

**10. Authorize Amendment No. 1 to Purchase Agreement with Victor Medical (All Wards)**

**Recommendation:**

It is recommended that the Mayor and City Council of the City of San Bernardino, California, adopt Resolution No. 2024-098, authorizing:

1. The Director of Finance and Management Services to amend the FY 2023/24 Animal Services budget in the amount of \$150,000, appropriated for expenses, and;
2. The City Manager to execute Amendment No. 1 to the contract with Victor Medical, increasing the annual contract amount by \$150,000 for an annual total of \$300,000 for Veterinary Medical Supplies.



## CONSENT CALENDAR

### City of San Bernardino Request for Council Action

**Date:** May 15, 2024

**To:** Honorable Mayor and City Council Members

**From:** Charles A. Montoya, City Manager;  
Kris Watson, Director of Animal Services

**Department:** Animal Services

**Subject:** **Increase Vendor Contract Amount (All Wards)**

#### **Recommendation**

It is recommended that the Mayor and City Council of the City of San Bernardino, California, adopt Resolution No. 2024-098, authorizing:

1. The Director of Finance and Management Services to amend the FY 2023/24 Animal Services budget in the amount of \$150,000, appropriated for expenses, and;
2. The City Manager to execute Amendment No. 1 to the contract with Victor Medical, increasing the annual contract amount by \$150,000 for an annual total of \$300,000 for Veterinary Medical Supplies.

#### **Executive Summary**

On December 17, 2023, the Mayor and City Council approved contract negotiations with the cities of Colton, Fontana, Grand Terrace, Loma Linda, and Rialto for shelter services beginning on July 1, 2024. All of the cities have approved the contract with the City of San Bernardino for Animal Services effective June 1, 2024. The Department expects an increase of animals beginning on July 1, 2024, and needs to purchase vaccines and other necessary medical supplies prior to the contract start date to ensure we have sufficient inventory to care for the influx of animals. Staff recommend a contract amount increase of \$150,000 annually to cover the additional costs.

#### **Background**

On March 2, 2022, the Mayor and City Council approved a 3-year contract with Victor Instruments, Inc. for an annual not to exceed amount of \$150,000. On December 17, 2023, the Mayor and City Council authorized the City Manager to conduct negotiations with the cities of Colton, Fontana, Grand Terrace, Loma Linda and Rialto for shelter services. All of the cities have approved the contract and will start housing their animals with the City of San Bernardino beginning on July 1, 2024. The Department is expecting

the annual number of pets impounded at the shelter to double as a result of the contracts. The Department is asking for the annual contract amount with Victor Instruments, Inc. to be increased to an amount not to exceed \$300,000.00 annually. This increased amount will allow the Department to order the necessary medical supplies to care for the additional animals impounded from the contract cities.

### **Discussion**

The department expects to double the number of animals impounded at the shelter once the contract period begins on July 1, 2024. In anticipation of the increase of animals, the Department needs to amend the agreement with Victor Instruments, Inc. to increase the annual contract amount to purchase vaccines and other necessary veterinary medical supplies to care for the animals in the shelter. The Department is requesting the increased contract amount to be applied to this fiscal year as well as next fiscal year so that we can purchase the goods now to ensure supplies are on hand and available for use beginning in July and August.

The increased contract amount will be shared with the other contract cities according to the executed agreements. Each of the cities will be billed quarterly for actual costs based on their share of expenses, including veterinary medical supplies.

### **2021-2025 Strategic Targets and Goals**

The request for an amendment to the contract with Victor Medical aligns with Strategic Target #1 – Improved Operational & Financial Capacity by creating a framework for spending decisions.

### **Fiscal Impact**

The Animal Services Fund's expense budget will be increased by \$150,000, of which \$47,000 will be reimbursed by the other contract cities.

### **Conclusion**

It is recommended that the Mayor and City Council of the City of San Bernardino, California, adopt Resolution No. 2024-, authorizing:

1. The Director of Finance and Management Services to amend the FY 2023/24 Animal Services budget in the amount of \$150,000, appropriated for expenses, and;
2. The City Manager to execute Amendment No. 1 to the contract with Victor Medical, increasing the annual contract amount by \$150,000 for an annual total of \$300,000 for Veterinary Medical Supplies.

### **Attachments**

Attachment 1 Resolution 2024-098

Attachment 2 Purchase Agreement with Victor Instruments Inc – 2022

Attachment 3 Victor Instruments Inc Contract Extension Option Year 1

Attachment 4 Contract Amendment No.1 with Victor Instruments Inc

**Ward:**

All Wards

**Synopsis of Previous Council Actions:**

On March 2, 2022, the Mayor and City Council adopted Resolution No. 2022-41, approving an annual agreement with Victor Medical in an annual not to exceed amount of \$150,000.00. On December 17, 2023, the Mayor and City Council approved contract negotiations for shelter services with the cities of Colton, Fontana, Grand Terrace, Loma Linda and Rialto.

**RESOLUTION NO. 2024-098**

**RESOLUTION OF THE MAYOR AND CITY COUNCIL OF  
THE CITY OF SAN BERNARDINO, CALIFORNIA,  
AUTHORIZING THE DIRECTOR OF FINANCE AND  
MANAGEMENT SERVICES TO AMEND THE FY 2023/24  
ANIMAL SERVICES BUDGET IN THE AMOUNT OF  
\$150,000, APPROPRIATED FOR EXPENSES, AND THE  
CITY MANAGER TO EXECUTE AN AMENDMENT TO  
THE CONTRACT WITH VICTOR INSTRUMENTS, INC. IN  
AN AMOUNT NOT TO EXCEED \$300,000 ANNUALLY TO  
PURCHASE VETERINARY SUPPLIES AND  
MEDICATIONS FOR ANIMALS IMPOUNDED AT THE  
SHELTER**

**WHEREAS**, on March 2, 2022, the Mayor and City Council approved an annual contract with Victor Instruments, Inc. in an amount not to exceed \$150,000 annually; and

**WHEREAS**, the City has executed contracts for shelter services for animals from additional cities; and

**WHEREAS**, the number of animals at the shelter is expected to increase significantly, requiring additional veterinary medical supplies; and

**WHEREAS**, the City now wishes to amend the Purchase Agreement with Victor Medical Company to increase the annual contract in an amount not to exceed \$300,000.

**BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN BERNARDINO AS FOLLOWS:**

**SECTION 1.** The above recitals are true and correct and are incorporated herein by this reference.

**SECTION 2.** The Mayor and City Council hereby authorize the Director of Finance and Management Services to amend the FY 2023/24 Animal Services budget in the amount of \$150,000, appropriated for expenses.

**SECTION 3.** The Mayor and City Council hereby authorize the City Manager, or designee, to execute a goods purchase agreement amendment with Victor Instruments, Inc. in an amount not to exceed \$300,000 annually to for veterinary supplies and medications for shelter animals.

**SECTION 4.** The Mayor and City Council finds this Resolution is not subject to the California Environmental Quality Act (CEQA) in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty, as in this case, that there is no possibility that

the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

**SECTION 5.** Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Resolution are declared to be severable.

**SECTION 6.** Effective Date. This Resolution shall become effective immediately.

**APPROVED** and **ADOPTED** by the City Council and signed by the Mayor and attested by the City Clerk this 15<sup>th</sup> day of May 2024.

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Helen Tran, Mayor  
City of San Bernardino

Attest:

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Genoveva Rocha, CMC, City Clerk

Approved as to form:

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Sonia Carvalho, City Attorney

CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF SAN BERNARDINO) ss  
CITY OF SAN BERNARDINO )

I, Genoveva Rocha, CMC, City Clerk, hereby certify that the attached is a true copy of Resolution No. 2024-098, adopted at a regular meeting held on the 15<sup>th</sup> day of May 2024 by the following vote:

<u>Council Members:</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
SANCHEZ	_____	_____	_____	_____
IBARRA	_____	_____	_____	_____
FIGUEROA	_____	_____	_____	_____
SHORETT	_____	_____	_____	_____
REYNOSO	_____	_____	_____	_____
CALVIN	_____	_____	_____	_____
ALEXANDER	_____	_____	_____	_____

WITNESS my hand and official seal of the City of San Bernardino this 16<sup>th</sup> day of May 2024.

\_\_\_\_\_  
Genoveva Rocha, CMC, City Clerk

**CITY OF SAN BERNARDINO**  
**GOODS PURCHASE AGREEMENT**

This Goods Purchase Agreement ("Agreement") is entered into this third day of March, 2022, by and between the City of San Bernardino, a charter city and municipal corporation organized under the laws of the State of California with its principal place of business at Vanir Tower, 290 North D Street, San Bernardino, California 92401, County of San Bernardino, State of California ("City"), and Victor Instruments, Inc., a corporation with its principal place of business at 50 Bunsen, Irvine CA 92618 d/b/a Victor Medical Company ("Supplier"). City and Supplier are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**Section 1. DEFINITIONS.**

A. "Goods" means all machinery, equipment, supplies, items, parts, materials, labor or other services, including design, engineering and installation services, provided by Supplier as specified in Exhibits "A" and "B", attached hereto and incorporated herein by reference.

B. "Delivery Date(s)" means that date or dates upon which the Goods is to be delivered to City, ready for approval, testing and/or use.

**Section 2. TERM**

The term of this Agreement shall be from March 3, 2022 through June 30, 2023, unless earlier terminated as provided herein ("Term"). This Agreement may be extended via written notice as provided by Section 19 of this Agreement by the City Manager or his or her designee for a maximum of two (2) additional years. Option Year One, if exercised, shall be effective July 1, 2023 through June 30, 2024. Option Year Two, if exercised, shall be effective July 1, 2024 through June 30, 2025.

**Section 3. MATERIALS AND WORKMANSHIP.**

When Exhibits "A" or "B" specifies machinery, equipment, supplies, or material by manufacturer, model or trade name, no substitution will be made without City's written approval. Machinery, equipment, supplies or material within the Goods without the approval required by this Section 3 will be deemed to be defective material for purposes of Section 5. Where machinery, equipment, supplies or materials are referred to in Exhibit "A" as equal to any particular standard, City will decide the question of equality. When requested by City, Supplier will furnish City with the name of the manufacturer, the performance capabilities and other pertinent information necessary to properly determine the quality and suitability of any machines, equipment, supplies and material to be incorporated in the Goods. Material samples will be submitted at City's request.



#### **Section 4. INSPECTIONS AND TESTS.**

City shall have the right to inspect and/or test the Goods prior to acceptance. If upon inspection or testing the Goods or any portion thereof are found to be nonconforming, unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any requirements or specifications contained in Exhibits "A" or "B" then without prejudice to any other rights or remedies, City may reject the Goods or exercise any of its rights under Section 5.C. The inspection, failure to make inspection, acceptance of goods, or payment for goods shall not impair City's right to reject nonconforming goods, irrespective of City's failure to notify Supplier of a rejection of nonconforming goods or revocation of acceptance thereof or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof.

#### **Section 5. WARRANTY.**

A. Supplier warrants that the Goods will be of merchantable quality and free from defects in design, engineering, material, and workmanship for a period of two (2) years, or such longer period as provided by a manufacturer's warranty or as agreed to by Supplier and City, from the date of final written acceptance of the Goods by City as required for payment under Section 8. Supplier further warrants that any services provided in connection with the Goods will be performed in a professional and workmanlike manner and in accordance with the highest industry standards.

B. Supplier further warrants that all machinery, equipment, supplies or process included in the Goods will meet the performance requirements and specifications specified in Exhibits "A" and Exhibit "B" and shall be fit for the purpose intended. City's inspection, testing, approval, or acceptance of any such machinery, equipment, supplies or process will not relieve Supplier of its obligations under this Section 5.B.

C. For any breach of the warranties contained in Section 5.A and Section 5.B, Supplier will, immediately after receiving notice from City, at the option of City, and at Supplier's own expense and without cost to City:

1. Repair the defective Goods;
2. Replace the defective Goods with conforming Goods, F.O.B. City's plant, office or other location of City where the Goods was originally performed or delivered; or
3. Repay to City the purchase price of the defective Goods.

If City selects repair or replacement, any defects will be remedied without cost to City, including but not limited to, the costs of removal, repair, and replacement of the defective Goods, and reinstallation of new Goods. All such defective Goods that is so remedied will be similarly warranted as stated above. In addition, Supplier will repair or replace other items of the Goods which may have been damaged by such defects or the repairing of the same, all at its own expense and without cost to City.

D. Supplier also warrants that the Goods is free and clear of all liens and encumbrances whatsoever, that Supplier has a good and marketable title to same, and that Supplier owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Goods. Supplier agrees to indemnify, defend, and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

E. In the event of a breach by Supplier of its obligations under this Section 5, City will not be limited to the remedies set forth in this Section 5, but will have all the rights and remedies permitted by applicable law, including without limitation, all of the rights and remedies afforded to City under the California Commercial Code.

## **Section 6. PRICES.**

In no event shall the total amount paid for Goods rendered by Supplier under this Agreement exceed the sum of **\$One Hundred and Fifty Thousand (\$150,000.00)** annually. Unless expressly provided otherwise, all prices and fees specified in Exhibit "B," attached hereto and incorporated herein by reference, are firm and shall not be subject to change without the written approval of City. Notwithstanding the foregoing, Supplier may adjust the pricing in Exhibit "B" by providing to City thirty (30) days written notice to City prior to such price adjustment. However, the request for any price adjustment that results in a price increase above three percent (3%) must be accompanied by written proof from Supplier and/or Supplier's source of the Goods, to City's satisfaction, of the need for a price adjustment. Under no circumstances shall the price be increased above three percent (3%) without written proof provided by the Supplier. In the event that City finds that a price increase above three percent (3%) is not warranted, City may terminate this Agreement pursuant to Section 17.B. Supplier may not adjust prices for the initial four (4) months of the term of this Agreement. With the exception of price adjustments as provided in this Section, no extra charges of any kind will be allowed unless specifically agreed to in writing by City's authorized representative. The total price shall include (i) all federal, state and local sales, use, excise, privilege, payroll, occupational and other taxes applicable to the Goods furnished to City hereunder; and (ii) all charges for packing, freight and transportation to destination.

## **Section 7. CHANGES.**

City, at any time, by a written order, and without notice to any surety, may make changes in the Goods, including but not limited to, City's requirements and specifications. If such changes affect the cost of the Goods or time required for its performance, an equitable adjustment will be made in the price or time for performance or both. Any change in the price necessitated by such change will be agreed upon between City and Supplier and such change will be authorized by a change order document signed by City and accepted by Supplier.

**Section 8. PAYMENTS.**

A. Terms of payment, are net thirty (30) days, less any applicable retention, after receipt of invoice. Payment shall be made by City after Supplier has satisfied all contractual requirements. Payment of invoices shall not constitute acceptance of Goods.

B. Payments for the Goods will be made by City upon proper submittal by Supplier of a billing invoice for the Goods. Supplier's billing invoice will include payments due for the original scope of work and changes. The costs of the Goods on the invoice shall reflect the prices shown in Exhibit "B", unless altered by the procedures set forth in Section 6, and each change order will be itemized on the invoice. Invoices for cost plus work, whether part of Exhibit "B" or a change order, must have subcontractor and/or supplier invoices attached to Supplier's invoice. Other format and support documents for invoices will be determined by City in advance of the first invoice cycle.

C. Payments otherwise due may be withheld by City on account of defective Goods not remedied, liens or other claims filed, reasonable evidence indicating probable filing of liens or other claims, failure of Supplier to make payments properly to its subcontractors or for material or labor, the failure of Supplier to perform any of its other obligations under the Agreement, or to protect City against any liability arising out of Supplier's failure to pay or discharge taxes or other obligations. If the causes for which payment is withheld are removed, the withheld payments will be made promptly. If the said causes are not removed within a reasonable period after written notice, City may remove them at Supplier's expense.

D. Payment for Goods or any retention will be made by City upon:

1. Submission of an invoice for satisfactory completion of the delivery of Goods in the amount defined in Exhibit "B";
2. Written acceptance of the Goods by City;
3. Delivery of all drawings and specifications, if required by City;
4. Delivery of executed full releases of any and all liens arising out of this Agreement; and
5. Delivery of an affidavit listing all persons who might otherwise be entitled to file, claim, or maintain a lien of any kind or character, and containing an averment that all of the said persons have been paid in full.

If any person refuses to furnish an actual release or receipt in full, Supplier may furnish a bond satisfactory to City to indemnify City against any claim or lien at no cost to City.

E. Acceptance by Supplier of payment pursuant to Section 8.D will constitute a waiver, release and discharge of any and all claims and demands of any kind or

character which Supplier then has, or can subsequently acquire against City, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement. However, payment by City will not constitute a waiver, release or discharge of any claims or demands which City then has, or can subsequently acquire, against Supplier, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement.

**Section 9. SCHEDULE FOR DELIVERY.**

A. The time of Supplier's performance is of the essence for this Agreement. Supplier must immediately notify City in writing any time delivery is behind schedule or may not be completed on schedule. In addition to any other rights City may have under this Agreement or at law, Supplier shall pay City the sum of \$25.00 per item of Goods for each calendar day for which the item of Goods is unavailable beyond the scheduled delivery date(s) as specified by Supplier. In the event that the Goods is part of a larger project or projects that require the coordination of multiple contractors or suppliers, then Supplier will fully cooperate in scheduling the delivery so that City can maximize the efficient completion of such project(s).

**Section 10. TAXES.**

A. Supplier agrees to timely pay all sales and use tax (including any value added or gross receipts tax imposed similar to a sales and use tax) imposed by any federal, state or local taxing authority on the ultimate purchase price of the Goods provided under this Agreement.

B. Supplier will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of any federal, state or local taxing authority which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors. Supplier will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.

C. All other taxes, however denominated or measured, imposed upon the price of the Goods provided hereunder, will be the responsibility of Supplier. In addition, all taxes assessed by any taxing jurisdiction based on Supplier property used or consumed in the provision of the Goods such as and including ad valorem, use, personal property and inventory taxes will be the responsibility of Supplier.

D. Supplier will, upon written request, submit to City written evidence of any filings or payments of all taxes required to be paid by Supplier hereunder.

**Section 11. INDEPENDENT CONTRACTOR.**

Supplier enters into this Agreement as an independent contractor and not as an employee of City. Supplier shall have no power or authority by this Agreement to bind City in any respect. Nothing in this Agreement shall be construed to be inconsistent with

this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Supplier are employees, agents, contractors or subcontractors of the Supplier and not of City. City shall not be obligated in any way to pay any wage claims or other claims made against Supplier by any such employees, agents, contractors or subcontractors or any other person resulting from performance of this Agreement.

**Section 12. SUBCONTRACTS.**

Unless otherwise specified, Supplier must obtain City's written permission before subcontracting any portion of the Goods. Except for the insurance requirements in Section 15.A, all subcontracts and orders for the purchase or rental of supplies, materials or equipment, or any other part of the Goods, will require that the subcontractor be bound by and subject to all of the terms and conditions of the Agreement. No subcontract or order will relieve Supplier from its obligations to City, including, but not limited to Supplier's insurance and indemnification obligations. No subcontract or order will bind City.

**Section 13. TITLE AND RISK OF LOSS.**

Unless otherwise agreed, City will have title to, and risk of loss of, all completed and partially completed portions of the Goods upon delivery, as well as materials delivered to and stored on City property which are intended to become a part of the Goods. However, Supplier will be liable for any loss or damage to the Goods and/or the materials caused by Supplier or its subcontractors, their agents or employees, and Supplier will replace or repair said Goods or materials at its own cost to the complete satisfaction of City. Notwithstanding the foregoing, in the event that the City has paid Supplier for all or a portion of the Goods which remains in the possession of Supplier, then City shall have title to, and the right to take possession of, such Goods at any time following payment therefor. Risk of loss for any Goods which remains in the possession of Supplier shall remain with Supplier until such Goods has been delivered or City has taken possession thereof. Supplier will have risk of loss or damage to Supplier's property used in the construction of the Goods but which does not become a part of the Goods.

**Section 14. INDEMNIFICATION.**

A. Supplier shall defend, 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, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of Supplier, its officials, officers, employees, agents, subcontractors and subconsultants arising out of or in connection with the Goods or the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

B. Supplier's defense obligation for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City,

its officials, officers, employees, agents, or volunteers shall be at Supplier's own cost, expense, and risk. Supplier shall pay and satisfy any judgment, award, or decree that may be rendered against City or its officials, officers, employees, agents, or volunteers, in any such suit, action, or other legal proceeding. Supplier shall reimburse City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

C. Supplier's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers.

## **Section 15. INSURANCE.**

A. General. Supplier shall take out and maintain:

1. Commercial General Liability Insurance, of at least \$2,000,000 per occurrence/ \$4,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01;

2. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per accident for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto);

3. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and

4. Pollution Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate shall be provided by the Supplier if transporting hazardous materials.

5. If Supplier is also the manufacturer of any equipment included in the Goods, Supplier shall carry Product Liability and/or Errors and Omissions Insurance which covers said equipment with limits of not less than \$1,000,000.

6. Privacy/Network Security (Cyber Liability), of at least \$1,000,000 per occurrence and aggregate for: (1) privacy breaches, (2) system breaches, (3) denial or loss of service, and (4) the introduction, implantation or spread of malicious software code, in a form and with insurance companies acceptable to the City.

B. Additional Insured; Primary; Waiver of Subrogation; No Limitation on Coverage. The policies required under this Section shall give City, its officials, officers, employees, agents or volunteers additional insured status. Such policies shall contain a

provision stating that Supplier's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any additional insureds shall not be called upon to contribute to any loss, and shall contain or be endorsed with a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers. 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. 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.

C. Insurance Carrier. All insurance required under this Section 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.

D. Evidence of Insurance. Supplier shall furnish City with original certificates of insurance and endorsements effecting coverage required by the Agreement. 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 delivery commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

E. Subcontractors. All subcontractors shall meet the requirements of this Section before commencing work. In addition, Supplier shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

F. Freight. Supplier shall ensure that third party shippers contracted by Supplier have adequate insurance coverage for the shipped Goods.

#### **Section 16. LIENS.**

A. Supplier, subcontractors and suppliers will not make, file or maintain a mechanic's or other lien or claim of any kind or character against the Goods, for or on account of any labor, materials, fixtures, tools, machinery, equipment, or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Agreement (such liens or claims referred to as "Claims"); and Supplier, subcontractor and suppliers expressly waive and relinquish any and all rights which they now have, or may subsequently acquire, to file or maintain any Claim and Supplier, subcontractor and suppliers agree that this provision waiving the right of Claims will be an independent covenant.

B. Supplier will save and hold City harmless from and against any and all Claims that may be filed by a subcontractor, supplier or any other person or entity and Supplier will, at its own expense, defend any and all actions based upon such Claims and

will pay all charges of attorneys and all costs and other expenses arising from such Claims.

**Section 17. TERMINATION OF AGREEMENT BY CITY.**

A. Should Supplier at any time refuse or fail to deliver the Goods with promptness and diligence, or to perform any of its other obligations under the Agreement, City may terminate Supplier's right to proceed with the delivery of the Goods by written notice to Supplier. In such event City may obtain the Goods by whatever method it may deem expedient, including the hiring of another contractor or other contractors and, for that purpose, may take possession of all materials, machinery, equipment, tools and appliances and exercise all rights, options and privileges of Supplier. In such case Supplier will not be entitled to receive any further payments until the Goods are delivered. If City's cost of obtaining the Goods, including compensation for additional managerial and administrative services, will exceed the unpaid balance of the Agreement, Supplier will be liable for and will pay the difference to City.

B. City may, for its own convenience, terminate Supplier's right to proceed with the delivery of any portion or all of the Goods by written notice to Supplier. Such termination will be effective in the manner specified in such notice, will be without prejudice to any claims which City may have against Supplier, and will not affect the obligations and duties of Supplier under the Agreement with respect to portions of the Goods not terminated.

C. On receipt of notice under Section 17.B, Supplier will, with respect to the portion of the Goods terminated, unless the notice states otherwise,

1. Immediately discontinue such portion of the Goods and the placing of orders for materials, facilities, and supplies in connection with the Goods,

2. Unless otherwise directed by City, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to City; and

3. Deliver only such portions of the Goods which City deems necessary to preserve and protect those portions of the Goods already in progress and to protect material, plant and equipment at the Goods site or in transit to the Goods site.

D. Upon termination pursuant to Section 17.B, Supplier will be paid a pro rata portion of the compensation in the Agreement for any portion of the terminated Goods already delivered, including material and services for which it has made firm contracts which are not canceled, it being understood that City will be entitled to such material and services. Upon determination of the amount of said pro rata compensation, City will promptly pay such amount to Supplier upon delivery by Supplier of the releases of liens and affidavit, pursuant to Section 8.C.



## **Section 18. FORCE MAJEURE**

A. Supplier shall not be held responsible for failure or delay in shipping nor City for failure or delay in accepting goods described herein if such failure or delay is due to a Force Majeure Event.

B. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the project site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the work); (4) pandemics, epidemics or quarantine restrictions; and (5) strikes and other organized labor action occurring at the project site and the effects thereof on the work, only to the extent such strikes and other organized labor action are beyond the control of Supplier and its subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of replacement workers. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority.

C. In the event of any such excused interference with shipments, City shall have the option either to reduce the quantity provided for in the order accordingly or to exercise its right of cancellation as set forth in this Agreement.

## **Section 19. MISCELLANEOUS PROVISIONS.**

A. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address or at such other address as the respective parties may provide in writing for this purpose:

**CITY:**

City of San Bernardino  
Vanir Tower, 290 North D Street  
San Bernardino, CA 92401  
Attn: Wanda Billbe

**SUPPLIER:**

Victor Medical Company  
50 Bunsen  
Irvine, CA 92618

**With Copy To:**

City of San Bernardino  
Vanir Tower, 290 North D Street  
San Bernardino, CA 92401  
Attn: City Attorney

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

B. Assignment or Transfer. Supplier shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the City, which will not be unreasonably withheld. Provided, however, that claims for money due or to become due Supplier from the City under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to the City.

C. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

D. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

E. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

F. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

G. Attorneys' Fees and Costs. If any action in law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party shall pay its own attorneys' fees.

H. Interpretation. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.

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

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

K. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

L. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

M. City's Right to Employ Other Suppliers. City reserves its right to employ other contractors in connection with the Goods.

N. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Goods specified herein. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement, except those contained in or referred to in the writing.

O. Electronic Signature. Each Party acknowledges and agrees that this Agreement may be executed by electronic or digital signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE TO GOODS PURCHASE AGREEMENT  
BETWEEN THE CITY OF SAN BERNARDINO  
AND VICTOR INSTRUMENTS, INC. d/b/a VICTOR MEDICAL COMPANY**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

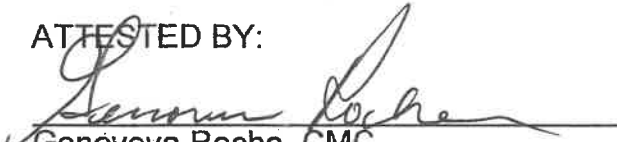
**CITY OF SAN BERNARDINO**

APPROVED BY:



Robert Field  
City Manager

ATTESTED BY:



Genoveva Rocha, CMC  
City Clerk

APPROVED AS TO FORM:



Best Best & Krieger LLP  
City Attorney

**VICTOR MEDICAL COMPANY**

APPROVED BY:



Steve Liscomb  
Vice President

ATTESTED BY:



Name



Title

**Exhibit A**  
**Goods Specifications**

Victor Medical Company provides a range of goods for animals, including veterinary pharmaceuticals, vaccines for cats and dogs, veterinary approved cleaning supplies, parasite prevention and treatment as well as veterinary equipment, including cages, scales, grooming tools and exam tables.

**Exhibit B**  
**Fee Schedule**

Item Num	Description	Unit Price	Line Total	Comment
1	Rescue concentrate 55gal – 8 barrels	\$13,772.50	\$13,772.50	
2	Canine DAPPv 25x1cc – 200 (flats of 25)	\$22,600.00	\$22,600.00	
3	Canine Bordatella 25x1cc – 200 (flats of 25)	\$22,250.00	\$22,250.00	
4	Feline FvRCP 25x1cc – 200 (flats of 25)	\$18,350.00	\$18,350.00	
5	Cefpodoximine 100mg – 2 bottles	\$70.08	\$70.08	
6	Cefpodoximine 200mg - 2 bottles	\$142.58	\$142.58	
7	Amoxicillin 250mg – 500 count – 3 bottles	\$50.55	\$50.55	
8	Amoxicillin 500mg - 500 count – 3 bottles	\$76.14	\$76.14	
9	Cephalhexin 250mg – 500 count – 2 bottles	\$46.92	\$46.92	
10	Cephalhexin 500mg – 500 count – 2 bottles	\$76.14	\$76.14	
11	Doxycycline 100mg – 500 count – 40 bottles	\$2,078.80	\$2,078.80	
12	Enrofloxacin 22.7mg – 500 count – 1 bottle	\$223.97	\$223.97	
13	Enrofloxacin 136mg – 200 count – 1 bottle	\$401.85	\$401.85	
14	Vetprofen 25mg – 180 count – 2 bottles	\$117.02	\$117.02	
15	Vetprofen 75mg – 150 count – 2 bottles	\$135.00	\$135.00	
16	Vetprofen 100mg – 180 count – 2 bottles	\$170.62	\$170.62	
17	Amoxicillin/Clavulanate Tablets 250mg – 5 boxes	\$1,034.15	\$1,034.15	
18	Amoxicillin/Clavulanate Oral Suspension 50mL--200MG/28.5MG – 6 cases	\$165.60	\$165.60	
19	3mL Luer-lock syringes with 22ga x ¾" needles attached – 10 cases	\$1,268.00	\$1,268.00	Terumo
20	6mL Luer-lock syringes – 2 box/cases	\$91.40	\$91.40	10boxes/case
21	12mL Luer-lock syringes -2 box/cases	\$236.52	\$236.52	Neogen 6box/case
22	22ga x ¾" needles – 10 cases	\$415.40	\$415.40	Exel
23	20ga x ¾" needles – 5 cases	\$207.70	\$207.70	Exel
24	18ga x 1" needles – 5 cases	\$207.70	\$207.70	Exel

25	18ga x 1 ½" needle – 5 cases	\$382.00	\$382.00	Terumo
26	Euthanasia III Solution 100mL – 36 bottles	\$1,970.64	\$1,970.64	subject to availability product on allocation from manufacturer
27	Multi-dose Vial Access Spike- 20 individual	\$38.40	\$38.40	
28	Xylazine – 2 cases	\$523.44	\$523.44	
29	Acepromazine – 2 cases	\$523.92	\$523.92	
30	Capstar (Oral Flea Medication) small dog – 5 boxes	\$1,171.50	\$1,171.50	
31	Capstar (Oral Flea Medication) large dog – 5 boxes	\$1,219.20	\$1,219.20	
32	Capstar for Cats and Kittens – 5 boxes	\$1,193.50	\$1,193.50	
33	33. Prednisone 5 mg – 1 small bottle	\$5.17	\$5.17	100 tab bottle
34	34. Gabapentin – 1 small bottle	\$10.86	\$10.86	500ct bottle
35	35. Duramax – 2 bottles	\$398.44	\$398.44	Doxidyl 100mg 90tab
36	36. Tobramycin eye drops – 48	\$130.56	\$130.56	
37	37. BNP Ophthalmic ointment – 40 tubes	\$208.80	\$208.80	
38	38. #10 blades for Oster Clippers – 5 packages of blades	\$116.85	\$116.85	5
39	39. Pyrantel Pamoate – 1 bottle	\$29.23	\$29.23	
40	40. Meloxicam 1.5mg/mL Oral Suspension 200mL bottle	\$95.15	\$95.15	subject to manufacturer shortages
41	41. Metronidazole tablets – 500 count – 1 bottle	\$29.61	\$29.61	
42	42. Pump for 55gal drum – 2 pumps	\$165.02	\$165.02	P20055
43	43. Sharps Container 7.5 Gal 30 Qt – 12 containers	\$132.96	\$132.96	7.5gal discontinued, this is 10gallon
44	44. Sharps Container 12 Qt – 12 containers	\$73.03	\$73.03	
45	45. Providone Iodine scrub 1% Gal - 1	\$22.84	\$22.84	
46	46. Canine Parvo Rapid tests – 15 boxes	\$4,449.76	\$4,449.76	
47	47. Ciproflaxin Tablets 250mg – 100 count – 2 bottles	\$11.98	\$11.98	
48	48. Ciproflaxin Tablets 750mg – 50 count – 2 bottles	\$28.42	\$28.42	
49	49. Alcohol 4 Qt./case – 2 cases	\$49.70	\$49.70	
50	50. Peroxide – 2 gallons	\$12.00	\$12.00	

53	53. Chlorhexidine scrub – 1 gallon	\$24.14	\$24.14	
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City of  
**San Bernardino**  
Animal Services Department

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TO: Charles Montoya, City Manager  
FROM: Kris Watson, Director Animal Services  
SUBJECT: Goods Purchase Agreement between the City and Victor Instruments, Inc.  
Date: December 20, 2023

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Please accept this letter as written confirmation that the City has exercised Option Year One in accordance with Section 2 of the Goods Purchase Agreement between the City and Victor Instruments, Inc. dated March 3, 2022 ("Agreement"). The Term of the Agreement shall now expire on June 30, 2024. Please also accept this letter as written confirmation of the City's approval of your updated prices in accordance with Section 6 of the Agreement. The price list attached to this letter shall serve as a replacement for Exhibit B in accordance with Section 6 of the Agreement.



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Charles Montoya  
City Manager



VETERINARY PHARMACEUTICALS  
BIOLOGICALS  
SUPPLIES & EQUIPMENT  
HUMAN PHARMACEUTICALS

A DIVISION OF VICTOR INSTRUMENTS, INC  
50 Bunsen Irvine, CA 92618 P.O. Box 1150 Lake Forest, CA 92609  
Phone: (949) 788-0330 Toll Free: 800-888-8908 Fax: (949) 585-9147

November 30, 2023

Kris Watson, MPA  
Director, Animal Services  
333 Chandler Place  
San Bernardino, CA 92401

**Re: City of San Bernardino Goods Purchase Agreement Price Changes**

Hello Kris:

I have attached a new Exhibit B Fee Schedule that reflects the price increases we discussed several weeks ago.

I believe most if not all items (apart from the vaccines) are under the 3% price increase threshold. Merck vaccine pricing is set by Merck for animal services/shelter accounts so that pricing is not determined by Victor medical Company.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Liscomb". The signature is written in a cursive, flowing style.

Steve Liscomb  
Vice President  
Victor Medical Company

## City of San Bernardino

### Exhibit B Fee Schedule Extension 2023-2024

Item Num	Description	Unit Price	Line Total	Comment
1	Rescue concentrate 55gal - 8 barrels	\$14,805.05	\$14,805.05	
2	Canine DAPPv 25x1cc - 200 (flats of 25)	\$129.50	\$25,900.00	
3	Canine Bordatella 25x1cc - 200 (flats of 25)	\$126.25	\$25,250.00	
4	Feline FvRCP 25x1cc - 200 (flats of 25)	\$105.25	\$21,050.00	
5	Cefpodoximine 100mg - 2 bottles	\$31.12	\$62.24	
6	Cefpodoximine 200mg - 2 bottles	\$65.80	\$131.60	
7	Amoxicillin 250mg - 500 count- 3 bottles	\$13.90	\$41.70	
8	Amoxicillin 500mg - 500 count - 3 bottles	\$24.95	\$74.85	
9	Cephalexin 250mg - 500 count - 2 bottles	\$24.10	\$48.20	
10	Cephalexin 500mg - 500 count- 2 bottles	\$49.55	\$99.10	
11	Doxycycline 100mg - 500 count - 40 bottles	\$42.30	\$1,692.00	
12	Enrofloxacin 22.7mg - 500 count-1 bottle	\$188.14	\$188.14	
13	Enrofloxacin 136mg- 200 count-1bottle	\$326.40	\$326.40	
14	Vetprofen 25mg -180 count - 2 bottles	\$68.28	\$136.56	
15	Vetprofen 75mg - 150 count - 2 bottles	\$78.65	\$157.30	
16	Vetoprofen 100mg-180 count- 2 bottles	\$98.77	\$197.54	
17	Amoxicillin/Clavulanate Tablets 250mg- 5 boxes	\$193.04	\$965.20	
18	Amoxicillin/Clavulanate Oral Suspension 50mL-- 200MG/28.5MG - 6 cases	\$2.18	\$156.96	
19	3mL Luer-lock syringes with 22ga x ¾" needles attached -10 cases	\$14.89	\$1,489.00	Terumo
20	6mL Luer-lock syringes - 2 box/cases	\$17.06	\$170.63	
21	12mL Luer-lock syringes -2 box/cases	\$22.35	\$268.28	Neogen 6box/case
22	22ga x ¾" needles -10 cases	\$4.56	\$455.77	Exel
23	20ga x ¾" needles - 5 cases	\$4.56	\$207.70	Exel
24	18ga x 1" needles - 5 cases	\$4.56	\$207.70	Exel
25	18ga x 1 ½" needle - 5 cases	\$9.70	\$475.02	Monoject Covidien

26	Euthanasia III Solution 100ml- 36 bottles	\$56.36	\$2,027.52	
27	Multi-dose Vial Access Spike- 20 individual	\$2.04	\$40.85	1254116
28	Xylazine - 2 cases(12)	\$28.90	\$288.84	Rompun
29	Acepromazine - 2 cases (24)	\$24.07	\$693.60	
30	Capstar (Oral Flea Medication) small dog -5 boxes	\$311.45	\$1,557.75	
31	Capstar (Oral Flea Medication) large dog -5 boxes	\$324.09	\$1,620.47	
32	Capstar for Cats and Kittens - 5 boxes	\$300.59	\$1,502.94	
33	33. Prednisone 5 mg -1 small bottle	\$2.93	\$2.93	100 tab bottle
34	34. Gabapentin -1 100mg	\$7.76	\$7.70	500ct bottle
35	Rederox 100g x 90 2 bottle	\$134.91	\$269.82	
36	36. Tobramycin eye drops- 48	\$2.72	\$130.51	
37	37. BNP Ophthalmic ointment - 40 tubes	\$5.22	\$208.82	
38	38. #10 blades for Oster Clippers - 5 blades	\$25.00	\$125.02	
39	39. Pyrantel Pamoate -1 bottle	\$34.80	\$34.80	
40	40. Meloxicam 1.Smg/ml Oral Suspension 200ml bottle	99.48	\$99.48	subject to manufacturer shortages
41	41. Metronidazole tablets - 500 count- 1 bottle	\$22.72	\$22.72	
42	42. Pump for 55gal drum - 2 pumps	\$82.51	\$165.03	P20055
43	43. Sharps Container 7.5 Gal 30 Qt -12 containers	\$12.57	\$150.82	7.5gal discontinued, this is10gallon
44	44. Sharps Container 12 Qt- 12 containers	\$6.90	\$82.80	
45	45. Providone Iodine scrub 1% Gal - 1	\$41.69	\$41.69	
46	46. Canine Parvo Rapid tests -15 boxes	\$271.40	\$4,071.00	
47	47. Ciproflaxin Tablets 250mg -100 count - 2 bottles	\$7.25	\$14.50	
48	48. Ciproflaxin Tablets 750mg - 50 count - 2 bottles	\$14.21	\$28.42	
49	49. Alcohol 4 Qt./case - 2 cases	\$24.85	\$49.70	
SO	50. Peroxide - 2 gallons	\$6.48	\$12.96	
53	53. Chlorhexidine scrub -1 gal Ct1	24.14	\$24.14	

**AMENDMENT NO. 1 TO  
GOODS PURCHASE AGREEMENT  
WITH VICTOR INSTRUMENTS, INC**

This Amendment No. 1 to the Goods Purchase Agreement is made and entered into as of May 15, 2024 (“Effective Date”) by and between the City of San Bernardino, a charter city and municipal corporation (“City”) and Victor Instruments, Inc., a corporation with its principal place of business at 50 Bunsen, Irvine CA 92618 d/b/a Victor Medical Company (“Vendor”). City and Vendor are sometimes referred to herein individually as a “Party” and collectively as “Parties.”

**RECITALS**

A. WHEREAS, the City and the Vendor have entered into an agreement, dated March 3, 2022, for the purpose of providing Veterinary Medical Supplies (the “Master Agreement”)

B. WHEREAS, the City and the Vendor have entered into Amendment No. 1 to the Master Agreement, dated May 15, 2024 for the purpose of amending the Term of the Master Agreement.

C. WHEREAS, the Parties now desire to amend the Master Agreement in order to extend the term of the Master Agreement through June 30, 2025, and to include additional funds for the continued performance of the services in accordance with the compensation provisions of the Master Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants, conditions, and promises contained in this Amendment No. 1 and the Master Agreement, the Parties mutually agree as follows:

**AGREEMENT**

1. Incorporation of Recitals. The recitals listed above are true and correct and are hereby incorporated herein by this reference.

2. Term. The term of the Master Agreement shall be extended through June 30, 2025 unless earlier terminated.

3. Compensation. Increase the total not to exceed compensation amount of the Master Agreement to \$300,000.00.

4. Full Force. Except as amended by this Amendment No. 1, all provisions of the Master Agreement, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the Parties under this Amendment No. 1.

5. Electronic Transmission. A manually signed copy of this Amendment No. 1 which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment No. 1 for all purposes. This Amendment No. 1 may be signed using an electronic signature.

6. Counterparts. This Amendment No. 1 may be signed in counterparts, each of which shall constitute an original.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE FOR  
AMENDMENT NO. 1 TO THE GOODS PURCHASE AGREEMENT  
WITH VICTOR INSTRUMENTS, INC**

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 on the Effective Date first herein above written.

**CITY OF SAN BERNARDINO**

**VICTOR MEDICAL COMPANY**

APPROVED BY:

\_\_\_\_\_  
Charles A. Montoya  
City Manager

\_\_\_\_\_  
Steve Liscomb  
Vice President

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

\_\_\_\_\_  
Rick Bills  
Director of Sales