



11/16/2021
City Council Meeting

Handouts received after
agenda posted



American Rescue Plan Act

NOVEMBER 16, 2021

MICHELLE SPEER,
ASSISTANT CITY MANAGER/ADMIN. SERVICES DIR.

HISTORY

- ▶ American Rescue Plan Act (ARPA) was signed into law by President Biden on March 11, 2021
- ▶ ARPA amended Title VI of the Social Security Act to add section 602, which established the Coronavirus State Fiscal Recovery Fund, and;
- ▶ Section 603, which established the Coronavirus Local Fiscal Recovery Fund
- ▶ On May 17, 2021 the Department of the Treasury issued the Interim Final Rule (IFR), establishing requirements for use of ARPA funding
- ▶ Issuance of the Final Rule is pending

Funding Schedule

- ▶ The City of Lemoore is expected to receive **\$6,393,188** in ARPA funding
 - ▶ The City received half of the allocation in July 2021; \$3,196,594
 - ▶ The second disbursement is expected in July 2022
- ▶ Funds may be used upon disbursement and through December 2024.
- ▶ For infrastructure projects, where funds have been committed, final disbursement must be made by December 31, 2026.

Discussion

- ▶ City Council is asked to provide direction to City Staff on projects for use of ARPA funding. City staff will bring back a resolution for adoption that will address, comprehensively, the use of program funds.
- ▶ Tonight's Goals:
 - ▶ City Council to prioritize potential projects, or any other project (allowed by the guidance) that Council would like to recommend for the remaining \$3,893,188
 - ▶ Assign potential allocations to projects for City Staff use

Eligible Uses

Within the categories of eligible uses, recipients have broad flexibility to decide how best to use funding to meet the needs of their communities.

The Interim Final Rule (and Section 603) provides that funds may be used to:

- ▶ Support public health expenditures, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff

Such services may include:

- ▶ Vaccination programs
- ▶ Testing
- ▶ Contact tracing; including personnel
- ▶ PPE purchases
- ▶ Enforcement of public health orders
- ▶ Public communication efforts
- ▶ Capital Investments in public facilities to meet pandemic operational needs

Eligible Uses

(Continued)

- ▶ Address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, impacted industries and the public sector

Eligible Expenses may include:

- ▶ Delivering assistance to workers and families
 - ▶ Aid to unemployed workers and job training
 - ▶ Assistance through funding for community health workers, remediation of lead hazards and community violence programs
 - ▶ Assistance for homelessness, affordable housing
 - ▶ Offering educational services; afterschool tutoring, etc.
- ▶ Supporting small businesses
 - ▶ Addressing financial challenges caused by the pandemic and to make investments in the prevention and mitigation of COVID-19. May include grants, loans, and in-kind assistance.

Eligible Uses

(Continued)

- ▶ Address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, impacted industries and the public sector
 - ▶ Speeding the recovery of the tourism, travel and hospitality sectors
 - ▶ Supporting industries that were particularly hard hit by COVID-19
 - ▶ Rebuilding public sector capacity
 - ▶ Rehiring public sector staff to pre-pandemic levels,
 - ▶ Building internal capacity to successfully implement economic relief programs,
 - ▶ Building capacity for COVID-19 data analysis, outreach, technology infrastructure and impact evaluations

Eligible Uses

(Continued)

- ▶ Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors
 - ▶ The IFR establishes the authorized use of funding toward premium pay for essential workers who provided services during the pandemic.
 - ▶ Premium pay is defined as an adjustment to employee hourly wages and can be disbursed through December 2024.

Eligible Uses

(Continued)

- ▶ Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.
 - ▶ Funds may be used for an array of drinking water infrastructure projects, such as building or upgrading facilities and transmission, distribution, treatment and storage systems, including the replacement of lead service lines
 - ▶ Funds may be used for wastewater treatment, stormwater drainage projects, facilitating water reuse, and securing publicly-owned treatment works.
 - ▶ Funds may be used to build broadband infrastructure with modern technologies to deliver services offering reliable 100Mbps download, and 100Mbps upload speeds to communities that are currently unserved or underserved.

Committed Funds

- ▶ The City Council took action in October and November of 2021 to pay premium pay to city employees.
- ▶ Total commitments for premium pay are approximately \$2.5M over three fiscal years
 - ▶ FY 2022: \$1,250,000
 - ▶ FY 2023: \$790,000
 - ▶ FY 2024: \$460,000
- ▶ Premium Pay total allocations will vary depending on staff size and tax thresholds in future years.

Proposed Projects

- ▶ *Address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, impacted industries and the public sector*
 - ▶ Salary & Benefits for positions reinstated and approved by City Council in the FY 2022 adopted budget
 - ▶ Management Analyst, Human Resources and Police Office in PD
 - ▶ Total budgeted for FY 2022 is \$210,586 in the general fund
 - ▶ Positions can be funded through December 2024
 - ▶ Cost of positions may increase 5-10% in future years based on cost of workers compensation insurance, tax increases and other variables.
 - ▶ Salary & Benefits for Additional Staffing
 - ▶ Additional personnel for COVID-19 compliance

Proposed Projects

- ▶ *Support public health expenditures, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff*
 - ▶ Procurement of the Enterprise Resource Planning software (Tyler Technologies); total project cost of approximately \$1,727,140
 - ▶ Eligible expenses through December 2024 are approximately \$1,565,000
 - ▶ Tyler Technologies software will enhance public service, while reducing the need for in-person services for nearly all aspects of city functions; utility billing, recreation sign-ups and payments, building inspections, permit issuance, business license application and review, planning project review and correspondence
 - ▶ This project would also meet the criteria for allowed use #2 as technology infrastructure for COVID-19 related data, review, analysis and tracking.
 - ▶ The City budgeted \$430,000 for Tyler Technologies in the FY 2022 adopted budget.

Proposed Projects

- ▶ *Support public health expenditures, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff*
 - ▶ Allocation to the Lemoore Volunteer Fire Association for work performed during the pandemic.
 - ▶ The Lemoore Volunteer Fire Department provides services to the citizens of Lemoore by responding to fire and emergency medical service calls.
 - ▶ City Council may choose to consider a payment to the Lemoore Volunteer Fire Association as remuneration for COVID-19 related services, and continued COVID-19 responses.
 - ▶ Provide allocation to other non-profits for COVID-19 mitigation and prevention programs

Proposed Projects

- ▶ *Support public health expenditures, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff*
 - ▶ City Council may choose to set aside a portion of the ARPA funds for compliance with the pending vaccination mandates
 - ▶ Funds may be used to hire compliance staff
 - ▶ Fund testing requirements that may be imposed of unvaccinated employees
 - ▶ Cal OSHA is expected to issue the Emergency Temporary Standard related to vaccine mandates on, or near, December 5, 2021

Proposed Projects

- ▶ *Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.*
- ▶ The Water Fund has approximately \$20,000,000 in need for capital improvement projects over the next five (5) fiscal years.

Discussion

City of Lemoore Allocation Remaining: \$3,893,188

Potential Projects
ERP Software
Water Infrastructure
Lemoore Volunteer Fire Association/Non-Profits
Reinstatement of Staff
COVID Compliance

F. O. K. C.
IN COORDINATION WITH

**ASIAN VARIETY STORE
PRESENTS:**

Maligayang Pasko!

**Potluck,
kids games,
basketball,
tennis, volleyball,
karaoke contest, etc.**

Dec. 4 from 9 am to 8 pm

Heritage Park, 661 Hanford-Armona Rd, Lemoore



**Purchase Agreement
By and Between
AdEdge Water Technologies, LLC
And**

This Agreement made this 16th day of November, 2021 by and between AdEdge Water Technologies, LLC (herein referred to as "AdEdge") and The City of Lemoore (herein referred to as "Purchaser") sets forth the agreement of AdEdge to sell and the agreement of the Purchaser to purchase a modular remediation and treatment system ("System"). The Engineer/Consultant and Installer (if applicable) referred to herein are identified on the signature page below.

The terms of this Agreement are set forth in the final supplemental final Pricing Letter and/or Scope of Supply dated October 25, 2021, and are hereby incorporated and made a part of this Agreement. No change or addition to these terms and conditions of sale shall be binding upon AdEdge unless accepted in writing by AdEdge. The terms herein shall have precedence over any difference in terms provided on Purchaser's order.

Conditions of Purchase:

1. Prolonged customer delays of shipment or startup may reduce warranty period and result in charges related to storage of equipment at our or another facility.
2. Pricing is based on Scope of Supply documents provided in this Agreement. Changes in the Scope resulting from the changes initiated by Purchaser or Purchaser's Engineer/Consultant may result in a change in the purchase price. Costs and lead time of components, including but not limited to metal and PVC components, in our system are subject to change due to the volatilities of market pricing, imposed taxes and tariffs, and supply chain scarcity, therefore AdEdge reserves the right to adjust schedule and pricing to pass along any such increases.
3. This Agreement is subject to the approval of AdEdge's credit department.
4. *Basis:* The basis of the system design encompassed by this Agreement is the water quality data provided to AdEdge by the Purchaser or the Engineer/Consultant from the site at city well locations. Following the execution of this Agreement, AdEdge will work with the Engineer/Consultant or Purchaser to complete the final design of the system as required. Modifications or additions to the proposed systems are allowable, but may result in a change in the purchase price.
5. *Delays / Schedule:* AdEdge has presented its offer and firm pricing in this Purchase Agreement for a system that will be fabricated within provided project specific schedule. If after execution of the contract, Purchaser delays the equipment fabrication for whatever reason beyond four (4) months (including that from late payments) AdEdge reserves the right to assess reasonable escalation charges in the form of a change order to the project at the rate of 1% of the contract value per month for each month the project is delayed after four (4) months and/or adjust prices to pass on materials cost increases which exceed 5% incurred due to customer fabrication delays over four (4) months.
6. In the event the terms herein are impacted or governed by the terms of an agreement between the Purchaser and their customer, the Purchaser agrees to provide said underling contract to AdEdge to allow contradictory delivery, payment or other terms to be reconciled with the terms herein.
7. *Force Majeure:* AdEdge shall not be in default of this Agreement or liable for a failure to perform, resulting from an act or event beyond their reasonable control and not caused by its fault, negligence, lack of due diligence or failure to follow reasonable prudent practices, acts of God, invasion, insurrection, riot, war, military authority, fire, flood, strike, or labor difficulty ("Force Majeure"), if (1) AdEdge promptly notifies Purchaser of the event and probable consequences, (2) exercised reasonable effort to minimize disruption; and (3) timely resumes performance. AdEdge shall not be liable for loss, damage or delay resulting from a Force Majeure event.
8. *Cancellation:* Once executed, this Agreement may be cancelled only with the written consent of AdEdge and on terms that will indemnify them from loss and provide compensation for time spent and committed costs including design and engineering spent to date. Any equipment or material purchased as a part of the Scope of Supply and/or fabricated as set forth in the design and Scope of Supply for Purchaser cannot be returned without the express written permission of AdEdge and on terms acceptable to AdEdge. Such items that can be returned shall also be subject to restocking fees that apply.
9. *Equipment / System Warranty:* AdEdge warrants the equipment provided hereunder to be free of defects in workmanship or material for a period of twelve (12) months from the date of start-up of the equipment or eighteen (18) months from the

date of shipment (FOB shipping point) whichever is sooner. During the warranty period, AdEdge's obligation is to replace or repair any part of the system or components supplied by AdEdge, which, under normal or proper use proves to be defective in workmanship or material upon examination by AdEdge. Unless determined in writing, defective system components must be returned to AdEdge for inspection or customer will be billed for such. Return of such system component shall be FOB AdEdge's plant. Prolonged customer delays of shipment or startup may result in a reduction of the warranty period.

10. *Warranty Exclusions and Conditions:* Excluded from this warranty are expendables or consumables such as bag filters, chemicals, and other one-time use items. Damage to equipment as a result of lightning strikes or other force majeure that are excluded. This warranty also excludes labor or installation of such components determined to be defective after 30 days from the date of startup. AdEdge will provide guidance on proper re-installation of a replacement part. If the Purchaser or site operator is not able or willing to install the component, AdEdge or a chosen local AdEdge subcontractor can provide this labor / installation service at an additional cost at standard billing rates. Current Field Service Technician rates are \$950/day plus expenses and will be billed upon completion of the field work under a written work order. Notwithstanding any stipulated contractual obligations requiring a retainage period before final payment, activation of this warranty is contingent upon full and complete payment of the purchase price to AdEdge per the terms herein. The warranty period for repaired or replaced parts of the system shall extend through the unexpired period of the original warranty. ADEGE MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY GOODS OR SERVICES OTHER THAN THE FOREGOING WARRANTIES INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES THAT MAY ARISE FROM THE COURSE OF DEALING BETWEEN THE PARTIES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED BY ADEGE AND WAIVED BY PURCHASER.
11. *Liability Limitation.* In no event shall AdEdge be liable, whether based in contract, warranty, indemnity, tort, strict liability or any other theory of law or equity, for any special, incidental, indirect, punitive, exemplary or consequential damages, including, but not limited to, lost profits, loss of use of property or equipment, downtime, loss of third party contracts or lost production, regardless of whether or not it was advised of the possibility of such damages. In addition, AdEdge's maximum aggregate liability (whether in contract, warranty, indemnity, tort, strict liability or any other theory of law or equity) for damages or loss, howsoever arising or caused, shall in no event exceed the amount Purchaser paid to AdEdge for the goods or services to which the liability relates. The parties recognize that the pricing associated with goods and services reflects this allocation of risk and is the basis of the bargain between the parties. The foregoing limitations shall be valid and enforceable, notwithstanding any alleged failure of essential purpose of the limited remedies set forth herein.
12. *Performance:* The treatment system provided hereunder is designed based on, and its performance predicated on, accurate flow and raw water quality analysis from Purchaser or Purchaser's Engineer/Consultant. Performance warranties can be provided supplemental to this Purchase Agreement only if such analysis proves accurate and complete. Effluent quality from the treatment system assumes the water quality provided in the solicitation from Purchaser is consistent with the water quality provided in the contract documents for which the design of this system is based. The results of the treatment are also dependent on water temperature not exceeding 90° F and that the water, prior to treatment, is sufficiently free of excess turbidity, oil, color, organic matter, bacteria and algae to avoid fouling of the treatment system or media. To evaluate potential warranty or performance claims, it is essential that the Purchaser's operator or agent obtain and provide appropriate performance samples and maintain regular operating logs documenting system performance. Purchaser or its agent must operate the equipment, provided hereunder, strictly in accordance with the instructions provided at startup by AdEdge and/or written operating instructions furnished by AdEdge in order to qualify under the warranty.
13. *Payment Terms:* Terms of payment are specified in the Pricing Letter and/or Scope of Supply attached hereto. All payments shall be in U.S. Dollars. AdEdge reserves the right to assess interest at the maximum rate allowable by law and recover all costs of collection from Purchaser for any past due accounts. In the event of late payment by Purchaser, AdEdge reserves the right to accelerate payments due for work completed, and cease further work, until such accounts are brought current. In the event Purchaser delays delivery, storage charges may be charged to Purchaser by AdEdge. In the event the financial condition of the Purchaser changes as evidenced by the continued credit monitoring by AdEdge's credit department, AdEdge may, at its discretion, suspend production on all or part of the System referenced herein and may require full or partial payment in advance and may choose to cancel any order outstanding and receive reimbursement for reasonable cancellation charges. In the event of bankruptcy or insolvency of Purchaser, AdEdge may cancel any outstanding order and all outstanding invoices shall become due and payable immediately. All payments shall be made to AdEdge at a location specified by AdEdge, currently 2055 Boggs Road, Duluth, Georgia, 30096.
14. *Delivery:* Delivery of the System shall be made F.O.B. shipping point unless stated otherwise in the Contract Letter. Risk of loss shall pass to Purchaser upon delivery of the System to carrier. The System shall retain its character as personal property regardless of mode of attachment. Title and ownership of the System shall remain vested in AdEdge until the entire purchase price has been paid in full. Purchaser agrees to do all acts necessary to allow AdEdge to perfect the security interest in the System until AdEdge receives such payment in full. Purchaser consents to AdEdge filing financing statements as required to perfect its lien against the System. Customer requested delays for shipment of a completed system, amounting to a period of 30 days or more, will be subject to storage fees of \$250 per week/\$1000 per month. Additionally, if off-site storage arrangements are required because our Duluth, GA warehouse facility is at capacity, all applicable charges become customer responsibility.

Shipment Claims & Documentation: Purchaser shall be responsible for inspecting all goods shipped to Purchaser by AdEdge. Purchaser shall note any damaged shipping on the Bill of Lading. All shipments must be checked in and inspected by Purchaser within 24 hours and noted and reported back promptly to AdEdge.

15. *Taxes:* Purchaser shall be responsible for any present or future sales, use, excess, value added or other taxes associated with sales of the System to Purchaser unless a tax exempt certificate acceptable to the taxing authority is provided to AdEdge. AdEdge will collect the tax from Purchaser and remit to the proper taxing authority. Purchaser shall be responsible for the payment of any other tax, custom, fee, duty, levy or assessment resulting from the sale of the System to Purchaser by AdEdge. In the event any tax or rate of tax increases after the execution of this agreement, AdEdge shall invoice and Purchaser agrees to pay, the increased tax required to be collected by AdEdge and remitted to the taxing jurisdiction.
16. *Startup and Commissioning:* Startup shall be scheduled after Startup and Commissioning Planning process is completed successfully in accordance with AdEdge's Standard Operating Procedures. This includes conducting a conference call between AdEdge, the contractor, engineer, and customer or any combination thereof. Startup is typically scheduled no less than two weeks after the successful completion of the SCP process. Upon determination that the site and client are ready for AdEdge to arrive on site to perform startup and commissioning, AdEdge will schedule travel for their field service personnel for a pre-determined number of days onsite per contract requirements. A day is defined as a maximum of 8 hours per day on site, excluding travel to the site. Should the duration of startup need to be extended due to customer unpreparedness of any kind, the customer will be charged for the additional day(s) or any portion thereof at the rate of \$950/day plus expenses.
17. *Terms Final; Enforcement.* The terms and conditions herein supersede all previous understandings, agreements or arrangements relating to the System, either written or oral, between Purchaser and AdEdge. No waiver, alteration, change or deletion shall be binding upon the parties hereto unless in writing and signed by an authorized representative of AdEdge. Should any term or condition herein prove unenforceable, all other terms and condition contained herein shall remain in full force and effect. All rights and obligations of the parties hereto shall be construed under the laws of the State of Georgia. Any dispute arising from this contractual relationship shall be governed by Georgia law, and shall be decided solely and exclusively by State or Federal courts located in Atlanta, Georgia. In the event any dispute, arbitration, litigation or controversy arises out of or in connection with this Agreement between the parties hereto, the prevailing party in such dispute, arbitration, litigation or controversy shall be entitled to recover from the other party all reasonable attorneys' fees, expenses and suit costs, including those associated with any appellate or post-judgment collection proceedings.
18. *Indemnification:* Purchaser shall indemnify and hold harmless AdEdge, its officers, employees, and agents, against all claims, liabilities, losses, damages and expenses, of every character and kind whatsoever, for property damage, bodily injury, sickness and/or disease, including death, sustained by any person or entity, if such claim, liability, loss, damage or expense arises out of or is in any way connected, directly or indirectly with this Agreement, except to the extent such loss, damage, injury, sickness or disease results from the gross negligence or willful misconduct of AdEdge.
19. *Proprietary Information:* All intellectual property supplied or furnished by AdEdge to Purchaser hereunder ("Intellectual Property") is proprietary and remains the exclusive property of AdEdge and is to be used by Purchaser only for the purpose of operating and maintaining the equipment and are not to be used for the manufacture of similar equipment or any other use, and shall under all circumstances be kept confidential by Purchaser and shall not be disclosed to anyone except Purchaser's attorneys, consultants, contractors, engineers or any other person or entity assisting Purchaser in connection with the design, installation, operation or maintenance of the treatment facilities. Such persons shall be instructed by the Purchaser to maintain all Intellectual Property as confidential. Purchaser may provide AdEdge drawings to regulatory agencies with jurisdiction over Purchaser that requests such drawings. Purchaser will make reasonable efforts when supplying AdEdge drawings to a regulatory agency to have that regulatory agency maintain the confidentiality of the drawings. Purchaser may also disclose AdEdge drawings if required to comply with a court or regulatory agency order. Any and all inventions, discoveries or development of other intellectual property shall be and remain the property of AdEdge. For these purposes, the term "Intellectual Property" shall mean, all of AdEdges patents, patent applications, patent rights, copyrights, moral rights, algorithms, devices, application programming interfaces, databases, data collections, diagrams, inventions, methods and processes (whether or not patentable), know-how, trade secrets, trademarks, service marks and other brand identifiers, network configurations and architectures, proprietary information, protocols, schematics, specifications, software (in any form, including source code and executable code), techniques, interfaces, URLs, web sites, works of authorship, and all other forms of technology, in each case whether or not registered with a governmental entity or embodied in any tangible form and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world in any way arising prior to or during the term of this Agreement.
20. Purchaser agrees that for a period of one (1) year following completion of the scope of work by AdEdge, Purchaser shall not hire or contract with any AdEdge employee or subcontractor assigned to perform duties in connection with this Agreement.
21. If either party defaults in any of its obligations under this Agreement, the non-defaulting party shall notify the other party of the alleged default in writing. Upon receipt of said written notification, the alleged defaulting party shall have a reasonable period of time, but not less than ten (10) business days, to cure any such default.

22. Any waiver by either party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of any subsequent breach of the same provision or condition.
23. If any section, subsection, paragraph, clause or sentence of this Agreement shall be adjudged illegal, invalid or unenforceable, such event shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.
24. The covenants and agreements contained herein shall be binding on the parties hereto, respective successors and assigns.
25. This Agreement may be executed in counterparts.

The parties hereto acknowledge that the signatory below is authorized to represent the respective party and bind that party to the terms and conditions contained herein.

Acceptance by Purchaser:

By: _____
Signature

Name (print): _____

Title: City Manager

Date of Acceptance: _____

Purchase Order #: _____

AdEdge Water Technologies, LLC.
2055 Boggs Road
Duluth, Georgia 30096
678-835-0052 Fax: 678-835-0057

By: _____
Signature

Name (print): _____

Title: _____

Date of Acceptance: _____

Authorized individuals for changes to Scope of
Work

Purchaser's Bill to and Notices to:

Contact(s) _____

Email(s) _____

Phone #(s) _____

Mailing Address: _____

Engineer/Consultant (if applicable)

Contact(s) _____

Email(s) _____

Phone #(s) _____

Mailing Address: _____

PLEASE RETURN THE FOLLOWING ITEMS WITH THIS EXECUTED CONTRACT:

- (1) A completed Credit References Document (A copy is attached herein)
- (2) A copy of your Sales Tax Exemption Certificate (if applicable)