.66
Year 3 – FY 2024-25	\$30,547.40
Year 4 – FY 2025-26	\$31,531.71
Year 5 – FY 2026-27	\$32,550.34
Year 6 – FY 2027-28	\$33,603.90
Tax	\$4,908.68
<b>Total</b>	<b>\$191,794.75</b>

Like handheld and vehicle radios, dispatch radio consoles are amongst the Police Department's primary means of communication, including responses to 9-1-1 calls, emergency responses, investigations, and traffic enforcement. Motorola radio equipment is currently being utilized and is the preferred vendor because of compatibility with existing Motorola equipment deployed systemwide within ICI. In addition, authorized warranty, maintenance, and support services for Motorola systems hardware and software, are exclusively provided by Motorola and its network of authorized and certified trained service providers.

The six-year Service Agreement with Motorola will ensure the radio console system will be properly monitored and maintained beginning in FY 2022-23. In addition, by accepting the six-year Service Agreement proposal presented to ICI the Department will realize significant savings. Thus, it is recommended that the City Council waive the formal bid process and approve the Service Agreement with Motorola Solutions Inc., for the Police Department radio consoles in an amount not to exceed \$191,795 utilizing the proposal provided to ICI to ensure the best rates possible.

### **ENVIRONMENTAL ANALYSIS**

The proposed action does not constitute a project under the California Environmental Quality Act ("CEQA"), based on Section 15061(b)(3) of the CEQA Guidelines, as it can be seen with certainty that it will have no impact on the environment. Thus, this matter is exempt under CEQA.

### **FISCAL IMPACT**

Sufficient funds in the amount of \$28,853 for the Service Agreement have been budgeted in the department Fiscal Year 2022-23 Operating Budget. The remaining years will be budgeted in their respective operating budgets for Fiscal Years 2023-2028.

**RECOMMENDATION**

It is recommended that the City Council determine that this action does not constitute a project and is, therefore, exempt under the California Environmental Quality Act (“CEQA”); and waive the formal bid process, and approve the Service Agreement with Motorola Solutions Inc., for the Police Department radio consoles for fiscal Year 2022-2023 through 2027-28 in an amount not to exceed \$191,795.

Approved:



Dominic Lazzaretto  
City Manager

Attachments: ICI and Motorola Six-Year Service Agreement  
Arcadia and Motorola Six-Year Service Agreement

# INTERAGENCY COMMUNICATIONS INTEROPERABILITY

SIX-YEAR P25 SYSTEM ADVANCED PLUS SERVICES PROPOSAL

DECEMBER 22, 2021

The design, technical, pricing, and other information ("Information") furnished with this submission is proprietary and/or trade secret information of Motorola Solutions, Inc. ("Motorola Solutions") and is submitted with the restriction that it is to be used for evaluation purposes only. To the fullest extent allowed by applicable law, the Information is not to be disclosed publicly or in any manner to anyone other than those required to evaluate the Information without the express written permission of Motorola Solutions.

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Motorola Solutions, Inc.  
10680 Treena St., Suite 200.  
San Diego, CA 92131 USA

December 22, 2021

Raymond A. Edey, Executive Director  
Interagency Communications Interoperability, JPA  
613 East Broadway, Suite 200  
Glendale, CA 91206

Subject: Interagency Communications Interoperability P25 System Advanced Plus Services Proposal

Dear Mr. Edey:

Motorola Solutions, Inc. (“Motorola”) is pleased to have the opportunity to provide Interagency Communications Interoperability, JPA (“ICI”) with quality communications equipment and services. The Motorola project team has taken great care to propose a solution that will address your needs and provide exceptional value.

Per ICI’s request, Motorola is providing a six-year firm offer for Advanced Plus Services consisting of Advanced Services and System Upgrade Agreement (SUA).

This proposal is subject to the terms and conditions contained in the Amended and Restated Master Purchase and Service Agreement, dated October 31, 2011, between Motorola and the City of Glendale (“Agreement”) together with the additional terms enclosed herein. Pricing is as set forth in the existing Los Angeles County Contract. ICI may accept this offer by signing this proposal, which shall act as a Transaction Document as described in the Agreement. This proposal shall remain valid until December 31, 2021.

We thank you for the opportunity to provide ICI with “best in class” service solutions. Our goal is to provide you with the best products and services available in the communications industry. Any questions can be directed to your Motorola Account Executive, Denis Redzepagic at 619-577-3619 or [denis.redzepagic@motorolasolutions.com](mailto:denis.redzepagic@motorolasolutions.com).

Sincerely,  
Motorola Solutions, Inc.



Jerry Burch  
Territory Vice President

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SECTION 1

# EXECUTIVE SUMMARY

Motorola has carefully studied ICI’s current approach towards services and software upgrades, and has developed a new strategy which should benefit the ICI system and users in the years to come. A detailed comparison between the current and new approach is shown in the table below.

	Current Approach	New Approach
System Upgrades	<b>One-off Upgrade Approach</b> 1. Complex upgrade efforts 2. Missing on new features 3. GGM replacement 4. Very costly	<b>Subscription to an Upgrade Program</b> 1. Upgrades are scheduled in advance and well planned/executed 2. New feature available to ICI to purchase 3. Predictable upgrade cost spread over 6 years 4. Volume discounts
Service Agreements	<b>Individual Service Agreements</b> 1. Inconsistent maintenance approach across single network 2. Complex, inconsistent timing and pricing of contracts 3. Higher cost 4. Non-participating agencies leave entire system at risk	<b>Consistent Maintenance Approach</b> 1. All ICI agencies have same Motorola service entitlements 2. Volume discounts 3. Predictable annual maintenance cost per agency over 6 years 4. Consistent pricing per site equipment

SECTION 2

# PRICING SUMMARY

The following table provides a breakout of the P25 Advanced Services and System Upgrade Agreement (SUA) over six years.

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	TOTAL
ICI Fiscal Year	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	FY 2026/27	FY 2027/28	
Start Date	7/1/2022	7/1/2023	7/1/2024	7/1/2025	7/1/2026	7/1/2027	
SUA	\$769,754	\$784,746	\$799,918	\$815,276	\$830,828	\$846,579	<b>\$4,847,101</b>
Advanced Services	\$2,296,187	\$2,381,522	\$2,470,136	\$2,562,091	\$2,657,664	\$2,756,925	<b>\$15,124,525</b>
	<b>\$3,065,941</b>	<b>\$3,166,268</b>	<b>\$3,270,054</b>	<b>\$3,377,367</b>	<b>\$3,488,492</b>	<b>\$3,603,504</b>	<b>\$19,971,626</b>

Notes:

Pricing is valid through December 31, 2021.

## 2.1 SUA PRICING BREAKDOWN PER AGENCY

		SUA - 6 years						
		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	
ICI Governing Agencies	Master	\$146,371	\$149,222	\$152,107	\$155,027	\$157,985	\$160,980	\$921,691
	DSR	\$41,611	\$42,421	\$43,241	\$44,072	\$44,912	\$45,764	\$262,021
	Burbank	\$30,925	\$31,527	\$32,137	\$32,754	\$33,379	\$34,011	\$194,732
	Beverly Hills	\$25,016	\$25,503	\$25,996	\$26,495	\$27,000	\$27,512	\$157,522
	Culver City	\$9,416	\$9,600	\$9,785	\$9,973	\$10,164	\$10,356	\$59,295
	Glendale	\$104,951	\$106,995	\$109,063	\$111,157	\$113,278	\$115,425	\$660,870
	Montebello	\$60,878	\$62,064	\$63,264	\$64,478	\$65,708	\$66,954	\$383,347
	Pasadena	\$43,557	\$44,405	\$45,263	\$46,132	\$47,012	\$47,904	\$274,273
	Pomona	\$32,553	\$33,187	\$33,828	\$34,478	\$35,135	\$35,802	\$204,983
	Santa Monica	\$34,324	\$34,992	\$35,669	\$36,353	\$37,047	\$37,749	\$216,134
	Torrance/INSB	\$60,102	\$61,273	\$62,457	\$63,657	\$64,871	\$66,101	\$378,461
	ComNet	\$69,018	\$70,362	\$71,723	\$73,100	\$74,494	\$75,906	\$434,604
<b>Subtotal</b>		<b>\$658,721</b>	<b>\$671,551</b>	<b>\$684,534</b>	<b>\$697,677</b>	<b>\$710,986</b>	<b>\$724,465</b>	<b>\$4,147,933</b>
ICI Subscriber Agencies	Arcadia	\$8,165	\$8,324	\$8,485	\$8,648	\$8,813	\$8,980	\$51,416
	Bell	\$5,775	\$5,888	\$6,002	\$6,117	\$6,233	\$6,352	\$36,366
	Bell Gardens	\$7,111	\$7,249	\$7,389	\$7,531	\$7,675	\$7,820	\$44,775
	Downey Fire	\$8,165	\$8,324	\$8,485	\$8,648	\$8,813	\$8,980	\$51,416
	Downey PD	\$10,467	\$10,671	\$10,877	\$11,086	\$11,298	\$11,512	\$65,911
	El Monte	\$10,275	\$10,475	\$10,677	\$10,882	\$11,090	\$11,300	\$64,698
	Huntington Park	\$6,830	\$6,963	\$7,098	\$7,234	\$7,372	\$7,512	\$43,007
	San Gabriel	\$5,775	\$5,888	\$6,002	\$6,117	\$6,233	\$6,352	\$36,366
	South Gate	\$8,358	\$8,521	\$8,685	\$8,852	\$9,021	\$9,192	\$52,629
	Verdugo	\$14,281	\$14,559	\$14,840	\$15,125	\$15,414	\$15,706	\$89,924
	Vernon	\$7,391	\$7,535	\$7,681	\$7,828	\$7,978	\$8,129	\$46,543
	Whittier	\$10,275	\$10,475	\$10,677	\$10,882	\$11,090	\$11,300	\$64,698
Monterey Park	\$8,165	\$8,324	\$8,485	\$8,648	\$8,813	\$8,980	\$51,416	
<b>Subtotal</b>		<b>\$111,033</b>	<b>\$113,195</b>	<b>\$115,384</b>	<b>\$117,599</b>	<b>\$119,842</b>	<b>\$122,114</b>	<b>\$699,168</b>
<b>SUA TOTAL</b>		<b>\$769,754</b>	<b>\$784,746</b>	<b>\$799,918</b>	<b>\$815,276</b>	<b>\$830,828</b>	<b>\$846,579</b>	<b>\$4,847,101</b>

		SUA - 6 years						
		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	
INSB	El Segundo	\$6,010	\$6,127	\$6,245	\$6,365	\$6,487	\$6,610	\$37,843
	Gardena	\$6,010	\$6,127	\$6,245	\$6,365	\$6,487	\$6,610	\$37,843
	Hawthorne	\$6,010	\$6,127	\$6,245	\$6,365	\$6,487	\$6,610	\$37,843
	Hermosa Beach	\$6,010	\$6,127	\$6,245	\$6,365	\$6,487	\$6,610	\$37,843
	Manhattan Beach	\$6,010	\$6,127	\$6,245	\$6,365	\$6,487	\$6,610	\$37,843
	Redondo Beach	\$6,010	\$6,127	\$6,245	\$6,365	\$6,487	\$6,610	\$37,843
	Torrance	\$24,044	\$24,512	\$24,986	\$25,465	\$25,951	\$26,443	\$151,401
<b>INSB Total</b>		<b>\$60,102</b>	<b>\$61,273</b>	<b>\$62,457</b>	<b>\$63,657</b>	<b>\$64,871</b>	<b>\$66,101</b>	<b>\$378,461</b>
ComNet	Azusa	\$9,671	\$9,859	\$10,050	\$10,243	\$10,438	\$10,636	\$60,895
	Baldwin Park	\$11,939	\$12,172	\$12,407	\$12,645	\$12,886	\$13,131	\$75,180
	Covina	\$11,939	\$12,172	\$12,407	\$12,645	\$12,886	\$13,131	\$75,180
	Glendora	\$9,404	\$9,587	\$9,773	\$9,960	\$10,150	\$10,343	\$59,218
	Irwindale	\$3,188	\$3,250	\$3,313	\$3,376	\$3,441	\$3,506	\$20,074
	La Verne	\$10,938	\$11,151	\$11,367	\$11,585	\$11,806	\$12,030	\$68,877
	West Covina	\$11,939	\$12,172	\$12,407	\$12,645	\$12,886	\$13,131	\$75,180
<b>ComNet Total</b>		<b>\$69,018</b>	<b>\$70,362</b>	<b>\$71,723</b>	<b>\$73,100</b>	<b>\$74,494</b>	<b>\$75,906</b>	<b>\$434,604</b>

## 2.2 ADVANCED SERVICES PRICING BREAKDOWN PER AGENCY

		ADVANCED SERVICES - 6 YEARS						
Agency	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Total	
ICI Governing Agencies	ICIS JOINT POWERS AUTHORITY (JPA)	\$151,173.70	\$156,928.94	\$161,216.47	\$167,218.02	\$173,455.71	\$179,934.10	\$989,926.95
	ICI - DSR	\$81,311.45	\$84,407.01	\$86,713.13	\$89,941.17	\$93,296.23	\$96,780.74	\$532,449.74
	BURBANK WATER & POWER COMMUNICATIONS	\$97,096.96	\$100,793.48	\$103,547.31	\$107,402.03	\$111,408.42	\$115,569.41	\$635,817.61
	BEVERLY HILLS, CITY OF	\$114,040.84	\$118,382.42	\$121,616.80	\$126,144.19	\$130,849.71	\$135,736.81	\$746,770.77
	CULVER CITY, CITY OF	\$26,442.58	\$27,449.26	\$28,199.21	\$29,248.97	\$30,340.04	\$31,473.21	\$173,153.25
	GLENDALE, CITY OF	\$367,569.94	\$381,563.48	\$391,988.33	\$406,580.76	\$421,747.33	\$437,499.16	\$2,406,949.00
	MONTEBELLO, CITY OF	\$190,982.01	\$198,252.77	\$203,669.32	\$211,251.25	\$219,131.50	\$227,315.84	\$1,250,602.70
	PASADENA, CITY OF	\$211,846.50	\$215,722.79	\$232,169.81	\$240,812.73	\$249,795.70	\$259,125.31	\$1,409,472.84
	POMONA, CITY OF	\$139,824.53	\$145,147.71	\$149,113.35	\$154,664.35	\$160,433.75	\$166,425.79	\$915,609.48
	SANTA MONICA POLICE DEPT	\$146,974.43	\$159,835.04	\$164,201.96	\$170,314.66	\$176,667.86	\$183,266.22	\$1,001,260.18
	INSB, PRIME SITE	\$37,304.53	\$38,724.73	\$39,782.74	\$41,263.72	\$42,802.97	\$44,401.62	\$244,280.31
	TORRANCE CONSOLES	\$53,499.45	\$54,478.36	\$58,631.87	\$60,814.54	\$63,083.09	\$65,439.18	\$355,946.50
	INSB RF SITES	\$160,162.97	\$163,093.10	\$175,527.56	\$182,061.87	\$188,853.27	\$195,906.75	\$1,065,605.52
	GLENDDORA, CITY OF (ComNet)	\$79,277.37	\$82,295.49	\$84,543.92	\$87,691.21	\$90,962.33	\$94,359.68	\$519,130.00
	GLENDDORA, CITY OF	\$17,574.67	\$18,243.75	\$18,742.19	\$19,439.90	\$20,165.06	\$20,918.21	\$115,083.78
	AZUSA, CITY OF	\$17,574.67	\$18,243.75	\$18,742.19	\$19,439.90	\$20,165.06	\$20,918.21	\$115,083.78
	BALDWIN PARK POLICE DEPT, CITY OF	\$19,675.21	\$20,424.25	\$20,982.27	\$21,763.37	\$22,575.20	\$23,418.37	\$128,838.67
	COVINA, CITY OF	\$19,675.21	\$20,424.25	\$20,982.27	\$21,763.37	\$22,575.20	\$23,418.37	\$128,838.67
	LA VERNE POLICE DEPT, CITY OF	\$19,675.21	\$20,424.25	\$20,982.27	\$21,763.37	\$22,575.20	\$23,418.37	\$128,838.67
	WEST COVINA POLICE DEPT, CITY OF	\$19,675.21	\$20,424.25	\$20,982.27	\$21,763.37	\$22,575.20	\$23,418.37	\$128,838.67
<b>SUB-TOTAL</b>	<b>\$1,971,357.44</b>	<b>\$2,045,259.07</b>	<b>\$2,122,335.24</b>	<b>\$2,201,342.76</b>	<b>\$2,283,458.87</b>	<b>\$2,368,743.69</b>	<b>\$12,992,497.08</b>	
ICI Subscriber Agencies	BELL, CITY OF	\$14,880.92	\$15,447.45	\$15,869.49	\$16,460.26	\$17,074.27	\$17,711.98	\$97,444.38
	ARCADIA, CITY OF	\$20,688.06	\$21,475.66	\$22,062.40	\$22,883.71	\$23,737.34	\$24,623.90	\$135,471.08
	BELL GARDENS POLICE DEPT, CITY OF	\$17,062.79	\$17,712.37	\$18,196.30	\$18,873.69	\$19,577.73	\$20,308.94	\$111,731.82
	DOWNEY FIRE DEPT	\$22,719.56	\$23,135.27	\$24,899.14	\$25,826.05	\$26,789.44	\$27,789.99	\$151,159.46
	DOWNEY POLICE DEPT, CITY OF	\$24,263.60	\$25,187.33	\$25,875.48	\$26,838.74	\$27,839.90	\$28,879.69	\$158,884.75
	EL MONTE POLICE DEPT	\$24,468.02	\$24,915.73	\$26,815.34	\$27,813.59	\$28,851.11	\$29,928.67	\$162,792.46
	HUNTINGTON PARK	\$17,574.29	\$18,243.35	\$18,741.78	\$19,439.48	\$20,164.62	\$20,917.75	\$115,081.28
	MONTEREY PARK, CITY OF	\$24,263.60	\$25,187.33	\$25,875.48	\$26,838.74	\$27,839.90	\$28,879.69	\$158,884.75
	SOUTH GATE, CITY OF	\$21,728.06	\$22,555.26	\$23,171.50	\$24,034.10	\$24,930.64	\$25,861.77	\$142,281.33
	SAN GABRIEL, CITY OF	\$19,675.21	\$20,424.25	\$20,982.27	\$21,763.37	\$22,575.20	\$23,418.37	\$128,838.67
	GLENDALE, CITY OF (Verdugo Fire)	\$73,799.87	\$76,609.46	\$78,702.54	\$81,632.38	\$84,677.49	\$87,840.11	\$483,261.86
	VERNON, CITY OF	\$17,574.67	\$18,243.75	\$18,742.19	\$19,439.90	\$20,165.06	\$20,918.21	\$115,083.78
WHITTIER POLICE DEPT	\$26,130.90	\$27,125.71	\$27,866.83	\$28,904.22	\$29,982.42	\$31,102.23	\$171,112.31	
<b>SUB-TOTAL</b>	<b>\$324,829.56</b>	<b>\$336,262.93</b>	<b>\$347,800.76</b>	<b>\$360,748.24</b>	<b>\$374,205.13</b>	<b>\$388,181.31</b>	<b>\$2,132,027.92</b>	
<b>TOTAL</b>	<b>\$2,296,187.00</b>	<b>\$2,381,522.00</b>	<b>\$2,470,136.00</b>	<b>\$2,562,091.00</b>	<b>\$2,657,664.00</b>	<b>\$2,756,925.00</b>	<b>\$15,124,525.00</b>	

## 2.3 PAYMENT TERMS

For SUA and Advanced Services, Motorola will invoice ICI, JPA annually in advance of each year of the plan for their portion of the contract, as detailed in the sections 2.1 and 2.2.

Subscriber Agencies will be invoiced individually on annual basis in advance of each year of the plan for their portion of the contract, as detailed in the sections 2.1 and 2.2.



SECTION 3

# SOLUTION DESCRIPTION

Motorola is pleased to propose to ICI its Advanced Plus Services package for 6 years consisting of Advanced Services and System Upgrade Agreement.

## 3.1 ADVANCED SERVICES FOR MASTER, RF, AND CONSOLE SITES

In order to ensure that Interagency Communications Interoperability (“ICI”) has access to technical support teams and resources for troubleshooting and maintenance, Motorola proposes Advanced Services to ICI. Appropriate for customers who need immediate access to Motorola’s technical personnel, Advanced Services provide remote assistance to address unforeseen network events, make necessary repairs to network components, and deliver patches to keep ICI’s system secure. The proposed offering consists of the following specific services.

- Network Event Monitoring
- Technical Support
- Network Hardware Repair with Advanced Replacement
- Remote Security Update Service (RSUS)
- On-site Infrastructure Response
- Annual Preventive Maintenance
- Security Monitoring

These services will be delivered to ICI through a centralized team within Motorola’s Solutions Support Center (SSC), which operates on a 24 x 7 x 365 basis; and through Motorola’s Repair Depot, which will ensure that equipment is repaired to the highest quality standards.

The above described services vary across network components as described below.

System Element	Services Offer	
	SUA II	Advanced Services
Master and DSR	Yes	Yes
Prime Sites and RF Sites	Yes	Yes
Consoles	Yes	Yes
NICE	No	No
Genesis	No	No
Microwave	No	No
Backhaul MPLS Routers	No	No

Full descriptions of Advanced Services may be found in Section 4 - Advanced Services Statement of Work for Master, RF, and Console Site Support”.

## 3.2 SYSTEM UPGRADE AGREEMENT (SUA)

The System Upgrade Agreement (SUA) provides for radio network technology refresh as needed to keep the system in a “standard support” window for the duration of the six-year contract period.

Keeping the system in a standard support window ensures the following:

- Best-in-class cyber-security technology through Anti-virus updates, vetted 3rd party, and MSI software patches
- Access to expansion components when needed to add RF and console sites and even new (unknown today) features
- Access to Motorola support services as needed

When needed, the SUA will cover update or replacement of relevant components in the following radio network subsystems:

- Master site (includes DSR)
- RF sites (includes 10 Prime sites, 38 Remote sites)
- Console sites (includes 32 Dispatch site locations)
  - Excludes consolettes, radios and antenna systems
- MCC 7500 Subsystem (includes 168 MCC7500 Operator Positions, 4 AIS)

Based on current lifecycle support of various components that compose the radio network we anticipate that system upgrades will occur approximately every two years with items listed below updated or refreshed when no longer supportable.

Component	Typical Refresh Cadence
Motorola System Release Software	2 Years
3rd Party Software Applications	3 Years
Operating Systems	3-5 Years
Databases	3-5 Years
Servers	3-4 Years
Switches	5-6 Years
Routers	3-5 Years
PCs	2-3 Years
Firewalls	3-5 Years
MSI - RF site equipment Field Replaceable Units (FRUs)	8-10 Years

Details and scope of coverage can be found in Section 5 – ASTRO 25 System Upgrade Agreement II (SUA II) Statement of Work.

SECTION 4

# ADVANCED SERVICES STATEMENT OF WORK FOR MASTER, RF, AND CONSOLE SITE SUPPORT

## 4.1 OVERVIEW

Motorola Solutions' ASTRO® 25 Advanced Services ("Advanced Services") provide an integrated and comprehensive sustainment program for fixed end network infrastructure equipment located at the network core, RF sites, and dispatch sites. Advanced Services do not include maintenance for mobile devices, portable devices, or network backhaul equipment.

Advanced Services consist of the following elements:

- Network Event Monitoring.
- Remote Technical Support.
- Network Hardware Repair.
- Remote Security Update Service.
- On-site Infrastructure Response.
- Annual Preventive Maintenance.
- Security Monitoring.

Each of these elements is summarized below and expanded upon in Section 4.4. In the event of a conflict between the descriptions below and an individual subsection of Section 4.4, the individual subsection prevails.

This Statement of Work ("SOW"), including all of its subsections and attachments is an integral part of the applicable agreement ("Agreement") between Motorola Solutions, Inc. ("Motorola Solutions") and the customer ("Customer").

In order to receive the services as defined within this SOW, the Customer is required to keep the system within a standard support period as described in Motorola Solutions' [Software Support Policy \("SwSP"\)](#).

### Network Event Monitoring

Real-time, continuous ASTRO 25 radio communications network monitoring and event management. Using sophisticated tools for remote monitoring and event characterization, Motorola Solutions will assess events, determine the appropriate response, and initiate that response. Possible responses include remotely addressing the issue, escalation to product technical support groups, and dispatch of designated field technical resources.



### **Remote Technical Support**

Motorola Solutions will provide telephone consultation with specialists skilled at diagnosing and swiftly resolving infrastructure operational technical issues that require a high level of ASTRO 25 network experience and troubleshooting capabilities.

### **Network Hardware Repair**

Motorola Solutions will repair Motorola Solutions-manufactured infrastructure equipment and select third-party manufactured infrastructure equipment supplied by Motorola Solutions. Motorola Solutions coordinates the equipment repair logistics process.

### **Remote Security Update Service**

Motorola Solutions will pre-test third-party security updates to verify they are compatible with the ASTRO 25 network, and remotely push the updates to the Customer's network.

### **On-site Infrastructure Response**

When needed to resolve equipment malfunctions, Motorola Solutions will dispatch qualified local technicians to the Customer's location to diagnose and restore the communications network. Technicians will perform diagnostics on impacted hardware and replace defective components. The service technician's response time will be based on pre-defined incident priority levels.

### **Annual Preventive Maintenance**

Qualified field service technicians will perform regularly scheduled operational testing and alignment of infrastructure and network components to verify those components comply with the original manufacturer's specifications.

### **Security Monitoring**

Real-time, continuous ASTRO 25 radio network security elements monitoring by specialized security technologists with extensive experience working with ASTRO 25 mission-critical networks. For highly complex or unusual security events, Motorola Solutions technologists have direct access to Motorola Solutions engineers for rapid resolution.

## **4.2 MOTOROLA SOLUTIONS SERVICE DELIVERY ECOSYSTEM**

Advanced Services are delivered through a tailored combination of local field service personnel, centralized teams equipped with a sophisticated service delivery platform, product repair depots, and MyView Portal. These service entities will collaborate to swiftly analyze issues, accurately diagnose root causes, and promptly resolve issues to restore the Customer's network to normal operations.

### **4.2.1 Centralized Managed Support Operations**

The cornerstone of Motorola Solutions' support process is the Centralized Managed Support Operations ("CMSO") organization, which includes the Service Desk and technical support teams. The CMSO is staffed 24x7x365 by experienced personnel, including service desk specialists, security analysts, and operations managers.

The Service Desk provides a single point of contact for all service related items, including communications between the Customer, Motorola Solutions, and third-party subcontractors.

The Service Desk processes service requests, service incidents, change requests, and dispatching, and communicates with stakeholders in accordance with pre-defined response times.

All incoming transactions through the Service Desk are recorded, tracked, and updated through the Motorola Solutions Customer Relationship Management (“CRM”) system. The Service Desk also documents Customer inquiries, requests, concerns, and related tickets.

The CMSO coordinates with the field service organization that will serve the Customer locally.

## 4.2.2 Field Service

Motorola Solutions authorized and qualified field service technicians perform on-site infrastructure response, field repair, and preventive maintenance tasks. These technicians are integrated with the Service Desk and with technical support teams and product engineering as required to resolve repair and maintenance requests.

## 4.2.3 Customer Support Manager

A Motorola Solutions Customer Support Manager (“CSM”) will be the Customer’s key point of contact for defining and administering services. The CSM’s initial responsibility is to create the Customer Support Plan (“CSP”) in collaboration with the Customer.

The CSP functions as an operating document that personalizes the services described in this document. The CSP contains Customer-specific information, such as site names, site access directions, key contact persons, incident handling instructions, and escalation paths for special issues. The CSP also defines the division of responsibilities between the Customer and Motorola Solutions so response protocols are pre-defined and well understood when the need arises.

The CSP governs how the services will be performed and will be automatically integrated into this Statement of Work by this reference. The CSM and Customer will review and amend the CSP on a mutually agreed cadence so the CSP remains current and effective in governing the Advanced Services.

## 4.2.4 Repair Depot

The Motorola Solutions Repair Depot provides the Customer with a central repair location, eliminating the need to send network equipment to multiple vendor locations for repair. All products sent to the Depot are tracked throughout the repair process, from inbound shipment to return, through a case management system that enables Customer representatives to see repair status.

## 4.2.5 MyView Portal

Supplementing the CSM and the Service Desk as the Customer points of contact, MyView Portal is a web-based platform that provides network maintenance and operations information. The portal is accessed from a desktop, laptop, tablet, or smartphone web browser.



**Figure 4-1: MyView Portal offers real-time, role-based access to critical network and services information.**

The information available includes:

- Network Event Monitoring: Manage incidents and view self-service reports. Observe incident details by incident priority level, and track the progress of issue resolution.
- Remote Technical Support: Manage incidents and view self-service reports. Observe incident details by incident priority level, and track the progress of issue resolution.
- Network Hardware Repair: Track return material authorizations (“RMA”) shipped to Motorola Solutions’ repair depot and eliminate the need to call for status updates. In certain countries, customers will also have the ability to create new RMA requests online.
- Remote Security Update Service: View patch history and status of recently completed security updates.
- On-site Infrastructure Response: Manage incidents and view self-service reports. Observe incident details by incident priority level, and track the progress of issue resolution.
- Annual Preventive Maintenance: View incident status and details of each annual change request for preventive maintenance, including completed checklist information for the incident.
- Security Monitoring: Manage incidents and view self-service reports. Observe incident details by incident priority level, and track the progress of issue resolution.
- Orders and Contract Information: View available information regarding orders, service contracts, and service coverage details.

The data presented in MyView Portal is provided to support the services described in the following sections, which define the terms of any service delivery commitments associated with this data.

## 4.3 CONNECTIVITY SPECIFICATIONS

The Advanced Services package requires available internet connectivity provided by the Customer. A minimum connection of 2 Mbps is necessary to enable remote monitoring and update services.

## 4.4 ADVANCED SERVICES DETAILED DESCRIPTION

Due to the interdependence between deliverables within the detailed sections, any changes to or any cancellation of any individual section may require a scope review and price revision.

### 4.4.1 Network Event Monitoring

Network Event Monitoring provides continuous real-time fault monitoring for radio communications networks. Motorola Solutions uses a defined set of tools to remotely monitor the Customer’s ASTRO 25 radio network and characterize network events. When an actionable event takes place, it becomes an incident. Centralized Managed Support Operations (“CMSO”) technologists acknowledge and assess these incidents, and initiate a defined response.

#### 4.4.1.1 Description of Service

With Network Event Monitoring, Motorola Solutions uses a Managed Services Suite of Tools (“MSST”) to detect events 24/7 as they occur, analyze them, and escalate them to the Network Operation Center (“NOC”). Incidents will be generated automatically based on the criteria shown in Table 4-1.

**Table 4-1: Alarm Threshold Rule Options for all Event Types**

Standard Threshold	Optional Threshold
An incident will be triggered if an event fulfills one of the two following criteria: <ul style="list-style-type: none"> <li>- Event occurs 5 times in 30 minutes.</li> <li>- Event causes 10 minutes of continuous downtime for a monitored component.</li> </ul>	An incident will be triggered if an event fulfills one of the two following criteria: <ul style="list-style-type: none"> <li>- Event occurs 7 times in 30 minutes.</li> <li>- Event causes 15 minutes of continuous downtime for a monitored component.</li> </ul>

The CMSO NOC agent assigns a priority level to an incident, then initiates a response in accordance with the Customer Handling Procedure (“CHP”). Depending on the incident, Motorola Solutions’ response may include continued monitoring for further incident development, remote remediation by technical support, dispatching a field service technician, or other actions Motorola Solutions determines necessary.

To prevent duplicate incidents from being generated by the same root cause, Motorola Solutions employs an auto triage process that groups related incidents. The auto triage process therefore automatically assigns grouped incidents to a field service technician, enabling the resolution of these incidents together if the root alarm has been addressed.

Motorola Solutions uses a set of standard templates to record key information on service process, defined actions, and points of contact for the Customer’s service. In the event of an



incident, Motorola Solutions and the Customer can reference these templates. When information is updated, it will be organized in four categories:

- Open – Motorola Solutions' points of contact for dispatch permissions, entitlement information, and knowledge management.
- Vendor – Escalation and contact information.
- Resolution – Incident closure information.
- Site Arrival – Site arrival and exit process information.

The Customer will be able to access information on Network Event Monitoring activities via MyView Portal, including incident management reports. Any specific remediation and action notes from Motorola Solutions' CMSO or field service technicians will be available for the Customer to review as well.

Service Configuration Portal-Lite ("SCP-Lite"), which can be accessed through MyView Portal, provides a read only view of the Customer's current service configuration, including site parameters, notification preferences, and dispatch information. If the Customer or Motorola Solutions make changes to the network, the updated information will be incorporated into SCP-Lite allowing the Customer a view of the ASTRO 25 radio network's state.

#### 4.4.1.2 Scope

Network Event Monitoring is available 24 hours a day, 7 days a week. Incidents generated by the monitoring service will be handled in accordance with Section 4.5: Priority Level Definitions and Response Times.

Network Event Monitoring is a globally provided service unless limited by data export control or other applicable local and regional regulations. Timeframes are based on the Customer's local time zone.

#### 4.4.1.3 Inclusions

Network Event Monitoring is available for the devices listed in Section 4.4.1.9: Monitored Elements.

#### 4.4.1.4 Motorola Solutions Responsibilities

- Provide a dedicated network connection necessary for monitoring the Customer's communication network. Section 4.4.1.7: Connectivity Matrix describes available connectivity options.
- If determined necessary by Motorola Solutions, provide Motorola Solutions-owned equipment at the Customer's premises for monitoring network elements. The type of equipment and location of deployment is listed in Section 4.4.1.8: Motorola Solutions Owned and Supplied Equipment.
- Verify connectivity and event monitoring prior to system acceptance or start date.
- Monitor system continuously during hours designated in the Customer Support Plan ("CSP"), and in accordance with Section 4.5: Priority Level Definitions and Response Times.
- Remotely access the Customer's system to perform remote diagnosis as permitted by the Customer pursuant to Section 4.4.1.6: Customer Responsibilities.

- Create an incident, as necessary. Gather information to perform the following:
  - Characterize the issue.
  - Determine a plan of action.
  - Assign and track the incident to resolution.
- Provide the Customer with a link to access system configuration info, site info, system notifications, and system notes.
- Cooperate with the Customer to coordinate the transition of monitoring responsibilities between Motorola Solutions and the Customer as specified in Section 4.4.1.6: Customer Responsibilities.
- If the Customer's technician designated in the CSP is Mobile OSS ("MOSS") enabled, the incident will be Automatically Dispatched to MOSS. Otherwise, the incident will be sent to the CMSO Service Desk.
- Maintain communication as needed with the Customer in the field until incident resolution.
- Provide available information on incident resolution to the Customer.

#### 4.4.1.5 Limitations and Exclusions

- The following activities are outside the scope of the Network Monitoring service:
  - Motorola Solutions will not monitor any elements outside of the Customer's ASTRO 25 network, or monitor infrastructure provided by a third party, unless specifically stated. Monitored elements must be within the ASTRO 25 radio network and capable of sending alerts to the Unified Event Manager ("UEM").
  - Additional support charges above contracted service agreement fees may apply if Motorola Solutions determines that system faults were caused by the Customer making changes to critical system parameters without written agreement from Motorola Solutions.
  - Monitoring of network transport, such as WAN ports, WAN cloud, and redundant paths, unless provided by supplemental service outside this standard scope.

#### 4.4.1.6 Customer Responsibilities

- Allow Motorola Solutions continuous remote access to enable the monitoring service.
- Provide continuous utility service to any Motorola Solutions equipment installed or used at the Customer's premises to support delivery of the service. The Customer agrees to take reasonable due care to secure the Motorola Solutions equipment from theft or damage while on the Customer's premises.
- Prior to contract start date, provide Motorola Solutions with pre-defined information necessary to complete a CSP, including:
  - Incident notification preferences and procedure.
  - Repair verification preference and procedure.
  - Database and escalation procedure forms.
- Submit timely changes in any information supplied to Motorola Solutions and included in the CSP to the Customer Support Manager ("CSM").
- Notify the CMSO when the Customer performs any activity that impacts the system. Activity that impacts the system may include, but is not limited to: installing software or hardware upgrades, performing upgrades to the network, renaming elements or devices within the network, and taking down part of the system to perform maintenance.
- Send system configuration change requests to Motorola Solutions' CSM.



- Allow Motorola Solutions’ field service technician, if designated in the CSP, access to equipment, including any connectivity or monitoring equipment, if remote service is not possible.
- Allow Motorola Solutions’ field service technician, if designated in the CSP, access to remove Motorola Solutions-owned monitoring equipment upon cancellation of service.
- Provide Motorola Solutions with all Customer-managed passwords required to access the Customer’s system upon request, when opening a request for service support, or when needed to enable response to a technical issue.
- Pay additional support charges above the contracted service agreements that may apply if it is determined that system faults were caused by the Customer making changes to critical system parameters without written agreement from Motorola Solutions.
- In the event that Motorola Solutions agrees in writing to provide supplemental monitoring for third-party elements provided by the Customer, the Customer agrees to obtain third party consents or licenses required to enable Motorola Solutions to provide the monitoring service.
- Cooperate with Motorola Solutions and perform reasonable or necessary acts to enable Motorola Solutions to provide these services.
- Contact Motorola Solutions to coordinate transition of monitoring when the responsibility for monitoring needs to be transferred to or from Motorola Solutions, as specified in pre-defined information provided in the Customer’s CSP. An example of a transfer scenario is transferring monitoring from Motorola Solutions for network monitoring after normal business hours.
  - Upon contact, the Customer must provide Motorola Solutions with customer name, site ID, status on any open incidents, priority level of any open incidents, brief descriptions of any ongoing incident, and action plan for resolving those incidents.
- Acknowledge that incidents will be handled in accordance with Section 4.5: Priority Level Definitions and Response Times.

#### 4.4.1.7 Connectivity Matrix

Request connectivity eight weeks in advance of service start date.

**Table 4-2: Available Connectivity**

System Type	Available Connectivity	Set up and Maintenance
ASTRO® 25	Internet VPN	Motorola Solutions
ASTRO® 25	Ethernet	Motorola Solutions

#### 4.4.1.8 Motorola Solutions Owned and Supplied Equipment

This table identifies equipment that Motorola Solutions will supply to support the network monitoring service for the duration of the service.

**Table 4-3: Motorola Solutions Owned and Supplied Equipment**

Equipment Type	Location Installed
Firewall/Router	Master Site
Service Delivery Management Server	Master Site for each Zone

#### 4.4.1.9 Monitored Elements

This table identifies the elements that can be monitored by the service. The specific quantities of each element to be monitored on the Customer's system will be inventoried in the CSP.

**Table 4-4: Monitored Elements**

Monitored Elements		
Active Directory	Enrichment Testing	Probe
Agent	Environmental	QUANTAR
AIS	ESX	Radio Interface
AMB	Exit Router	RDM
Application Server	Firewall	RFDS
APX Cloud Application	GAS Server	RGU
ATR	Gateway	RNG
AUC	Gateway Router	Router
Backup Server	Gateway Unit	RTU
Base Radio	GIS Server	SCOM Server
Call Processor	HSS	Short Data Router
CAM	Infrastructure (CHI CAM)	Site
Camera	Install Server	Statistical Server
CBSD	LAN Switch	Storage Networking
CCGW	Licensing Service	Switch
CEB	Link	Telephony
Channel	Load Balancer	TENSR
Client Station	Logging Recorder	Terminal Server
CommandCentral AXS dispatch console	Logging Replay Station	Time Keeper
Controller	MGEG	Training App
Conventional	Microwave	Training Database
Core	MME	TRAK
Core Router	MOSCAD Server	Trap Forwarder
Data Processing	Network Address	UCS
Database Server	Network Device	UEM
Data Warehouse Server	NTP	Virtual Machine
Device Configuration Server	OP	VMS
DIU	OSP	VPM
DNS	Packet Data Gateway	WSGU
Domain Controller	Physical Host Environmental	ZDS
DSC 8000 Site Controller	Physical Host Power and Network	Zone Controller
eNodeB	Power Distribution Unit	

## 4.4.2 Remote Technical Support

Motorola Solutions' Remote Technical Support service provides telephone consultation for technical issues that require a high level of ASTRO 25 network knowledge and troubleshooting capabilities. Remote Technical Support is delivered through the Motorola Solutions Centralized Managed Support Operations ("CMSO") organization by a staff of technical support specialists skilled in diagnosis and swift resolution of infrastructure performance and operational issues.

Motorola Solutions applies leading industry standards in recording, monitoring, escalating, and reporting for technical support calls from its contracted customers to provide the support needed to maintain mission-critical systems.

### 4.4.2.1 Description of Service

The CMSO organization's primary goal is Customer Issue Resolution ("CIR"), providing incident restoration and service request fulfillment for Motorola Solutions' currently supported infrastructure. This team of highly skilled, knowledgeable, and experienced specialists is an integral part of the support and technical issue resolution process. The CMSO supports the Customer remotely using a variety of tools, including fault diagnostics tools, simulation networks, and fault database search engines.

Calls requiring incidents or service requests will be logged in Motorola Solutions' Customer Relationship Management ("CRM") system, and Motorola Solutions will track the progress of each incident from initial capture to resolution. This helps ensure that technical issues are prioritized, updated, tracked, and escalated as necessary, until resolution. Motorola Solutions will advise and inform Customer of incident resolution progress and tasks that require further investigation and assistance from the Customer's technical resources.

The CMSO Operations Center classifies and responds to each technical support request in accordance with Section 4.5: Priority Level Definitions and Response Times.

This service requires the Customer to provide a suitably trained technical resource that delivers maintenance and support to the Customer's system, and who is familiar with the operation of that system. Motorola Solutions provides technical consultants to support the local resource in the timely closure of infrastructure, performance, and operational issues.

### 4.4.2.2 Scope

The CMSO Service Desk is available via telephone 24 hours per day, 7 days per week, and 365 days per year to receive and log requests for technical support. Remote Technical Support service is provided in accordance with Section 4.5: Priority Level Definitions and Response Times.

### 4.4.2.3 Inclusions

Remote Technical Support service will be delivered for Motorola Solutions-provided infrastructure, including integrated third-party products.



#### 4.4.2.4 Motorola Solutions Responsibilities

- Maintain availability of the Motorola Solutions CMSO Service Desk via telephone (800-MSI-HELP) 24 hours per day, 7 days per week, and 365 days per year to receive, log, and classify Customer requests for support.
- Respond to incidents and technical service requests in accordance with Section 4.5: Priority Level Definitions and Response Times.
- Provide caller a plan of action outlining additional requirements, activities, or information required to achieve restoral/fulfillment.
- Maintain communication with the Customer in the field as needed until resolution of the incident.
- Coordinate technical resolutions with agreed upon third-party vendors, as needed.
- Escalate support issues to additional Motorola Solutions technical resources, as applicable.
- Determine, in its sole discretion, when an incident requires more than the Remote Technical Support services described in this SOW and notify the Customer of an alternative course of action.

#### 4.4.2.5 Limitations and Exclusions

The following activities are outside the scope of the Remote Technical Support service:

- Customer training.
- Remote Technical Support for network transport equipment or third-party products not sold by Motorola Solutions.
- Any maintenance and/or remediation required as a result of a virus or unwanted cyber intrusion.

#### 4.4.2.6 Customer Responsibilities

- Prior to contract start date, provide Motorola Solutions with pre-defined information necessary to complete Customer Support Plan (“CSP”).
- Submit timely changes in any information supplied in the CSP to the Customer Support Manager (“CSM”).
- Contact the CMSO Service Desk to engage the Remote Technical Support service when needed, providing the necessary information for proper entitlement services. This information includes, but is not limited to, the name of contact, name of Customer, system ID number, site(s) in question, and a brief description of the problem that contains pertinent information for initial issue classification.
- Maintain suitably trained technical resources familiar with the operation of the Customer’s system to provide field maintenance and technical maintenance services for the system.
- Supply suitably skilled and trained on-site presence when requested.
- Validate issue resolution in a timely manner prior to close of the incident.
- Acknowledge that incidents will be addressed in accordance with Section 4.5: Priority Level Definitions and Response Times.
- Cooperate with Motorola Solutions, and perform all acts that are reasonable or necessary to enable Motorola Solutions to provide Remote Technical Support.
- In the event that Motorola Solutions agrees in writing to provide supplemental Remote Technical Support to third-party elements provided by the Customer, the Customer

agrees to obtain all third-party consents or licenses required to enable Motorola Solutions to provide the service.

## 4.4.3 Network Hardware Repair with Advanced Replacement

Motorola Solutions will provide hardware repair for Motorola Solutions and select third-party infrastructure equipment supplied by Motorola Solutions. A Motorola Solutions authorized repair depot manages and performs the repair of Motorola Solutions supplied equipment, and coordinates equipment repair logistics.

### 4.4.3.1 Description of Service

Infrastructure components are repaired at Motorola Solutions-authorized Infrastructure Depot Operations (“IDO”). At Motorola Solutions’ discretion, select third-party infrastructure may be sent to the original equipment manufacturer or third-party vendor for repair.

Network Hardware Repair is also known as Infrastructure Repair.

### 4.4.3.2 Scope

Repair authorizations are obtained by contacting the Centralized Managed Support Operations (“CMSO”) organization Service Desk, which is available 24 hours a day, 7 days a week. Repair authorizations can also be obtained by contacting the Customer Support Manager (“CSM”).

### 4.4.3.3 Inclusions

This service is available on Motorola Solutions-provided infrastructure components, including integrated third-party products. Motorola Solutions will make a commercially reasonable effort to repair Motorola Solutions manufactured infrastructure products after product cancellation. The post-cancellation support period of the product will be noted in the product’s end-of-life (“EOL”) notification.

### 4.4.3.4 Motorola Solutions Responsibilities

- Provide the Customer access to the CMSO Service Desk, operational 24 hours a day and 7 days per week, to request repair service.
- Provide repair return authorization numbers when requested by the Customer.
- Receive malfunctioning infrastructure components from the Customer and document its arrival, repair, and return.
- Conduct the following services for Motorola Solutions infrastructure:
  - Perform an operational check on infrastructure components to determine the nature of the problem.
  - Replace malfunctioning components.
  - Verify that Motorola Solutions infrastructure components are returned to applicable Motorola Solutions factory specifications.
  - Perform a box unit test on serviced infrastructure components.
  - Perform a system test on select infrastructure components.
- Conduct the following services for select third-party infrastructure:

- When applicable, perform pre-diagnostic and repair services to confirm infrastructure component malfunctions and prevent sending infrastructure components with No Trouble Found (“NTF”) to third-party vendor for repair.
- When applicable, ship malfunctioning infrastructure components to the original equipment manufacturer or third-party vendor for repair service.
- Track infrastructure components sent to the original equipment manufacturer or third-party vendor for service.
- When applicable, perform a post-test after repair by original equipment manufacturer or third-party vendor to confirm malfunctioning infrastructure components have been repaired and function properly in a Motorola Solutions system configuration.
- Reprogram repaired infrastructure components to original operating parameters based on software and firmware provided by the Customer, as required in Section 4.4.3.6. If the Customer’s software version and configuration are not provided, shipping will be delayed. If the repair depot determines that infrastructure components are malfunctioning due to a software defect, the repair depot reserves the right to reload these components with a different but equivalent software version.
- Properly package repaired infrastructure components.
- Ship repaired infrastructure components to Customer-specified address during normal operating hours of Monday through Friday from 7:00 a.m. to 7:00 p.m. Central Standard Time (“CST”), excluding holidays. Infrastructure component will be sent using two-day air shipping unless the Customer requests otherwise. Motorola Solutions will pay for shipping unless the Customer requests shipments outside of the above mentioned standard business hours or carrier programs, such as next flight out (“NFO”). In such cases, the Customer will be responsible for paying shipping and handling charges.

#### 4.4.3.5 Limitations and Exclusions

Motorola Solutions may return infrastructure equipment that is no longer supported by Motorola Solutions, the original equipment manufacturer, or a third-party vendor without repairing or replacing it. The following items are excluded from this service:

- All Motorola Solutions infrastructure components over the post-cancellation support period.
- All third-party infrastructure components over the post-cancellation support period.
- All broadband infrastructure components over the post-cancellation support period.
- Physically damaged infrastructure components.
- Third-party equipment not shipped by Motorola Solutions.
- Consumable items including, but not limited to, batteries, connectors, cables, toner or ink cartridges, tower lighting, laptop computers, monitors, keyboards, and mouse.
- Video retrieval from digital in-car video equipment.
- RF infrastructure and backhaul components, including but not limited to, antennas, transmission lines, antenna dehydrators, microwave, line boosters, amplifiers (such as tower top amplifiers and bi-directional amplifiers), logging recorders, data talker wireless transmitters, short haul modems, combiners, multicouplers, duplexers, shelters, shelter HVAC, generators, UPS’s, and test equipment.
- Racks, furniture, and cabinets.
- Non-standard configurations, customer-modified infrastructure, and certain third party infrastructure.
- Firmware or software upgrades.

#### 4.4.3.6 Customer Responsibilities

- Contact or instruct servicer to contact the Motorola Solutions CMSO organization, and request a return authorization number prior to shipping malfunctioning infrastructure components.
- Provide model description, model number, serial number, type of system, software and firmware version, symptom of problem, and address of site location for spare infrastructure components.
- Indicate if Motorola Solutions or third-party infrastructure components being sent in for service were subjected to physical damage or lightning damage.
- Follow Motorola Solutions instructions regarding including or removing firmware and software applications on infrastructure components being sent in for service.
- In the event that the Customer requires repair of equipment that is not contracted under this service at the time of request, the Customer acknowledges that charges may apply to cover shipping, labor, and parts. Motorola Solutions and the Customer will collaborate to agree on payment vehicle that most efficiently facilitates the work, commensurate with the level of urgency that is needed to complete the repair.
- Properly package and ship the malfunctioning component, at the Customer's expense. The Customer is responsible for properly packaging the malfunctioning infrastructure component to ensure it is not damaged in-transit and arrives in repairable condition.
  - Clearly print the return authorization number on the outside of the packaging.
- Maintain versions and configurations for software, applications, and firmware to be installed on repaired equipment.
- Provide Motorola Solutions with proper software and firmware information to reprogram equipment after repair, unless current software has caused this malfunction.
- Cooperate with Motorola Solutions and perform reasonable or necessary acts to enable Motorola Solutions to provide hardware repair services to the Customer.
- At the Customer's cost, obtain all third-party consents or licenses required to enable Motorola Solutions to provide the service.



### 4.4.3.7 Repair Process

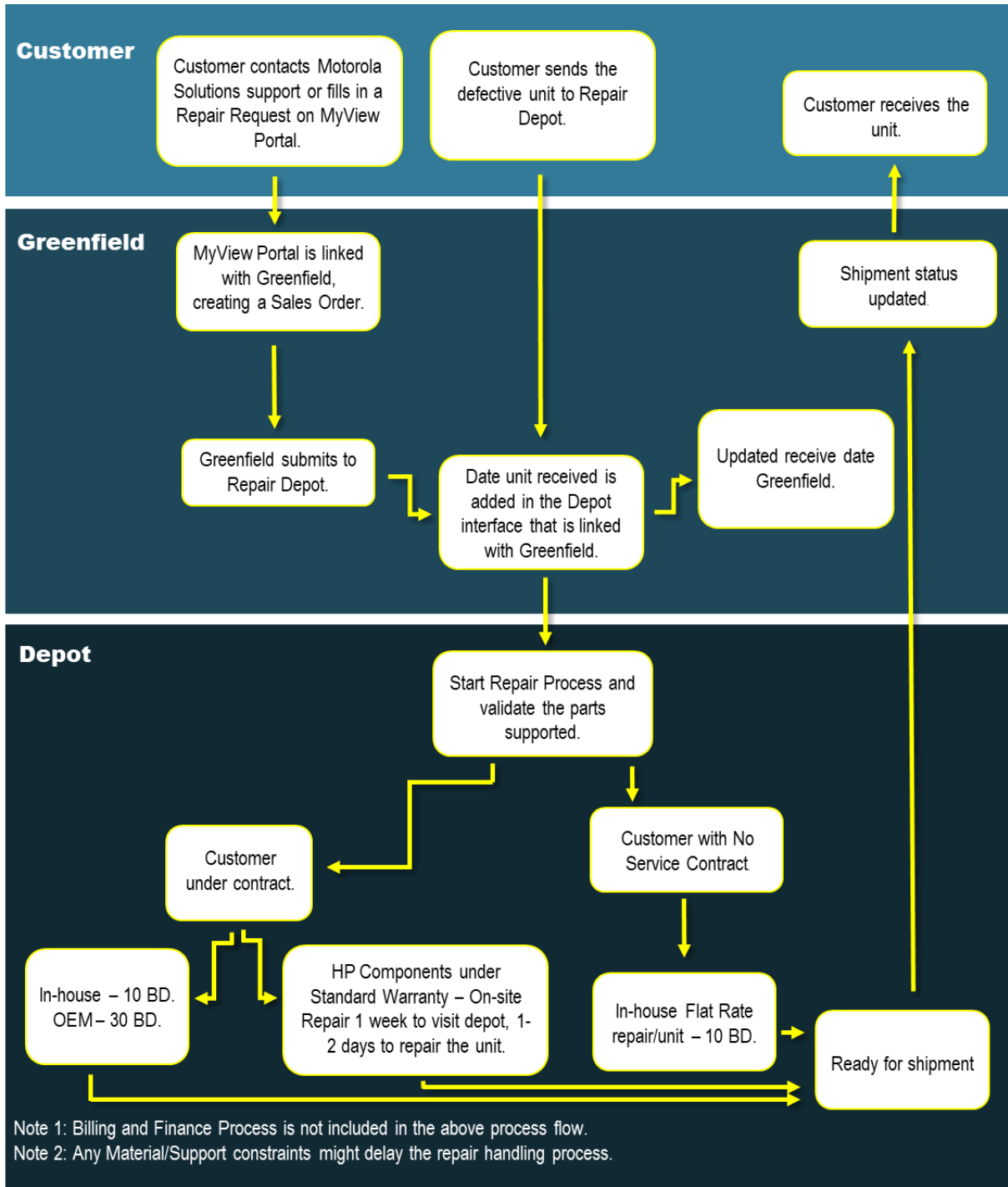


Figure 4-2: Repair Decision Process

### 4.4.3.8 Advanced Replacement

As an addition to Hardware Repair service, Advanced Replacement is a repair exchange service for Motorola Solutions and select third-party infrastructure components supplied by Motorola Solutions. When available, Motorola Solutions will provide the Customer with advanced replacement units or Field Replacement Units (“FRU”) in exchange for the Customer’s malfunctioning equipment. A Motorola Solutions-authorized repair depot will evaluate and repair malfunctioning equipment, and add that equipment to the depot’s FRU inventory after completing repairs.

Customers who prefer to maintain their own FRU inventory may request a “Loaner” FRU while their unit is being repaired. Refer to Figure 4-3 for details on the unit loan process.

#### 4.4.3.8.1 Added Motorola Solutions Responsibilities for Advanced Replacement

- Use commercially reasonable efforts to maintain FRU inventory on supported platforms.
- Provide new or reconditioned FRU’s to the Customer upon request, subject to availability. The FRU will be an equipment type and version similar to the Customer’s malfunctioning component, and will contain equivalent boards and chips.
- Load firmware and software for equipment that requires programming. The Customer’s software version information must be provided for the replacement FRU to be programmed accordingly. If the Customer’s software version and configuration are not provided, shipping will be delayed.
- Package and ship FRU from the FRU inventory to Customer-specified address.
  - Motorola Solutions will ship FRU as soon as possible, depending on stock availability and requested configuration. FRU will be shipped during normal operating hours of Monday through Friday from 7:00 a.m. to 7:00 p.m. CST, excluding holidays. Motorola Solutions will pay for the shipping to the Customer, unless the Customer requests shipments outside of standard business hours or carrier programs, such as weekend or next flight out (“NFO”) shipment. In such cases, the Customer will be responsible for paying shipping and handling charges.
  - When sending FRU to the Customer, provide a return air bill in order for the Customer to send the Customer’s malfunctioning component. The Customer’s malfunctioning component will become property of the Motorola Solutions repair depot or select third party replacing it, and the Customer will own the FRU.
  - For loaner equipment, Motorola Solutions will ship repaired infrastructure components to Customer-specified address during normal operating hours, Monday through Friday from 7:00 a.m. to 7:00 p.m. CST, excluding holidays. FRU will be sent using two-day air shipping unless the Customer requests otherwise. Motorola Solutions will pay for shipping unless the Customer requests shipments outside of the above mentioned standard business hours or carrier programs, such as NFO. In such cases, the Customer will be responsible for paying shipping and handling charges.
  - When sending a loaner FRU to the Customer, Motorola Solutions will pay for outbound shipping charges. Inbound shipping to Motorola Solutions for repair will be the Customer’s responsibility. Motorola Solutions will repair and return the Customer’s component, and provide a return air bill for the Customer to return the loaner FRU. Refer to Figure 4-3 for the loaner process, and Table 4-5 for shipping charge details.

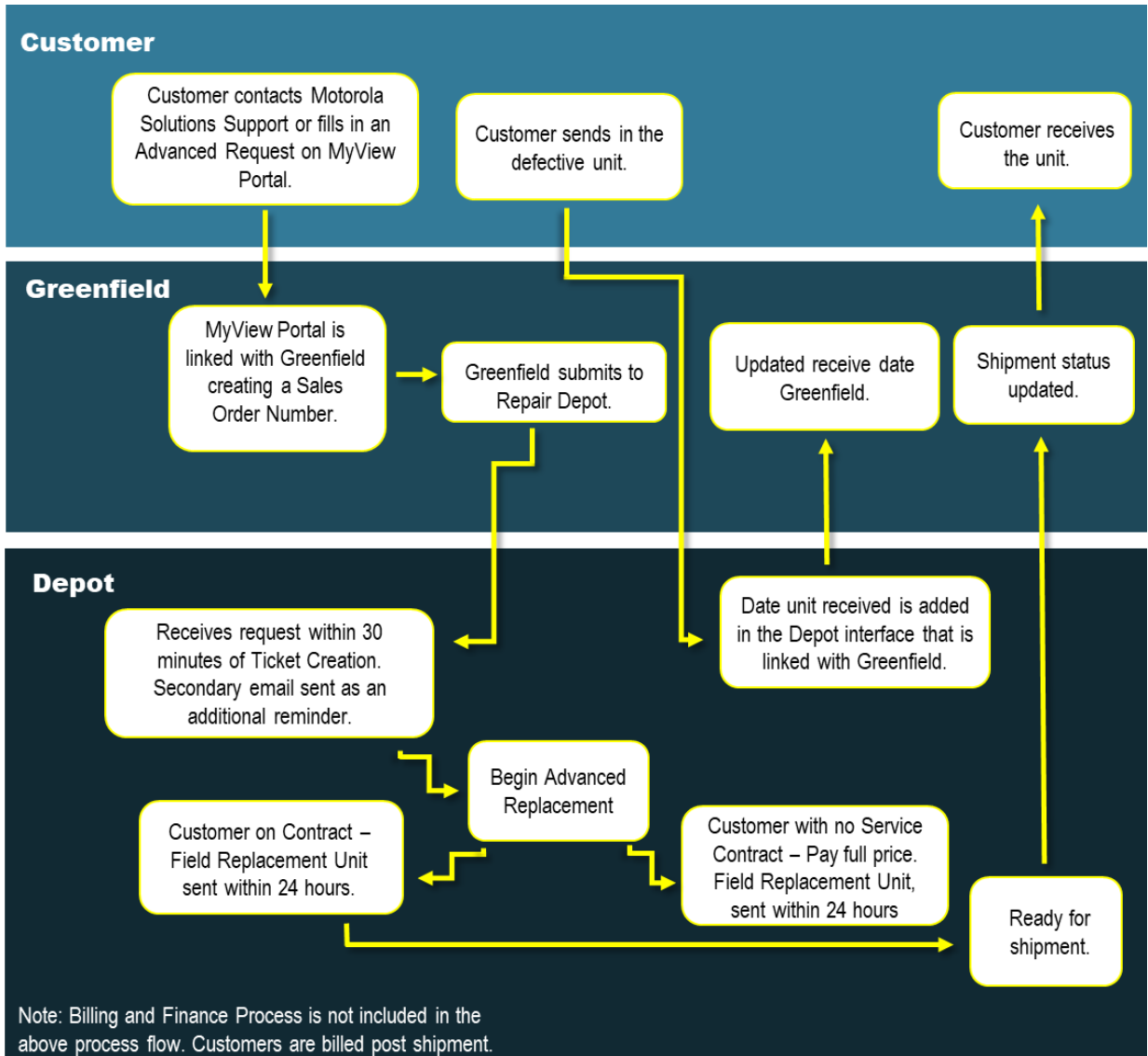


- Provide repair return authorization (“RA”) number upon Customer request to replace infrastructure components that are not classified as an advanced replacement or loaner FRU.
- Provide a repair RA number so that returned components can be repaired and returned to FRU stock.
- Receive malfunctioning components from the Customer, carry out repairs and testing, and return it to the FRU stock

#### 4.4.3.8.2 Added Customer Responsibilities for Advanced Replacement

- Pay for Advanced Replacement or Loaner FRU shipping from Motorola Solutions repair depot if the Customer requested shipping outside of standard business hours or carrier programs set forth in Section 4.4.3.8.1. See Table 4-5 for shipping charge details.
- Properly package and ship the malfunctioning component using the pre-paid air-bill that arrived with the FRU. The Customer is responsible for properly packaging the malfunctioning infrastructure component to ensure that it is not damaged in transit and arrives in repairable condition. The Customer will be subject to a replacement fee for malfunctioning components returned improperly.
- Within five business days of receipt of the advanced replacement FRU from Motorola Solutions’ FRU inventory, properly package the Customer’s malfunctioning FRU and ship the malfunctioning Infrastructure to Motorola Solutions’ repair depot for evaluation and repair. The Customer must send the return air bill back to the repair depot in order to facilitate proper tracking of the returned infrastructure. The Customer will be subject to a full replacement fee for FRU’s not returned within five business days.
- At the Customer’s expense and risk of loss, the Customer may send a malfunctioning Motorola Solutions or third-party infrastructure component for repairs before a replacement has been sent. In such cases, the malfunctioning component should be properly packaged and shipped to Motorola Solutions.
- Clearly print the return authorization number on the outside of the packaging.

### 4.4.3.8.3 Replacement Process for Advanced Replacement



**Figure 4-3: Advanced Replacement or Loaner Decision Process**

**Table 4-5: Shipping Charges and Default Mail Service:**

Service	Advanced Replacement Charges Responsibility
Advanced Replacements (Normal Business Hours) Shipped FedEx Overnight or equivalent	Motorola Solutions
Loaner Shipping Outbound to Customer	
Loaner Repair and Return Shipping Outbound to Customer	
Advanced Replacements (Next Flight Out or Other)	Customer
Exchanges or Loaners Shipped Outbound to Customer by Non-Motorola Carrier*	
Loaner Repair Shipping Inbound to Motorola Solutions	
Loaner Installation Labor	

\*Motorola Solutions shipping carrier – FedEx

## 4.4.4 Remote Security Update Service

Motorola Solutions’ ASTRO 25 Remote Security Update Service (“RSUS”) provides pretested security updates, minimizing cyber risk and software conflicts. These security updates contain operating system security patches and antivirus definitions that have been validated for compatibility with ASTRO 25 systems. Motorola Solutions will remotely deliver tested security updates to the Customer using a network connection. Reboot responsibility is determined by which options are included as part of this service.

The ASTRO 25 Security Update Service (“SUS”) and Network Event Monitoring service are prerequisites for RSUS. These prerequisites are included as part of this service package.

### 4.4.4.1 Description of Service

Motorola Solutions remotely installs pretested security updates on the Customer’s network. Motorola Solutions tests security updates for compatibility with ASTRO 25 in a dedicated information assurance lab.

Motorola Solutions will install compatible ASTRO 25 security updates using a remote connection. After installing tested security updates remotely, Motorola Solutions provides the Customer with a report outlining the updates made to the Customer’s system. This report will inform the Customer of security update network transfers and installation.

#### Remote Update Requirements

A reliable connection from Motorola Solutions to the Customer’s network is required to enable remote security update installation. Motorola Solutions’ Network Event Monitoring service includes the required hardware and maintenance, and is a prerequisite to RSUS. Customer systems with slow and/or unreliable remote site links may impact the speed of RSUS updating and our ability to deliver the service.

In some instances, Motorola Technical Notices (“MTN”) must be applied to enable Motorola Solutions to remotely deploy the latest security updates. MTN installation is not part of RSUS. In the event Motorola Solutions cannot deploy security updates unless one or more MTNs are installed, Motorola Solutions will communicate this to the Customer. The Customer and their Customer Support Manager (“CSM”) will determine how to apply necessary MTNs. Once necessary MTNs are applied to the Customer’s system, Motorola Solutions will continue to remotely deploy security updates.

Connections to other networks, herein referred to as Customer Enterprise Network (“CEN”), are delineated by firewalls. All security updates deployed by RSUS are specific to the equipment included in the ASTRO 25 radio network with only the following exceptions: Key Management Facility (“KMF”) and MCC 7500e consoles.

The Customer may request, via the CSM, that Motorola Solutions remotely updates MCC 7500e consoles and KMF in the Customer’s CEN as part of RSUS, or designate Customer IT resources to install the security updates. The Customer must make the appropriate configuration changes to their firewall allowing access.

### Reboot Support

If Reboot Support is included with RSUS, Motorola Solutions provides technician support to reboot impacted Microsoft Windows servers and workstations after operating system security patches have been installed.

#### 4.4.4.2 Scope

RSUS includes pretested security updates for the software listed in Table 4-6. This table also describes the release cadence for security updates.

**Table 4-6: Update Cadence**

Software	Update Release Cadence
Antivirus Definition Files	Weekly
Microsoft Windows	Monthly
Microsoft Windows SQL Server	Quarterly
Microsoft Windows third party (Adobe Reader)	Monthly
Red Hat Linux (RHEL)	Quarterly
VMWare ESXi Hypervisor	Quarterly
PostgreSQL (From ASTRO 25 7.14 and newer major releases)	Quarterly
McAfee Patch(es)	Quarterly
Dot Hill DAS Firmware	Quarterly
HP SPP Firmware	Quarterly
QNAP Firmware	Quarterly

Motorola Solutions installs security updates during normal business hours. Normal business hours are defined as 8 a.m. to 5 p.m. Central Standard Time on Monday through Friday, excluding Public Holidays. The Customer may submit a formal request that Motorola Solutions personnel work outside of these hours. The Customer may need to pay additional costs for work to be completed outside of normal business hours.



Motorola Solutions will provide an Impact Timeline (“ITL”) to show installation tasks scheduled during normal business hours, including preparation work and the transfer of security updates to local storage or memory. Server and workstation reboots or zone controller rollover will be initiated at the times shared in the ITL.

Intrusive security updates require Customer coordination. Intrusive security updates may require hardware reboots and zone controller rolling (switching from one zone controller to the other) to fully implement. Systems with redundant zone controllers (L2, M2, M3) have low downtime (minutes) as the zone controllers are rolled, but systems with single zone controllers (L1, M1) will be down for longer periods. While rolling the zone controllers, the system will operate in “Site trunking” mode. The Customer will need to be aware of these operational impacts, and coordinate events with users.

#### 4.4.4.3 Inclusions

Supported ASTRO 25 core types and security update delivery methods are included in Table 4-7. This table indicates if Motorola Solutions will provide any RSUS optional services to the Customer. RSUS supports the current Motorola Solutions ASTRO 25 system release and aligns with the established [Software Support Policy \(SwSP\)](#).

Motorola Solutions reserves the right to determine which releases are supported as business conditions dictate. Additional charges may apply in the event of supporting older releases. Contact Motorola Solutions’ assigned Customer Support Manager (“CSM”) for the latest supported releases.

**Table 4-7: SUS Packages**

Service	ASTRO 25 Core Type	Included
Remote Security Update Service	M Core	X
Remote Security Update Service with Reboot Support	M Core	(Not included)

Responsibilities for rebooting applicable hardware are detailed in Section 4.4.4.7: Reboot Responsibilities.

#### 4.4.4.4 Motorola Solutions Responsibilities

- Remotely deploy updates listed in Section 4.4.4.2: Scope on the Customer’s system. Updates will be installed on the cadence described in that section.
  - As outlined in Section 4.4.4.2: Scope, coordinate and communicate with the Customer when installing updates that will require server reboots, workstation reboots, or both.
  - Install non-intrusive updates, like antivirus definitions, as released without coordination.
- In the event no security updates are released by the OEMs during the usual time period, Motorola Solutions will send a notice that no new security updates were deployed.



#### 4.4.4.5 Limitations and Exclusions

- Systems with non-standard configurations that have not been certified by Motorola Solutions' Systems Integration and Test ("SIT") team are specifically excluded from this service, unless otherwise agreed in writing by Motorola Solutions.
- Interim or unplanned releases outside the supported release cadence.
- Service does not include pretested intrusion detection system ("IDS") signature updates for IDS solutions. However, select vendor IDS signature updates are made available via the secure website. The available vendors may change pursuant to Motorola Solutions' business decisions. The Customer is responsible for complying with all IDS licensing requirements and fees, if any.
- This service does not include releases for Motorola Solutions products that are not ASTRO 25 L, M, and Simplified Core radio network infrastructure equipment. The following are examples of excluded products: WAVE PTX™, Critical Connect, and VESTA® solutions.
- K Core ASTRO 25 systems are excluded.
- Motorola Solutions product updates are not included in these services.
- Shared network infrastructure firmware, such as transport and firewall firmware, are not included in these services.

#### 4.4.4.6 Customer Responsibilities

- This service requires connectivity from Motorola Solutions' CMSO to the Customer's ASTRO 25 system. Procure Motorola Solutions' Network Event Monitoring service, and maintain it for the duration of RSUS contract.
- Refrain from making uncertified changes to the ASTRO 25 system. Consult with Motorola Solutions before making changes to the ASTRO 25 system.
- Be aware of the operational impacts of RSUS update installation, and coordinate the update process with users.
- Coordinate any maintenance or other updates that are not part of RSUS with Motorola Solutions to minimize downtime and redundant efforts.

#### 4.4.4.7 Reboot Responsibilities

Microsoft Windows servers and workstations often need to be rebooted before security updates take full effect and mitigate vulnerabilities. Reboot responsibilities are determined by the specific RSUS package being purchased. Table 4-8 contains the breakdown of responsibilities. Section 4.4.4.3: Inclusions indicates which services are included.



**Table 4-8: Reboot Responsibilities Matrix**

Remote SUS Package	Motorola Solutions Responsibilities	Customer Responsibilities
Remote Security Update Service	<ul style="list-style-type: none"> <li>▪ Provide a report to the Customer’s main contact listing the servers or workstations which must be rebooted to ensure installed security updates become effective.</li> </ul>	<ul style="list-style-type: none"> <li>▪ When a security update requires a reboot, reboot servers and workstations after security updates are installed.                             <ul style="list-style-type: none"> <li>○ When remote deployment is in progress, it may be necessary for multiple reboots to be coordinated with Motorola Solutions.</li> </ul> </li> </ul>
Remote Security Update Service with Reboot Support	<ul style="list-style-type: none"> <li>▪ When a security update requires a reboot, dispatch a technician to reboot servers and workstations after security updates are installed.</li> </ul>	

#### 4.4.4.8 Disclaimer

This service tests OEM security updates. Delivering security updates for specific software depends on OEM support for that software. If an OEM removes support (end-of-life) from deployed software, Motorola Solutions will work with the OEM to reduce the impact, but may remove support for the affected software from this service without notice.

OEMs determine security update schedules, supportability, or release availability without consultation from Motorola Solutions. Motorola Solutions will obtain and test security updates when they are made available, and incorporate those security updates into the next appropriate release.

Motorola Solutions disclaims any warranty with respect to pretested database security updates, hypervisor patches, operating system software patches, intrusion detection sensor signature files, or other third-party files, express or implied. Further, Motorola Solutions disclaims any warranty concerning non-Motorola Solutions software and does not guarantee Customers' systems will be error-free or immune to security breaches as a result of these services.

### 4.4.5 On-site Infrastructure Response

Motorola Solutions’ On-site Infrastructure Response service provides incident management and escalation for on-site technical service requests. The service is delivered by Motorola Solutions’ Centralized Managed Support Operations (“CMSO”) organization in cooperation with a local service provider.

On-site Infrastructure Response may also be referred to as On-site Support.

#### 4.4.5.1 Description of Service

The Motorola Solutions CMSO Service Desk will receive the Customer’s request for on-site service.

The CMSO Dispatch Operations team is responsible for opening incidents, dispatching on-site resources, monitoring issue resolution, and escalating as needed to ensure strict compliance to committed response times.

The dispatched field service technician will travel to the Customer's location to restore the system in accordance with Section 4.5: Priority Level Definitions and Response Times.

Motorola Solutions will manage incidents as described in this SOW. The CMSO Service Desk will maintain contact with the field service technician until incident closure.

#### 4.4.5.2 Scope

On-site Infrastructure Response is available 24 hours a day, 7 days a week in accordance with Section 4.5: Priority Level Definitions and Response Times. Customer's Response Time Classification is designated in the Customer Support Plan.

#### 4.4.5.3 Inclusions

On-site Infrastructure Response is provided for Motorola Solutions-provided infrastructure.

#### 4.4.5.4 Motorola Solutions Responsibilities

- Receive service requests.
- Create an incident when service requests are received. Gather information to characterize the issue, determine a plan of action, and assign and track the incident to resolution.
- Dispatch a field service technician, as required by Motorola Solutions' standard procedures, and provide necessary incident information.
- Provide the required personnel access to relevant Customer information, as needed.
- Motorola Solutions field service technician will perform the following on-site:
  - Run diagnostics on the infrastructure component.
  - Replace defective infrastructure component, as supplied by the Customer.
  - Provide materials, tools, documentation, physical planning manuals, diagnostic and test equipment, and any other material required to perform the maintenance service.
  - If a third-party vendor is needed to restore the system, the vendor can be accompanied onto the Customer's premises.
  - If required by the Customer's repair verification in the Customer Support Plan ("CSP"), verify with the Customer that restoration is complete or system is functional. If verification by the Customer cannot be completed within 20 minutes of restoration, the incident will be closed and the field service technician will be released.
  - Escalate the incident to the appropriate party upon expiration of a response time.
- Close the incident upon receiving notification from the Customer or Motorola Solutions field service technician, indicating the incident is resolved.
- Notify the Customer of incident status, as defined in the CSP and Service Configuration Portal ("SCP"):
  - Open and closed.
  - Open, assigned to the Motorola Solutions field service technician, arrival of the field service technician on-site, delayed, or closed.
- Provide incident activity reports to the Customer, if requested.

#### 4.4.5.5 Customer Responsibilities

- Contact Motorola Solutions, as necessary, to request service.
- Prior to start date, provide Motorola Solutions with the following pre-defined Customer information and preferences necessary to complete CSP:
  - Incident notification preferences and procedure.
  - Repair verification preference and procedure.
  - Database and escalation procedure forms.
- Submit timely changes in any information supplied in the CSP to the Customer Support Manager (“CSM”).
- Provide the following information when initiating a service request:
  - Assigned system ID number.
  - Problem description and site location.
  - Other pertinent information requested by Motorola Solutions to open an incident.
- Provide field service technician with access to equipment.
- Supply infrastructure spare or FRU, as applicable, in order for Motorola Solutions to restore the system.
- Maintain and store software needed to restore the system in an easily accessible location.
- Maintain and store proper system backups in an easily accessible location.
- If required by repair verification preference provided by the Customer, verify with the CMSO Service Desk and dispatch that restoration is complete or system is functional.
- Cooperate with Motorola Solutions and perform reasonable or necessary acts to enable Motorola Solutions to provide these services.
- In the event that Motorola Solutions agrees in writing to provide supplemental On-site Infrastructure Response to Customer-provided third-party elements, the Customer agrees to obtain and provide applicable third-party consents or licenses to enable Motorola Solutions to provide the service.

#### 4.4.6 Annual Preventive Maintenance

Motorola Solutions personnel will perform a series of maintenance tasks to keep network equipment functioning correctly.

##### 4.4.6.1 Description of Service

Annual Preventative Maintenance provides annual operational tests on the Customer’s infrastructure equipment to monitor its conformance to specifications.

##### 4.4.6.2 Scope

Annual Preventive Maintenance will be performed during standard business hours, unless otherwise agreed to in writing. After the service starts, if the system or Customer requirements dictate that the service must occur outside of standard business hours, an additional quotation will be provided. The Customer is responsible for any charges associated with unusual access requirements or expenses.

Motorola Solutions will provide level 1 Preventive Maintenance.



#### 4.4.6.3 Inclusions

Annual Preventive Maintenance service will be delivered for Motorola Solutions-provided infrastructure, including integrated third-party products, per the level of service defined in Section 4.4.6.7: Preventive Maintenance Tasks.

#### 4.4.6.4 Motorola Solutions Responsibilities

- Notify the Customer of any planned system downtime needed to perform this service.
- Maintain communication with the Customer as needed until completion of the Annual Preventive Maintenance.
- Determine, in its sole discretion, when an incident requires more than the Annual Preventive Maintenance services described in this SOW, and notify the Customer of an alternative course of action.
- Provide the Customer with a report in MyView Portal, or as otherwise agreed in the Customer Support Plan (“CSP”), comparing system performance with expected parameters, along with any recommended actions. Time allotment for report completion is to be mutually agreed.
- Provide trained and qualified personnel with proper security clearance required to complete Annual Preventive Maintenance services.
- Field service technician will perform the following on-site:
  - Perform the tasks defined in Section 4.4.6.7: Preventive Maintenance Tasks.
  - Perform the procedures defined in Section 4.4.6.8: Site Performance Evaluation Procedures for each site type on the system.
  - Provide diagnostic and test equipment necessary to perform the Preventive Maintenance service.
  - As applicable, use the Method of Procedure (“MOP”) defined for each task.

#### 4.4.6.5 Limitations and Exclusions

The following activities are outside the scope of the Annual Preventive Maintenance service.

- Preventive maintenance for third-party equipment not sold by Motorola Solutions as part of the original system.
- Network transport link performance verification.
- Verification or assessment of Information Assurance.
- Any maintenance and/or remediation required as a result of a virus or unwanted cyber intrusion.
- Tower climbs, tower mapping analysis, or tower structure analysis.

#### 4.4.6.6 Customer Responsibilities

- Provide preferred schedule for Annual Preventative Maintenance to Motorola Solutions.
- Authorize and acknowledge any scheduled system downtime.
- Maintain periodic backup of databases, software applications, and firmware.
- Establish and maintain a suitable environment (heat, light, and power) for the equipment location as described in equipment specifications, and provide Motorola Solutions full, free, and safe access to the equipment so that Motorola Solutions may provide services. All sites shall be accessible by standard service vehicles.
- Submit timely changes in any information supplied in the CSP to the Customer Support Manager (“CSM”).

- Provide site escorts, if required, in a timely manner.
- Provide Motorola Solutions with requirements necessary for access to secure facilities.
- In the event that Motorola Solutions agrees in writing to provide supplemental Annual Preventive Maintenance to third-party elements provided by Customer, the Customer agrees to obtain any third-party consents or licenses required to enable Motorola Solutions field service technician to access the sites to provide the service.

#### 4.4.6.7 Preventive Maintenance Tasks

The Preventive Maintenance service includes the tasks listed in this section.

<b>MASTER SITE CHECKLIST</b>	
<b>Servers</b>	
Equipment Alarms	Check LED and/or other status indicators for fault conditions.
Capture Diagnostics	Perform recommended diagnostic tests based on server type. Capture available diagnostic logs.
Network Management ("NM") Client Applications	Review Unified Event Manager ("UEM") events and verify backhaul links are reported as operational. Review event log for persistent types. Verify all NM client applications are operating correctly.
Verify System software physical media	Perform audit of software media on site. Verify that versions, KC numbers, and types match what is deployed to Customer server.
Complete Backup	Verify backups have been completed or scheduled, and that data has been stored in accordance with the Customer's backup plan. Check that adequate storage space is available for backups.
Network Time Protocol ("NTP")	Verify operation and syncing all devices.
Data Collection Devices ("DCD") check (if present)	Verify data collection.
Anti-Virus	Verify anti-virus is enabled and that definition files on core security management server were updated within two weeks of current date.
<b>Routers</b>	
Equipment Alarms	Check LED and/or other status indicators for fault conditions.
Capture Diagnostics	Perform recommended diagnostic tests based on router type. Capture available diagnostic logs.
Verify Redundant Routers	Test redundancy in cooperative WAN routers. Carry out core router switchover in coordination with Customer.
<b>Switches</b>	
Equipment Alarms	Check LED and/or other status indicators for fault conditions.
Capture Diagnostics	Perform recommended diagnostic tests based on switch type. Capture available diagnostic logs.
Verify Redundant Switches	Test redundancy in backhaul switches. Carry out core router switchover in coordination with Customer.
<b>Domain Controllers (non-Common Server Architecture)</b>	
Equipment Alarms	Check LED and/or other status indicators for fault conditions.

<b>MASTER SITE CHECKLIST</b>	
Capture Diagnostics	Perform recommended diagnostic tests based on server type. Capture available diagnostic logs.
Verify System software physical media	Perform audit of software media on site. Verify that versions, KC numbers, and types match what is deployed to Customer server.
<b>Firewalls</b>	
Equipment Alarms	Check LED and/or other status indicators for fault conditions.
Capture Diagnostics	Perform recommended diagnostic tests based on server type. Capture available diagnostic logs.
<b>Logging Equipment</b>	
Equipment Alarms	Check LED and/or other status indicators for fault conditions.
Capture Diagnostics	Perform recommended diagnostic tests based on server type. Capture available diagnostic logs.
Server CPU Health	Check memory, HDD, CPU, and disk space utilization.

<b>PRIME SITE CHECKLIST</b>	
<b>Software</b>	
Verify System software physical media	Perform audit of software media on site. Verify that versions, KC numbers, and types match what is deployed to Customer server.
<b>Switches</b>	
Equipment Alarms	Check LED and/or other status indicators for fault conditions.
Capture Diagnostics	Perform recommended diagnostic tests based on switch type. Capture available diagnostic logs.
Clean Fans and Equipment	Use antistatic vacuum to clean cooling pathways.
<b>Routers</b>	
Equipment Alarms	Check LED and/or other status indicators for fault conditions.
Capture Diagnostics	Perform recommended diagnostic tests based on router type. Capture available diagnostic logs.
Clean Fans and Equipment	Use antistatic vacuum to clean cooling pathways.
<b>Miscellaneous Equipment</b>	
Equipment Alarms	Check LED and/or other status indicators for fault conditions.
Capture Diagnostics	Perform recommended diagnostic tests based on server type. Capture available diagnostic logs.
Site Frequency Standard Check (Timing Reference Unit)	Check LEDs for proper operation.

<b>PRIME SITE CHECKLIST</b>	
<b>Site Controllers</b>	
Capture Diagnostics	Perform recommended diagnostic tests based on server type. Capture available diagnostic logs.
Equipment Alarms	Check LED and/or other status indicators for fault conditions.
Clean Fans and Equipment	Use antistatic vacuum to clean cooling pathways.
Site Controller Redundancy (Trunking)	Roll site controllers with no dropped audio.
<b>Comparators</b>	
Equipment Alarms	Verify no warning/alarm indicators.
Capture Diagnostics	Perform recommended diagnostic tests based on server type. Capture available diagnostic logs.
Clean Fans and Equipment	Use antistatic vacuum to clean cooling pathways.

<b>DISPATCH SITE CHECKLIST</b>	
<b>General</b>	
Inspect all Cables	Inspect all cables and connections to external interfaces are secure.
Mouse and Keyboard	Verify operation of mouse and keyboard.
Configuration File	Verify each operator position has access to required configuration files.
Console Operator Position Time	Verify console operator position time is consistent across all operator positions.
Screensaver	Verify screensaver set as Customer prefers.
Screen Performance	Verify screen operational and is not suffering from dead pixels or image burn-in that prevent user operation.
Touchscreen	Verify touchscreen operation, if present.
Cabling/Lights/Fans	Visual inspection of all equipment cabling, lights, and fans
Filters/Fans/Dust	Clean all equipment filters and fans and remove dust.
Monitor and Hard Drive	Confirm monitor and hard drive do not "sleep".
DVD/CD	Verify and clean DVD or CD drive.
Time Synchronization	Verify console time is synchronized with NTP server
Anti-Virus	Verify anti-virus is enabled and that definition files have been updated within two weeks of current date.

<b>DISPATCH SITE CHECKLIST</b>	
<b>Headset Unplugged Testing</b>	
Speakers	Test all speakers for audio quality, volume, static, drop-outs, and excess hiss when turned up.
Channel Audio in Speaker	Verify selected channel audio in select speaker only.
Footswitch Pedals	Verify both footswitch pedals operational.
Radio On-Air Light	Verify radio on-air light comes on with TX (if applicable).
<b>Headset Plugged In Testing</b>	
Radio TX and RX	Verify radio TX/RX from both headset jacks. Verify levels OK. Check volume controls for noise, static, or drop-outs.
Speaker Mute	Verify speaker mutes when muted.
Telephone Operation	Verify telephone operational through both headset jacks. Check volume controls for noise, static, or drop-outs.
Audio Switches	Verify audio switches to speaker when phone off-hook if interfaced to phones.
Radio Takeover in Headset	Verify radio-takeover in headset mic when phone is off-hook, with mic switching to radio and muting phone during push-to-talk.
<b>Other Tests</b>	
Phone Status Light	Verify phone status light comes on when phone is off-hook (if applicable).
Desk Microphone Operation	Confirm desk mic operation (if applicable).
Radio Instant Recall Recorder ("IRR") Operation	Verify radio IRR operational on Motorola Solutions dispatch (if applicable).
Telephone IRR Operation	Verify telephone IRR operational on Motorola Solutions dispatch, if on radio computer.
Recording	Verify operator position being recorded on long term logging recorder, if included in service agreement
<b>Computer Performance Testing</b>	
Computer Reboot	Reboot operator position computer.
Computer Operational	Confirm client computer is fully operational (if applicable).
<b>Audio Testing</b>	
Conventional Resources	Confirm all conventional resources are functional, with adequate audio levels and quality.
Secure Mode	Confirm any secure talkgroups are operational in secure mode.
Trunked Resources	Confirm all trunked resources on screen are functioning by placing a call in both directions, at the Customer's discretion, and at a single operator position
Backup Resources	Confirm backup resources are operational.
<b>Logging Equipment Tests</b>	
Recording - AIS Test	Verify audio logging of trunked calls.

<b>DISPATCH SITE CHECKLIST</b>	
Recording	With Customer assistance, test operator position logging on recorder.
System Alarms	Review alarm system on all logging equipment for errors.
Capture Diagnostics	Perform recommended diagnostic tests based on equipment, and capture available diagnostic logs.
Verify System software Physical media	Perform audit of software media on site. Verify that versions, KC numbers, and types match what is deployed to Customer server.
<b>Playback Station (Motorola Solutions Provided)</b>	
Capture Diagnostics	Perform recommended diagnostic tests based on equipment, and capture available diagnostic logs.
Recall Audio	Verify that radio and telephone audio can be recalled.

<b>RF SITE CHECKLIST</b>	
<b>RF PM Checklist</b>	
Equipment Alarms	Verify no warning or alarm indicators.
Clean Fans and Equipment	Use an antistatic vacuum to clean cooling pathways.
Site Frequency Standard Check	Check LEDs for proper operation.
Basic Voice Call Check	Voice test each voice path, radio to radio.
Trunking Control Channel Redundancy	Roll control channel, test, and roll back.
Trunking Site Controller Redundancy, ASTRO 25 Site Repeater only	Roll site controllers with no dropped audio.
PM Optimization Workbook (See Section 4.4.6.8 Site Performance Evaluation Procedures for GTR tests)	Complete Base Station Evaluation tests - Frequency Error, Modulation Fidelity, Forward at Set Power, Reverse at Set Power, and Gen Level Desense no TX. Update station logs.

<b>FACILITIES CHECKLIST</b>	
<b>Visual Inspection Exterior</b>	
Antenna Site Registration Sign	Verify that the Antenna Site Registration sign is posted.

<b>FACILITIES CHECKLIST</b>	
Warning Sign - Tower	Verify that a warning sign is posted on the tower.
Warning Sign - Gate	Verify that a warning sign is posted at the compound gate entrance.
10 Rule Sign	Verify that a 10 rules sign is posted on the inside of the shelter door.
Outdoor Lighting	Verify operation of outdoor lighting and photocell.
Exterior of Building	Check exterior of building for damage and disrepair.
Fences / Gates	Check fences and gates for damage and disrepair.
Landscape / Access Road	Check landscape and access road for accessibility.
<b>Visual Inspection Interior</b>	
Electrical Surge Protectors	Check electrical surge protectors for alarms.
Emergency Lighting	Verify emergency lighting operation.
Indoor Lighting	Verify indoor lighting.
Equipment Inspection	Visually inspect that all hardware, including equipment, cables, panels, batteries, and racks, is in acceptable physical condition for normal operation.
Regulatory Compliance (License, ERP, Frequency, Deviation)	Check for site and station FCC licensing indicating regulatory compliance.
Clean Fans and Equipment	Use antistatic vacuum to clean cooling pathways.
<b>UPS</b>	
Visual inspection (condition, cabling)	Check for damage, corrosion, physical connections, dirt and dust, and error indications.
<b>Generator</b>	
Visual Inspection	Check panel housing for cracks, rust, and weathering. Check physical connections for corrosion, dirt and dust, or other abnormal conditions.
<b>HVAC</b>	
Coils	Check coils for dirt and straightness.
Outdoor Unit	Check that outdoor unit is unobstructed.
Wiring	Check wiring for insect and rodent damage.

FACILITIES CHECKLIST	
Cooling / Heating	Check each HVAC unit for cooling/heating.

PRIME SITE CHECKLIST	
<b>Software</b>	
Verify System software physical media	Perform audit of software media on site. Verify that versions, KC numbers, and types match what is deployed to Customer server.
Verify System software Installed	Verify software versions installed on system. Document any changes.
<b>Switches</b>	
Equipment Alarms	Check LED and/or other status indicators for fault conditions.
Capture Diagnostics	Perform recommended diagnostic tests based on switch type. Capture available diagnostic logs.
Clean Fans and Equipment	Use antistatic vacuum to clean cooling pathways.
Verify Redundant Switches	Test redundancy in backhaul switches. Carry out core router switchover in coordination with Customer.
<b>Routers</b>	
Equipment Alarms	Check LED and/or other status indicators for fault conditions.
Capture Diagnostics	Perform recommended diagnostic tests based on router type. Capture available diagnostic logs.
Clean Fans and Equipment	Use antistatic vacuum to clean cooling pathways.
Verify Redundant Routers	Test redundancy in cooperative WAN routers. Carry out core router switchover in coordination with Customer.
<b>Miscellaneous Equipment</b>	
Equipment Alarms	Check LED and/or other status indicators for fault conditions.
Capture Diagnostics	Perform recommended diagnostic tests based on server type. Capture available diagnostic logs.
Site Frequency Standard Check (Timing Reference Unit)	Check LEDs for proper operation.
<b>Site Controllers</b>	
Capture Diagnostics	Perform recommended diagnostic tests based on server type. Capture available diagnostic logs.
Equipment Alarms	Check LED and/or other status indicators for fault conditions.

<b>PRIME SITE CHECKLIST</b>	
Clean Fans and Equipment	Use antistatic vacuum to clean cooling pathways.
Site Controller Redundancy (Trunking)	Roll site controllers with no dropped audio.
Verify Software	Verify that the latest MOTOPATCH, released for Windows by Motorola Solutions, has been installed.
<b>Comparators</b>	
Equipment Alarms	Verify no warning/alarm indicators.
Capture Diagnostics	Perform recommended diagnostic tests based on server type. Capture available diagnostic logs.
Clean Fans and Equipment	Use antistatic vacuum to clean cooling pathways.

<b>DISPATCH SITE CHECKLIST</b>	
<b>General</b>	
Inspect all Cables	Inspect all cables and connections to external interfaces are secure.
Mouse and Keyboard	Verify operation of mouse and keyboard.
Configuration File	Verify each operator position has access to required configuration files.
Console Operator Position Time	Verify console operator position time is consistent across all operator positions.
Screensaver	Verify screensaver set as Customer prefers.
Screen Performance	Verify screen operational and is not suffering from dead pixels or image burn-in that prevent user operation.
Touchscreen	Verify touchscreen operation, if present.
Cabling/Lights/Fans	Visual inspection of all equipment cabling, lights, and fans
Filters/Fans/Dust	Clean all equipment filters and fans and remove dust.
Monitor and Hard Drive	Confirm monitor and hard drive do not "sleep".
DVD/CD	Verify and clean DVD or CD drive.
Time Synchronization	Verify console time is synchronized with NTP server
Anti-Virus	Verify anti-virus is enabled and that definition files have been updated within two weeks of current date.
<b>Headset Unplugged Testing</b>	
Speakers	Test all speakers for audio quality, volume, static, drop-outs, and excess hiss when turned up.
Channel Audio in Speaker	Verify selected channel audio in select speaker only.

<b>DISPATCH SITE CHECKLIST</b>	
Footswitch Pedals	Verify both footswitch pedals operational.
Radio On-Air Light	Verify radio on-air light comes on with TX (if applicable).
<b>Headset Plugged In Testing</b>	
Radio TX and RX	Verify radio TX/RX from both headset jacks. Verify levels OK. Check volume controls for noise, static, or drop-outs.
Speaker Mute	Verify speaker mutes when muted.
Telephone Operation	Verify telephone operational through both headset jacks. Check volume controls for noise, static, or drop-outs.
Audio Switches	Verify audio switches to speaker when phone off-hook if interfaced to phones.
Radio Takeover in Headset	Verify radio-takeover in headset mic when phone is off-hook, with mic switching to radio and muting phone during push-to-talk.
<b>Other Tests</b>	
Phone Status Light	Verify phone status light comes on when phone is off-hook (if applicable).
Desk Microphone Operation	Confirm desk mic operation (if applicable).
Radio Instant Recall Recorder ("IRR") Operation	Verify radio IRR operational on Motorola Solutions dispatch (if applicable).
Telephone IRR Operation	Verify telephone IRR operational on Motorola Solutions dispatch, if on radio computer.
Recording	Verify operator position being recorded on long term logging recorder, if included in service agreement
IRR Setup Parameters	Check IRR set-up parameters, audio card set-up, and level adjustments.
Paging Controls	Confirm all paging controls are functional, including third-party encoders if covered by maintenance contract.
<b>Computer Performance Testing</b>	
Computer Reboot	Reboot operator position computer.
Computer Operational	Confirm client computer is fully operational (if applicable).
Event Logs	Pull event logs and review for major errors.
Hard Drive Backup	Create backup of drive for offsite storage.
Memory Usage	Check memory usage.
Application Logs and Alerts	Review built in application logs and alerts.
Hard Drive Usage	Check available space, ensure there is a minimum of 10%.
Verify Software	Verify that the latest MOTOPATCH, released for Windows by Motorola Solutions, has been installed.
<b>Audio Testing</b>	
Conventional Resources	Confirm all conventional resources are functional, with adequate audio levels and quality.

<b>DISPATCH SITE CHECKLIST</b>	
Secure Mode	Confirm any secure talkgroups are operational in secure mode.
Trunked Resources	Confirm all trunked resources on screen are functioning by placing a call in both directions, at the Customer's discretion, and at a single operator position
Backup Resources	Confirm backup resources are operational.
Paging Tones	Confirm tone sequences and paging operation.
<b>Logging Equipment Tests</b>	
Recording - AIS Test	Verify audio logging of trunked calls.
Recording	With Customer assistance, test operator position logging on recorder.
System Alarms	Review alarm system on all logging equipment for errors.
Capture Diagnostics	Perform recommended diagnostic tests based on equipment, and capture available diagnostic logs.
Verify System software Physical media	Perform audit of software media on site. Verify that versions, KC numbers, and types match what is deployed to Customer server.
Verify Software	Verify that the latest MOTOPATCH, released for Windows by Motorola Solutions, has been installed.
<b>Playback Station (Motorola Solutions Provided)</b>	
Capture Diagnostics	Perform recommended diagnostic tests based on equipment, and capture available diagnostic logs.
Recall Audio	Verify that radio and telephone audio can be recalled.

<b>RF SITE CHECKLIST</b>	
<b>RF PM Checklist</b>	
Equipment Alarms	Verify no warning or alarm indicators.
Clean Fans and Equipment	Use an antistatic vacuum to clean cooling pathways.
Site Frequency Standard Check	Check LEDs for proper operation.
Basic Voice Call Check	Voice test each voice path, radio to radio.
Trunking Control Channel Redundancy	Roll control channel, test, and roll back.

<b>RF SITE CHECKLIST</b>	
Trunking Site Controller Redundancy, ASTRO 25 Site Repeater only	Roll site controllers with no dropped audio.
PM Optimization Workbook (See Section 4.4.6.8 Site Performance Evaluation Procedures for GTR tests)	Complete Base Station Evaluation tests - Frequency Error, Modulation Fidelity, Forward at Set Power, Reverse at Set Power, and Gen Level Desense no TX. Update station logs.

#### 4.4.6.8 Site Performance Evaluation Procedures

The Preventive Maintenance service includes the site performance evaluation procedures listed in this section.

<b>ASTRO 25 GTR ESS SITE PERFORMANCE</b>
<b>Antennas</b>
Transmit Antenna Data
Receive Antenna System Data
Tower Top Amplifier Data
<b>FDMA Mode</b>
Base Radio Transmitter Tests
Base Radio Receiver Tests
Base Radio Transmit RFDS Tests
Receive RFDS Tests with TTA (if applicable)
Receive RFDS Tests without TTA (if applicable)
<b>TDMA Mode</b>
Base Radio TDMA Transmitter Tests
Base Radio TDMA Receiver Tests
TDMA Transmit RFDS Tests
TDMA Receive RFDS Tests with 432 Diversity TTA
TDMA Receive RFDS Tests with 2 Independent TTA's (if applicable)
TDMA Receive RFDS Tests without TTA (if applicable)

## 4.4.7 Security Monitoring

Motorola Solutions' ASTRO 25 Security Monitoring provides radio network security element monitoring by experienced, specialized security technologists with extensive experience working with ASTRO 25 mission-critical networks. For highly complex or unusual security events, Motorola Solutions' technologists have rapid direct access to Motorola Solutions engineers for rapid resolution.

### 4.4.7.1 Description of Service

Security Monitoring provides continuous monitoring of authentication logs and monitors for potential introduction of malware software into the ASTRO 25 network.

### 4.4.7.2 Scope

Security Monitoring is available 24 hours a day, 7 days a week. The service is delivered by the Motorola Solutions Secure Operations Center ("SOC"). The SOC is part of Motorola Solutions' Centralized Managed Support Operations ("CMSO"), and is staffed by highly trained and experienced security professionals. When a security event is detected, the security specialists will run remote diagnostics and initiate an appropriate response. This response may consist of continuing to monitor the event for further development, attempting to remotely restore the system, or logging an incident for dispatch of a field service technician.

Motorola Solutions will respond to events in accordance with Section 4.4.7.8: Security Monitoring Priority Level Definitions and Response Times.

### 4.4.7.3 Inclusion

- **Anti-malware Monitoring** – ASTRO 25 comes installed with Anti-malware software. Motorola Solutions will remotely monitor ASTRO 25 anti-malware software for activity such as deletion, quarantine, and alerting of suspicious software.
- **Authentication Monitoring** – ASTRO 25 may be accessed by users by way of Windows and RSA logins. Motorola Solutions will remotely monitor such logins for repeated failures and locked accounts.
- **Firewall Monitoring** – ASTRO 25 systems may be deployed with certain firewalls, as described in Section 4.4.7.7: Potential ASTRO 25 Firewalls, which may or may not support remote monitoring. Motorola Solutions will remotely monitor those firewalls that support such monitoring.
- **Intrusion Detection System ("IDS") Monitoring.** – An IDS is an option for ASTRO 25 that may be deployed between the ASTRO 25 firewall and the CEN. Motorola Solutions will remotely monitor an IDS for the Customer where applicable.
- **Centralized Event Logging** – ASTRO 25 has provided the ability to forward device syslogs to a single virtual server called Centralized Syslog Server. This allows monitoring of Linux components for authentication events. Motorola Solutions will remotely monitor syslog data elements forwarded by the centralized event logging server specific to the monitored ASTRO 25 system. Not all elements within the network will be supported for forwarding in every ASTRO 25 system release. The Customer and CSM will document the specific supported elements in the Customer Support Plan ("CSP").

#### 4.4.7.4 Motorola Solutions Responsibilities

- Provide, maintain, and when necessary replace, hardware and software required to monitor ASTRO 25 security elements. Hardware may include a firewall, router, or physical server. Software may include virtual servers either on the ASTRO 25 core or a separate physical server, as well as related OS, SIEM collectors, and software that support update distribution and remote diagnostics.
- Verify connectivity and monitoring is active prior to start of service.
- Coordinate with the Customer to maintain Motorola Solutions service authentication credentials.
- Maintain trained and accredited technicians. Monitor the Customer's system 24/7/365 for malicious or unusual activity.
- Post security reports to MyView Portal.

#### 4.4.7.5 Customer Responsibilities

- Security Monitoring requires a connection from the Customer's ASTRO 25 system to Motorola Solutions' SOC. Motorola Solutions offers either a T1 or a Virtual Private Network ("VPN") link through a Customer-supplied internet connection. Connectivity needs to be established before service commences.
- Permit Motorola Solutions continuous remote access to monitor the ASTRO 25 system. This includes keeping the connection plugged-in, providing passwords, and working with Motorola Solutions to understand and maintain proper administration privileges.
- Provide continuous utility service to any Motorola Solutions equipment installed or utilized at the Customer's premises to support service delivery.
- Provide Motorola Solutions with contact information necessary to complete the CSP. Notify the Customer's Customer Support Manager ("CSM") within two weeks of any contact changes.
- Validate that Motorola Solutions is monitoring the components defined in the CSP and notify Motorola Solutions if any new components need to be incorporated in Security Monitoring.
- As necessary, upgrade the ASTRO 25 system to supported releases.
- Allow Motorola Solutions dispatched field service technicians physical access to the equipment when required.
- Comply with the terms of the applicable license agreements between Customer and the non-Motorola Solutions software copyright owners.
- Cooperate with Motorola Solutions and perform all acts that are reasonable or necessary to enable Motorola Solutions to provide the services described in this SOW.
- Ensure that all monitored devices within the network have a properly configured Syslog agent, which is forwarding events to the centralized event log server.
- Obtain any third party consents required to enable Motorola Solutions to provide the monitoring service.



#### 4.4.7.6 Disclaimer

Disclaimer: **“AS IS”**. MOTOROLA SOLUTIONS’ ASTRO 25 SECURITY MONITORING SERVICES ARE PROVIDED “AS IS”. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. Motorola Solutions does not guarantee that the Customer’s system will be error-free or immune to security breaches as a result of these services.

#### 4.4.7.7 Potential ASTRO 25 Firewalls

**Table 4-9: Potential ASTRO Firewalls**

Firewall	Description
Customer Network Interface (“CNI”)	This firewall separates the ASTRO 25 Radio Network from the Customer’s IT network, which is often referred to as the CEN or Customer Enterprise network. There are single and redundant (high-availability) options for the CNI. The redundant option includes two firewalls. Both firewalls must be monitored in the redundant case.
Dynamic System Resilience (“DSR”)	This is an ASTRO 25 option where a geographically separated backup master site is implemented as a “hot-standby” in case the primary becomes inoperable due to a failure. This option potentially doubles the number of firewalls in the system.
Zone Core Protection (“ZCP”)	This ASTRO 25 option places firewalls at the master site where the RF and console sites connect. This prevents a compromised site from being used to attack the core or other sites. For redundancy, there are always 2 firewalls in this option.
Telephone Interconnect (“TI”)	This ASTRO 25 option allows calls to be made to and from ASTRO 25 subscribers. One firewall is required to protect the RNI. The TI firewall may also be used to protect ISSI connections.
Inter RF Subsystem Interface (“ISSI”)	This option allows connectivity to a separate system. This connection can be to another P25 system, or to non-P25 systems through an additional interface, such as WAVE. In both cases, one firewall is necessary to protect the RNI. The ISSI firewall may also be used to protect TI connections.
MCC 7100 Dispatch Console	The MCC 7100 Dispatch Console may be configured so that it can connect via Virtual Private Network (“VPN”) through an internet connection. A firewall is required to terminate on the ASTRO 25 side of that connection. This firewall may be physically located at either a console site or the master site, and there may be multiple firewalls for this purpose.
Custom	The Customer may opt to install their own firewalls and request that Motorola Solutions monitor them. The most common location is at console sites. The Customer will have to work with Motorola Solutions to determine if and how custom firewalls can be monitored. Monitoring these firewalls may require an additional fee.

#### 4.4.7.8 Security Monitoring Priority Level Definitions and Response Times

**Table 4-10: Priority Level Definitions and Response Times**

Incident Priority	Incident Definition	Response Time
<b>Critical P1</b>	<p>Security incidents that have caused, or are suspected to have caused significant and/or widespread damage to the functionality of the Customer's ASTRO 25 system or information stored within it. Effort to recover from the incident may be significant.</p> <p>Examples:</p> <ul style="list-style-type: none"> <li>- Malware that is not quarantined by anti-virus</li> <li>- Evidence that a monitored component has communicated with suspected malicious actors.</li> </ul>	Response provided <b>24 hours, 7 days</b> a week, including US Holidays.
<b>High P2</b>	<p>Security incidents that have localized impact, but have the potential to become more serious if not quickly addressed. Effort to recover from the incident may be moderate to significant.</p> <p>Examples:</p> <ul style="list-style-type: none"> <li>- Malware that is quarantined by antivirus.</li> <li>- Multiple behaviors observed in the system that are consistent with known attacker techniques.</li> </ul>	Response provided <b>24 hours, 7 days</b> a week, including US Holidays.
<b>Medium P3</b>	<p>Security incidents that potentially indicate an attacker is performing reconnaissance or initial attempts at accessing the system. Effort to recover from the incident may be low to moderate.</p> <p>Examples include:</p> <ul style="list-style-type: none"> <li>- Suspected unauthorized attempts to log into user accounts.</li> <li>- Suspected unauthorized changes to system configurations, such as firewalls or user accounts.</li> <li>- Observed failures of security components.</li> </ul>	Response provided Monday through Friday <b>8 a.m. to 5 p.m.</b> local time, excluding US Holidays.
<b>Low P4</b>	<p>Routine, informational events that are expected to be benign, but are captured and tracked to provide context in case of future incidents.</p> <p>Examples include:</p> <ul style="list-style-type: none"> <li>- User account creation or deletion.</li> <li>- Privilege change for existing accounts.</li> </ul>	Response provided Monday through Friday <b>8 a.m. to 5 p.m.</b> local time, excluding US Holidays.

## 4.5 PRIORITY LEVEL DEFINITIONS AND RESPONSE TIMES

Table 4-11 describes the criteria Motorola Solutions uses to prioritize incidents and service requests, and lists the response times for those priority levels.

**Table 4-11: Priority Level Definitions and Response Times**

Incident Priority	Incident Definition	Initial Response Time	On-site Response Time
<b>Critical P1</b>	<p><b>Core:</b> Core server or core link failure. No redundant server or link available.</p> <p><b>Sites/Subsites:</b> Primary site down. Two RF sites or more than 10% of RF sites down, whichever is greater.</p> <p><b>Consoles:</b> More than 40% of a site's console positions down.</p> <p><b>Conventional Channels:</b> Conventional Channel Gateways (CCGW) down without redundant gateways available.</p> <p><b>Security Features:</b> Security is non-functional or degraded.</p> <p><b>Alarm Events:</b> Door, motion, intrusion, power failure, or environmental alarms triggered.</p>	<p>Response provided 24/7 until service restoration.</p> <p>Technical resource will acknowledge incident and respond within 30 minutes of CMSO logging incident.</p>	<p>Response provided 24/7 until service restoration.</p> <p>Field service technician arrival on-site within 4 hours of receiving dispatch notification.</p>
<b>High P2</b>	<p><b>Core:</b> Core server or link failures. Redundant server or link available.</p> <p><b>Consoles:</b> Between 20% and 40% of a site's console positions down.</p> <p><b>Sites/Subsites:</b> One RF site or up to 10% of RF sites down, whichever is greater.</p> <p><b>Conventional Channels:</b> Up to 50% of CCGWs down. Redundant gateways available.</p> <p><b>Network Elements:</b> Site router, site switch, or GPS server down. No redundant networking element available.</p>	<p>Response provided 24/7 until service restoration.</p> <p>Technical resource will acknowledge incident and respond within 1 hour of CMSO logging incident.</p>	<p>Response provided 24/7 until service restoration.</p> <p>Field service technician arrival on-site within 4 hours of receiving dispatch notification.</p>

Incident Priority	Incident Definition	Initial Response Time	On-site Response Time
<b>Medium P3</b>	<p><b>Consoles:</b> Up to 20% of a site's console positions down.</p> <p><b>Conventional Channels:</b> Single channel down. Redundant gateway available.</p> <p><b>Network Elements:</b> Site router/switch or GPS server down. Redundant networking element available.</p>	<p>Response provided during normal business hours until service restoration.</p> <p>Technical resource will acknowledge incident and respond within 4 hours of CMSO logging incident.</p>	<p>Response provided during normal business hours until service restoration.</p> <p>Field service technician arrival on-site within 8 hours of receiving dispatch notification.</p>
<b>Low P4</b>	<p><b>Service Requests:</b> Minor events and warnings in the system. Preventative and planned maintenance activities (scheduled work).</p>	<p>Response provided during normal business hours.</p> <p>Motorola Solutions will acknowledge and respond within 1 Business Day.</p>	Not applicable.

SECTION 5

# ASTRO 25 SYSTEM UPGRADE AGREEMENT II (SUA II) STATEMENT OF WORK

## 5.1 DESCRIPTION OF SERVICE AND OBLIGATIONS

- 1.1 As system releases become available, Motorola agrees to provide the Customer with the software, hardware and implementation services required to execute up to one system infrastructure upgrade in a two-year period for their ASTRO 25 system.
- 1.2 The Customer has, at its option, the choice of upgrading in either Year 1 or Year 2 of the coverage period. To be eligible for the recurring ASTRO 25 SUA II, the ASTRO 25 system must be in the Standard Support Period.
- 1.3 ASTRO 25 system releases are intended to improve the system functionality and operation from previous releases and may include some minor feature enhancements. At Motorola's option, system releases may also include significant new feature enhancements that Motorola may offer for purchase. System release software and hardware shall be pre-tested and certified in Motorola's Systems Integration Test lab.
- 1.4 The price quoted for the SUA II requires the Customer to choose a certified system upgrade path from the system release upgrade chart referenced in Appendix A. Should the Customer elect an upgrade path other than one listed in Appendix A, the Customer agrees that additional costs will be incurred to complete the implementation of the system upgrade. In this case, Motorola agrees to provide a price quotation for any additional materials and services necessary.
- 1.5 ASTRO 25 SUA II entitles a Customer to past software versions for the purpose of downgrading product software to a compatible release version.
- 1.6 The following ASTRO 25 certified system release software for the following products are covered under this ASTRO 25 SUA II:
  - 1.6.1 Servers
  - 1.6.2 Workstations
  - 1.6.3 Firewalls
  - 1.6.4 Routers
  - 1.6.5 LAN switches
  - 1.6.6 MCC 7XXX Dispatch Consoles
  - 1.6.7 GTR8000 Base Stations
  - 1.6.8 GCP8000 Site Controllers
  - 1.6.9 GCM8000 Comparators
  - 1.6.10 Motorola Solutions Logging Interface Equipment



- 1.6.11 PBX switches for Telephone Interconnect
- 1.6.12 NICE and Verint Logging Solutions (if purchased)
- 1.7 Motorola will provide certified hardware version updates and/or replacements necessary to upgrade the system with an equivalent level of functionality up to once in a two-year period. Hardware will be upgraded and/or replaced if required to maintain the existing features and functionality. Any updates to hardware versions and/or replacement hardware required to support new features or those not specifically required to maintain existing functionality are not included. Unless otherwise stated, platform migrations such as, but not limited to, stations, consoles, backhaul, civil, network changes and additions, and managed services are not included.
- 1.8 The following hardware components, if originally provided by Motorola, are eligible for full product replacement when necessary per the system release upgrade:
  - 1.8.1 Servers
  - 1.8.2 Workstations
  - 1.8.3 CommandCentral AXS Hub
  - 1.8.4 Routers
  - 1.8.5 LAN Switches
- 1.9 The following hardware components, if originally provided by Motorola, are eligible for board-level replacement when necessary per the system release upgrade. A “board-level replacement” is defined as any Field Replaceable Unit (“FRU”) for the products listed below:
  - 1.9.1 GTR 8000 Base Stations
  - 1.9.2 GCP 8000 Site Controllers
  - 1.9.3 GCM 8000 Comparators
  - 1.9.4 MCC 7XXX Dispatch Consoles
- 1.10 ASTRO 25 SUA II makes available the subscriber radio software releases that are shipping from the factory during the SUA II coverage period. New subscriber radio options and features not previously purchased by the Customer are excluded from ASTRO 25 SUA II coverage. Additionally, subscriber software installation and reprogramming are excluded from the ASTRO 25 SUA II coverage.
- 1.11 The ASTRO 25 SUA II does not cover all products. Refer to section 3.0 for exclusions and limitations.
- 1.12 Motorola will provide implementation services necessary to upgrade the system to a future system release with an equivalent level of functionality up to once in a two-year period. Any implementation services that are not directly required to support the certified system upgrade are not included. Unless otherwise stated, implementation services necessary for system expansions, platform migrations, and/or new features or functionality that are implemented concurrently with the certified system upgrade are not included.
- 1.13 As system releases become available, Motorola will provide up to once in a two-year period the following software design and technical resources necessary to complete system release upgrades:
  - 1.13.1 Review infrastructure system audit data as needed.
  - 1.13.2 Identify additional system equipment needed to implement a system release, if applicable.



- 1.13.3 Complete a proposal defining the system release, equipment requirements, installation plan, and impact to system users.
  - 1.13.4 Advise Customer of probable impact to system users during the actual field upgrade implementation.
  - 1.13.5 Program management support required to perform the certified system upgrade.
  - 1.13.6 Field installation labor required to perform the certified system upgrade.
  - 1.13.7 Upgrade operations engineering labor required to perform the certified system upgrade.
- 1.14 ASTRO 25 SUA II pricing is based on the system configuration outlined in Appendix C. This configuration is to be reviewed annually from the contract effective date. Any change in system configuration may require an ASTRO 25 SUA II price adjustment.
- 1.15 The ASTRO 25 SUA II applies only to system release upgrades within the ASTRO 25 7.x platform.
- 1.16 Motorola will issue Software Maintenance Agreement (“SMA”) bulletins on an annual basis and post them in soft copy on a designated extranet site for Customer access. Standard and optional features for a given ASTRO 25 system release are listed in the SMA bulletin.

## 5.2 UPGRADE ELEMENTS AND CORRESPONDING PARTY RESPONSIBILITIES

- 2.1 Upgrade Planning and Preparation: All items listed in this section are to be completed at least 6 months prior to a scheduled upgrade.
- 2.1.1 Motorola responsibilities
    - 2.1.1.1 Obtain and review infrastructure system audit data as needed.
    - 2.1.1.2 Identify the backlog accumulation of security patches and antivirus updates needed to implement a system release. If applicable, provide a quote for the necessary labor, security patches and antivirus updates.
    - 2.1.1.3 If applicable, identify additional system hardware needed to implement a system release and if the customer has added hardware that is not covered under this agreement.
    - 2.1.1.4 Complete a proposal defining the system release, equipment requirements, installation plan, and impact to system users.
    - 2.1.1.5 Advise Customer of probable impact to system users during the actual field upgrade implementation.
    - 2.1.1.6 Inform Customer of high speed internet connection requirements.
    - 2.1.1.7 Assign program management support required to perform the certified system upgrade.
    - 2.1.1.8 Assign field installation labor required to perform the certified system upgrade.
    - 2.1.1.9 Assign upgrade operations engineering labor required to perform the certified system upgrade.
    - 2.1.1.10 Deliver release impact and change management training to the primary zone core owners, outlining the changes to their system as a result of the upgrade path elected. This training needs to be completed at least 12 weeks prior to



the scheduled upgrade. This training will not be provided separately for user agencies who reside on a zone core owned by another entity. Unless specifically stated in this document, Motorola will provide this training only once per system.

## 2.1.2 Customer responsibilities

- 2.1.2.1 Contact Motorola to schedule and engage the appropriate Motorola resources for a system release upgrade.
- 2.1.2.2 Purchase the security patches, antivirus updates and the labor necessary to address any security updates backlog accumulation identified in Section 2.1.1.2, if applicable. Unless otherwise agreed in writing between Motorola and Customer, the installation and implementation of accumulated backlog security patches and network updates is the responsibility of the Customer.
- 2.1.2.3 Provide high-speed internet connectivity at the zone core site(s) for use by Motorola to perform remote upgrades and diagnostics. High-speed internet connectivity must be provided at least 12 weeks prior to the scheduled upgrade. In the event access to a high-speed connection is unavailable, Customer may be billed additional costs to execute the system release upgrade.
- 2.1.2.4 Assist in site walks of the system during the system audit when necessary.
- 2.1.2.5 Provide a list of any FRUs and/or spare hardware to be included in the system release upgrade when applicable.
- 2.1.2.6 Purchase any additional software and hardware necessary to implement optional system release features or system expansions.
- 2.1.2.7 Provide or purchase labor to implement optional system release features or system expansions.
- 2.1.2.8 Participate in release impact training at least 12 weeks prior to the scheduled upgrade. This applies only to primary zone core owners. It is the zone core owner's responsibility to contact and include any user agencies that need to be trained or to act as a training agency for those users not included.

2.2 System Readiness Checkpoint: All items listed in this section must be completed at least 30 days prior to a scheduled upgrade.

## 2.2.1 Motorola responsibilities

- 2.2.1.1 Perform appropriate system backups.
- 2.2.1.2 Work with the Customer to validate that all system maintenance is current.
- 2.2.1.3 Work with the Customer to validate that all available security patches and antivirus updates have been updated on the customer's system.
  - 2.2.1.3.1 Motorola reserves the right to charge the Customer for the security patches, antivirus updates and the labor necessary to address any security updates backlog accumulation, in the event that these are not completed by the Customer at the System Readiness Checkpoint.

## 2.2.2 Customer responsibilities

- 2.2.2.1 Validate system maintenance is current.
- 2.2.2.2 Validate that all available security patches and antivirus updates to their system have been completed or contract Motorola to complete in time for the System Readiness Checkpoint.



## 2.3 System Upgrade

### 2.3.1 Motorola responsibilities

2.3.1.1 Perform system infrastructure upgrade in accordance with the system elements outlined in this SOW.

### 2.3.2 Customer responsibilities

2.3.2.1 Inform system users of software upgrade plans and scheduled system downtime.

2.3.2.2 Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide software upgrade services.

## 2.4 Upgrade Completion

### 2.4.1 Motorola responsibilities

2.4.1.1 Validate all certified system upgrade deliverables are complete as contractually required.

2.4.1.2 Deliver post upgrade implementation training to the customer as needed, up to once per system.

2.4.1.3 Obtain upgrade completion sign off from the customer.

### 2.4.2 Customer Responsibilities

2.4.2.1 Cooperate with Motorola in efforts to complete any post upgrade punch list items as needed.

2.4.2.2 Cooperate with Motorola to provide relevant post upgrade implementation training as needed. This applies only to primary zone core owners. It is the zone core owner's responsibility to contact and include any user agencies that need to be trained or to act as a training agency for those users not included.

2.4.2.3 Provide Motorola with upgrade completion sign off.

## 5.3 EXCLUSIONS AND LIMITATIONS

3.1 The parties agree that Systems that have non-standard configurations that have not been certified by Motorola Systems Integration Testing are specifically excluded from the ASTRO 25 SUA II unless otherwise agreed in writing by Motorola and included in this SOW.

3.2 The parties acknowledge and agree that the ASTRO 25 SUA II does not cover the following products:

- MCC5500 Dispatch Consoles
- MIP5000 Dispatch Consoles
- Plant/E911 Systems
- MOTOBRIDGE Solutions
- ARC 4000 Systems
- Motorola Public Sector Applications Software ("PSA")
- Custom SW, CAD, Records Management Software
- Data Radio Devices



- Mobile computing devices such as Laptops
- Non-Motorola two-way radio subscriber products
- Genesis Products
- Point-to-point products such as microwave terminals and association multiplex equipment

- 3.3 ASTRO 25 SUA II does not cover any hardware or software supplied to the Customer when purchased directly from a third party, unless specifically included in this SOW.
- 3.4 ASTRO 25 SUA II services do not include repair or replacement of hardware or software that is necessary due to defects that are not corrected by the system release, nor does it include repair or replacement of defects resulting from any nonstandard, improper use or conditions; or from unauthorized installation of software.
- 3.5 ASTRO 25 SUA II does not cover or include deliverables included with the Security Update Service. This means that the SUA II does not include software support for virus attacks or other applications that are not part of the ASTRO 25 system or unauthorized modifications or other misuse of the covered software. Motorola is not responsible for management of anti-virus or other security applications, unless specifically contracted.
- 3.6 ASTRO 25 SUA II does not cover the labor or materials associated with the backlog accumulation of security patches or antivirus updates. Additional fees may apply as outlined in Section 2.1.1.2.
- 3.7 At the time of upgrade, Motorola will provide the latest applicable software, patches and antivirus updates when and if available, as a part of the system release upgrade. The security patches and antivirus updates delivered as part of this upgrade are intended to bring the system current in all respects but does not imply that the customer is eligible for ongoing security patching. The upgrade may include 3rd party SW such as Microsoft Windows and Server OS, Red Hat Linux, and any Motorola software service packs that may be available. Motorola will only provide patch releases that have been analyzed, pre-tested, and certified in a dedicated ASTRO 25 test lab to ensure that they are compatible and do not interfere with the ASTRO 25 network functionality.
- 3.8 Upgrades for equipment add-ons or expansions during the term of this ASTRO 25 SUA II are not included in the coverage of this SOW unless otherwise agreed to in writing by Motorola.

## 5.4 SPECIAL PROVISIONS

- 4.1 Customer acknowledges that if the System has a Special Product Feature, that it may be overwritten by the software update. Upon request, Motorola will determine whether a Special Product Feature can be incorporated into a system release and whether additional engineering effort is required. If additional engineering is required Motorola will issue a change order for the change in scope and associated increase in the price for the ASTRO 25 SUA II.
- 4.2 Customer will only use the software (including any System Releases) in accordance with the applicable Software License Agreement.



- 4.3 ASTRO 25 SUA II coverage and the parties' responsibilities described in this Statement of Work will automatically terminate if Motorola no longer supports the ASTRO 25 7.x software version in the Customer's system or discontinues the ASTRO 25 SUA II program; in either case, Motorola will refund to Customer any prepaid fees for ASTRO 25 SUA II services applicable to the terminated period.
- 4.4 If Customer chooses to not have Motorola apply the security patches and antivirus updates as described in 2.1.1.2 and this delays or postpones the system software update, Motorola reserves the right to charge the Customer a fee equivalent to the costs incurred by the Motorola Solutions Upgrade Operations Team for the unplanned and additional time on site. Any additional fees to be provided in a quote or other writing.
- 4.5 If Customer cancels a scheduled upgrade within less than 12 weeks of the scheduled on site date, Motorola reserves the right to charge the Customer a cancellation fee equivalent to the cost of the pre-planning efforts completed by the Motorola Solutions Upgrade Operations Team.
- 4.6 The SUA II annualized price is based on the fulfillment of the two-year term. If Customer terminates, except if Motorola is the defaulting party, Customer will be required to pay for the balance of payments owed if a system release upgrade has been taken prior to the point of termination.



## APPENDIX A – ASTRO 25 SYSTEM RELEASE UPGRADE PATHS

ASTRO System Release	Certified Upgrade Paths
Pre-7.15	Release in the Standard Support Period
7.15	7.17.X*
7.16	7.18
7.17.X*	A2019.2, A2020.1
7.18	A2021.1

\* Includes planned incremental releases

- The information contained herein is provided for information purposes only and is intended only to outline Motorola's presently anticipated general technology direction. The information in the roadmap is not a commitment or an obligation to deliver any product, product feature or software functionality and Motorola reserves the right to make changes to the content and timing of any product, product feature or software release.
- The most current system release upgrade paths can be found in the most recent SMA bulletin.

## APPENDIX B – HIGH-SPEED CONNECTIVITY SPECIFICATIONS

### Connectivity Requirements

- The minimum supported link between the core and the zone is a full T1
- Any link must realize a sustained transfer rate of 175 kBps / 1.4 Mbps or better, bidirectional
- Interzone links must be fully operational when present
- Link reliability must satisfy these minimum QoS levels:
  - Port availability must meet or exceed 99.9% (three nines)
  - Round trip network delay must be 100 ms or less between the core and satellite (North America) and 400 ms or less for international links
  - Packet loss shall be no greater than 0.3%
  - Network jitter shall be no greater than 2 ms

## APPENDIX C – SYSTEM PRICING CONFIGURATION

This configuration is to be reviewed annually from the contract effective date. Any change in system configuration may require an ASTRO 25 SUA II price adjustment.

<b>Master Site Configuration</b>	<b>Qty</b>
# of M3 Master Sites	1
# DSR Sites	1
<b>System Level Features</b>	
Network Management Clients	9
Unified Network Services (UNS) ex: POP25, Presence Notifier, Text Messaging, Outdoor Location, KMF/OTAR	1
<b>Security Configuration</b>	
Firewalls	2
<b>RF Site Configuration</b>	
Simulcast Prime Sites (co-located/redundant) and Conventional XLC Site	10
RF Sites (includes Simulcast sub-sites, ASR sites, HPD sites)	38
GTR 8000 Base Stations	479
<b>Dispatch Site Configuration</b>	
# of Dispatch Sites	32
MCC7500 Dispatch Consoles	168
AIS	4
CCGWs	92

SECTION 6

# CONTRACTUAL DOCUMENTATION

This proposal is subject to the terms and conditions contained in the Amended and Restated Master Purchase and Service Agreement, dated October 31, 2011, between Motorola and the City of Glendale ("Agreement") and the attached Lifecycle Management Addendum.



## LIFECYCLE MANAGEMENT ADDENDUM

This Addendum to the Communications System and Services Agreement or other previously executed Agreement currently in force, as applicable (“Primary Agreement”) provides additional or different terms and conditions to govern the sale of Lifecycle Management services. The terms in this Addendum are integral to and incorporated into the Primary Agreement signed by the Parties.

### 1. DEFINITIONS

All capitalized terms not otherwise defined herein shall have the same meaning as defined in the Agreement.

“Lifecycle Management Services” means the upgrade services as defined in the applicable Statement(s) of Work.

“SUA” or “SUA II” means Motorola’s Software Upgrade Agreement program.

### 2. SCOPE

Motorola will provide Services as further described in the applicable Statement of Work, or attachment to Motorola’s proposal for additional services.

### 3. TERMS AND CONDITIONS

The terms of the Primary Agreement combined with the terms of this Addendum will govern the products and services offered pursuant to this Addendum. To the extent there is a conflict between the terms and conditions of the Primary Agreement and the terms and conditions of this Addendum, this Addendum takes precedence.

#### 3.2 LIFECYCLE MANAGEMENT SERVICES

3.2.1 PURCHASE ORDER ACCEPTANCE. Purchase orders for SUA, NUA or MUA services and software support, during the Warranty Period or after the Warranty Period, become binding only when accepted in writing by Motorola.

3.2.2 The Software License Agreement included as Exhibit A to the Agreement applies to any Motorola Software provided as part of the Lifecycle Management transactions.

3.2.3 The term of this Addendum is 6 years, commencing on July 1, 2022. The Lifecycle Management Price for the 6 years of services is \$4,847,101, excluding applicable sales or use taxes but including discounts as more fully set forth in the pricing pages. Because the Lifecycle Management services are subscription services as more fully described in the applicable Statement of Work, payment from Customer is due in advance and will not be in accordance with any Payment Milestone Schedule.

3.2.4 The System upgrade will be scheduled during the subscription period and will be



performed when Motorola's system upgrade operation resources are available. Because there might be a significant time frame between when this Amendment is executed and when a System upgrade transaction is performed, Motorola may substitute any of the promised Equipment or Software so long as the substitute is equivalent or superior to the initially promised Equipment or Software.

3.2.5 Acceptance of a Lifecycle Management transaction occurs when the Equipment (if any) and Software are delivered and the Lifecycle Management services are fully performed; there is no Acceptance Testing with a Lifecycle Management transaction.

3.2.6 The Warranty Period for any Equipment or Motorola Software provided under a Lifecycle Management transaction will commence upon shipment and not on System Acceptance or Beneficial Use, and is for a period of ninety (90) days rather than one (1) year. The ninety (90) day warranty for Lifecycle Management services is set forth in the applicable Statement of Work.

3.2.7 In addition to the description of the services and exclusions provided in the Statement of Work, the following apply:

- a) Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment.
- b) services exclude the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.
- c) Unless specifically included in this Addendum or the Statement of Work, services exclude items that are consumed in the normal operation of the Equipment; accessories; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.
- d) Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available during the performance of the services.

3.2.8 The annualized price is based on the fulfillment of the two year cycle. If Customer terminates this service during a two year cycle, except for Motorola's default, then Customer will be required to pay for the balance of payments owed for the two year cycle if a major system release has been implemented before the point of termination.

3.2.9 If Customer terminates this service and contractual commitment before the end of the 6 year term, for any reason other than Motorola's default, then the Customer will pay to Motorola a



termination fee equal to the discount applied to the last three years of service payments related to the 6 year commitment.

3.2.10 INFLATION ADJUSTMENT. For multi-year agreements, at the end of the first year of the Agreement and each year thereafter, a CPI percentage change calculation shall be performed using the U.S. Department of Labor, Consumer Price Index, all Items, Unadjusted Urban Areas (CPI-U). Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 3%. All items, not seasonally adjusted shall be used as the measure of CPI for this price adjustment. Measurement will take place once the annual average for the new year has been posted by the Bureau of Labor Statistics. For purposes of illustration, if in year 5 the CPI reported an increase of 8%, Motorola may increase the Year 6 price by 5% (8%-3% base).

4. ENTIRE AGREEMENT. This Addendum, any related attachments, and the Agreement, constitutes the entire agreement of the Parties regarding the subject matter of this Addendum and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Addendum may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase or purchase order, acknowledgment or other form will not be considered an amendment or modification of this Addendum, even if a representative of each Party signs that document.

The Parties hereby enter into this Agreement as of the Effective Date.

**Motorola Solutions, Inc.**

**Customer**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_





# SERVICE AGREEMENT

500 W Monroe St  
Chicago, IL 60661  
(800) 247-2346

Contract Number: USC000126527  
Contract Modifier: R11-MAR-22 21:44:30

Date: 08-JUN-2022

<p>Company Name: Arcadia, City Of Attn.: Lt. Mike Castro Billing Address: 250 W Huntington Dr City, State, Zip Code: Arcadia, CA 91006 Customer Contact: Lt. Mike Castro Phone: 626-574-5156</p>
--

P.O.#: N/A  
Customer #: 1000410936  
Bill to Tag#: 0001  
Contract Start Date: 01-JUL-2022  
Contract End Date: 30-JUN-2028  
Payment Cycle: ANNUALLY  
Currency: USD

QTY	MODEL/OPTION	SERVICES DESCRIPTION	MONTHLY EXT	EXTENDED AMT
		***** Recurring Services *****		
	LSV01S01108A	ASTRO SYSTEM ADVANCED PACKAGE	\$11,289.26	\$135,471.07
	SSV01S01624A	ASTRO SYSTEM UPGRADE AGREEMENT	\$1,285.14	\$15,421.59
	SSV01S01626A	ASTRO SUA UO IMPLEMENTATION	\$0.00	\$0.00
	SSV01S01628A	SERVICES CC		
	SSV01S01628A	ASTRO SUA FIELD IMPLEMENTATION SVC	\$88.95	\$1,067.41
	SSV01S01630A	CC		
	SSV01S01630A	SUA RELEASE IMPACT TRAINING CC	\$0.00	\$0.00
	SSV01S01631A	SUA RELEASE IMPLEMENTATION	\$0.00	\$0.00
		TRAINING CC		
	SVC02SVC0201A	ASTRO SUA II UO IMPLEMENTATION	\$0.00	\$0.00
		SERVICES		
	SVC02SVC0343A	RELEASE IMPACT TRAINING	\$0.00	\$0.00
	SVC02SVC0344A	RELEASE IMPLEMENTATION TRAINING	\$0.00	\$0.00
	SVC02SVC0433A	ASTRO SUA II FIELD IMPLEMENTATN SVC	\$204.83	\$2,457.97
	SVC04SVC0169A	SYSTEM UPGRADE AGREEMENT II	\$2,705.68	\$32,468.03
			<b>Sub Total</b>	<b>\$15,573.84</b>
			<b>Taxes</b>	<b>\$409.06</b>
			<b>Grand Total</b>	<b>\$15,982.90</b>
<b>SPECIAL INSTRUCTIONS - ATTACH STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS</b>  ***Refer to ICI Six-Year P25 System Advanced Plus Services Proposal for agency pricing breakdown*** Year 1 Total = \$28,853.06 (\$20,688.06 + \$8,165) Year 2 Total = \$29,799.66 (\$21,475.66 + \$8,324) Year 3 Total = \$30,547.40 (\$22,062.40 + \$8,485) Year 4 Total = \$31,531.71 (\$22,883.71 + \$8,648) Year 5 Total = \$32,550.34 (\$23,737.34 + \$8,813) Year 6 Total = \$33,603.90 (\$24,623.90 + \$8,980)			THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA SOLUTIONS	
4 MCC7500 Consoles				

I received Statements of Work that describe the services provided on this Agreement. Motorola's Service Terms and Conditions, a copy of which is attached to this Service Agreement, is incorporated herein by this reference.

Highlighted cybersecurity services added when applicable:

**SECURITY PATCHING**

Remote Security Update Service

Does Not Apply

Opt Out - I have received a briefing on this service and choose not to subscribe.

Security Update Service

Does Not Apply

Opt Out - I have received a briefing on this service and choose not to subscribe.

**THREAT DETECTION**

Managed Detection & Response

Does Not Apply

Opt Out - I have received a briefing on this service and choose not to subscribe.

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AUTHORIZED CUSTOMER SIGNATURE	TITLE	DATE
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CUSTOMER (PRINT NAME)

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MOTOROLA REPRESENTATIVE (SIGNATURE)	TITLE	DATE
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ROBERT RUSSELL	(714)8532012	
MOTOROLA REPRESENTATIVE (PRINT NAME)	PHONE	

Company Name : Arcadia, City Of  
Contract Number : USC000126527  
Contract Modifier : R11-MAR-22 21:44:30  
Contract Start Date : 01-JUL-2022  
Contract End Date : 30-JUN-2028

## Service Terms and Conditions

Motorola Solutions Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

### Section 1. APPLICABILITY

These Maintenance Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

### Section 2. DEFINITIONS AND INTERPRETATION

2.1. "Agreement" means these Maintenance Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Maintenance Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2. "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

### Section 3. ACCEPTANCE

Customer accepts these Maintenance Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

### Section 4. SCOPE OF SERVICES

4.1. Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3. If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6. If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7. Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

### Section 5. EXCLUDED SERVICES

5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards;

excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

#### **Section 6. TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

#### **Section 7. CUSTOMER CONTACT**

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

#### **Section 8. INVOICING AND PAYMENT**

8.1 Customer affirms that a purchase order or notice to proceed is not required for the duration of this service contract and will appropriate funds each year through the contract end date. Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date.

8.2 Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity. The Customer will pay all invoices as received from Motorola. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.

8.3 For multi-year service agreements, at the end of the first year of the Agreement and each year thereafter, a CPI percentage change calculation shall be performed using the U.S. Department of Labor, Consumer Price Index, all Items, Unadjusted Urban Areas (CPI-U). Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 3%. All items, not seasonally adjusted shall be used as the measure of CPI for this price adjustment. Measurement will take place once the annual average for the New Year has been posted by the Bureau of Labor Statistics. For purposes of illustration, if in year 5 the CPI reported an increase of 8%, Motorola may increase the Year 6 price by 5% (8%-3% base)

#### **Section 9. WARRANTY**

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **Section 10. DEFAULT/TERMINATION**

10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of

termination to the defaulting party.

10.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

10.3 If the Customer terminates this Agreement before the end of the Term, for any reason other than Motorola default, then the Customer will pay to Motorola an early termination fee equal to the discount applied to the last three (3) years of Service payments for the original Term.

#### **Section 11. LIMITATION OF LIABILITY**

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

#### **Section 12. EXCLUSIVE TERMS AND CONDITIONS**

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2. Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

#### **Section 13. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS**

13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2. Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

#### **Section 14. FCC LICENSES AND OTHER AUTHORIZATIONS**

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

#### **Section 15. COVENANT NOT TO EMPLOY**

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

#### **Section 16. MATERIALS, TOOLS AND EQUIPMENT**

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

#### **Section 17. GENERAL TERMS**

17.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2. This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State in which the Services are performed.

17.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

17.4. Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

17.5. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.6. Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event.

17.7. THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates.

17.8. If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.

17.9 This Agreement may be executed in one or more counterparts, all of which shall be considered part of the Agreement. The parties may execute this Agreement in writing, or by electronic signature, and any such electronic signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

## Cybersecurity Online Terms Acknowledgement

This Cybersecurity Online Terms Acknowledgement (this "Acknowledgement") is entered into between Motorola Solutions, Inc. ("Motorola") and the entity set forth in the signature block below ("Customer").

**1. Applicability and Self Deletion.** This Cybersecurity Online Terms Acknowledgement applies to the extent cybersecurity products and services, including Remote Security Update Service, Security Update Service, and Managed Detection & Response subscription services, are purchased by or otherwise provided to Customer, including through bundled or integrated offerings or otherwise.

**NOTE: This Acknowledgement is self deleting if not applicable under this Section 1.**

**2. Online Terms Acknowledgement.** The Parties acknowledge and agree that the terms of the *Cyber Subscription Renewals and Integrations Addendum* available at <http://www.motorolasolutions.com/cyber-renewals-integrations> are incorporated in and form part of the Parties' agreement as it relates to any cybersecurity products or services sold or provided to Customer. By signing the signature block below, Customer certifies that it has read and agrees to the provisions set forth and linked on-line in this Acknowledgement. To the extent Customer is unable to access the above referenced online terms for any reason, Customer may request a paper copy from Motorola. The signatory to this Acknowledgement represents and warrants that he or she has the requisite authority to bind Customer to this Acknowledgement and referenced online terms.

**3. Entire Agreement.** This Acknowledgement supplements any and all applicable and existing agreements and supersedes any contrary terms as it relates to Customer's purchase of cybersecurity products and services. This Acknowledgement and referenced terms constitute the entire agreement of the parties regarding the subject matter hereof and as set out in the referenced terms, and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter.

**4. Execution and Amendments.** This Acknowledgement may be executed in multiple counterparts, and will have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing or by electronic signature. An electronic signature, facsimile copy, or computer image of a signature, will be treated, and will have the same effect as an original signature, and will have the same effect, as an original signed copy of this document. This Acknowledgement may be amended or modified only by a written instrument signed by authorized representatives of both Parties.

The Parties hereby enter into this Acknowledgement as of the last signature date below.

**Motorola Solutions, Inc.**

**Customer:** \_\_\_\_\_

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

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

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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



# STAFF REPORT

Public Works Services Department

**DATE:** November 1, 2022

**TO:** Honorable Mayor and City Council

**FROM:** Paul Cranmer, Public Works Services Director  
By: Carmen Masud, Deputy Public Works Director

**SUBJECT:** REJECT LOW BID FROM BLUESKY DIVERSIFIED DBA PUENTE HILLS FORD AND APPROVE PURCHASE ORDER WITH ERNIE'S AUTO PARTS FOR THE PURCHASE OF AUTOMOTIVE REPAIR PARTS FOR CITY VEHICLES IN THE AMOUNT NOT TO EXCEED \$60,677.06  
**Recommendation: Approve**

## **SUMMARY**

The Public Works Services Department ("PWSD") Fleet Section is responsible for purchasing and maintaining automotive repair parts for all City of Arcadia ("City") vehicles. To ensure that the City is receiving the most competitive prices, a formal bid process was conducted. Bluesky Diversified DBA Puente Hills Ford ("Puente Hills Ford") submitted the lowest bid. During the evaluation process, it was determined that bid items were not included in the bid, deeming the Puente Hills Ford bid non-responsive. Ernie's Auto Parts was the second lowest bid received, which was determined to be responsive.

It is recommended that the City Council reject the low bid submitted by Puente Hills Ford and approve a purchase order with Ernie's Auto Parts for the purchase of automotive repair parts for City vehicles in the amount not to exceed \$60,677.06, with the option of three, one-year renewals.

## **BACKGROUND**

The Public Works Services Department's Fleet Section ("Fleet Services") is responsible for purchasing and maintaining automotive repair parts for all City vehicles. It is critical that Fleet Services maintain the proper on-hand inventory of automotive repair parts to prevent an interruption in daily operations of City vehicles and heavy-duty emergency equipment. To ensure that the City is receiving the most competitive prices, a formal bid process was conducted. To accurately bid the project, a detailed list of items covering every required automotive repair part was compiled to ensure that Fleet Services would have access to all items necessary for any repair that may arise. The quantities provided in the City's purchase specifications are based on estimates. The City may purchase an amount less than the estimate given, according to the needs and requirements of the City.

## **DISCUSSION**

A Notice Inviting Bids was published in the City's adjudicated newspaper and bid packages were distributed to area vendors. On September 29, 2022, the City Clerk received five sealed bids with the following results:

<u>Bidder</u>	<u>Location</u>	<u>Bid Amount</u>
Bluesky Diversified DBA Puente Hills Ford	City of Industry, CA	\$ 59,778.48*
Ernie's Auto Parts	Azusa, CA	\$ 60,677.06
South Bay Ford	Hawthorne, CA	\$ 60,798.98*
Undercar Express DBA Undercar Plus	Pasadena, CA	\$ 61,569.04
Advance Auto Parts	Monrovia, CA	\$127,962.10**

\* Non-responsive bids

\*\* Corrected bid total is \$71,841.36

Puente Hills Ford submitted the lowest bid. During the evaluation process and review of the bid received, staff found that Puente Hills Ford failed to provide bid prices for more than half of the items listed in the bid. The bid clearly stated not to leave any items blank on any schedules and that failure to provide all information on the bid form or on any attachments would result in disqualification of the bid. Therefore, the Puente Hills Ford bid is considered non-responsive and should be rejected. The second low bidder, Ernie's Auto Parts, is considered the lowest responsive bidder. Ernie's Auto Parts bid was reviewed and is complete.

It should be noted that South Bay Ford also failed to provide bid prices for half of the items listed in the bid schedule and is also considered non-responsive. Furthermore, Advance Auto Parts had some calculation errors in their bid total. The correct bid total for Advance Auto Parts is \$71,841.36, which is less than the total that was provided in their bid, but is still well above the other qualified bids submitted.

## **ENVIRONMENTAL ANALYSIS**

The proposed action does not constitute a project under the California Environmental Quality Act ("CEQA"), and it can be seen with certainty that it will have no impact on the environment. Thus, this matter is exempt under CEQA.

## **FISCAL IMPACT**

The requested purchase order amount is based on the estimated need for automotive repair parts and is in an amount not to exceed \$60,677.06. Sufficient funds are budgeted in the Fiscal Year 2022-23 Operating Budget/Vehicle Maintenance for the purchase of automotive repair parts.

**RECOMMENDATION**

It is recommended that the City Council determine that this project is exempt under the California Environmental Quality Act ("CEQA"); and reject the low bid submitted by Bluesky Diversified DBA Puente Hills Ford and approve a purchase order with Ernie's Auto Parts for the purchase of automotive repair parts for City vehicles in the amount not to exceed \$60,677.06, with the option of three, one-year renewals.

Approved:

  
\_\_\_\_\_  
Dominic Lazzaretto  
City Manager



# STAFF REPORT

Public Works Services Department

**DATE:** November 1, 2022

**TO:** Honorable Mayor and City Council

**FROM:** Paul Cranmer, Public Works Services Director  
By: Michael Kwok, Associate Civil Engineer

**SUBJECT:** ACCEPT ALL WORK PERFORMED BY RAMONA, INC. FOR THE SEWER MAIN REPLACEMENT PROGRAM AS COMPLETE  
**Recommendation: Approve**

## **SUMMARY**

On October 19, 2021, the City Council approved a contract with Ramona, Inc. in the amount of \$958,400 for the Sewer Main Replacement Program. The terms and conditions of this project have been met and the work has been performed to the satisfaction of the Project Manager, for a total project cost of \$953,789. This amount reflects the original contract amount of \$958,400 less contract change orders totaling \$4,611, or 0.5% less than the original contract amount.

It is recommended that the City Council accept all work performed by Ramona, Inc. for the Sewer Main Replacement Program as complete, and authorize the final payment to be made in accordance with the contract documents, subject to the retention of \$47,689.45.

## **BACKGROUND**

In 2006, the State Water Resources Control Board adopted the Waste Discharge Requirement Program for all publicly owned sanitary sewer collection systems in California with more than one mile of sewer pipeline. Under this program, the City was required to prepare and implement a Sewer System Management Plan ("SSMP"). The SSMP identifies routine preventative operation and maintenance activities that assist the City in achieving a goal of zero sewer system overflows. This is achieved through annual inspections, routine cleaning of the sewer pipes, repair of broken pipes, and replacement of pipes flowing above their design capacity.

The City of Arcadia's 2006 Sewer Master Plan study identified sections of sanitary sewer pipe on Duarte Road as inadequate in accommodating the current high demand flows and at risk of experiencing sewer overflows. As a result, the existing sewer pipe

along Duarte Road between Baldwin Avenue was scheduled to be replaced in Fiscal Year 2021-22.

### **DISCUSSION**

On October 19, 2021, the City Council approved a contract with Ramona, Inc. for the Sewer Main Replacement Program. The work performed included replacement of the existing 12-inch sewer pipe along Duarte Road between Baldwin Avenue and Holly Avenue, with a 16-inch sewer pipe. The project was completed with a method called pipe bursting; a process that eliminated the need to cut a long trench in the street and helped minimize traffic impacts and disruption to businesses and residents along Duarte Road.

During work, the City received credits for a reduction in quantities of material needed to complete the project. Below is a breakdown of total contract change orders.

<b>CCO</b>	<b>Description</b>	<b>Amount</b>
1.	Deleted (1 EA) – Locate and Reconnect Existing Sewer Laterals	(\$1,400.00)
2.	Deleted (13 LF) – Pipe Burst 12” Pipe to 16” HDPE DR 17 Pipe	(\$3,211.00)
	<b>Total</b>	<b>(\$4,611.00)</b>

The change orders listed reduced the overall contract amount by \$4,611, or 0.5% less than the original contract amount. All terms and conditions of this contract have been met and the work has been performed to the satisfaction of the Project Manager. Ramona, Inc. completed the work as defined in the project plans and specifications in an efficient and timely manner. Photographs of the Sewer Main Replacement Program are shown on Exhibit “A”.

### **FISCAL IMPACT**

Funds in the amount of \$1,200,000 have been budgeted in the FY 2021-22 Capital Improvement Program for the Sewer Main Replacement Program. The total construction cost for this project is \$953,789. This amount reflects the original contract amount of \$958,400 minus change orders totaling \$4,611, or 0.5% less than the original contract amount.

### **RECOMMENDATION**

It is recommended that the City Council accept all work performed by Ramona, Inc. for the Sewer Main Replacement Program as complete; and authorize the final payment to

Accept Sewer Main Replacement Program  
November 1, 2022  
Page 3 of 3

be made in accordance with the contract documents, subject to the retention in the amount of \$47,689.45.

Approved:



Dominic Lazzaretto  
City Manager

Attachment: Exhibit "A" – Photographs of the Sewer Main Replacement Program

EXHIBIT "A"

Sewer Main Replacement Program Photos



EXHIBIT "A"

Sewer Main Replacement Program Photos





# STAFF REPORT

Development Services Department

**DATE:** November 1, 2022

**TO:** Honorable Mayor and City Council

**FROM:** Jason Kruckeberg, Assistant City Manager/Development Services Director  
By: Alana Bautista, Management Analyst

**SUBJECT:** ALLOWABLE HOURS AND RULES OF OPERATION FOR NOISE RELATED TO GARDENING/LANDSCAPING AND USE OF GAS-POWERED LEAF BLOWERS IN RESIDENTIAL AREAS  
**Recommendation: Provide Direction**

## **SUMMARY**

At the request of current Mayor Pro Tem Cheng, at the January 19, 2021, City Council meeting, the City Council discussed the subject of allowable hours for noise related to gardening and landscaping in residential areas. A staff report was prepared at that time that included an evaluation of the subject and provided the recommendation to retain existing regulations. At the conclusion of the City Council's discussion, the City Council made the decision to table the subject.

In addition to gardening and landscaping hours and regulations, it has also been requested that information on the use of gas-powered leaf blowers be provided. Currently, the Cities of South Pasadena and Pasadena are the only cities in the San Gabriel Valley that have adopted an ordinance banning gas-powered leaf blowers. At the State level, Governor Gavin Newsom signed Assembly Bill No. 1346 in October 2021, which will prohibit the sale of new gas-powered leaf-blowers, lawn mowers, and other small off-road engines ("SOREs") and could go into effect by January 2024. It is recommended that the City Council provide direction on the allowable hours of operation and regulations for noise related to gardening and landscaping and on the use of gas-powered leaf blowers in residential areas.

## **BACKGROUND**

Currently, gardening and landscaping services are permitted in the City from 7:00 a.m. to 7:00 p.m. Monday through Saturday, and from 9:00 a.m. to 5:00 p.m. on Sundays. These regulations were added to the Arcadia Municipal Code on September 16, 2008, when the City Council approved Text Amendment No. 08-04 amending the Arcadia

Gardening and Landscaping Noise Regulations and Leaf Blowers

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Municipal Code by adding Section 4630.2 to Article IV (noise regulations) regarding hours of operations for gardeners and landscapers.

Prior to this amendment, the Arcadia Municipal Code only addressed the hours of operations for construction, and the City was receiving complaints from residents that gardeners or landscapers were operating equipment before 7:00 a.m. Through the review of this Text Amendment, the Planning Commission recommended revised hours of operation: (7:00 a.m. to 7:00 p.m., Monday through Saturday, and from 9:00 a.m. to 5:00 p.m. on Sundays within all residential zones). On October 7, 2008, the City Council adopted Ordinance No. 2246 and added Section 4630.2 to Article IV of the Arcadia Municipal Code. Section 4630.2 in its entirety reads as follows:

*4630.2. NOISE, GARDENING AND LANDSCAPING. No person shall operate any mechanical equipment related to the gardening and/or landscaping of any property within a residential zone other than from 7:00 a.m. to 7:00 p.m., Monday through Saturday, and from 9:00 a.m. to 5:00 p.m. on Sundays within all residential zones; provided, however, that use of mechanical equipment for tree trimming on Sundays shall be prohibited.*

The following table is a comparison of the City's permitted gardening/landscaping and construction hours.

<b>City of Arcadia Permitted Gardening/Landscaping and Construction Hours</b>				
<b>Activity</b>	<b>Monday - Friday</b>	<b>Saturday</b>	<b>Sunday</b>	<b>Note</b>
Gardening and Landscaping	7:00 a.m. - 7:00 p.m.	7:00 a.m. - 7:00 p.m.	9:00 a.m. - 5:00 p.m.	Use of mechanical equipment for tree trimming is prohibited on Sundays.
Construction	7:00 a.m. - 6:00 p.m.	8:00 a.m. - 5:00 p.m.	Prohibited	Construction activity is also prohibited on holidays.

At the November 17, 2020, City Council meeting, current Mayor Pro Tem Cheng asked for support from the City Council to discuss amending noise regulations, specifically the time period permitted to operate any equipment related to gardening and landscaping. Mayor Chandler and Mayor Pro Tem Tay concurred. Following this meeting, Development Services Department staff researched the issue and prepared a staff report on the topic for the January 19, 2021, City Council meeting. The staff report (See Attachment No. 1) evaluated the City's current regulations, conducted a study of neighboring cities' regulations, examined the low volume of complaints the City receives

regarding this matter, proposed alternative regulatory options, and concluded with the recommendation that the City retain existing gardening and landscaping noise regulations.

In addition, Council Member Tay recently requested a presentation from City of South Pasadena Mayor Michael Cacciotti (who is also a Governing Board Member of the South Coast Air Quality Management District (“AQMD”)) on the subject of phasing out gas-powered leaf blowers. The purpose of the presentation was to hear about efforts to reduce noise as well as the emissions and environmental impacts of gas blowers. On October 4, 2022, Mr. Cacciotti provided information to the City Council on South Coast AQMD’s leaf blower exchange program, South Pasadena’s efforts to ban gas-powered leaf blowers, and provided examples of electric leaf blowers. In response to this presentation, and based on interest from the City Council, additional research on this topic was conducted and details are provided later in this Staff Report.

## **DISCUSSION**

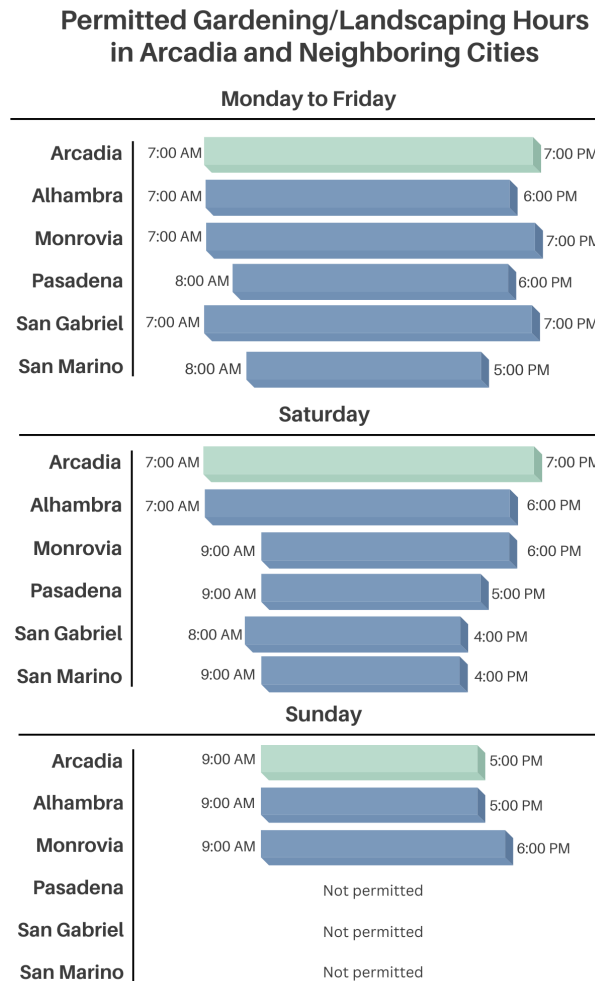
### **Gardening and Landscaping Hours**

To review noise issues related to the hours of operation of gardening and landscaping equipment, a review of complaints was conducted before and after the last Staff Report on this matter. The Development Services Department rarely receives complaints about gardeners or landscapers creating a noise nuisance while operating gardening equipment. In fact, since the January 19, 2021, meeting, the Department only received one complaint regarding gardening noise that occurred before the allowed hours. Another complaint was recently received verbally at a Council Meeting. If a noise nuisance occurs during the City’s normal business hours, a Code Services Officer will conduct an inspection to observe the nuisance at the location provided by the reporting party. If it is determined that the property is in violation of the Municipal Code, general protocols will be followed until the violation is abated. In the event a noise nuisance cannot be fully eliminated, efforts will be made to ensure that the nuisance is minimized to not cause a continued or intolerable disturbance to adjoining neighbors. When a noise nuisance occurs outside of normal business hours, residents are advised to contact the Arcadia Police Department.

The Arcadia Police Department conducted an updated record search for calls regarding loud gardening or landscaping noises between the years 2016 to present and found a total of 17 calls regarding this type of nuisance in the last six years. Nine of those calls were from this year. Of those nine calls, three were gardening or landscaping noises that occurred outside the allowed times. Prior to this year, all Police Department calls received were for noises that occurred within the allowed times.

In January 2021, research was conducted on neighboring cities and their regulations related to this issue. Since then, no changes have been made to neighboring cities’

regulations. For reference, the chart below shows the permitted gardening and landscaping hours in the Cities of Alhambra, Monrovia, Pasadena, San Gabriel, and San Marino in comparison to Arcadia.

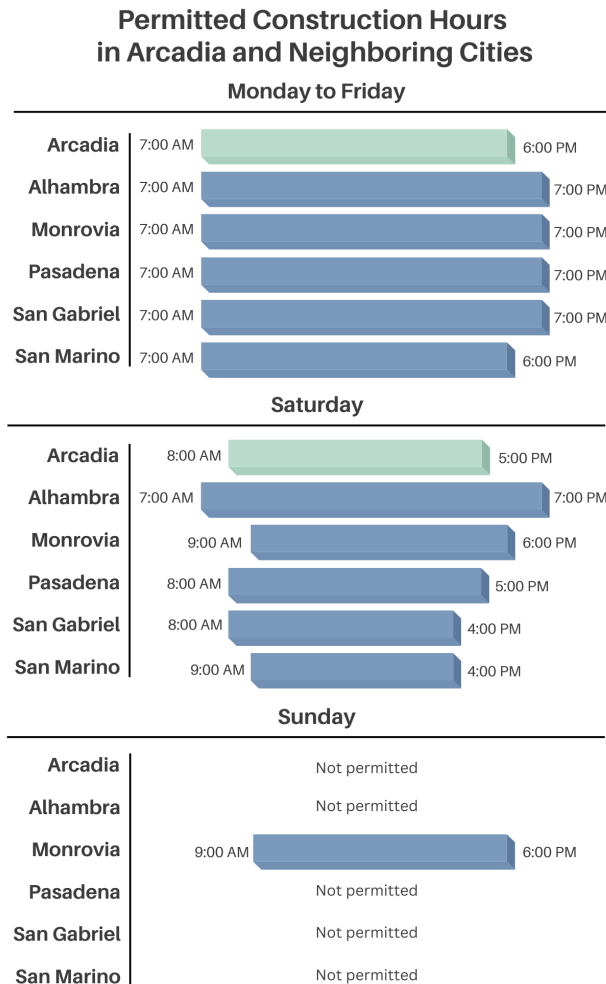


Although the City of Arcadia has among the most permissive standards for this type of work, especially on weekends, neighboring cities have fairly similar approaches during the week. To provide context to the tables above, it is important to note that the noise standards in the Cities of Pasadena and San Marino are only applicable to the use of leaf blowers. All other equipment is regulated under the permitted construction hours of those two cities (construction hours are shown in the graphic below). Similarly, in the Cities of Monrovia and San Gabriel, the same noise standard applies to both construction and landscaping work.

It is important to consider that the regulations for landscaping and gardening noise are not just applicable to commercial sources, such as hired gardening companies. The

regulations are also applicable to anyone maintaining their own yard with leaf blowers, edgers, or any other noise producing equipment.

Due to some overlap of gardening and landscaping hours with construction hours in how they are regulated, the chart below shows a comparison of the City’s construction hours with the same neighboring cities listed in the previous chart.



Despite the low level of complaints on this issue, it is acknowledged that gardening and landscaping equipment produces significant noise, and the City Council may wish to modify the hours accordingly. In addition, there may be confusion over the discrepancies between hours of operation for this type of equipment vs. overall construction hours. If the City Council believes modifications are needed, the following are options to consider in making changes to the City’s regulation of gardening and landscaping hours:

## Gardening and Landscaping Noise Regulations and Leaf Blowers

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1. Further restriction of gardening/landscaping hours to coincide with construction hours. This restriction would reduce operating times by one hour in the evening Monday through Friday (7:00 a.m. to 6:00 p.m.), curtail hours to be more restrictive on Saturdays (8:00 a.m. to 5:00 p.m.), and would prohibit such work on Sundays.
2. Amend the City's gardening/landscaping allowable hours on Monday to Saturday to begin at 8:00 a.m. instead of 7:00 a.m., with the end time to remain at 7:00 p.m. The permitted hours on Sunday would remain the same (9:00 a.m. to 5:00 p.m.). This was the option raised by Mayor Pro Tem Cheng in January 2021.
3. Amend the City's gardening/landscaping allowable hours to reflect the average of the listed neighboring cities' hours. This would change the allowable hours on Monday to Friday to 7:00 a.m. to 6:00 p.m. (currently 7:00 a.m. to 7:00 p.m.) and Saturday to 8:00 a.m. to 5:00 p.m. (currently 7:00 a.m. to 7:00 p.m.). The allowable hours on Sunday could either remain from 9:00 a.m. to 5:00 p.m. or be prohibited the entire day like half of the listed neighboring cities.
4. Amend the City's gardening/landscaping allowable hours to a different combination of hours deemed appropriate by the City Council.
5. Retain existing permitted gardening/landscaping hours. No change.

With any option selected, it is important to note how the hours are (and will be) enforced. In all options, the Code Services Division and Police Department would continue to enforce violations on a complaint driven basis. As mentioned prior, if a noise complaint is received during the City's normal business hours, a Code Services Officer responds by conducting an inspection at the location provided by the reporting party. When a noise nuisance occurs outside of normal business hours, the Police Department responds to it. If hours are made more restrictive, it is likely that the Arcadia Police Department and Code Services Division will experience an increase in complaints and enforcement follow up. It is likely that the majority of the additional complaints would fall on the weekends or outside of normal business hours, so the Police Department would receive the bulk of additional calls.

Currently, enforcement efforts consist of simple notification and education about the allowable hours. Only if the City finds chronic offenders associated with a specific address would the citation process be initiated in the same manner as other Municipal Code violations. This has not been an issue with current enforcement efforts and it is anticipated that "repeat" violators would not be a significant concern if hours were modified.

### **Leaf Blower Regulations**

At the October 4, 2022, City Council meeting, City of South Pasadena Mayor and South Coast Air Quality Management District (“AQMD”) Governing Board Member Michael Cacciotti presented information on programs to phase out gas-powered leaf blowers. Mayor Cacciotti stated that the South Pasadena City Council adopted an ordinance banning the use of gas-powered leaf blowers in the City, which took effect on October 1, 2022, and still allows independent gardeners and residents more than a year to switch to battery-operated machinery without facing possible penalties. The City of Pasadena adopted an ordinance on April 25, 2022, to ban gas-powered leaf blowers in two stages: (1) starting February 28, 2023, for equipment operated by the City, and (2) starting April 28, 2023, for equipment operated by any other person. The Cities of South Pasadena and Pasadena are the only San Gabriel Valley cities that have adopted ordinances that ban the use of gas-powered leaf blowers. Environmental impacts are the primary reason for these regulations, but the ancillary benefit is noise reduction.

Beyond the San Gabriel Valley, the City of Los Angeles has a ban on gas-powered leaf blowers and the County of Los Angeles is exploring a ban for the unincorporated area by conducting a feasibility study. Other cities that have enacted bans or restrictions on gas-powered leaf blowers include the Cities of Claremont, West Hollywood, Beverly Hills, and Santa Monica.

Additionally, AQMD has programs that help clean the air through the replacement of gas-powered residential lawn mowers and commercial lawn and garden equipment. Through the Residential Electric Lawn Mower Rebate Program, participants can receive up to \$250 cash back by purchasing a new electric lawn mower and turning in their old gasoline lawn mower to an approved dismantler. The Commercial Electric Lawn and Garden Equipment Incentive and Exchange Program is also available for commercial landscapers and gardeners, local governments, school districts, colleges, and non-profits. This program provides up to 75% off commercial lawn and garden equipment. Equipment available through this program includes handheld trimmers, chainsaws, pruners, backpack and handheld blowers, and ride-on, stand-on, walk-behind, and robotic lawn mowers. An equivalent operable gasoline or diesel-powered piece of lawn or garden equipment must be scrapped when the new battery-electric equipment is purchased. This program is currently closed but is anticipated to resume in March 2023. In the meantime, AQMD is currently accepting applications for their new Commercial Lawn and Garden Battery Buy-Down Rebate Program, which provides a rebate of up to 75% of the cost of the replacement battery for electric lawn and garden equipment previously funded by the Commercial Lawn and Garden Equipment Incentive and Exchange Program.

On the State level, Governor Newsom signed Assembly Bill No. 1346 on October 9, 2021, which will prohibit the sale of new gas-powered leaf-blowers, lawn mowers, and other small off-road engines (“SOREs”). The bill directs California Air Resources Board

(“CARB”) to set emissions requirements for SOREs to zero by 2024, or whenever CARB determines is feasible. In addition, CARB will be required to provide funding to state air districts and offer rebates to commercial users to buy zero-emission equipment. Although it bans the sale of new gas-powered SOREs, there is no specific language within the bill that bans their operation. Retailers will be limited to selling only electric- or battery-powered equipment under the new law.

The City Council has several options to consider with regard to gas-powered leaf blowers, which are provided below. Inherent in each of these options is the expectation that the City will be proactive in providing education, awareness, and resources to the community related to AQMD’s various programs directed at electric-powered gardening and landscaping equipment. With that as a base recommendation, the following are options to consider on actions that can be taken towards phasing out gas-powered leaf blowers should the City Council choose to do so:

1. Direct staff to prepare an ordinance for adoption that would ban gas-powered leaf blowers in the City. This would include a summary of the expected costs of this action.
2. Direct staff to research the issue further and bring back a more detailed Staff Report with findings for City Council consideration.
3. Take no specific action at this time, follow the State’s lead and wait for Assembly Bill No. 1346 to take into effect by January 2024.

### **ENVIRONMENTAL ANALYSIS**

The proposed action does not constitute a project under the California Environmental Quality Act (“CEQA”), as it can be seen with certainty that it will have no impact on the environment. Thus, this matter is exempt under CEQA per Section 15061(b)(3).

### **FISCAL IMPACT**

Modifications to the allowable hours of operation for gardening and landscaping equipment are likely to lead to additional complaints to the Police Department and Code Services Division. At this time, however, it is anticipated that the increase in calls and/or enforcement follow-up would fall within the normal anticipated work programs of the two Departments and there is not expected to be a new direct fiscal impact expected as a result of any policy change contemplated to the hours of operation for gardening and landscaping equipment. There would be cost implications should the City decide to ban gas-powered blowers and require only electric or battery equipment for City use. Additional study would be needed to determine an estimate of these costs.

**RECOMMENDATION**

It is recommended that the City Council determine that this action does not constitute a project and is therefore exempt under the California Environmental Quality Act (“CEQA”); and provide direction on the allowable hours and rules of operation for noise related to gardening/landscaping and use of gas-powered leaf blowers in residential areas.

Approved:



Dominic Lazzaretto  
City Manager

- Attachment No. 1: January 19, 2021, City Council Meeting Staff Report
- Attachment No. 2: September 16, 2008, City Council Meeting Staff Report and Minutes  
(EXCERPTS ONLY)
- Attachment No. 3: Information on South Coast AQMD Programs

Attachment No. 1:  
January 19, 2021  
City Council Meeting  
Staff Report



# STAFF REPORT

Development Services Department

**DATE:** January 19, 2021

**TO:** Honorable Mayor and City Council

**FROM:** Jason Kruckeberg, Assistant City Manager/Development Services Director  
By: Alana Bautista, Management Aide  
Amy Hsieh, Senior Administrative Assistant

**SUBJECT:** ALLOWABLE HOURS OF OPERATION FOR NOISE RELATED TO GARDENING AND LANDSCAPING IN RESIDENTIAL AREAS  
**Recommendation: Retain Existing Regulations**

## **SUMMARY**

At the November 17, 2020, City Council meeting, the City Council requested a review of noise regulations, specifically the time period permitted to operate any equipment related to gardening and landscaping. Currently, gardening and landscaping services are permitted in the City from 7:00 a.m. to 7:00 p.m. Monday through Saturday, and from 9:00 a.m. to 5:00 p.m. on Sundays. After a close evaluation of the current regulations, a study on neighboring cities' regulations, and based on the very low volume of complaints the City receives regarding this matter, it is recommended that the City retain the existing gardening and landscaping noise regulations.

## **BACKGROUND**

On September 16, 2008, the City Council approved Text Amendment No. 08-04 amending the Arcadia Municipal Code by adding Section 4630.2 to Article IV (noise regulations) regarding hours of operations for gardeners and landscapers. Prior to this amendment, the Arcadia Municipal Code only addressed the hours of operations for construction, and the City was receiving complaints from residents that gardeners or landscapers were operating equipment before 7:00 a.m. Through the review of this Text Amendment, the Planning Commission recommended revised hours of operation: (7:00 a.m. to 7:00 p.m., Monday through Saturday, and from 9:00 a.m. to 5:00 p.m. on Sundays within all residential zones). On October 7, 2008, the City Council adopted Ordinance No. 2246 and added Section 4630.2 to Article IV of the Arcadia Municipal Code. Section 4630.2 in its entirety reads as follows:

*"4630.2. NOISE, GARDENING AND LANDSCAPING. No person shall operate any mechanical equipment related to the gardening and/or landscaping of any property*

*within a residential zone other than from 7:00 a.m. to 7:00 p.m., Monday through Saturday, and from 9:00 a.m. to 5:00 p.m. on Sundays within all residential zones; provided, however, that use of mechanical equipment for tree trimming on Sundays shall be prohibited."*

## **DISCUSSION**

In researching the City Council's request on this issue, the current volume of complaints was reviewed, as well as the current hours of operation allowed in surrounding cities. The Development Services Department rarely receives complaints about gardeners or landscapers creating a noise nuisance while operating gardening equipment. In fact, the Department only received one complaint regarding gardening noise in 2020, which occurred during the allowed days and times. If a noise nuisance occurs during the City's normal business hours, a Code Services Officer will conduct an inspection to observe the nuisance at the location provided by the reporting party. If it is determined that the property is in violation of the Municipal Code, general protocols will be followed until the violation is abated. In the event a noise nuisance cannot be fully eliminated, efforts will be made to ensure that the nuisance is minimized to not cause a continued or intolerable disturbance to adjoining neighbors. When a noise nuisance occurs outside of normal business hours, residents are advised to contact the Arcadia Police Department.

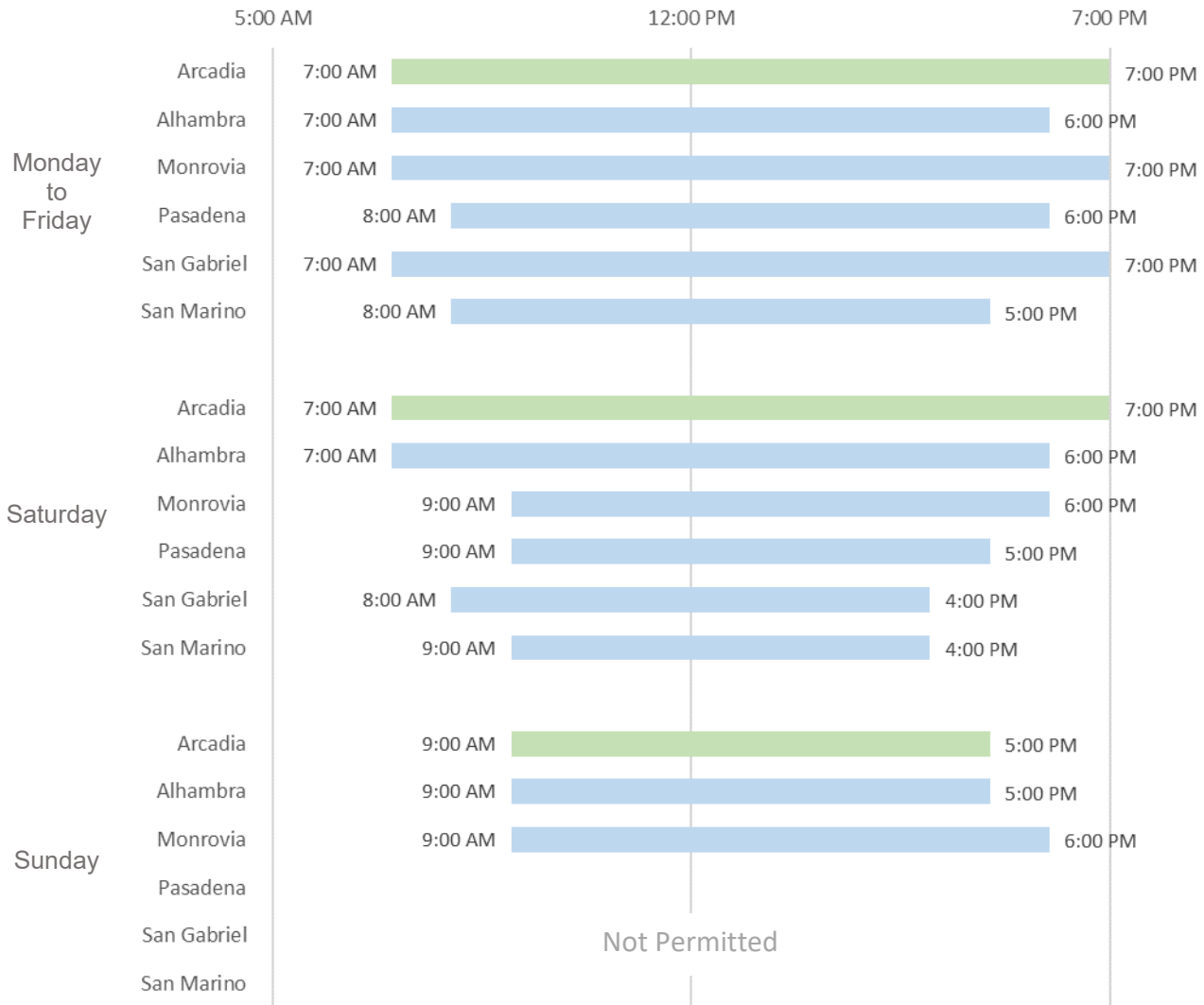
The Arcadia Police Department conducted a record search for calls regarding loud gardening or landscaping noises between the years 2016 to 2020 and found a total of eight calls regarding this type of nuisance in the last five years. Out of the eight calls, only one was from 2020, and the landscaping noise occurred during the allowed days and time period.

Research was also conducted on neighboring cities and their regulations related to this issue. For reference, the chart below shows the permitted gardening and landscaping hours in the Cities of Alhambra, Monrovia, Pasadena, San Gabriel, and San Marino, in comparison to Arcadia.

# Gardening and Landscaping Noise Regulations

January 19, 2021

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Although the City of Arcadia has among the most permissive standards for this type of work, the hours are in line with several of our neighboring cities. To provide context to the tables above, it is important to note that the noise standards in the City of Pasadena and San Marino are only applicable to the use of leaf blowers. All other equipment is regulated under the permitted construction hours of those two cities. Similarly, in the cities of Monrovia and San Gabriel, the same noise standard applies to both construction and landscaping work. Additionally, it is important to consider that the regulations for landscaping and gardening noise are not just applicable to commercial sources, such as hired gardening companies. The regulations are also applicable to anyone maintaining their own yard with leaf blowers, edgers, or any other noise producing equipment.

The table below is a comparison of the City's permitted landscaping and construction hours.

<b>City of Arcadia Permitted Gardening/Landscaping and Construction Hours</b>				
<b>Activity</b>	<b>Monday - Friday</b>	<b>Saturday</b>	<b>Sunday</b>	<b>Note</b>
Gardening and Landscaping	7:00 a.m. - 7:00 p.m.	7:00 a.m. - 7:00 p.m.	9:00 a.m. - 5:00 p.m.	Use of mechanical equipment for tree trimming is prohibited on Sundays.
Construction	7:00 a.m. - 6:00 p.m.	8:00 a.m. - 5:00 p.m.	Prohibited	Construction activity is also prohibited on holidays.

An option to consider would be further restriction of landscaping hours to coincide with construction hours. This restriction would curtail hours for homeowners to maintain their yards in the evening hours and would prohibit such work on Sundays. The City may also consider adopting a noise ordinance similar to Pasadena and San Marino where leaf blowers along are regulated separately. Based on the very low volume of complaints the City receives regarding this matter, these changes do not seem necessary however, and it is recommended that the City retain the current existing gardening and landscaping noise regulations. If the City Council does choose to modify the Municipal Code on this matter, this change can be included in a set of Text Amendments being prepared to come before the Planning Commission and City Council in the first quarter of 2021.

### **ENVIRONMENTAL ANALYSIS**

The proposed action does not constitute a project under the California Environmental Quality Act ("CEQA"), and it can be seen with certainty that it will have no impact on the environment. Thus, this matter is exempt under CEQA per Section 15061(b)(3).

### **FISCAL IMPACT**

There is no fiscal impact expected as a result of any policy change contemplated.

### **RECOMMENDATION**

It is recommended that the City retain the existing gardening and landscaping noise regulations.

Gardening and Landscaping Noise Regulations

January 19, 2021

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Approved:



Dominic Lazzaretto  
City Manager

Attachment No. 1: September 16, 2008 Council Meeting Staff Report Packet

Attachment No. 2: September 16, 2008 Council Meeting Minutes

Attachment No. 3: Arcadia Police Department 2016-2020 Record Search Result

Attachment No. 2:  
September 16, 2008  
City Council Meeting  
Staff Report and Minutes  
(EXCERPTS ONLY)



# STAFF REPORT

Development Services Department

September 16, 2008

TO: Mayor and City Council

FROM: Jason Kruckeberg, Development Services Director *JK*  
By: Jim Kasama, Community Development Administrator  
Prepared by: Lisa L. Flores, Senior Planner *LF*

SUBJECT: Consideration of Text Amendment No. 08-04 amending the Arcadia Municipal Code by adding Section 4630.2 to Article IV regarding Hours of Operations for Gardeners and Landscapers to the Noise Regulations, and Amending various regulations of Article IX (Zoning Regulations and General Provisions).  
**Recommendation: Introduce Ordinance No. 2246**

## SUMMARY

The Development Services Department is recommending approval of twelve (12) text amendments to the Arcadia Municipal Code, including eleven (11) text amendments to Article IX Zoning Regulations and Provisions and an amendment to Section 4630.2 to Article IV regarding Hours of Operation for Gardeners and Landscapers to the Noise Regulations.

These Amendments are considered "clean-up" and streamlining of our existing ordinances. The amendments are based primarily on the Staff and Planning Commission's experiences with issues raised and are designed to provide efficiency in our land use regulations.

On August 26, 2008, the Planning Commission considered the proposed text amendments and recommended one change to the hours of operations for gardeners and landscapers (refer to Item no. 11) that the hours should be limited on Sunday from 9:00 a.m. to 5:00 p.m. instead of from 7:00 a.m. to 7:00 p.m. The proposed recommendation has been amended and is reflected in the proposed Ordinance.

## H. Fence Regulations in Residential Zones

When the fence regulations were amended in 2004, it was Staff's intention to prohibit chain link, corrugated fiberglass, bamboo fencing, and wire type fencing everywhere on a property. However, it was only mentioned under the front yard section of the fence regulations. As a result, **Item No. 8** is proposed to prohibit such fencing in the corner lots, side, and rear yard areas of the fence regulations.

## I. Prohibit Health Clubs in the M-1 and M-2 Zones

Currently, the Code permits a health club in an industrial zone, subject to a Conditional Use Permit. After much discussion on this issue, Members of the Planning Commission and City Council opined that a health club is an inappropriate use in an industrial zone, and incompatible with the surrounding uses typically. Therefore, Staff is proposing **Item No. 9** to prohibit health clubs in the M-1 and M-2 zones.

## J. Off-Street Parking Requirements for a Health Club

The existing parking regulation for health clubs was intended for clubs that were less than 10,000 square feet and could comply with this requirement. It was not until after 2005 when the City reviewed health clubs that were larger than 35,000 square feet that Staff determined the current requirement could not realistically be applied to a facility of this size because the parking requirement did not anticipate this type of facility. The proposal is to change the off-street parking requirements for a health club from 1 parking space for every 35 square feet of gross floor area in workout areas to 1 parking space for every 100 square feet of gross floor area in all workout areas for health clubs that are less than 3,000 square feet, and that the parking requirements for health clubs that are larger than 3,000 square feet be determined through the Conditional Use Permit process based on their unique needs. Refer to **Item No. 10** for new requirements.

## K. Hours of Operation – Gardeners and Landscapers

The Code only addresses the hours of operation for construction. On several occasions, the City has received complaints from residents that gardeners or landscapers operate their equipment before 7:00 a.m. To be able to enforce this issue, Staff is proposing **Item No. 11** to limit the hours of operation on gardening and landscaping service from 7:00 a.m. to 7:00 p.m., everyday within all residential zones. ***The Planning Commission modified this recommendation to 7:00 a.m. to 7:00 p.m., Monday through Saturday, and from 9:00 a.m. to 5:00 p.m. on Sundays within all residential zones.***

## **ENVIRONMENTAL ANALYSIS**

The proposed text amendments are exempt from the requirements of the California Environmental Quality Act (CEQA). There is no possibility that the text amendments will have a significant effect on the environment under Section 15061(b)(3) of the CEQA Guidelines, and this text amendment does not constitute a "project" under Section 15378(b)(2) of the CEQA Guidelines.

## **FISCAL IMPACT**

The proposed text amendment will have no direct fiscal impact.

## **RECOMMENDATION**

It is recommended that the City Council:

**Introduce Ordinance No. 2246: An Ordinance of the City Council of the City of Arcadia, California amending the Arcadia Municipal Code by adding Section 4630.2 to Article IV regarding Hours of Operation for Gardeners and Landscapers to the Noise Regulations, and amending various regulations of Article IX (Zoning Regulations and General Provisions).**

Approved By: Donald Penman  
Donald Penman, City Manager

Attachments: 1) Proposed Text Amendments Item Nos. 1-12  
2) Ordinance No. 2246  
3) Preliminary Exemption Assessment

## **HOURS OF OPERATION FOR GARDENERS AND LANDSCAPERS**

### **AMC Section 4630.2 NOISE, GARDENING AND LANDSCAPING.**

No person shall operate any mechanical equipment related to the gardening and/or landscaping of any property within a residential zone from 7:00 a.m. to 7:00 p.m., Monday through Saturday, and from 9:00 a.m. to 5:00 p.m. on Sundays.

**CITY COUNCIL/REDEVELOPMENT AGENCY  
REGULAR MEETING MINUTES  
TUESDAY, SEPTEMBER 16, 2008**

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**CALL TO ORDER**

Mayor Harbicht called the Special Meeting to order at 5:00 p.m.

**ROLL CALL OF CITY COUNCIL/REDEVELOPMENT AGENCY MEMBERS:**

PRESENT: Council/Agency Member Amundson, Chandler, Kovacic, Wuo and Harbicht

ABSENT: None

**STUDY SESSION/CLOSED SESSION PUBLIC COMMENTS (5 minutes per person)**

None

**STUDY SESSION**

- a. Report, discussion and direction regarding proposed Redevelopment Agency Tax Allocation Bond issue.

Mr. Penman noted that a few months ago staff discussed with the City Council options for the refunding of the 2001 Redevelopment Tax Allocation Bonds and the issuance of new 2008 Tax Allocation Bonds. He noted that at that meeting, the City Council directed staff to monitor bond market conditions in order to determine if tax-exempt and taxable interest rates improve enough to warrant moving forward with a refunding of the 2001 Tax Allocation Bonds and move forward with the issuance of additional bonds to generate taxable new money proceeds for the Redevelopment Agency.

Mr. Penman introduced Darryl Street of Fieldman Rolapp & Associates and Kurt Yeager, Stradling, Yocca Carlson and Rauth who were present and discussed options for refunding the 2001 Tax Allocation Bonds and Issuing New 2008 Tax Allocation Bonds in addition to the capacity to issue additional Bonds in today's market, the need to fund Housing Fund cumulative obligation, and the use of bond proceeds and Subordination of Statutory Pass-Thru payments and recommendations.

Mayor Harbicht suggested that a list be prepared showing the amount of money the Agency currently has, current obligations and what the projected annual obligation would be on the debt with a new bond issue in addition to a list of proposed projects including the cost involved and bring it back to the City Council on October 7<sup>th</sup> and the City Council agreed.

**CLOSED SESSION**

- a. Pursuant to Government Code Section 54956.8 to confer about the Exclusive Residential Waste Hauling Contract.

Property: Franchise to Use All City Streets, Alleys and Rights-of-Way

**MOTION TO READ ALL ORDINANCES AND RESOLUTIONS BY TITLE ONLY AND WAIVE THE READING IN FULL**

A motion was made by Council/Agency Member Chandler, seconded by Mayor Pro Tem Wuo and carried on roll call vote to read all ordinances and resolutions by title only and waive the reading in full.

**1. PUBLIC HEARING**

**CITY COUNCIL ITEMS:**

- a. Resolution No. 6644 approving a Tax-Exempt Bond Financing to be issued by the California Statewide Communities Development Authority to benefit Methodist Hospital of Southern California.  
Recommended Action: Adopt

City Manager Don Penman reported that on April 1, 2008, the City Council conducted a public hearing and adopted Resolution No. 6617 approving tax-exempt bond financing to be issued by the California Statewide Communities Development Authority (CSCDA) to benefit Methodist Hospital in the amount of \$280,000,000 to upgrade existing facilities and a new North Tower. He further reported that since that time, Methodist Hospital has increased the borrowing amount to \$330,000,000 due to changed conditions in the financing market, an increase in estimated project costs and a decision to increase borrowing to 100% of the project's costs. He noted that the newly proposed financing again requires the approval of the elected body of the governmental entity having jurisdiction over the area where the project to be financed is located. He further noted that the City is merely required to express support of CSCDA's issuance of the bonds to finance the capital improvements and that the City does not have any financial or legal responsibility in this action and recommended adoption of Resolution No. 6644.

Mayor Harbicht opened the public hearing.

A motion to close the public hearing was made by Council Member Chandler, seconded by Council Member Kovacic and seeing no further objection, the Mayor declared the public hearing closed.

It was moved by Council Member Kovacic, seconded by Council Member Amundson and carried on roll call vote to adopt Resolution No. 6644 approving a Tax-Exempt Bond Financing to be issued by the California Statewide Communities Development Authority to benefit Methodist Hospital of Southern California.

AYES: Council Member Kovacic, Chandler, Amundson, Wuo and Harbicht  
NOES: None  
ABSENT: None

- a. Introduce Ordinance No. 2246 amending the Arcadia Municipal Code by adding a new Section 4630.2 to Article IV (Noise Regulations) regarding hours of operation for gardeners and landscapers and amending and adding various Sections to Article IX (Zoning Regulations and General Provisions).  
Recommended Action: Introduce

Jason Kruckeberg, Development Services Director reported that 12 text amendments were being proposed and are considered clean-up and streamlining of current ordinances. He noted that the text amendments were based primarily on staff and Planning Commission experiences and are designed to provide efficiency in the City's land use regulations.

Jim Kasama, Community Development Administrator noted that 11 of the 12 text amendments are zoning regulations, one is a noise related regulation which establishes the hours of operation for gardeners and landscapers to operate lawn mowers and leaf blowers. Mr. Kasama further noted that a proposed change relates to tree trimming equipment and hours of operation is being proposed. He reported that the Planning Commission has considered the proposed text amendments and recommended one change to the hours of operations for gardeners and landscapers. Mr. Kasama provided a summary of the proposed changes relating to: entry requirements, accessory buildings, driveways, corner lots-indentation/projection requirements, exterior lighting in single family and multi-family residential zones, equipment and facilities, nonconforming uses and structures, fence regulations in residential zones, prohibiting health clubs in the M-1 and M-2 zones, off-street parking requirements for health clubs, hours of operation for gardeners and landscapers and items being proposed to the Administrative Modification list which are not subject to a hearing, but require the consent of adjoining neighbors. Mr. Kasama recommended introduction of Ordinance No. 2246 relating to the hours of operation for gardeners and landscapers and adding various sections to the zoning regulations and general provisions.

Mayor Harbicht opened the public hearing.

A motion to close the public hearing was made by Mayor Pro Tem Wuo, seconded by Council Member Chandler and seeing no further objection, the Mayor declared the public hearing closed.

It was moved by Council Member Chandler, seconded by Mayor Pro Tem Wuo and carried on roll call vote to introduce Ordinance No. 2246 amending the Arcadia Municipal Code by adding a new Section 4630.2 to Article IV (Noise Regulations) regarding hours of operation for gardeners and landscapers and amending and adding various Sections to Article IX (Zoning Regulations and General Provisions) with recommended revision regarding tree trimming hours of operation on Sundays.

AYES: Council Member Chandler, Wuo, Amundson, Kovacic and Harbicht  
 NOES: None  
 ABSENT: None

- c. Introduce Ordinance No. 2247 amending Sections 9250.3.6, 9251.2.6 and 9252.2.6 of the Arcadia Municipal Code regarding single-family residential garage parking requirements.

Recommended Action: Introduce

Jason Kruckeberg, Development Services Director noted that the City Council previously expressed concern that current single-family garage parking requirements were inadequate for the larger homes being built and has caused concern because inadequate parking results in numerous vehicles being parked in the driveway or on the street.

It was moved by Council Member Chandler, seconded by Mayor Pro Tem Wuo and carried on roll call vote to approve a waiver of Arcadia Redevelopment Agency Resolution No. 172 to permit vehicle storage and parking at 21 Morlan Place and auto related uses at 37 W. Huntington Drive.

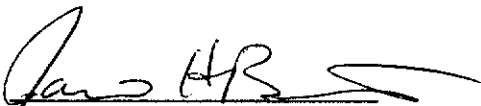
AYES: Council Member Chandler, Wuo, Amundson, Kovacic and Harbicht  
NOES: None  
ABSENT: None

**ADJOURNMENT**

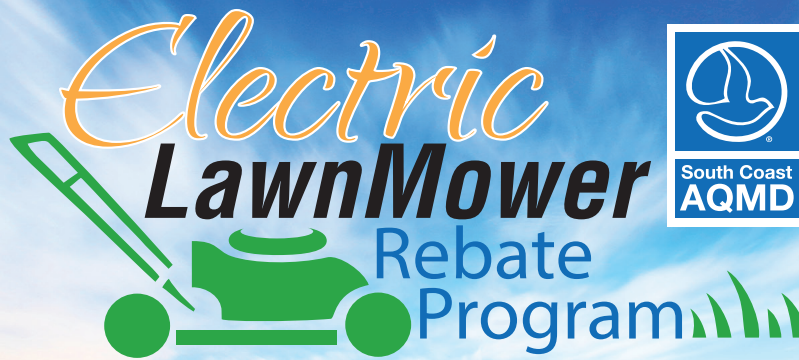
The City Council/Redevelopment Agency adjourned this meeting in memory of Jayne Vento Bellin at 9:20 p.m. to October 7, 2008, 6:00 p.m. in the City Council Chamber Conference Room located at 240 W. Huntington Drive, Arcadia.

  
\_\_\_\_\_  
Robert C. Harbicht, Mayor

ATTEST:

  
James H. Barrows, City Clerk

# Attachment No. 3: Information on South Coast AQMD Programs



**Get up to \$250**

**When You Replace Your Old, Polluting Lawn Mower for an Electric One**

Purchase a new electric lawn mower in store or online and get up to \$250 cash back.

**REBATE PROGRAM STEP BY STEP**



**Rules and Conditions Apply**

- \* Rebate cannot be greater than purchase price, not including taxes and delivery.
- \* Program is on a first-come, first-served basis until funds run out.
- \* Electric lawn mower purchased must be cordless and include a battery and charger.
- \* You must scrap a working gas mower to receive the rebate.
- \* To access the list of lawn mower manufacturers and certified scappers, please visit: [www.aqmd.gov/lawnmower](http://www.aqmd.gov/lawnmower).
- \* For questions or more info please email us at [lawnmower@aqmd.gov](mailto:lawnmower@aqmd.gov) or call **888-425-6247**.





**South Coast  
Air Quality  
Management  
District**

# Commercial *Electric*

# Lawn & Garden

## EQUIPMENT

### Incentive & Exchange Program

Find your local **Participating Dealer** location by visiting:

**[www.aqmd.gov/lawnmower](http://www.aqmd.gov/lawnmower)**

### Eligibility

- Commercial Gardeners / Landscapers
- Local Government Agencies, School Districts & Colleges
- Non-Profit Organizations
- Participants Must Reside or Provide Landscaping / Gardening Service Within the South Coast Basin

To speak to a staff person call 888-425-6247 (Tuesday – Friday 7:30 a.m. to 5:00 p.m.)



	EQUIPMENT	PROGRAM PRICE*	INCENTIVE FUNDS WITH SOUTH COAST AQMD BUYDOWN	CUSTOMER PAYS
<b>Oregon</b>	Backpack Blower Model BL120V-NA	\$1,088	\$816	\$272
<b>Stihl</b>	Leaf Blower BGA 100, AR 3000	\$1,080	\$810	\$270
<b>Husqvarna</b>	Quiet Leaf Blower 550iBTx	\$1,200	\$900	\$300
<b>Makita</b>	Handheld Blower XBU02PT1	\$290	\$218	\$72
<b>Mean Green Mowers</b>	Rival-60 Industrial Package	\$22,999	\$16,500	\$6,499

\*Sales tax is based on MSRP, not Program Price

Products Available



\*Including up to 3 replacement batteries for products under this program. To view a full list of available equipment, please visit our website!

(Prices effective January 27, 2020)

**@SouthCoastAQMD**





# STAFF REPORT

Development Services Department

**DATE:** November 1, 2022

**TO:** Honorable Mayor and City Council

**FROM:** Jason Kruckeberg, Assistant City Manager/Development Services Director

**SUBJECT:** RESOLUTION NO. 7468 REVISING RESOLUTION NO. 7407 (SIXTH CYCLE HOUSING ELEMENT ADOPTION) WITH A CATEGORICAL EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)  
**Recommendation: Adopt**

## **SUMMARY**

The City is required by State law to update its General Plan Housing Element every eight years for certification by the State Department of Housing and Community Development (“HCD”). The City Council approved the Housing Element following receipt of public testimony and the recommendation of the Planning Commission on February 15, 2022, and directed that the adopted documents be submitted to HCD. Through their review, HCD directed that modifications and clarifying language be added to the adopted Housing Element documents, including minor technical revisions to the adopting Resolution.

It is recommended that the City Council adopt Resolution No. 7468, which includes the minor technical revisions proposed by HCD.

## **BACKGROUND**

The Housing Element sets forth goals, policies, and programs that address future housing needs for all income levels over a planning period of 2021-2029, which coincides with a unit count established by the Regional Housing Needs Assessment (“RHNA”). Arcadia was allocated 3,214 housing units under the RHNA for this housing cycle and the adopted documents satisfy this mandate.

A Housing Element is one of eight required elements, or chapters, of a City’s General Plan document. State law requires that all cities update their Housing Element once every eight years to be in compliance with the guidelines of the State Department of Housing and Community Development (“HCD”). The City’s current prior Housing Element covered the planning period extending from 2014 to 2021, which is referred to as the “5<sup>th</sup> Housing Element Cycle” in reference to the five required updates that occurred since a

comprehensive revision to State law on this topic in 1980. All cities in the Southern California Association of Governments (“SCAG”) region were required to prepare a Housing Element Update for the 6<sup>th</sup> Planning Cycle, which spans the 2021-2029 time period. The SCAG region includes Los Angeles, Orange, Riverside, San Bernardino, Ventura, and Imperial Counties.

The City Council completed a timely adoption of the Housing Element and associated Implementation Plan and Technical Background appendix on February 15, 2022, along with the directive that it be submitted to HCD for certification and any changes required by HCD be incorporated through an administrative process. The City submitted several iterations of the documents to HCD for review and received comments and suggested changes to clarify the documents and meet various State requirements for language and intent. Staff has addressed HCD’s proposed changes and clarifications to the Housing Element documents per the City Council’s prior direction.

Even though HCD only certifies housing elements, not the adopting resolutions, HCD is requiring the City to include certain specific language in a revised Resolution as a condition of certification. With the clarifying changes having already been made to the documents themselves, HCD has indicated that the revisions to the Resolution should be the last step to achieve certification.

## **DISCUSSION**

The primary language that HCD requested be added to the Resolution has to do with the expectation that much of Arcadia’s future housing will be developed on infill sites and locations that currently house non-residential uses. Although the City has a substantial track record of accommodation of infill development, transitioning commercial sites into residential, and approving zone changes to accommodate residential development, HCD requests that a specific recital be added to the Resolution to justify the City’s future strategies. This is specifically geared toward affordable housing provision. As such, the following recital has been added to the Revised Resolution:

*Pursuant to Government Code Section 65583.2(g)(2), based on substantial evidence set forth in the Technical Background Report of the adopted 2021 – 2029 Housing Element, any existing uses on sites identified to accommodate affordable housing are likely to be discontinued during the planning period, and therefore do not constitute an impediment to additional residential development during the period covered by the Housing Element. Any sites identified to accommodate 2020-2029 RHNA need that have existing structures, improvements and/or activities demonstrate a likelihood for redevelopment during the 2021-2029 planning period. Parcels with existing uses or activities that were not likely to be discontinued during the*

*planning period were generally removed if they had conditions suggesting continued use during the planning period; and*

The documents submitted to HCD by the City addressed this issue by only taking “credit” for the redevelopment of a certain percentage of sites within various zones and areas as it is not realistic to expect 100% of all areas to transition. Nevertheless, the added language provides the assurance that the identified areas will transition over time as identified in the materials.

The additional language requested by HCD in the Revised Resolution includes authorization that the Staff be able to make any subsequent revisions required by HCD to the documents following the City Council action. While this was clear in the original February 2022 Staff Report, HCD wanted specific mention of this in the Resolution. The Revised Resolution also includes the declaration that the documents comply with Fair Housing regulations in compliance with the Government Code.

With the added language, Resolution No. 7407 meets the requirements of HCD. As mentioned previously, a link to all of the Housing Element documents is provided below. Because of the Negative Declaration and considering all materials were previously adopted by the City Council, there is no need to specifically adopt the materials again.

It is therefore recommended that the City Council adopt Resolution No. 7468 (Attachment No. 1), which includes the original adopted Resolution No. 7407 with the revisions shown.

### **ENVIRONMENTAL ANALYSIS**

The proposed action does not constitute a project under the California Environmental Quality Act (“CEQA”), because it is an action that will not have an impact on the environment. (State CEQA Guidelines, Section 15378.) Even if the action were a project under CEQA, it is exempt under State CEQA Guidelines, Section 15061(b)(3) because it can be seen with certainty that the project would not have an impact on the environment. Thus, no further environmental review is required.

### **FISCAL IMPACT**

There is no fiscal impact because approval of this Resolution makes only minor technical revisions that HCD has requested as a condition of certification. Failing to achieve certification of the City’s Housing Element would have unknown fiscal impacts.

For additional background, the City Council’s original approval of the draft Housing Element itself does not result in a direct fiscal impact to the City. Implementation of the goals and policies within the Housing Element will lead to additional housing units within the City, which generally provide increases in property value and property taxes and a

positive fiscal benefit to the City. Conversely, loss of commercial property over time in favor of residential development could result in lower sales taxes and other City revenues as land uses change over time. Each zone change or other strategy that is proposed within the Housing Element Update will be reviewed by the City Council prior to adoption, and the specific fiscal impact of each action will be analyzed on a case by case basis as these recommended strategies are presented.

### **RECOMMENDATION**

It is recommended that the City Council adopt Resolution No. 7468 revising Resolution No. 7407 (Sixth Cycle Housing Element adoption) and find that the Resolution is exempt from the California Environmental Quality Act (“CEQA”).

Approved:



Dominic Lazzaretto  
City Manager

- Attachment No. 1: Resolution No. 7468 (including REVISED Resolution No. 7407)
- Attachment No. 2: Links to [Draft Housing Element](#), [Implementation Plan](#), and [Technical Background Report](#)

RESOLUTION NO. 7468

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARCADIA, CALIFORNIA, REVISING RESOLUTION NO. 7407 (SIXTH CYCLE HOUSING ELEMENT ADOPTION) WITH A CATEGORICAL EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA")

WHEREAS, California State Housing Element Law establishes the requirements for Housing Elements, and California Government Code Section 65588 requires that local governments review and revise the Housing Element of their comprehensive General Plans not less than once every eight years, and currently the State is in the "6th Cycle" of Housing Element Updates, covering the time period of 2021-2029; and

WHEREAS, on February 15, 2022, a duly noticed public hearing was held before the City Council on the draft Housing Element Update, and the associated Initial Study and Negative Declaration, at which time all interested persons were given full opportunity to be heard and to present evidence and all public comments on the environmental document were reviewed; and

WHEREAS, on February 15, 2022, the City Council, having determined that all legal prerequisites had been fulfilled, adopted Resolution No. 7407 on a 4-0 vote, thereby adopting the 2021-2029 Housing Element, directing the Staff to submit the Housing Element and all associated materials to HCD, and authorizing changes to the adopted documents based on HCD review; and,

WHEREAS, after reviewing the 2021-2029 Housing Element in its entirety and suggesting revisions and clarifying language over several iterations, HCD directed the City to revise Resolution No. 7407 to include additional language, which is provided in four additional Recitals; and

WHEREAS, in the interest of obtaining a HCD's certification of the City of Arcadia's

2021-2029 Housing Element, the City Council hereby adopts this Resolution in order to insert four new Recitals into Resolution No. 7407, with no other technical changes and no substantive changes to the City Council's prior action.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ARCADIA, CALIFORNIA, HEREBY RESOLVES AS FOLLOWS:

SECTION 1. As shown in the attached REVISED Resolution No. 7407, the following Recitals are hereby inserted into Resolution No. 7407:

“WHEREAS, the City has prepared a draft 2021-2029 Housing Element in accordance with California Housing Element Law, Government Code section 65580 *et seq.* (“Housing Element Law”), that may be further revised through consultation and review by the California Department of Housing and Community Development (“HCD”) to comply with state law; and

WHEREAS, the City Council authorizes staff to make subsequent revisions or modifications to the draft 2021-2029 Housing Element to comply with state law as requested by the California Department of Housing and Community Development (“HCD”); and

WHEREAS, the 2021-2029 Housing Element complies with the duty to Affirmatively Further Fair Housing as required by Government Code Section 65583; and

WHEREAS, pursuant to Government Code Section 65583.2(g)(2), based on substantial evidence set forth in Appendix A of the Technical Background Report of the adopted 2021 – 2029 Housing Element, any existing uses on sites identified to accommodate affordable housing are likely to be discontinued during the planning period, and therefore do not constitute an impediment to additional residential development during the period covered by the Housing Element. This finding is based, in part, upon a comprehensive review of all possible opportunities for additional residential development

that can accommodate affordable housing during the planning period. This review includes a review of any sites identified to accommodate 2020-2029 RHNA need that have existing structures, improvements and/or activities demonstrate a likelihood for redevelopment during the 2021-2029 planning period. Examples of existing development projects of non vacant sites for residential uses were evaluated as shown in Table A-3 of Appendix A and redevelopment assumptions were analyzed for each of the specific Focus areas and strategies within the document. Based on an analysis of land value ratios, age of existing structures, the history of development in the zone, and how each zone is envisioned to be developed, parcels with existing uses or activities that were not likely to be discontinued during the planning period were generally removed if they had conditions suggesting continued use during the planning period. These included newly built parcels, sites that were not physically able to support housing in place of or in addition to existing uses, or sites that included recent entitlement applications or development plans. Additionally, Table A-24 of Appendix A (the “Adequate Sites Table”), provides a description of existing land uses and a justification for the redevelopment potential of each of the identified sites. This analysis utilized the Southern California Association of Government’s HELPR tool, as well as additional site by site analysis, to provide an accurate picture of each site within each Focus/Strategy Area; and”.

SECTION 2. The proposed action does not constitute a project under the California Environmental Quality Act (“CEQA”), because it is an action that will not have an impact on the environment. (State CEQA Guidelines, section 15378.) Even if the action were a project under CEQA, it is exempt under State CEQA Guidelines, section 15061(b)(3) because it can be seen with certainty that the project would not have an impact on the environment. Thus, no further environmental review is required. The City Council directs staff to prepare,

execute and file a Notice of Exemption within five (5) working days of the approval of this Resolution.

SECTION 3. The City Clerk shall certify as to the adoption of this Resolution.

[SIGNATURES ON THE NEXT PAGE]

Passed, approved and adopted this 1st day of November, 2022.

\_\_\_\_\_  
Mayor of City of Arcadia

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read "S. P. Deitsch", is written over a horizontal line.

for

\_\_\_\_\_  
Stephen P. Deitsch  
City Attorney

RESOLUTION NO. 7407

(REVISED NOV. 1, 2022

By

RESOLUTION NO. 7468)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARCADIA, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT NO. GPA 21-02 WITH A NEGATIVE DECLARATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") UPDATING THE HOUSING ELEMENT FOR THE 2021-2029 HOUSING CYCLE.

WHEREAS, California Government Code Section 65358(a) authorizes the City Council to amend the General Plan if it is deemed to be in the public interest or required by State law; and

WHEREAS, the General Plan is a long-range, comprehensive document that serves as a guide for the orderly development of the City of Arcadia; and by its very nature, the General Plan is subject to update and revision to account for current and future community needs; and

WHEREAS, California State Housing Element Law establishes the requirements for Housing Elements, and California Government Code Section 65588 requires that local governments review and revise the Housing Element of their comprehensive General Plans not less than once every eight years, and currently the State is in the "6<sup>th</sup> Cycle" of Housing Element Updates, covering the time period of 2021-2029; and

WHEREAS, the California State Legislature identifies overall housing policies for the State with the goal of ensuring every resident has access to housing and suitable living environments, and additionally establishes a Regional Housing Needs Assessment ("RHNA") which establishes projected allocations of housing units through local Councils of Governments that are attributed to each jurisdiction in the State; and

WHEREAS, the updated Housing Element must be adopted by City Council and certified by the California State Department of Housing and Community Development

("HCD") in concert with statewide housing policies and in compliance with the established RHNA; and

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA"), an Initial Study/Negative Declaration ("IS/ND") was prepared for General Plan Amendment No. GPA 21-02 (the "draft Housing Element Update") in compliance with CEQA and the local environmental review guidelines, and a Notice of Intent to Adopt a Negative Declaration for the draft Housing Element Update was posted with the Los Angeles County Clerk's Office on December 17, 2021; and

WHEREAS, on January 25, 2022, a duly noticed public hearing was held before the Planning Commission on the draft Housing Element Update, at which time all interested persons were given full opportunity to be heard and to present evidence, and the Planning Commission subsequently voted 4-0, with one member absent, to recommend approval of the draft Housing Element Update to the City Council; and

WHEREAS, on February 15, 2022, a duly noticed public hearing was held before the City Council on the draft Housing Element Update, and the associated Initial Study and Negative Declaration, at which time all interested persons were given full opportunity to be heard and to present evidence and all public comments on the environmental document were reviewed; and

WHEREAS, the City has prepared a draft 2021-2029 Housing Element in accordance with California Housing Element Law, Government Code section 65580 *et seq.* ("Housing Element Law"), that may be further revised through consultation and review by the California Department of Housing and Community Development ("HCD") to comply with state law; and

WHEREAS, the City Council authorizes staff to make subsequent revisions or modifications to the draft 2021-2029 Housing Element to comply with state law as requested

by the California Department of Housing and Community Development (“HCD”); and

WHEREAS, the 2021-2029 Housing Element complies with the duty to Affirmatively Further Fair Housing as required by Government Code Section 65583; and

WHEREAS, pursuant to Government Code Section 65583.2(g)(2), based on substantial evidence set forth in Appendix A of the Technical Background Report of the adopted 2021 – 2029 Housing Element, any existing uses on sites identified to accommodate affordable housing are likely to be discontinued during the planning period, and therefore do not constitute an impediment to additional residential development during the period covered by the Housing Element. This finding is based, in part, upon a comprehensive review of all possible opportunities for additional residential development that can accommodate affordable housing during the planning period. This review includes a review of any sites identified to accommodate 2020-2029 RHNA need that have existing structures, improvements and/or activities demonstrate a likelihood for redevelopment during the 2021-2029 planning period. Examples of existing development projects of non vacant sites for residential uses were evaluated as shown in Table A-3 of Appendix A and redevelopment assumptions were analyzed for each of the specific Focus areas and strategies within the document. Based on an analysis of land value ratios, age of existing structures, the history of development in the zone, and how each zone is envisioned to be developed, parcels with existing uses or activities that were not likely to be discontinued during the planning period were generally removed if they had conditions suggesting continued use during the planning period. These included newly built parcels, sites that were not physically able to support housing in place of or in addition to existing uses, or sites that included recent entitlement applications or development plans. Additionally, Table A-24 of Appendix A (the “Adequate Sites Table”), provides a description of existing land uses and a

justification for the redevelopment potential of each of the identified sites. This analysis utilized the Southern California Association of Government's HELPR tool, as well as additional site by site analysis, to provide an accurate picture of each site within each Focus/Strategy Area; and".

WHEREAS, all other legal prerequisites to the adoption of this Resolution have been fulfilled.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ARCADIA, CALIFORNIA, HEREBY RESOLVES AS FOLLOWS:

SECTION 1. The factual data submitted by the Development Services Department in the Staff Report dated February 15, 2022, and associated attachments, are true and correct.

SECTION 2. The City Council finds that based upon the entire record, including all written and oral evidence presented, pursuant to Section 9108.03.060 of the Arcadia Development Code, all of the following findings can be made.

1. The amendment is internally consistent with all other provisions of the General Plan.

FACTS TO SUPPORT THE FINDING: The Housing Element would make the General Plan consistent with state law requirements per Government Code Section 65580 that requires the Housing Element to be updated every eight years upon the adoption of a region's RHNA. The Housing Element Update identifies goals, policies, and implementation programs addressing housing opportunities, removal of governmental constraints, improving the condition of existing housing, and providing equal housing opportunities for all Arcadia residents. These goals, policies and program actions are consistent with all other Elements of the General Plan in that they further the City's overall goals to create a diverse,

sustainable, and balanced community by implementing strategies and programs that contribute to economic and socially diverse housing opportunities that preserve and enhance Arcadia's character.

2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.

FACTS TO SUPPORT THE FINDING: The proposed amendments are in the public interest and reflect the input of residents, decision makers, and other stakeholders in the community. No zone changes are proposed under the Housing Element Update that would reduce or compromise existing standards that protect the health, safety or general welfare of the City. The Initial Study/Negative Declaration for the Housing Element Update analyzed all the significant environmental impacts of all candidate housing sites associated with the proposed 6th Cycle Housing Element Update, and it was determined that all the potential impacts would be less than significant. Therefore, the proposed General Plan amendment for the Housing Element Update would not be detrimental to the public health and welfare, and in fact, the promotion and encouragement of diverse and varied housing types throughout the City furthers the public interest and convenience of residents by providing housing options and choices over time.

SECTION 3. The draft Housing Element Update has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act ("CEQA") and CEQA Guidelines. An Initial Study/Negative Declaration ("IS/ND") has been prepared for the project for the City, as the lead agency. The IS/ND was prepared pursuant with the requirements of CEQA on the basis that there was no substantial evidence that there may be significant environmental impacts on specific environmental areas as a result of the project. Subsequent housing developments proposed will, of course, be subject to

compliance with CEQA as they are submitted.

SECTION 4. For the foregoing reasons the City Council approves General Plan Amendment GPA 21-02, updating the General Plan's Housing Element, and approving the associated Initial Study / Negative Declaration prepared for the project.

SECTION 5. The City Clerk shall certify as to the adoption of this Resolution.

[SIGNATURES ON THE NEXT PAGE]

Passed, approved and adopted this 15th day of February, 2022.

\_\_\_\_\_  
Mayor of City of Arcadia

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephen P. Deitsch  
City Attorney