

A CONTRACT BETWEEN  
**HOUSTON-GALVESTON AREA COUNCIL**  
Houston, Texas  
AND  
**GAPVAX, INC.**  
Johnstown, Pennsylvania

This Contract is made and entered into by the **Houston-Galveston Area Council of Governments**, hereinafter referred to as **H-GAC**, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND, **GapVax, Inc.**, hereinafter referred to as the **CONTRACTOR**, having its principal place of business at 575 Central Avenue, Johnstown, Pennsylvania 15909.

**ARTICLE 1: SCOPE OF SERVICES**  
The parties have entered into a **Sewer Cleaning, Hydro-Excavating, Inspection Equipment & Miscellaneous Services** Contract to become effective as of January 1, 2018, and to continue through December 31, 2020 (the "Contract"), subject to extension upon mutual agreement of the **CONTRACTOR** and **H-GAC**. **H-GAC** enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as **END USER**, for the purchase of **Sewer Cleaning, Hydro-Excavating, Inspection Equipment & Miscellaneous Services** offered by the **CONTRACTOR**. The **CONTRACTOR** agrees to sell **Sewer Cleaning, Hydro-Excavating, Inspection Equipment & Miscellaneous Services** through the **H-GAC** Contract to **END USERS**.

**ARTICLE 2: THE COMPLETE AGREEMENT**  
The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Bid Specifications No:SC01-18, including any relevant suffixes
4. **CONTRACTOR's** Response to Bid No:SC01-18, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

**ARTICLE 3: LEGAL AUTHORITY**  
**CONTRACTOR** and **H-GAC** warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

**ARTICLE 4: APPLICABLE LAWS**  
The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

**ARTICLE 5: INDEPENDENT CONTRACTOR**  
The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of **H-GAC** or **CONTRACTOR**. No provision of this Contract or act of **H-GAC** in performance of this Contract shall be construed as making **CONTRACTOR** the agent, servant or employee of **H-GAC**, the State of Texas or the United States Government. Employees of **CONTRACTOR** are subject to the exclusive control and supervision of **CONTRACTOR**. **CONTRACTOR** is solely responsible for employee payrolls and claims arising therefrom.

**ARTICLE 6: END USER AGREEMENTS**  
**H-GAC** acknowledges that the **END USER** may choose to enter into an End User Agreement with the **CONTRACTOR** through this Contract and that the term of said Agreement may exceed the term of the **H-GAC** Contract. However, this acknowledgement is not to be construed as **H-GAC's** endorsement or approval of the End User Agreement terms and conditions. **CONTRACTOR** agrees not to offer, agree to or accept from **END USER** any terms or conditions that conflict with or contravene those in **CONTRACTOR's H-GAC** contract. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between **CONTRACTOR** and any **END USER** which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that **CONTRACTOR** will no longer be able to enter into any new End User Agreements with **END**

USERS pursuant to this Contract. Applicable H-GAC order processing charges will be due and payable to H-GAC on any End User Agreements surviving termination of this Contract between H-GAC and CONTRACTOR .

**ARTICLE 7: SUBCONTRACTS & ASSIGNMENTS**

CONTRACTOR agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to H-GAC. H-GAC reserves the right to accept or reject any such change. CONTRACTOR shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. H-GAC shall be liable solely to CONTRACTOR and not to any of its Subcontractors or Assignees.

**ARTICLE 8: EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

CONTRACTOR shall maintain during the course of its work, complete and accurate records of items that are chargeable to END USER under this Contract. H-GAC, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of CONTRACTOR. Failure to provide access to records may be cause for termination of this Contract. CONTRACTOR shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. CONTRACTOR further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that H-GAC'S duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

**ARTICLE 9: REPORTING REQUIREMENTS**

CONTRACTOR agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Bid Specifications. If CONTRACTOR fails to submit to H-GAC in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

**ARTICLE 10: MOST FAVORED CUSTOMER CLAUSE**

If CONTRACTOR, at any time during this Contract , routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to H-GAC on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to H-GAC, CONTRACTOR shall notify H-GAC within ten (10) business days thereafter of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein CONTRACTOR shall provide the same prices, warranties, benefits, or terms to H-GAC and its END USER. H-GAC shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If CONTRACTOR is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, CONTRACTOR shall within ten (10) business days notify H-GAC in writing, setting forth the detailed reasons CONTRACTOR believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. H-GAC, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between H-GAC and CONTRACTOR shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to H-GAC.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure. *EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, proposer or contractor, which are not within bidder's/ proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.*

**ARTICLE 11: SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

**ARTICLE 12: DISPUTES**

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to CONTRACTOR. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, CONTRACTOR requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this

Article, **CONTRACTOR** shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. **CONTRACTOR** may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, **CONTRACTOR** shall proceed diligently with the performance of this Contract and in accordance with **H-GAC'S** final decision.

**ARTICLE 13: LIMITATION OF CONTRACTOR'S LIABILITY**

Except as specified in any separate writing between the **CONTRACTOR** and an **END USER**, **CONTRACTOR'S** total liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify **H-GAC** described in Article 14, is limited to the price of the particular products/services sold hereunder, and **CONTRACTOR** agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will **CONTRACTOR** be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. **CONTRACTOR** understands and agrees that it shall be liable to repay and shall repay upon demand to **END USER** any amounts determined by **H-GAC**, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

**ARTICLE 14: LIMIT OF H-GAC'S LIABILITY AND INDEMNIFICATION OF H-GAC**

**H-GAC'S** liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will **H-GAC** be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless **H-GAC**, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of **CONTRACTOR'S** negligent act or omission under this Contract. **CONTRACTOR** shall notify **H-GAC** of the threat of lawsuit or of any actual suit filed against **CONTRACTOR** relating to this Contract.

**ARTICLE 15: TERMINATION FOR CAUSE**

**H-GAC** may terminate this Contract for cause based upon the failure of **CONTRACTOR** to comply with the terms and/or conditions of the Contract; provided that **H-GAC** shall give **CONTRACTOR** written notice specifying **CONTRACTOR'S** failure. If within thirty (30) days after receipt of such notice, **CONTRACTOR** shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then **H-GAC** may, at its option, place **CONTRACTOR** in default and the Contract shall terminate on the date specified in such notice. **CONTRACTOR** shall pay to **H-GAC** any order processing charges due from **CONTRACTOR** on that portion of the Contract actually performed by **CONTRACTOR** and for which compensation was received by **CONTRACTOR**.

**ARTICLE 16: TERMINATION FOR CONVENIENCE**

Either **H-GAC** or **CONTRACTOR** may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. **CONTRACTOR** may be entitled to payment from **END USER** for services actually performed; to the extent said services are satisfactory to **END USER**. **CONTRACTOR** shall pay to **H-GAC** any order processing charges due from **CONTRACTOR** on that portion of the Contract actually performed by **CONTRACTOR** and for which compensation is received by **CONTRACTOR**.

**ARTICLE 17: CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS**

**CONTRACTOR** agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by **H-GAC**, the State of Texas and the acts and regulations of any funding entity. **CONTRACTOR** agrees to notify **H-GAC** of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

**ARTICLE 18: GOVERNING LAW & VENUE**

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas. Disputes between **END USER** and **CONTRACTOR** are to be resolved in accord with the law and venue rules of the state of purchase. **CONTRACTOR** shall immediately notify **H-GAC** of such disputes.

**ARTICLE 19: PAYMENT OF H-GAC ORDER PROCESSING CHARGE**

**CONTRACTOR** agrees to sell its products to **END USERS** based on the pricing and other terms of this Contract, including, but not limited to, the payment of the applicable **H-GAC** order processing charge. On notification from an **END USER** that an order has been placed with **CONTRACTOR**, **H-GAC** will invoice **CONTRACTOR** for the applicable order processing charge. Upon delivery of any product/service by **CONTRACTOR** and acceptance by **END USER**, **CONTRACTOR** shall, within thirty (30) calendar days or ten (10) business days after receipt of payment, whichever is less, pay **H-GAC** the full amount of the applicable order processing charge, whether or not **CONTRACTOR** has received an invoice from **H-GAC**. For sales made by **CONTRACTOR** based on this contract, including sales to

entities without Interlocal Contracts, CONTRACTOR shall pay the applicable order processing charges to H-GAC. Further, CONTRACTOR agrees to encourage entities who are not members of H-GAC's Cooperative Purchasing Program to execute an H-GAC Interlocal Contract. H-GAC reserves the right to take appropriate actions including, but not limited to, contract termination if CONTRACTOR fails to promptly remit H-GAC's order processing charge. In no event shall H-GAC have any liability to CONTRACTOR for any goods or services an END USER procures from CONTRACTOR.

**ARTICLE 20: LIQUIDATED DAMAGES**

Any liquidated damages terms will be determined between CONTRACTOR and END USER at the time END USER's purchase order is placed.

**ARTICLE 21: PERFORMANCE AND PAYMENT BOND FOR INDIVIDUAL ORDERS**

H-GAC's contractual requirements DO NOT include a Performance & Payment Bond (PPB), and offered pricing should reflect this cost saving. However, CONTRACTOR must be prepared to offer a PPB to cover any specific order if so requested by END USER. CONTRACTOR shall quote a price to END USER for provision of any requested PPB, and agrees to furnish the PPB within ten business (10) days of receipt of END USER's purchase order.

**ARTICLE 22: CHANGE OF CONTRACTOR STATUS**

CONTRACTOR shall immediately notify H-GAC, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract shall be affected in any way by such change. H-GAC shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Contract.

**ARTICLE 23: LICENSING REQUIRED BY TEXAS MOTOR VEHICLE BOARD IIF APPLICABLE/**

CONTRACTOR will, for the duration of this Contract, maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Contract period, any CONTRACTOR'S license is not renewed, or is denied or revoked, CONTRACTOR shall be deemed to be in default of this Contract unless the Motor Vehicle Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to H-GAC upon request.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

Signed for Houston-Galveston  
Area Council, Houston, Texas:

  
\_\_\_\_\_  
Jack Steele, Executive Director

Attest for Houston-Galveston  
Area Council, Houston, Texas:

  
\_\_\_\_\_  
Director

Date: November 30, 2017

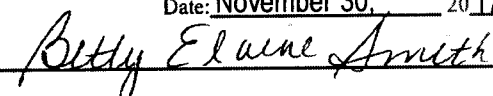
Signed for GapVax, Inc.  
Johnstown, Pennsylvania:

  
\_\_\_\_\_

Printed Name & Title: GARY A. POBORSKY President

Date: November 30, 2017

Attest for GapVax, Inc.  
Johnstown, Pennsylvania:

  
\_\_\_\_\_

Printed Name & Title: Betty Elaine Smith VP Administration

Date: November 30, 2017

**Attachment A**  
**GapVax, Inc.**  
**Sewer Cleaning, Hydro-Excavating, Inspection Equipment and Miscellaneous**  
**Services**  
**Contract No.: SC01-18**

**H-GAC PRODUCT ITEM BASE OFFERING PRICES**

| H-GAC<br>Product<br>Code | Description | Base<br>Offered<br>Price |
|--------------------------|-------------|--------------------------|
|--------------------------|-------------|--------------------------|

**GapVax**

**B. Sewer Cleaners, Positive Displacement Type, For Truck Mounting**

|             |  |              |
|-------------|--|--------------|
| <b>B001</b> | Model MC 1005, 1000 gallon water 5 yd3 debris body, single engine  | \$228,380.00 |
| <b>B002</b> | Model MC 1007, 1000 gallon water 7 yd3 debris body, single engine  | \$231,642.00 |
| <b>B003</b> | Model MC 1510, 1500 gallon water 10 yd3 debris body, single engine | \$232,538.00 |
| <b>B005</b> | Model MC 1210, 1200 gallon water 10 yd3 debris body, single engine | \$231,962.00 |
| <b>B006</b> | Model MC 1012, 1000 gallon water 12 yd3 debris body, single engine | \$232,538.00 |
| <b>B007</b> | Model MC 1312, 1300 gallon water 12 yd3 debris body, single engine | \$237,400.00 |
| <b>B008</b> | Model MC 1204, 1200 gallon water 4 yd3 debris body, single engine  | \$231,642.00 |
| <b>B009</b> | Model MC 1508, 1500 gallon water 8 yd3 debris body, single engine  | \$231,962.00 |
| <b>B010</b> | Model MC 1511, 1500 gallon water 11 yd3 debris body, single engine | \$237,400.00 |
| <b>B011</b> | Model MC 2008, 2000 gallon water 8 yd3 debris body, single engine  | \$234,969.00 |
| <b>B012</b> | Model MC1109, 1100 gallon water 9 yd3 debris body, single engine   | \$231,962.00 |

**C. Jet Rodders, For Truck & Trailer Mounting**

|              |                                |              |
|--------------|--------------------------------|--------------|
| <b>C016A</b> | Model GJET GapJet 1600 gallon  | \$138,940.00 |
| <b>C017</b>  | Model GJET GapJet, 2000 gallon | \$141,495.00 |
| <b>C018</b>  | Model GJET GapJet, 2500 gallon | \$145,325.00 |
| <b>C019</b>  | Model GJET GapJet, 3000 gallon | \$149,185.00 |

**D. Hydroexcavators, Truck & Trailer Mounted**

|             |   |              |
|-------------|---|--------------|
| <b>D003</b> | Model VHE 1005 Hydro Excavator, 1000 gal water, 5 yd3 debris        | \$194,335.00 |
| <b>D004</b> | Model VHE 1007 Hydro Excavator, 1000 gal water, 7 yd3 debris        | \$196,605.00 |
| <b>D005</b> | Model VHE 1510 Hydro Excavator, 1500 gal water, 10 yd3 debris       | \$198,155.00 |
| <b>D009</b> | Model VHE 1012 Hydro Excavator, 1000 gal water, 12 yd3 debris       | \$198,155.00 |
| <b>D010</b> | Model VHE 1312 Hydro Excavator, 1300 gal water, 12 yd3 debris       | \$201,880.00 |
| <b>D012</b> | Model VHE 1511 Hydro Excavator, 1500 gallon water, 11 yd3 debris    | \$201,880.00 |
| <b>D013</b> | Model HV-55 wet/dry hydro excavator 1000 gallon water, 12yd3 debris | \$286,145.00 |
| <b>D014</b> | Model HV-56 wet/dry hydroexcavator 1000 gal water, 15 yd3 debris    | \$287,345.00 |
| <b>D018</b> | Model VHE 1110 Hydro Excavator, 1100 gal water, 10 yd3 debris       | \$196,605.00 |
| <b>D019</b> | Model VHE 1113 Hydro Excavator, 1100 gal water, 13 yd3 debris       | \$201,880.00 |
| <b>D020</b> | Model HV-44 wet/dry Hydro Excavator 400 gal water, 12 ½ yd3 debris  | \$269,340.00 |
| <b>D021</b> | Model HV-44 wet/dry Hydro Excavator 1000 gal water, 12 ¼ yd3 debris | \$275,640.00 |
| <b>D022</b> | Model HV-44 wet/dry Hydro Excavator 1200 gal water, 12 ¼ yd3 debris | \$276,740.00 |
| <b>D023</b> | Model HV-33 wet/dry Hydro Excavator 600 gal water, 6y d3 debris     | \$284,960.00 |
| <b>D024</b> | Model HV-55 wet/dry Hydro Excavator 600 gal water, 12 yd3 debris    | \$281,545.00 |
| <b>D025</b> | Model HV-55 wet/dry Hydro Excavator 1200 gal water, 12 yd3 debris   | \$287,245.00 |

**H. Miscellaneous Sewer Equipment**

|      |  |              |
|------|--|--------------|
| H039 | GapVax Recycle Jet/Vac Sewer Cleaner, 1500 gallons, 10 1/2 yd3 | \$850,000.00 |
|------|--|--------------|