

RESOLUTION NO. 5305

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A
CONTRACT WITH SMEAL HOLDING, LLC FOR THE PURCHASE OF A
2017 TYPE I FIRE ENGINE AT A COST OF \$533,230.62**

WHEREAS, the City's current reserve Fire Engine (E-137) is at the end of its useful service life and needs to be replaced; and

WHEREAS, in January of 2017, the City Council approved and authorized the execution of a purchase agreement for a new Type 1 Engine from the Smeal Fire Apparatus Company ("Smeal"), funded by a combination of FEMA AFG grant funds (\$342,182.00) and a loan from the City's water and/or wastewater enterprise fund (\$190,435.70) and utilizing the City of Soledad In-Lieu Purchase Exception, as set forth in Municipal Code Section 3.24.040(C); and

WHEREAS, prior to the time that the purchase documents were fully executed with Smeal, Smeal was purchased by Spartan Motors USA Inc., with the resulting formation of a new entity known as Smeal Holding, LLC; and

WHEREAS, Smeal Holding, LLC has agreed to honor all of the terms and conditions of the previously approved purchase agreement between the City and Smeal, and Staff has verified that Smeal Holding LLC can provide the desired fire engine within the City's strict time constraints; and

WHEREAS, the total purchase price for the fire engine will increase by \$612.92, due to the application of a new sales tax rate of 8.75% as opposed to 8.65%, but the possibility of this modification was already contemplated in the previously approved agreement with Smeal.

NOW THEREFORE, BE IT HEREBY RESOLVED, by the City Council of the City of Soledad that the City approves and authorizes the City Manager to execute a contract for the purchase of a 2017 Type 1 Fire Engine, pursuant to the terms and conditions previously authorized by the Council in January of 2017, with Smeal Holding, LLC for a total adjusted cost of \$533,230.62. A copy of the new agreement is attached hereto as "Exhibit "A" and by this reference is incorporated herein. Any prior authorization pertaining to the purchase of said vehicle from Smeal Fire Apparatus Company is hereby rescinded in its entirety.

PASSED AND ADOPTED by the City Council of the City of Soledad at a Special meeting duly held on the 21st of June, 2017 by the following vote:

AYES, and in favor thereof, Councilmembers: Carla Stewart, Christopher Bourke, Anna Velazquez, Mayor Pro Tem Alejandro Chavez and Mayor Fred Ledesma

NOES, Councilmembers: None

ABSENT, Councilmembers: None

ABSTAIN, Councilmembers: None



FRED J. LEDESMA, Mayor

ATTEST:



MICHAEL McHATTEN, City Clerk



610 WEST 4TH ST. - P.O. BOX 8
 SHYDER, NEBRASKA 68564
 smeal.com
 (402) 568-2221

SALES CONTRACT

WE BUILD RESPECT.

(Standard)

7.1 California Taxes. The total above does not include applicable California State and Local sales tax. All applicable California State and Local sales tax will be added to the number above and invoiced at the time of completion of the apparatus. Based on the purchase price above and using current tax rates the tax on the purchase price of the apparatus would be \$ 42,903.62 Dollars.

8. PAYMENT. The purchase price shall be paid in the following manner:

1. Payment shall be made at final inspection

2. Sales Tax Rate of 8.75% is not figured in the above pricing. Sales tax shall be applied to the final invoice. If the Sales Tax rates change from the time of invoice the new rate shall be applied.

All checks must be made payable to Holding LLC. only and delivered to Seller at its offices. Under no circumstances shall payment be made to a dealer or anyone else as Seller's agent. Smeal Holding LLC. is the only authorized payee. Any representation that payment is to be made to any other party is absolutely unauthorized.

9. SELLER'S REPRESENTATIONS. All representations made and/or actions taken by a dealer or agent either before or after execution of this Sales Contract are not binding on the Seller. This Sales Contract in order to be effective and binding upon Seller must be signed and accepted by an authorized officer of Seller. The effective date of this Sales Contract will be the date it is signed and accepted by the Seller.

City of Suledad 6/30/17 [Signature]

10. BUYER'S REPRESENTATIONS. Buyer is the ~~Fire Department~~ and has the power and authority to enter into this Sales Contract and perform its obligations hereunder; this Agreement has been duly authorized, executed and delivered by Buyer and is the valid, enforceable and binding obligation of Buyer; and Buyer represents that there are no warranties, agreements or understandings, written or oral, which in any manner alter, abridge or conflict with the terms of this Sales Contract. Buyer represents that the individuals listed below have authority to sign all documents including but not limited to, all change orders on behalf of Buyer.

Contract Buyer (Name) Authorized for Changes 1

Contract Buyer (Name) Authorized for Changes 2 (if applicable)

Contract Buyer (Name) Authorized for Changes 3 (if applicable)

11. DELAY ON PERFORMANCE. Seller's Performance under this Sales Contract is subject to delays resulting from strike, insurrection, war, accidents, fires, floods, commandeering of plant or other demands of governmental authority, delays in transportation, or materials, delays in receipt of information when clarifications are requested, and all other causes beyond the control of Seller.

12. TESTING. In the event Buyer wishes to test the apparatus, such test shall be made within ten (10) days after arrival of the apparatus at its destination. A written report of any and all tests shall be promptly forwarded to Seller. If Buyer fails to test within this time limit and/or fails to forward test



610 WEST 4TH ST. - P.O. BOX 8
SKYDER, NEBRASKA 68864

smeal.com
(402) 568-2224

SALES CONTRACT

WE BUILD RESPECT.

(Standard)

results to Seller, the apparatus shall be considered as fully complying with contract specifications as described in paragraph 3.

13. **TITLE.** All apparatus shall remain the property of Seller until the purchase price is paid in full. In the event of default in payment, Seller may take full possession of all apparatus sold hereunder and any payments that have been made shall be forfeited and/or considered as rental for the use of the apparatus up to date of taking possession.

14. **MISCELLANEOUS.** The following miscellaneous provisions shall apply to this Sales Contract:

14.1 **Entire Agreement.** This Sales Contract, and the specifications and warranty attached hereto sets forth the entire agreement between the parties and there are no promises, agreements, conditions or understandings, either oral or written between them that are other than as herein set forth. Except as herein otherwise provided, no subject alteration, amendment, change or addition to this Sales Contract shall be binding upon either Seller or Buyer unless reduced to writing and signed by them.

14.2 **Severability.** If any term, covenant or condition of this Sales Contract, or any application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Sales Contract or application of such term, covenant or condition to persons or circumstances other than those as to which it is held as invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Sales Contract shall be valid and enforceable to the fullest extent permitted by law.

14.3 **Binding Effect.** This Sales Contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Except with the written consent of the other party hereto, no person shall take any action which will allow any right hereunder to be assigned or held by any other person.

IN WITNESS WHEREOF, this Sales Contract has been duly executed by the parties hereto on the date set forth opposite their name.



810 WEST 4TH ST. - P.O. BOX 8
SHYDER, NEBRASKA 68664

smeal.com
402) 568-2221

WE BUILD RESPECT.

SALES CONTRACT

(Standard)

To be completed by the Authorized Smeal Distributor

By: x _____

Date: ____/____/____

Fire Apparatus Solutions

Scott Beck

Sales Manager

Mailing Address of Customer:

City of Soledad

248 Main Street/PO Box 156

Soledad, CA 93960



610 WEST 4TH ST. - P.O. BOX 8
SHYDER, NEBRASKA 68664
smeal.com
(402) 569-2224


SALES CONTRACT

WE BUILD RESPECT.

(Standard)

To be completed by the Purchasing Entity

Printed Name: Michael McTotten Title: City Manager

Signature:  Date: 6/30/17

Printed Name: _____ Title: _____

Signature: _____ Date: ___/___/___

Printed Name: _____ Title: _____

Signature: _____ Date: ___/___/___

Printed Name: _____ Title: _____

Signature: _____ Date: ___/___/___

Attests: _____ Date: ___/___/___



610 WEST 4TH ST. - P.O. BOX 8
SHYDER, NEBRASKA 68664

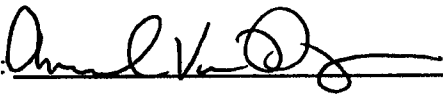
smeal.com
(402) 568-2224

WE BUILD RESPECT.

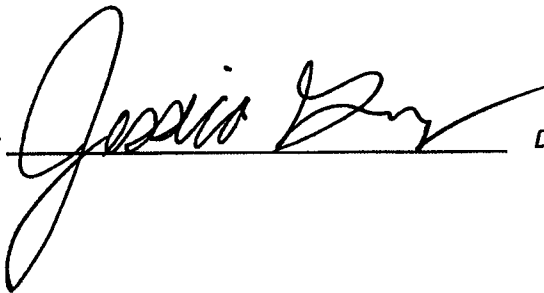
SALES CONTRACT

(Standard)

To be completed by Smeal Holding LLC.

By:  Date of Acceptance: 07, 24, 2017

Smeal Holding LLC.

Attests:  Date: 07, 24, 2017



610 WEST 4TH ST. - P.O. BOX 8
SHYDER, NEBRASKA 68664

smeal.com
(402) 566-2224

WE BUILD RESPECT.

SALES CONTRACT

SALES CONTRACT

(California)

This Sales Contract is made and entered into by and between Smeal Holding LLC (Smeal), a wholly owned subsidiary of Spartan Motors, USA Inc., Seller and Customer Name City of Soledad Fire Department, ^{Rus} Buyer. 4/30/17

PRODUCT DESCRIPTION:

One Spartan/Smeal Urban Interface Engine So # 4662, per attached Specifications, FOB Soledad, CA

PURCHASE. Buyer does hereby agree to purchase and accept delivery of the apparatus described in the Smeal Holding LLC. Proposal attached hereto, which is made a part hereof by this reference, upon the following terms and conditions:

1. **ACCEPTANCE.** This Sales Contract shall become a contract and a binding obligation only when accepted by the Seller as provided in paragraph 9 hereof.
2. **COMPLETION.** The Smeal supplied apparatus and equipment, excluding dealership supplied equipment, covered by this contract will be completed on or before August 10th, 2017 or \$150 dollar a day penalty shall be enforcece, after written acceptance of this Sales Contract by the Seller, or as soon thereafter as is consistent with good workmanship and subject to any and all delays resulting from causes beyond the control of Seller, and contingencies set out in paragraph 11 hereof. It is understood by both the Seller and the Buyer that *Change Orders* executed after contract acceptance will delay delivery.
3. **SPECIFICATIONS.** The attached Smeal Proposal, shall control the construction of the apparatus and be binding upon both Buyer and Seller, notwithstanding any other specifications or proposals whether written or oral heretofore supplied, considered or discussed. If there is any conflict between Buyer's specifications and the attached Proposal, the attached Proposal and specifications will control and prevail.
4. **WARRANTY.** The attached warranty or warranties shall apply to this agreement:

Contract Warranty Description

(Copies may be attached.)



610 WEST 4TH ST. - P.O. BOX 8
 SNYDER, NEBRASKA 68664
 smeal.com
 (402) 556-2221

SALES CONTRACT

WE BUILD RESPECT.

(Standard)

5. PERFORMANCE BOND. The following bonding provisions are applicable:

Performance Bond NOT required.

Performance Bond Required - Performance Bond (Surety Bond) will cover standard one year warranty period only and will not cover extended warranties offered by seller or other component manufacturer.

EXCEPT AS SPECIFICALLY PROVIDED ABOVE, SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT ARISE BY OPERATION OF LAW, COURSE OF TRADE, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

6. LIMITATION OF REMEDIES. In no event shall Seller be liable for special, incidental, or consequential damages nor for any damages which exceed the purchase price of the apparatus.

7. PRICE. Buyer agrees to pay for the apparatus described herein the total sum of:

Spelled out Contract Amount of

FOUR HUNDRED NINETY THOUSAND, THREE HUNDRED TWENTY-SEVEN DOLLARS

Dollars \$. 490,327.00

State and local sales taxes, if any, are not included in the purchase price. It is understood by both the buyer and the seller that *Change Orders* executed after contract acceptance may increase or decrease the price. The purchase price herein is based upon all applicable state and federal manufacturing law, regulations, orders, mandates and standards in effect as of the date of this Agreement (hereinafter "Standards") such as, for example, the Standards mandated by the National Fire Protection Association, tentative interim amendments to the National Fire Protection Association Standard, Underwriters Laboratories of Canada, and the Environmental Protection Agency. The purchase price shall be subject to increase due to any state or federal Standards that are adopted, issued or mandated following the date of this Agreement that require the apparatus(es) described above to be manufactured and/or delivered in compliance with such Standard(s).

Acceptance of Apparatus and Equipment shall occur immediately after completion of a final inspection by a representative of Customer at a factory location of Smeal, completion of any discrepancy list, and shipment of Apparatus and Equipment from Smeal's factory location. Upon completion of the final inspection and related discrepancy list, the Apparatus and Equipment shall be conclusively determined to be in full compliance with the terms of this Contract, including without limitation the Original Specifications.

PERFORMANCE BOND
(Maintenance Provision)

Bond No: 30013767

KNOW ALL PERSONS BY THESE PRESENTS: That we Smeal Holding, LLC
of 610 W. 4th Street, Snyder, NE 68664, Principal and
Western Surety Company, 333 S. Wabash Ave., Chicago, IL 60604, Surety, are held and firmly bound unto
City of Soledad, 525 Monterey St., Soledad, CA 93960, Oblige, in the sum of
Four hundred ninety thousand three hundred twenty-seven and 00/100 Dollars (\$ 490,327.00)
for the payment of which we bind ourselves, our legal representatives, successors and assigns, jointly and severally, firmly by
these presents.

WHEREAS, Principal has by written agreement dated 7/24/2017 entered into a contract
with Oblige for 1 - Smeal/Spartan Urban Interface Engine as per specifications.

_____ in accordance
with drawings and specifications prepared by _____,
which contract is by reference made a part hereof, and is hereinafter referred to as the contract.

Now, therefore, if principal shall faithfully perform said contract and guarantee that the work will be free of defective materials and
workmanship for a period of one year (12) months following completion of the contract, then this obligation
shall be null and void. Any additional warranty or guarantee whether expressed or implied is extended by the principal or
manufacturer only, and the Surety assumes no liability for such a guarantee.

Whenever Principal shall be, and be declared by Oblige to be in default under the contract, the Oblige having performed
Oblige's obligations thereunder:

- (1) Surety may promptly remedy the default subject to the provisions of paragraph 3 herein, or;
- (2) Oblige after reasonable notice to Surety may, or Surety upon demand of Oblige may arrange for the performance of
Principal's obligation under the contract subject to the provisions of paragraph 3 herein;
- (3) The balance of the contract price, as defined below, shall be credited against the reasonable cost of completing
performance of the contract. If completed by Oblige, and that reasonable cost exceeds the balance of the contract
price, Surety shall pay the Oblige such excess, but in no event shall the aggregate liability of the Surety exceed the
amount of this bond. If Surety arranges completion or remedies the default, that portion of the balance of the contract
price as may be required to complete the contract or remedy the default and to reimburse Surety for its outlays shall be
paid to Surety at the times and in the manner as said sums would have been payable to Principal has there been a no
default under the contract. The term "balance of the contract price," as used in this paragraph, shall mean the total
amount payable by Oblige to Principal under the contract and any amendments thereto, less the amounts heretofore
properly paid by Oblige under the contract.

Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which
the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the
Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond,
whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available
to sureties as a defense in the jurisdiction of the suit shall be applicable.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Oblige named herein or
the heirs, executors, administrators or successors of the Oblige.

Signed, sealed, and dated 8/30/2017

Smeal Holding, LLC

by Ann L. V. [Signature] (Principal) (Seal)

Western Surety Company

by Justin Haan [Signature] (Surety) Attorney-in-Fact

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Max B Van Wyk, Patricia A Zuk, Linda L De Vries, Alison L Van Wyk, Justin Haan, Individually

of Grand Rapids, MI, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 1st day of August, 2017.



WESTERN SURETY COMPANY

Paul T. Bruflat
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 1st day of August, 2017, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
June 23, 2021



J. Mohr
J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 30th day of August, 2017.



WESTERN SURETY COMPANY

L. Nelson
L. Nelson, Assistant Secretary

