



TRACY CITY COUNCIL

REGULAR MEETING AGENDA

Tuesday, February 18, 2025, 7:00 P.M.

Tracy City Hall Chambers, 333 Civic Center Plaza, Tracy

Web Site: www.cityoftracy.org

THIS MEETING WILL BE OPEN TO THE PUBLIC FOR IN-PERSON AND REMOTE PARTICIPATION PURSUANT TO GOVERNMENT CODE SECTION 54953(e).

MEMBERS OF THE PUBLIC MAY PARTICIPATE REMOTELY IN THE MEETING VIA THE FOLLOWING METHOD:

As always, the public may view the City Council meetings live on the City of Tracy's website at CityofTracy.org or on Comcast Channel 26/AT&T U-verse Channel 99. To view from the City's website, open the "Government" menu at the top of the City's homepage and select "[City Council Meeting Videos](#)" under the "City Council" section.

If you only wish to watch the meeting and do not wish to address the Council, the City requests that you stream the meeting through the City's website or watch on Channel 26.

Remote Public Comment:

During the upcoming City Council meeting public comment will be accepted via the options listed below. If you would like to comment remotely, please follow the protocols below:

- *Comments via:*
 - o **Online by visiting** <https://cityoftracyevents.webex.com> and using the following **Event Number 2554 973 5640** and **Event Password: TracyCC**
 - o ***If you would like to participate in the public comment anonymously***, you may submit your comment in WebEx by typing "Anonymous" when prompted to provide a First and Last Name and inserting Anonymous@example.com when prompted to provide an email address.
 - o Join by phone by dialing +1-408-418-9388, enter 25549735640#8722922# Press *3 to raise the hand icon to speak on an item.
- *Protocols for commenting via WebEx:*
 - o *If you wish to comment on the "Consent Calendar", "Items from the Audience/Public Comment" or "Regular Agenda" portions of the agenda:*
 - 1) *Listen for the Mayor to open that portion of the agenda for discussion, then raise your hand to speak by clicking on the Hand icon on the Participants panel to the right of your screen.*
 - 2) *If you no longer wish to comment, you may lower your hand by clicking on the Hand icon again.*
 - o *Comments for the "Consent Calendar" "Items from the Agenda/Public Comment" or "Regular Agenda" portions of the agenda will be accepted until the public comment for that item is closed.*
 - o *Comments received on Webex outside of the comment periods outlined above will not be included in the record.*

Date Posted: February 13, 2025

Americans With Disabilities Act - The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in Council meetings. Persons requiring assistance or auxiliary aids should call City Hall (209/831-6105) 24 hours prior to the meeting.

Addressing the Council on Items on the Agenda - The Brown Act provides that every regular Council meeting shall provide an opportunity for the public to address the Council on any item within its jurisdiction before or during the Council's consideration of the item, provided no action shall be taken on any item not on the agenda. To facilitate the orderly process of public comment and to assist the Council to conduct its business as efficiently as possible, members of the public wishing to address the Council are requested to, but not required to, hand a speaker card, which includes the speaker's name or other identifying designation and address to the City Clerk prior to the agenda item being called. Generally, once the City Council begins its consideration of an item, no more speaker cards will be accepted. An individual's failure to present a speaker card or state their name shall not preclude the individual from addressing the Council. Each citizen will be allowed a maximum of five minutes for input or testimony. In the event there are 15 or more individuals wishing to speak regarding any agenda item including the "Items from the Audience/Public Comment" portion of the agenda and regular items, the maximum amount of time allowed per speaker will be three minutes. When speaking under a specific agenda item, each speaker should avoid repetition of the remarks of the prior speakers. To promote time efficiency and an orderly meeting, the Presiding Officer may request that a spokesperson be designated to represent similar views. A designated spokesperson shall have 10 minutes to speak. At the Presiding Officer's discretion, additional time may be granted. The City Clerk shall be the timekeeper.

Consent Calendar - All items listed on the Consent Calendar are considered routine and/or consistent with previous City Council direction. One motion, a second, and a roll call vote may enact the items listed on the Consent Calendar. No separate discussion of Consent Calendar items shall take place unless a member of the City Council, City staff or the public request discussion on a specific item.

Addressing the Council on Items not on the Agenda – The Brown Act prohibits discussion or action on items not on the posted agenda. The City Council's Meeting Protocols and Rules of Procedure provide that in the interest of allowing Council to have adequate time to address the agenda items of business, "Items from the Audience/Public Comment" following the Consent Calendar will be limited to 15-minutes maximum period. "Items from the Audience/Public Comment" listed near the end of the agenda will not have a maximum time limit. A five-minute maximum time limit per speaker will apply to all individuals speaking during "Items from the Audience/Public Comment". For non-agendized items, Council Members may briefly respond to statements made or questions posed by individuals during public comment; ask questions for clarification; direct the individual to the appropriate staff member; or request that the matter be placed on a future agenda or that staff provide additional information to Council. When members of the public address the Council, they should be as specific as possible about their concerns. If several members of the public comment on the same issue an effort should be made to avoid repetition of views already expressed.

Notice - A 90 day limit is set by law for filing challenges in the Superior Court to certain City administrative decisions and orders when those decisions or orders require: (1) a hearing by law, (2) the receipt of evidence, and (3) the exercise of discretion. The 90 day limit begins on the date the decision is final (Code of Civil Procedure Section 1094.6). Further, if you challenge a City Council action in court, you may be limited, by California law, including but not limited to Government Code Section 65009, to raising only those issues you or someone else raised during the public hearing, or raised in written correspondence delivered to the City Council prior to or at the public hearing.

Full copies of the agenda are available on the City's website: www.cityoftracy.org

Date Posted: February 13, 2025

CALL TO ORDER

ACTIONS, BY MOTION, OF CITY COUNCIL PURSUANT TO AB 2449, IF ANY

ROLL CALL AND DECLARATION OF CONFLICTS

PLEDGE OF ALLEGIANCE

INVOCATION

PRESENTATIONS

1. Proclamation - National Cancer Prevention Month
2. Presentations - DARE

ORDER OF BUSINESS

1. CONSENT CALENDAR

- 1.A. Adoption of February 4, 2025 Closed Session and Regular Meeting Minutes.
- 1.B. Staff recommends that the City Council adopt a resolution by a four-fifths vote (1) making a determination that compliance with standard procurement process is not in the best interest of the City and dispense the bidding requirements for the purchase of a fully self-contained pre-manufactured commercial kitchen, from McGrath RentCorp, Inc., dba Kitchens To Go by Mobile Modular, pursuant to California Public Contract Code Section 22050 and Tracy Municipal Code Section 2.20.270(a); and (2) approving a Purchase Agreement with McGrath RentCorp, Inc., dba Kitchens To Go by Mobile Modular, of Livermore, California, a California Corporation, for the fully self-contained pre-manufactured commercial kitchen, comprised of a twelve (12) foot by thirty-eight (38) foot premanufactured structure with an attached eight (8) foot by ten (10) foot dual temperature walk in cooler, to be installed as part of the Phase II 2024 Site Improvements at the Temporary Emergency Housing Facility Project, CIP 71112, at 370 W. Arbor Avenue, for a Not-To-Exceed amount of \$859,891.
- 1.C. Staff recommends that the City Council adopt a Resolution 1)authorizing the purchase of one new, unused MY 2023 Ford F-350 from Rush Truck Centers utilizing Sourcewell Cooperative Program in the amount of \$72,114 for the Building Maintenance Department and 2) declaring the existing F -250 as surplus and approving its disposition pursuant to Tracy Municipal Code Section 2.20.310.
- 1.D. Staff recommends that the City Council adopt a resolution: 1) Approving the General Services Agreement with Imperial Bag & Paper Co. LLC for the janitorial supplies and delivery services for an initial term of two-years with compensation not to exceed \$39,000 annually. 2) Authorizing an administrative extension up to an additional five (5) years contingent upon satisfactory performance and budget availability.
- 1.E. Staff recommends that the City Council adopt a Resolution authorizing the execution of a Purchase Agreement with Public Restroom Company for the purchase of a premanufactured restroom building utilizing the Sourcewell Cooperative Program in the amount of \$363,496 pursuant to Tracy Municipal Code Section 2.20.220 for CIP 78170, Gretchen Talley Park – Phase III.

- 1.F. Staff recommends that the City Council adopt a resolution: 1) Approving the General Services Agreement with Pacific Star Chemical for the supply and delivery of swimming pool chemicals for an initial term of two-years with compensation not to exceed \$42,000 per fiscal year. 2) Authorizing an administrative extension up to an additional five (5) years contingent upon satisfactory performance and budget availability.
- 1.G. Staff recommends that the City Council adopt the following, each by separate resolution: (A) approving an On-Call List, for five years, of six qualified consultants for Entitlements and Land Development Plan Checking Engineering Services; and (B) approving (1) the execution of three separate Master Professional Services Agreements, each with an initial term of three years and a not-to-exceed fiscal year amount of \$600,000, with each of the listed qualified consultants: SNG & Associates, Inc., HALEY & ALDRICH, Inc., and NV5, Inc., and (2) an administrative extension for up to two years based on satisfactory performance for each Master Professional Services Agreement, if needed.
- 1.H. Staff recommends that the City Council adopt a Resolution (1) accepting public improvements required pursuant to the Subdivision Improvement Agreement for Tract 3788 Tracy Hills Village 1A as complete and assume responsibility for the future maintenance and repairs, (2) authorizing the City Engineer to release the Developer furnished bonds in accordance with the Subdivision Improvement Agreements, and (3) authorizing the City Clerk to file Notices of Completion for Tract 3788 Tracy Hills Village 1A as amended, and Tract 3788 Tracy Hills Village 1A (for Parkway Landscaping) with the San Joaquin County Recorder's Office.
- 1.I. Staff recommends that the City Council adopt a resolution (1) accepting public improvements required pursuant to the Subdivision Improvement Agreement for Tract 3943 Tracy Hills Village 1B as complete and assume responsibility for the future maintenance and repairs, (2) accepting additional public improvements for Parkway Landscaping for Tract 3943 Tracy Hills Village 1B as complete and assume responsibility for the future maintenance and repairs, (3) accepting public improvements for Tracy Hills Phase 1A Palmer Street Extension as complete and assume responsibility for the future maintenance and repairs, (4) authorizing the City Engineer to release the Developer furnished bonds in accordance with the Improvement Agreements, and (5) authorizing the City Clerk to file Notices of Completion for Tract 3943 Tracy Hills Village 1B, as amended, Tract 3943 Tracy Hills Village 1B (for Parkway Landscaping), and Tracy Hills Phase 1A Palmer Street Extension with the San Joaquin County Recorder's Office.
- 1.J. Staff recommends that the City Council adopt a Resolution 1) approving permits under Tracy Municipal Code Chapter 4.40, to allow the consumption of alcoholic beverages on City streets for the following special events of community-wide interest occurring in 2025: 1) Downtown Block Parties (May 2, June 6, July 11, August 1, and September 5); 2) Brews and BBQ (October 4); (3) Girls Night Out – Witches and Broomsticks(October24); (4) Tracy City Center Association Events (Taps on Tenth on April 5, Downtown Tracy Wine Stroll on September 20, and Car Show on September 27); (5) South Side Community Organization Event (September 13); and 2) delegating the authority to the City Manager to put required time and other restrictions on each permit.

- 1.K. Staff recommends that City Council adopt a resolution approving Amendment No 1. to Professional Services Agreement with West Yost & Associates, Inc. for Program Management for CIP No. 74168 Recycled Water Expansion Project and authorizing: 1) the City Manager to grant extensions up to an additional two-years, if requested, 2) billing rates may be increased annually in January of each year by the lesser of 3% or the annual increase in the Cost-of-Living Index – All Items, for the Sacramento Metropolitan Region; and 3) new billing rates retroactive to January 1, 2025.
- 1.L. Staff recommends that the City Council adopt a resolution (1) accepting public improvements in accordance with the Subdivision Improvement Agreement for Tract 3944, Tracy Hills Village 1C as complete, and assume responsibility for the future maintenance and repairs, (2) accepting additional public improvements for Parkway Landscaping for Tract 3944, Tracy Hills Village 1C as complete, and assume responsibility for the future maintenance and repairs, (3) authorizing the City Engineer to release the Developer furnished bonds in accordance with the Subdivision Improvement Agreement, and (4) authorizing the City Clerk to file Notices of Completion for Tract 3944 Tracy Hills Village 1C and Tract 3944 Tracy Hills Village 1C (for Parkway Landscaping) with the San Joaquin County Recorder's Office.
- 1.M. Staff recommends that the City Council adopt a Resolution approving and authorizing the execution and the recordation of two Subdivision Improvement Agreements, and three Offsite Improvement Agreements with Lennar Homes of California, LLC for the Residential Development Project commonly known as Phase 2 of the Tracy Hills Specific Plan.
- 1.N. Staff recommends that the City Council adopt a resolution: 1) Determining that compliance with the standard procurement processes is not in the best interests of the City pursuant to Tracy Municipal Code 2.20.140(b)(6) and dispensing such requirement for the procurement of security and alarm services for City facilities. (2) Reinstating the existing General Services Agreement with B.I.C SEC Security (Contractor) and authorizing execution of Amendment No. 2 to be effective retroactively from July 1, 2024; and (3) Authorizing payment in the amount of \$64,200 for security and alarm services, including equipment, monitoring, and inspections. (4) Authorizing an administrative option to extend the agreement on a month-to-month basis for up to an additional six (6) months.

1. ITEMS FROM THE AUDIENCE

2. REGULAR AGENDA

- 3.A. Introduce an Ordinance adding Section 1.24.040 to Chapter 1.24 of the Tracy Municipal Code establishing an administrative remedies procedure for challenges to fees, charges, and assessments.
- 3.B. Receive the annual report of the Parks and Community Services Commission for Fiscal Year 2023-2024.
- 3.C. Staff recommends that the City Council receive the annual informational report regarding the City of Tracy's Senior Services Program for 2024.

3. ITEMS FROM THE AUDIENCE
5. STAFF ITEMS
6. COUNCIL ITEMS
7. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

February 4, 2025, 5:00 p.m.

Tracy City Hall, 333 Civic Center Plaza, Tracy, CA.

1. Mayor Arriola called the meeting to order at 5:01 p.m.
2. There were no actions taken pursuant to AB 2449.
3. Roll Call and Declaration of Conflicts – Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie, and Mayor Arriola present. City Council had no declarations of conflict.
4. ITEMS FROM THE AUDIENCE – None.
5. Request to Conduct Closed Session: Time: 5:03 p.m.

5.A Conference with Labor Negotiators (Gov. Code § 54957.6)

o City Negotiators

- Midori Lichtwardt, City Manager
- Kimberly Murdaugh, Director of Human Resources
- JoAnn Weberg, Human Resources Manager
- Sara Castro, Director of Finance
- Andrew Shen, Interim City Attorney
- Che Johnson, Special Counsel

o Employee Organizations

- General Teamsters Local No. 439, IBT
- Tracy Mid Managers Bargaining Unit
- Tracy Police Management Association
- Tracy Police Officers' Association
- Tracy Technical and Support Services Employee Association

There was no public comment on item 5.A.

ACTION: Motion was made by Mayor Pro Tem Abercrombie and seconded by Council Member Nygard to recess to closed session. Time: 5:03 p.m. Roll call found all in favor; passed and so ordered.

6. Reconvene to Open Session – Time: 6:24 p.m.
7. Report of Final Action – No report of final action.
8. Council Items and Comments – None.
9. Adjournment: Time: 6:26 p.m.

ACTION: Motion was made by Mayor Pro Tem Abercrombie and seconded by Council Member Evans to adjourn. Roll call found all in favor; passed and so ordered.

The above agenda was posted at the Tracy City Hall on January 30, 2025. The above are action minutes. A recording is available at the office of the City Clerk.

ATTEST:

Mayor

City Clerk

February 4, 2025, 7:00 p.m.

City Hall, 333 Civic Center Plaza, Tracy

Web Site: www.cityoftracy.org

Mayor Arriola called the meeting to order at 7:01 p.m.

There were no actions taken pursuant to AB 2449.

Roll Call and Declaration of Conflicts – Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie and Mayor Arriola present. City Council had no declarations of conflict.

Mayor Arriola led the Pledge of Allegiance.

Pastor Scott McFarland, Journey Christian Church offered the invocation.

Mayor Arriola announced Certificate of Appointment to Transportation Advisory Commissioner: Raj Dhillon.

Mayor Arriola presented a proclamation for Black History Month to Yolande Barial-Knight representing the Tracy African American Association.

Mayor Arriola presented a proclamation for Random Acts of Kindness Day to Kevin Tobeck.

Midori Lichtwardt, City Manager presented to Lilia Perez, Code Enforcement, Employee of the Month for February.

Midori Lichtwardt, City Manager presented to Austin Fox, Public Works Department, Employee of the Month for January.

1. CONSENT CALENDAR – Andrew Shen, Interim City Attorney announced that Item 1.C required some conforming changes to the title and clarified that there was no change to the body of the resolution and that the title needed to conform to the three recommendations that staff requested: 1) approving the proposed report; 2) making the required findings and, 3) renewing Tracy Ordinance 1327, this action does not require this item to be pulled from agenda.

Motion was made by Council Member Bedolla seconded by Mayor Pro Tem Abercrombie to adopt the Consent Calendar. Tamera Bartlett pulled Item 1.C, Robert Tanner pulled Item 1.D and Mayor Pro Tem Abercrombie pulled Item 1.F. Roll call found all in favor; passed and so ordered.

- 1.A. Adoption of January 21, 2025 Closed Session and Regular Meeting Minutes. – **Minutes were adopted.**

- 1.B. Staff recommends that the City Council adopt a Resolution approving a General Services Agreement with Cornerstone Environmental Contractors, Inc., for on-call irrigation booster pump troubleshooting, repair, and replacement services for a not-to-exceed amount of \$400,000 per fiscal year and authorizing the City Manager to grant up to four, one-year extensions. – **Resolution 2025-019**

- 1.E. Staff recommends that the City Council adopt a Resolution: 1) amending the City's Operating and Capital Budget for the Fiscal Year (FY) ending June 30, 2025 to reflect actual expenses and revenues and requested augmentations to fund various departmental needs; 2) authorizing the Budget Officer to amend the City's position control roster for FY2024-25. – Resolution 2025-020
- 1.G. Staff recommends that the City Council adopt a resolution approving Amendment No. 2 to the Professional Services Agreement with Michael Baker International for the Housing Element Update. – Resolution 2025-021
- 1.H. Staff recommends that the City Council adopt a resolution (1) accepting offsite improvements for Tracy Lakes Offsite Recycled Water Line Public Improvements, ENG23-0002, as complete and assuming all future operations and maintenance, (2) authorizing the City Engineer to release improvement security in accordance with the Offsite Improvement Agreement, and (3) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office. – Resolution 2025-022
- 1.C. Staff recommends that the City Council adopt a resolution (1) Approving the City's Annual Military Equipment Report (2) Adopting findings required under Government Code Section 7071(e)(2) for each item of military equipment identified in such report; and (3) Approving the renewal of City Ordinance 1327 authorizing the continued use of specified military equipment as required by Government Code Section 7071(e)(2).

Tamera Bartlett voiced concerns regarding the use of military grade equipment and is in opposition of the use of these weapons and requested information as to frequency of use and hopes that all options have been exhausted before the militarization of the police force.

Lieutenant Craig Kootstra provided clarification.

ACTION: Motion was made by Mayor Pro Tem Abercrombie and seconded by Council Member Evans to adopt **Resolution 2025-023** a Resolution (1) Approving the Annual Military Equipment Report; (2) adopting findings that each type of military equipment identified in the Annual Report complies with the standards set forth in Government Code Section 7071(D); and (3) renewing, pursuant to Government Code Section 7071(E), Ordinance 1327 authorizing the continued use of the military equipment specified in Tracy Police Department Policy 708 – Military Equipment. Roll call found Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie and Mayor Arriola in favor; passed and so ordered.

- 1.D. Staff recommends that the City Council adopt a resolution approving Amendment No. 1 to the Professional Services Agreement with Willdan Engineering for Interim City Engineer and support services increasing compensation to a not-to-exceed amount of \$450,000, expiring on December 31, 2025.

Mariann Stolte, Executive Assistant to Assistant City Manager Karin Schnaider, provided the staff report.

Robert Tanner requested clarification if this was for the Civil Engineering position and when the last Civil Engineer left the City and expressed concerns regarding the cost of the agreement in relation to the hiring of an engineer.

Karin Schnaider, Assistant City Manager provided clarification.

Council Member Bedolla asked if the contract was due to a vacancy and requested clarification as to the last day of the City Engineer.

Midori Lichtwardt, City Manager shared that a resignation was received in December and explained the necessity of the contract since a City Engineer is the signer for various City projects.

Council Member Bedolla requested clarification to the continuity of City Engineer services between the contract signing and the City Engineer's last day.

Midori Lichtwardt, City Manager clarified that the contract was signed in early January and the former City Engineer's last day was in mid-January.

ACTION: Motion was made by Council Member Evans and seconded by Mayor Pro Tem Abercrombie to adopt **Resolution 2025-024** approving Amendment No. 1 to the Professional Services Agreement with Willdan Engineering for Interim City Engineer and Support Services increasing compensation to a not-to-exceed amount of \$450,000, expiring on December 31, 2025. Roll call found Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie and Mayor Arriola in favor; passed and so ordered.

1.F. Staff recommends that the City Council accept an informational report on Credit Card Convenience Fees and affirm that the City will not charge Credit Card Convenience Fees on utility payments.

Mayor Pro Tem Abercrombie requested that staff bring back these fees when the fee schedule is presented in May and requested that this be included for Council discussion, Council Member Nygard supported.

Council Member Evans requested possibly waiving this fee for residential or providing a 6-month to 1-year grace period. Mayor Pro Tem Abercrombie clarified intent of specific item.

ACTION: Motion was made by Mayor Pro Tem Abercrombie and seconded by Council Member Nygard to accept an informational report on Credit Card Convenience Fees and affirm that the City will not charge Credit Card Convenience Fees on utility payments. Roll call found Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie and Mayor Arriola in favor; passed and so ordered.

DEVIATION: STAFF ITEMS - Mayor Arriola announced the receipt of multiple emails and requested that Midori Lichtwardt, City Manager provide a statement regarding the concerns of the Tracy Hills residents regarding the PG&E poles and facilitate communication between the community, Integral, the property owners, and announced that Eric Alvarez, PG&E Government Affairs Representative will facilitate the collection of contact information so that a town hall style meeting can be coordinated.

Eric Alvarez PG&E Government Affairs Representative shared that he would be collecting contact information from the Tracy Hills residents that were present for PG&E to contact and schedule a town hall meeting.

2. ITEMS FROM THE AUDIENCE – Denise Snider expressed concern regarding the changes in the Federal Government and concern for the marginalized community members and requested information regarding the actions that the City is doing.

Melissa Watkins expressed frustration regarding an over 2-year long dispute with her neighbors and the lack of action on the part of the Police Department.

Dr. Nancy Young thanked the Mayor for continuing to acknowledge Black History Month and shared historical information regarding Black History Month and the impacts of education and contributions of the African American Community within the City of Tracy.

Robert Tanner congratulated new City Council and congratulated the Mayor on the report provided and encouraged the rest of Council to follow and expressed frustration that the Pledge of Allegiance was not said at the beginning of the meeting.

Mayor Arriola clarified that the Pledge of Allegiance was done right before the invocation.

Alice English congratulated Adrienne Richardson, City Clerk, on 20 years of dedication to the City of Tracy and congratulated her on her professionalism, integrity and retirement.

Tracy Hills Community Member shared her continued concerns and expressed frustration in lack of response from anyone including the developer and wanted clarification as to what the City has done and is the project paused.

Sara Wood expressed appreciation to the Animal Shelter in being a no-kill shelter and shared concerns for the animal population in the City and shared historical information regarding a grant that offers low-cost spay/neuter program and funds are halfway gone and only applicable to German Shepherds, Huskies and Pit Bulls, and requested that Council expand funding for the program.

June Yasemsky requested that the completion of the second phase be finalized and shared information regarding the vital services that the Animal Services Department provide and provided the Clerk with a handout.

Gabriela Rodriguez-Machuca wanted to introduce herself to the Council and shared history regarding her advocacy for the mobile food ordinance and will reach out to Council, did receive feedback from staff and thanked staff for responding and is open to one-on-one discussions with Council.

Community Member expressed concerns regarding the amount of stray dogs, current shelter limitations and shared statistics regarding puppy mills and provided the Clerk with a handout.

Tracy Hills Community Member shared concerns regarding the installation of power poles and the potential for fires with the poles and high grasses in the area, requested clarification as to why 15 homes are being affected.

Barbara McVey expressed frustration regarding the animal problem especially the amount of feral cats and the cost that Community Members are incurring to care for these animals, shared that her mother has spent over \$10,000 over a five-year span and that most of those that do the work are on limited incomes.

Community Member shared concerns regarding dogs out loose and if the dogs are chipped, the owner should be held liable, unfair to the animals and to the citizens.

Multiple Tracy Hills Community Members expressed frustration and fear regarding the power poles, lack of response and information and asked for the project to stop or be paused.

Gerald Jeffs, Project Manager Consultant would like to pilot a program with the City of Tracy and submitted a handout to the Clerk.

Ray shared frustrations regarding the shelter and the resources that were promised were not provided and people are being exited without resources for life skills or education.

Claudia from Tracy Dog Girls Rescue shared concerns for the safety of the stray animals and community, proud that the animal shelter is a no kill shelter and requested that more spay and neuter education be made available.

Multiple Tracy Hills Community Members expressed fears and concerns regarding the high voltage power lines, citing last year's summer temperatures and the fears of potential fires.

Arturo Sanchez, Assistant City Manager updated the community regarding the concerns that were raised during public comment.

3. REGULAR AGENDA

- 3.A. Staff Recommends that the City Council 1) adopt a Resolution amending the Tracy Finance Committee Bylaws to combine the Finance Committee with the Investment Review Committee and 2) rescinding Tracy City Resolution No. 95-087.

Sara Castro, Finance Director, provided the staff report.

Council comments and questions.

There was no public comment.

Andrew Shen, Interim City Attorney noted that the title required a minor modification to the resolution and specified that the title should also refer to the rescinding of the past resolution that was mentioned in the staff report.

ACTION: Motion was made by Mayor Pro Tem Abercrombie and seconded by Council Member Evans to adopt **Resolution 2025-025** amending the Finance Committee Bylaws to combine the Finance Committee with the Investment Review Committee and 2) rescinding Tracy City Resolution No. 95-087. Roll call found Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie and Mayor Arriola in favor; passed and so ordered.

- 3.B. Staff recommends that the City Council receive an informational report regarding the City of Tracy Police Department's Annual Report for 2024.

Chief Sekou Millington, Lt. Miguel Contreras, Captain Luis Mejia, Captain Octavio Lopez, Lt. Craig Kootstra, Manager Beth Lyons-McCarthy, provided the staff report.

Council comments and questions.

There was no public comment.

ACTION: Motion was made by Mayor Pro Tem Abercrombie and seconded by Council Member Evans to receive City of Tracy Police Department's Annual Report for 2024. Roll call found Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie and Mayor Arriola in favor; passed and so ordered.

4. ITEMS FROM THE AUDIENCE – Sara Wood, a volunteer at the animal shelter, provided statistical information regarding the animals that are not spayed or neutered, neonatal kits for kittens and the education required to bottle feed kittens, would like expansion on the Teen Ambassador Program, identified staffing shortages, requested additional funding for shelter expansion and additional staff.
5. STAFF ITEMS – Midori Lichtwardt, City Manager stated that in compliance with Council Policy regarding travel, along with Council Member Nygard and Mayor, attended the Mayor and Council Members Academy sponsored by the California League of Cities and shared information in the sessions that they participated in.

6. COUNCIL ITEMS – Council Member Nygard attended several events including welcoming the Korean delegation, met with all department heads to understand roles, responsibilities, vision, and needs for their departments, sworn in as a Board Member of AVA and for South San Joaquin County Consolidated Fire, participated in welcoming the firefighters that were deployed to aid in Southern California, and toured the Grand Theatre and encouraged the community to visit.

Council Member Evans thanked Tracy Dog Girls Rescue for their work in the community, attended the South San Joaquin Fire Authority badge pinning ceremony and crab feed, also requested staff to bring back an update on an ordinance regarding vacant buildings. Mayor Arriola and Council Member Nygard supported.

Midori Lichtwardt, City Manager shared that there is an ordinance that is currently being worked on and that information will be reported out by Karin Schnaider, Assistant City Manager, at a future meeting.

Council Member Evans requested that staff look into tumble weed abatement and if there is an agreement with Union Pacific Railroad to clean those up considering that those are not only a nuisance but can potentially create a hazard for drivers.

Mayor Pro Tem Abercrombie requested that two items scheduled to go to the Tracy Homeless Advisory Committee (THAC) go directly to Council due to the time sensitive nature of the kitchen construction item and the report regarding the need for a Request for Proposal (RFP) for the operations management of the shelter site and requested that these items come back to Council in the form of a Special Meeting or a Workshop.

Council Member Bedolla asked if there could be considerations made to hold a Special THAC meeting for those items before they go to Council and expressed support for the kitchen item to go directly to Council so that time sensitive deadlines can be met.

Mayor Pro Tem Abercrombie shared that both items relate to the completion of Phase 2.

Arturo Sanchez, Assistant City Manager clarified that there is a potential for a price increase and shared that a more robust policy discussion related to the completion of Phase 2 that need to be heard by the full Council and how the outcome of that discussion will potentially affect the RFP that is due no later than November 1, 2025, funding impacts, and potential changes to who and how services will be provided at the shelter. These discussions should be held in front of full Council and may take several meetings to resolve.

Council Member Bedolla expressed concern over the potential cancellation of several THAC meetings and asked if there would be potential adverse effects if these discussions were to bypass the standing committee.

Arturo Sanchez, Assistant City Manager clarified that there would not be a cancellation of the THAC meeting as there are additional items that will be discussed.

Mayor Arriola expressed support for the original request made by Mayor Pro Tem Abercrombie.

Council Member Bedolla requested a timeframe as to when the special meeting or workshop would take place.

Arturo Sanchez, Assistant City Manager clarified that the special meeting would be held on February 18, 2025 between 5:00 p.m. and 7:00 p.m.

Council Member Bedolla commended the Tracy Dog Girls organization and shared his longstanding support for the organization in previously requesting information regarding the shelter and potential expansion, shared discussion item with the City Manager regarding unhoused youth regarding how services are being provided to that population, expressed concerns on items bypassing the THAC committee and urged staff to follow the proper processes and supported the kitchen item being expedited to Council.

Mayor Arriola shared that a written report was provided and ask that Council provide information regarding committee meetings that they participate in during Council Items, highlighted various events that were attended including the JPA Board Meeting with local dignitaries, a meeting with San Joaquin Council of Governments (SJCOG) regarding Measure K Strategic Plan and One-Voice Project Submission List. Updated that the City of Tracy withdrew funding application because the Department of Transportation selected Tracy to receive a grant, would like to agendize a future item for Council to take a position or action regarding the power poles in Tracy Hills and stated that this meeting can take place after the Town Hall Meeting that has been proposed by PG&E, Council Member Bedolla supported.

Mayor thanked Adrienne Richardson, City Clerk for her 20 years of service to the City of Tracy and congratulated her on her retirement. Happy Valentines Day and Happy Black History Month.

7. ADJOURNMENT – Time: 10:00 p.m.

ACTION: Motion was made by Council Member Bedolla and seconded by Council Member Evans to adjourn. Roll call found all in favor; passed and so ordered.

The above agenda was posted at the Tracy City Hall on January 30, 2025. The above are action minutes. A recording is available at the office of the City Clerk

Mayor

ATTEST:

City Clerk

Agenda Item 1.B

RECOMMENDATION

Staff recommends that the City Council adopt a resolution by a four-fifths vote (1) making a determination that compliance with standard procurement process is not in the best interest of the City and dispense the bidding requirements for the purchase of a fully self-contained pre-manufactured commercial kitchen, from McGrath RentCorp, Inc., dba Kitchens To Go by Mobile Modular, pursuant to California Public Contract Code Section 22050 and Tracy Municipal Code Section 2.20.270(a); and (2) approving a Purchase Agreement with McGrath RentCorp, Inc., dba Kitchens To Go by Mobile Modular, of Livermore, California, a California Corporation, for the fully self-contained pre-manufactured commercial kitchen, comprised of a twelve (12) foot by thirty-eight (38) foot premanufactured structure with an attached eight (8) foot by ten (10) foot dual temperature walk in cooler, to be installed as part of the Phase II 2024 Site Improvements at the Temporary Emergency Housing Facility Project, CIP 71112, at 370 W. Arbor Avenue, for a Not-To-Exceed amount of \$859,891.

EXECUTIVE SUMMARY

Staff recommends that the Tracy City Council adopt a resolution by a four-fifths vote (1) making a determination that compliance with standard procurement process is not in the best interest of the City and dispense the bidding requirements for the purchase of a fully self-contained pre-manufactured commercial kitchen, from McGrath RentCorp, Inc., dba Kitchens To Go by Mobile Modular, pursuant to California Public Contract Code Section 22050 and Tracy Municipal Code Section 2.20.270(a); and (2) approving a Purchase Agreement with McGrath RentCorp, Inc., dba Kitchens To Go by Mobile Modular, of Livermore, California, a California Corporation, for the fully self-contained pre-manufactured commercial kitchen, comprised of a twelve (12) foot by thirty-eight (38) foot premanufactured structure with an attached eight (8) foot by ten (10) foot dual temperature walk in cooler, to be installed as part of the Phase II 2024 Site Improvements at the Temporary Emergency Housing Facility Project, CIP 71112, at 370 W. Arbor Avenue.

BACKGROUND AND LEGISLATIVE HISTORY

On September 1, 2020, Council authorized the creation of a Capital Improvement Project for the Temporary Emergency Housing Facility Project on Arbor Avenue, CIP 71112, to create a safe and dignified facility for residents experiencing homelessness.

During design development for the TEHF it was determined that the use of prefabricated structures would best meet the City's goal to expedite the facility occupancy schedule. Options for pre-manufactured structures were considered for all needed facilities, dormitory and administration space, restroom, shower and laundry facilities, and options for kitchen facilities, components that required to provide a safe and dignified temporary accommodations for the unsheltered community at the TEHF on Arbor Avenue.

On December 21, 2021, under Resolution 2021-197, Council authorized staff to pursue the direct purchase of a fully self-contained commercial kitchen to be installed as part of the site

improvements at the TEHF, from the manufacturer, McGrath RentCorp, Inc., dba Kitchens To Go by Mobile Modular, of Livermore, California. Staff began the coordination with the Vendor to determine the best option for providing commercial kitchen facilities that would best meet the needs of the facility.

On October 19, 2022, bids for the construction of the TEHP Site Improvements were received. All bids exceeded the available funding, therefore, the construction contract could not be awarded and the project was not able to move forward in 2022.

On August 15, 2023, City Council, under Resolution 2023-150, rejected all bids received in October of 2022, so that staff could prepare the TEHF Phase II project to be readvertised. The additional grant funding through both San Joaquin County and Department of Housing and Urban Development (HUD) has provided adequate funds for the TEHF project to move forward with construction bids, in the summer of 2024. Due to the project delay, it was necessary to postpone the execution of a purchase agreement with the vendor.

On December 16, 2024, Kitchens To Go by Mobile Modular provided an updated cost proposal for a total of \$859,891. The not-to-exceed total includes:

Phase 1 Ancillary Services – Final Design & Estimate	\$ 21,600
Phase 2 – Manufacture Kitchen Structure (including shipping, delivery and on site structure placement, transfer fees & licenses)	\$ 735,959
Equipment Cost Escalation and Unforeseen Expenses (5%)	\$ 36,798
Taxable Sub-Total	\$ 794,357
Sales & Use Taxes	\$ 65,534
Not-to-Exceed	\$ 859,891

The 2024 proposal from Kitchens To Go, reflects a 20% increase over the original 2022 proposed cost. Due to the volatility in the market for the materials and equipment required to complete the pre-manufactured kitchen, and the specific equipment options identified during the final kitchen design, the final costs may fluctuate. The proposed agreement includes an equipment cost escalation and unforeseen expense amount of 5% to accommodate any unanticipated equipment changes or costs.

Construction details required for the pre-manufactured kitchen, including construction of the foundation, utility connections and the grease trap required for the pre-manufactured kitchen, and notations regarding the City purchase of the kitchen structure, have been coordinated into the plans and specifications for the Phase II bid documents, that are currently under construction.

FISCAL IMPACT

The Temporary Emergency Homeless Shelter, CIP 71112, is an approved Capital Improvement Project with a total budget of \$22,093,254. There are sufficient funds available in the project for the purchase of the equipment, with funding as follows:

<u>Funding Source</u>	<u>Budget</u>	<u>Expenses</u>	<u>Balance</u>
American Rescue Plan Act - City of Tracy	\$ 4,500,000	\$ 2,051,421	\$ 743,624
San Joaquin County (ARPA) R1	\$ 3,661,113	\$ 3,661,113	\$ -
HHAP	\$ 329,240	\$ 329,240	\$ -
HHAP R2	\$ 414,042	\$ 414,042	\$ -
Federal Grant	\$ 3,000,000	\$ -	\$ -
San Joaquin County (ARPA) R2	\$ 7,167,798	\$ 1,418,126	\$ -
CDBG (4 Grants)	\$ 1,185,461	\$ 837,371	\$ 252,089
Housing Asset Funds	\$ 690,000	\$ 31,502	\$ -
Redevelopment	\$ 1,145,600	\$ -	\$ 1,145,600
Current Budget	\$ 22,093,254	\$ 8,742,815	\$ 2,141,313

CEQA DETERMINATION

Government Code section 8698.4 exempts the application of the California Environmental Quality Act (CEQA) to various actions taken by public agencies to implement the construction of a homeless shelter in response to a declared shelter crisis. In addition, the interim solutions taken thus far are in furtherance of and related to the permanent solution that will be implemented, referred to as the Temporary Emergency Housing Facility on Arbor Avenue (CIP 71112). A Notice of Exemption was issued on October 16, 2020, for the Temporary Emergency Housing site at 500 Arbor Avenue in accordance with Government Code sections 65660-65662 for Low Barrier Navigation Centers and Section 15269(c) of the CEQA Guidelines (14 Cal. Code Regs. 15269(c) for (Emergency Projects). No environmental impacts beyond those already analyzed for the CIP exist; accordingly, no further CEQA analysis is needed.

STRATEGIC PLAN

This agenda item is consistent with the City Council's adopted 2021-2023 Strategic Priorities, Public Safety Strategy Plan, Goal No. 2, Implementation of the Adopted Homelessness Strategic Plan, Item No. 1, to secure capital funding to construct a Temporary Emergency Housing Facility.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution by a four-fifths vote (1) making a determination that compliance with standard procurement process is not in the best interest of the City and dispense the bidding requirements for the purchase of a fully self-contained pre-manufactured commercial kitchen, from McGrath RentCorp, Inc., dba Kitchens To Go by Mobile Modular, pursuant to California Public Contract Code Section 22050 and Tracy Municipal Code Section 2.20.270(a); and (2) approving a Purchase Agreement with McGrath RentCorp, Inc., dba Kitchens To Go by Mobile Modular, of Livermore, California, a California Corporation, for the fully self-contained pre-manufactured commercial kitchen, comprised of a twelve (12) foot by thirty-eight (38) foot premanufactured structure with an attached eight (8) foot by ten (10) foot dual temperature walk in cooler, to be installed as part of the Phase II 2024 Site Improvements at the Temporary Emergency Housing Facility Project, CIP 71112, at 370 W. Arbor Avenue, for a Not-To-Exceed amount of \$859,891.

Prepared by: Ilene Macintire, PE, Senior Civil Engineer

Reviewed by: Sara Castro, Director of Finance
Brian MacDonald, Director of Parks, Recreation and Community Services
Arturo M. Sanchez, Assistant City Manager
Matthew Summers, Interim Assistant City Attorney

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A - Purchase Agreement with McGrath RentCorp, Inc., dba Kitchens To Go by Mobile Modular

*Purchase Agreement between:
The City of Tracy and McGrath RentCorp, dba Kitchens to Go by Mobile Modular*

**CITY OF TRACY
PURCHASE AGREEMENT FOR GOODS, COMMODITIES,
AND ANCILLARY SERVICES WITH McGRATH RENTCORP, INC., dba KITCHENS TO GO
BY MOBILE MODILAR, LIVERMORE, CALIFORNIA**

This Purchase Agreement for Goods, Commodities, and Ancillary Services (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and McGrath RentCorp, Inc., dba Kitchens to Go by Mobile Modular, a California Corporation (**Vendor**). City and Vendor are sometimes referred to individually as "**Party**" and collectively as "**Parties**."

Recitals

- A. City is actively pursuing the construction of Temporary Emergency Housing, CIP 71112, pursuant to which the City may provide up to 154 beds on a nightly basis to unhoused residents in the City, along with ancillary services (**Project**), on City-owned land of 4.8 acres located at Arbor Avenue (**Project Site**).
- B. The Project is being funded by Community Development Block Grant (**CDBG**) funds, American Rescue Plan Act (ARPA) funds, Homeless Housing, Assistance and Prevention (**HHAP**) funds, Department of Housing and Urban Development (**HUD**) Community Project Funding Grant funds, and other grant funding sources.
- C. During preliminary design City staff researched all the available the options for providing a fully outfitted self-contained prefabricated kitchen structure (as further described in **Exhibit A** attached hereto, Goods) for use at the Temporary Emergency Housing Facility, CIP 71112. The Vendor was the only local manufacturer able to provide the required structure and furnishings that meet the City's requirements for permanent installation at the project site.
- D. Staff determined that Vendor possesses the skills, experience, and certifications required to provide the requisite Goods for the Project and that the Vendor was the only manufacturer able to provide the City with the required Goods within the City's timelines.
- E. Under Chapter 14.1.4 Non-competitive Proposals section of the CDBG procurement guidelines, the City can procure an item without competitive bidding when that item is only available from that single source.
- F. After negotiations between the City and Vendor, the Parties have reached an agreement for the performance of the Services in accordance with the terms set forth in this Agreement.
- G. This Agreement is being executed pursuant to Resolution No. 2021-197, which was adopted by the City Council for the City of Tracy on December 21, 2021.

Now, therefore, the Parties mutually agree as follows:

1. **CITY PURCHASE.**

1.1. **GOODS.** The City agrees to purchase, and the Vendor agrees to sell, the Goods as more specifically outlined and described in the attached **Exhibit A**, which is incorporated herein by this reference. The Goods shall comply with all of the standards and specifications outlined in **Exhibit A**.

1.2. **SERVICES.** The City also agrees to purchase from Vendor the services related to the design, approval and delivery, and installation of such Goods, as more specifically outlined and described in the attached **Exhibit B (Ancillary Services)**, which is incorporated herein by this reference. Ancillary Services shall be provided in a manner consistent with the level of care and skill ordinarily exercised by members in the same profession, practicing in the same locality under similar conditions.

1.3. **NO SUBSTITUTIONS; AUTHORIZED REPRESENTATIVE.** There shall be no substitution of Goods or Ancillary Services, without the prior written authorization of the City. All Ancillary Services shall be performed by or under the direct supervision of, the Vendor's Authorized Representative: Sam Proserpi, Account Executive. Vendor shall not replace its Authorized Representative without City's prior written consent. If Vendor fails to obtain the City's prior written consent for any change or replacement in personnel, Goods, or Ancillary Services, the City may terminate this Agreement.

2. **DELIVERY DATES.** The Vendor shall ship Goods, and the Goods must arrive at the destination of 370 W Arbor Avenue, Tracy CA, 95304 and Ancillary Services must be provided by the Vendor as outlined in the detailed Delivery Timeline, specified in **Exhibit C**.

2.1 Any failure by the vendor to meet the Delivery Timeline will constitute a material default of this Agreement. If the Vendor fails to meet the delivery timeline set out in this Agreement in Exhibit C, the City may cancel the order of any Goods and Ancillary Services not delivered by the required time, without liability, and/or may terminate this Agreement. The Vendor must notify the City immediately if the Vendor reasonably believes the Vendor will not be able to meet the Delivery Timeline for any reason and provide the City with a schedule that the Vendor reasonably believes it will be able to meet. It is within the City's discretion whether it will accept the revised timeline.

3. **PURCHASE PRICE.** City shall pay Vendor on a fixed fee basis, at the fee amounts outlined in **Exhibit D**, attached hereto and incorporated herein by this reference. The purchase price will be broken down by price of the Goods, and the price of the Ancillary Services, with a total calculation at the end.

- 3.1 NOT TO EXCEED AMOUNT.** Vendor's total contract amount, for the aggregate of the Goods and the Ancillary Services, under this Agreement shall not exceed \$859,891.40. The Not to Exceed Amount includes all applicable sales taxes, license, and transfer fees. Unless specifically stated otherwise or agreed to in a writing signed by all Parties, the fees proposed by Vendor, as set forth in Exhibit D hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement. It is understood and agreed that Vendor may not receive compensation up to the "not-to-exceed" amount (or any other amount), and Vendor's total compensation under this Agreement will depend on the scope of the Services requested and approved by the City. Vendor's billing rates shall cover all costs and expenses for Vendor's performance of this Agreement. No work shall be performed by Vendor in excess of the "not-to-exceed" amount provided in this section without the City's prior written approval.
- 3.2 INVOICES.** Vendor shall submit invoice(s) in accordance with the payment schedule as shown in Exhibit D.
- 3.3 PAYMENT.** Within 30 days after the City's receipt of the invoice(s), City shall make payment to the Vendor based upon the services described on the invoice(s) and approved by the City.
- 3.4 FINAL PAYMENT.** The acceptance by Vendor of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for payment to Vendor for the Goods and Ancillary Services. Vendor agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Vendor or its employees, subcontractors, agents and subconsultants for the accuracy and competency of the information provided and/or services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the Services performed by Vendor, its employees, subcontractors, agents and subconsultants.
- 3.5 BOOKS AND ACCOUNTS.** Vendor agrees to maintain books, accounts, payroll records and other information relating to the performance of Vendor's obligations under the Agreement, which shall adequately and correctly reflect the expenses incurred by the Vendor in the performance of Vendor's work under the Agreement. Such books and records shall be open to inspection and audit by the City during regular business hours for three years after expiration or termination of this Agreement at City's sole cost and expense, for the limited purpose of ensuring proper billing.

4. **CANCELLATION AND TERMINATION.** The City reserves the right to terminate or cancel any portion of this Agreement at any time prior to the delivery of Goods and Ancillary Services, for cause in the event of a breach of this Agreement by Vendor, by giving Vendor written notice as set forth in Section 14 below. There shall be no period of grace after giving the notice of cancellation or termination. Notwithstanding the terms of Section 14 below, cancellation or termination shall become effective immediately upon the date the written notice is delivered to Vendor. Notwithstanding anything herein to the contrary, it is understood and agreed that upon the City's execution of this Agreement, Vendor shall proceed with procurement of any materials, equipment, labor, or otherwise in the performance of its obligations hereunder and in so doing, may incur extraordinary costs and expenses. City may not cancel and portion of the work or terminate the agreement, except for cause as set forth above. In the event that the Agreement is terminated for cause, the City shall receive reimbursement for all partial payments.
5. **BREACH.** In the event of a breach of the Agreement by Vendor, City may terminate the Agreement immediately without notice, may reduce payment to the Vendor in the amount necessary to offset City's resulting damages, may procure substitute Goods or Ancillary Services at Vendor's expense, and/or may pursue any other available recourse against Vendor. Vendor may only terminate the Agreement if City breaches a material provision of this Agreement, and such breach continues for a period of 30 days after written notice describing the breach.
6. **DELIVERY RISK OF LOSS.** All orders will be Free on Board (FOB) destination if not otherwise specified. Risk of loss or damage to the Goods shall remain with the Vendor until the Goods have been delivered to the City. All Goods and Ancillary Services will be received by the City subject to its right of inspection, rejection, and revocation of acceptance under the Uniform Commercial Code. The City will be allowed a reasonable period of time to inspect the Goods and Ancillary Services and to notify Vendor of any nonconformance with the terms and conditions of the specifications. The City may reject any Goods and Ancillary Services that do not conform to the terms and conditions outlined under **Exhibits A** through E. Any Goods and Ancillary Services rejected may be returned to the Vendor at the Vendor's risk and expense. Any loss of or damage to the Goods after delivery shall not alleviate City's obligation to pay Vendor any remaining balance of the purchase price existing at the time of the loss, except to the extent any such loss or damage is caused by negligence or willful misconduct, or by the failure of the Goods to conform to the warranties or specifications set forth in this Agreement (including without limitation any Exhibits hereto). Title to the Goods shall not pass to the City before the entire purchase price has been paid to Vendor.
7. **INDEMNIFICATION.** Vendor shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against, and reimburse the City for, any and all third party liabilities, obligations, losses, damages, injunctions, suits, actions, fines, penalties, claims, demands, administrative and judicial proceedings and order, judgments, remedial action requirements, costs and expenses of every kind or nature, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs ("**Claims**") arising directly or indirectly from or out of (including any and all related costs and expenses), relating or pertaining to or resulting from, in whole or in

part, this Agreement; the Goods and the Ancillary Services; any act, omission, or event relating in any way to Vendor's obligations under this Agreement, but only to the extent such Claim is caused by the negligence or willful misconduct of the Vendor. In this Section 7, "City" means the City, its officials, officers, agents, employees and volunteers; "Vendor" means the Vendor, its employees, agents and subcontractors.

In the event there is a finding and/or determination that Vendor is not an independent contractor and/or is an employee of City, including but not limited to any such finding and/or determination made by the California Public Employees' Retirement System (CalPERS), the Department of Industrial Relations (DIR), or the Internal Revenue Service (IRS), Vendor shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the City from and against any and all Claims relating to or in connection with such a finding and/or determination.

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

Vendor and City mutually waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination of this Agreement.

Vendor is an independent contractor and is solely responsible for the acts of its employees or agents or anyone acting on Vendor's behalf, including any negligent acts or omissions. Vendor is not City's employee, and Vendor shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Vendor, and its agents or employees, are not entitled to City benefits. Vendor shall be solely responsible for, and shall save the City harmless from, all matters relating to the payment of Vendor's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and State income tax withholding and all other regulations governing employer-employee relations.

The City shall indemnify and hold Vendor harmless from any and all Claims arising out of or relating to (A) the City's negligence or willful misconduct; (B) the City's failure to comply with applicable law; and/or (C) the City's modification of the Goods or the removal, application, or use of attachments, accessories, or parts on Goods, which have not been given approval in writing by an officer of Vendor.

The provisions of this section survive the expiration or the termination of this Agreement and are not limited by the provisions of Section 8 relating to insurance.

8. **INSURANCE**. Vendor shall, throughout the duration of this Agreement, maintain insurance to cover Vendor, its agents, representatives, and employees in connection with the performance of the Services under this Agreement at the minimum levels set forth herein.

- 8.1 COMMERCIAL GENERAL LIABILITY** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 8.2 AUTOMOBILE LIABILITY** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 8.3 WORKERS' COMPENSATION** coverage shall be maintained as required by the State of California.
- 8.4 ENDORSEMENTS**. Vendor shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:
- 8.4.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
- 8.4.2** To the extent of the liabilities assumed by Vendor under this Agreement, Vendor's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Vendor's insurance and shall not contribute with it.
- 8.5 NOTICE OF CANCELLATION**. Vendor shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Vendor shall immediately obtain a replacement policy.
- 8.6 AUTHORIZED INSURERS**. All insurance companies providing coverage to Vendor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California
- 8.7 INSURANCE CERTIFICATE**. Vendor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement and, in any event, within five (5) days of such request.

- 8.8 **SUBSTITUTE CERTIFICATES.** Vendor shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.
- 8.9 **VENDOR'S OBLIGATION.** Maintenance of insurance by the Vendor as specified in this Agreement shall in no way be interpreted as relieving the Vendor of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Vendor may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.
- 8.10 **CITY'S INSURANCE OBLIGATION.** Upon delivery of the Goods and until the City has paid for the Goods in full, City shall provide, maintain, and pay all premiums for property insurance covering the loss, theft, destruction, or damage to the Goods in an amount not less than the full replacement value and will name Vendor as loss payee of the proceeds, unless City has paid Vendor the entire purchase price in full prior to the scheduled delivery of the Goods. The City shall also provide, maintain, and pay all premiums for general liability insurance in the amount of \$1,000,000.00 (one million dollars) and name Vendor as an additional insured, but only until the City has paid for the Goods in full. All insurance shall be in a form and with a company having an A.M. Best rating of A- or better and shall not be subject to cancellation without thirty (30) days prior written notice to Vendor. The City shall deliver to Vendor insurance certificates, or evidence of insurance proving the existence of policies meeting the above requirements, upon execution of the Agreement. Notwithstanding the foregoing, subject to the City providing to Vendor proof of self-insurance satisfying requirements equivalent to those imposed under this Section 8.10, the City may maintain self-insurance sufficient to satisfy the potential liabilities arising hereunder, in full satisfaction of the above insurance requirements
9. **PACKING AND SHIPPING.** Deliveries must be made as specified in **Exhibit C**, without charge, for boxing, crating, or storage unless otherwise specified. As set forth in this Agreement and the exhibits hereto, Vendor will construct and assemble certain structures away from the Project Site and deliver (or cause to be delivered) said pre-constructed structures to the Project Site. Vendor, not the City or any of its employees, shall accept all deliveries under this Agreement (including pieces of equipment that were not included in the original pre-constructed structure) for installation at a secure location and safeguard such deliveries until they are installed at the Project Site. The Vendor shall not direct deliveries of equipment to be installed within the pre-constructed structure to the Project Site or any other City facility or location, unless Vendor will be on site to accept and safeguard such delivery. City will not receive any deliveries on the Vendor's behalf at any City facility. Goods must be suitably packed to secure the lowest transportation costs and, in accordance with the requirements of common carriers, in a manner to assure against damage from weather or

transportation. The City's order numbers and symbols must be plainly marked on all invoices, packages, and shipping orders. Packing lists specifying the quantity, description, and Purchase Agreement Number must accompany each box or packing shipment and must be submitted to the City as verification that the installed equipment is per the final design and Agreement.

10. **TAXES**. The Vendor must separately state on all invoices any taxes imposed by the local, state, or federal state government applicable to furnishing of Goods and Ancillary Services; provided, however, where a tax exemption is available, the tax must be subtracted from the total price and identified. Unless otherwise outlined in the Purchase Agreement, the Purchase Price will be considered to include state and city sales or use tax.
11. **WARRANTY**. The Vendor warrants and represents that the Goods being sold pursuant to this Agreement will conform to the description set forth on this Agreement, including all attachments hereto. Except for the foregoing sentence and the Limited Warranty provided in **Exhibit E** hereto, VENDOR MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, EXCEPT AS SPECIFICALLY SET FORTH WITHIN THE LIMITED WARRANTY ATTACHED HERETO AS EXHIBIT E. The City hereby acknowledges that it has received and reviewed said Limited Warranty. Without limiting Vendor's indemnification obligations set forth in Section 7 above, correction by Vendor of nonconformities, whether patent or latent, within the applicable warranty period shall constitute fulfillment of all liabilities of Vendor for such nonconformities, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise with respect to such Goods.
12. **REBATES, KICKBACKS, OR OTHER UNLAWFUL CONSIDERATIONS**. Vendor warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For any breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price the value of the rebate, kickback, or other unlawful consideration; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.
13. **NOTICES**. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:
Ilene Macintire, P.E.
Senior Civil Engineer, Utilities Division
City of Tracy, Operations & Utilities
3900 Holly Drive
Tracy, CA 95304

To Vendor:
Sam Prosperi, Account Executive
McGrath RentCorp
5700 Las Positas Road
Livermore, CA 94551

With a copy to:
City Attorney
333 Civic Center Plaza
Tracy, CA 95376

14. MISCELLANEOUS

- 14.1 STANDARD OF CARE.** Unless otherwise specified in this Agreement, the standard of care applicable to Vendor's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.
- 14.2 AMENDMENTS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.
- 14.3 WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. No waiver shall be effective unless it is in writing and signed by the waiving party.
- 14.4 ASSIGNMENT AND DELEGATION.** Vendor may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment, transfer or delegation shall not be deemed to be a consent to any subsequent assignment, transfer or delegation.
- 14.5 JURISDICTION AND VENUE.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 14.6 COMPLIANCE WITH THE LAW.** The Parties shall comply with all applicable local, state, and federal laws, including, without limitation, those identified below, whether or not such laws are expressly stated in this Agreement.
- 14.6.1 HAZARDOUS MATERIAL.** Vendor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of performing their services, but only to the extent such spill is

caused or contributed to by Vendor's negligence, willful misconduct, or otherwise culpable act.

14.6.2 NON-DISCRIMINATION. Vendor represents and warrants that it is an equal opportunity employer, and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, or age. Consultant shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

14.7 BUSINESS ENTITY STATUS. Vendor is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Vendor. By entering into this Agreement, Vendor represents that it is authorized to do business in California, in good standing with the Secretary of State, and in good standing with all agencies having jurisdiction over Vendor (including any licensing agencies). If Vendor is a suspended entity at the time, it enters this Agreement, City may take steps to have this Agreement declared voidable.

14.8 BUSINESS LICENCE. Before the City signs this Agreement, Vendor shall obtain a City of Tracy Business License. Vendor shall maintain an active City of Tracy Business License during the term of this Agreement.

14.9 SUCCESSORS AND ASSIGNS. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

14.10 CONSTRUCTION OF AGREEMENT. Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.

14.11 SEVERABILITY. If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

14.12 CONTROLLING PROVISIONS. In the case of any conflict between the terms of this Agreement and the Exhibits hereto and Vendor's proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Vendor's proposal (if any), the Exhibits shall control.

14.13 ENTIRE AGREEMENT. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed and the matters contemplated herein. This Agreement supersedes all prior negotiations, representations or agreements (in each case, whether oral or in writing). All exhibits attached hereto are incorporated by reference herein.

- 14.14 COUNTERPARTS.** City and Vendor agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original
- 14.15 EXPENSES FOR ENFORCEMENT.** Vendor and City agree that the prevailing party's reasonable costs, attorneys' fees and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.
- 14.16 Ownership of Work.** All original documents prepared by Vendor relating to the Goods or Ancillary Services, whether complete or in progress, are the property of the City, and shall be given to the City upon termination of this Agreement or within five (5) days of any demand from the City. No such documents shall be revealed or made available by Vendor to any third party without the City's prior written consent.
- 15. SIGNATURES.** The individuals executing this Agreement on behalf of Vendor represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of Vendor.

[Signature Page to Follow]

Purchase Agreement between:
The City of Tracy and McGrath RentCorp, dba Kitchens to Go by Mobile Modular

The Parties agree to the full performance of the terms set forth in this Agreement and have caused this Agreement to be duly executed.

City of Tracy, a Municipal Corporation

By: _____
Midori Lichtwardt, City Manager
Title: _____
Date: _____

Attest:

Necy Lopez, Interim City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

**McGrath RentCorp, dba Kitchens to Go by
Mobile Modular**

By: 
Dave Whitney
Title: Chief Financial Officer
Date: 2/6/2025

Federal Employer Tax ID No. 94-2579843

By: Philip Hawkins
Signature ID: F1FE43ZKT6...
Phil Hawkins

Title: Chief Operating Officer
Date: 2/6/2025

Exhibits:

Exhibit A:	Description of Goods
Exhibit B:	Description of Ancillary services
Exhibit C:	Delivery Timeline
Exhibit D:	Purchase Price & Payment Schedule
Exhibit E:	Warranty

EXHIBIT A – DESCRIPTION OF GOODS

The Vendor shall design and construct a fully code compliant twelve (12) foot by thirty-eight (38) foot pre-manufactured kitchen structure with an attached eight (8) foot by ten (10) foot walk in cooler, fully furnished with commercial kitchen equipment as listed below and as determined during design.

The structure design must have California Department of Housing and Community Development (HCD) review and approval, prior to the start of fabrication. The kitchen structure will be installed by the Vendor on a foundation at the project site constructed by the City's General Contractor. The kitchen structure shall include all plumbing, electrical and mechanical (HVAC) components required for a fully self-contained kitchen that will be connected by the City's General Contractor to the project site water, power, sewer, and communications & data infrastructure.

Upon receipt of City approval of the HCD approved stamped engineering design drawings, the Vendor shall manufacture the structures as described in the Exhibits A thru E fabricating all required structure components, providing all labor and materials, shipping the completed pre-manufactured structure to the City's project site at 370 Arbor Avenue to arrive at a time coordinated with the City and the City's General Contractor, and completing the installation and testing of all equipment once installed on site. The Vendor shall schedule an equipment instruction period with the City and facility users after installation and testing are complete.

The cost of the following services are considered to be included in the purchase price of the Goods:

1. Fabrication and Manufacture of Modular Kitchen
2. Construction Administration Phase services
3. Freight and Delivery of Modular Kitchen to Project Site
4. Installation of Modular Kitchen at Project Site
5. Coordination with Local Architect and Engineer of Record for Project Site Activities
6. Coordination with Site General Contractor and City on Delivery Timeframes, coordination of the requirements for installation on the foundation, testing, etc.

LIST OF GOODS

COMMERCIAL KITCHEN EQUIPMENT	MODEL DETAILS **	MODEL No. **
Dishwasher		
Soiled Dish Table with Pre-Rinse – 48"		
Floor Sinks		
Stainless Steel Wall Mounted Shelf – 12" x 84"		
Stainless Steel Wall Mounted Shelf – 12" x 36"		
Stainless Steel Wall Mounted Shelf – 12" x 60"		

Three Compartment Sink		
Water Heater		
Wire Shelving – 24" x 48"		
Wire Shelving – 24" x 48"		
Stainless Steel Exterior Service Counter		
Serving Window		
30" x 72" Stainless Steel Worktable		
Reach-In Refrigerator – 2 Door		
Fire Extinguisher – "K" Type		
Wire Shelving – 18" x 48"		
Electrical Panel		
36" Entry Doors		
Fire Extinguisher – "ABC" Type		
Hand Sink with Side Splash Guards		
Reach-In Freezer – 1 Door		
Mixer – 20 Qt.		
Equipment Stand		
Fire Suppression System		
Six (6) Burner Electric Range with Standard Oven Below		
24" Charbroiler on Stand		
Flat Top Cooking Surface		
Stainless Steel Canopy Hood		
Tilt Skillet -16 Gallon		
Dual Stack Convection Oven		
Two Compartment Sink		
Wire Shelving – 24" x 36"		
HVAC Unit		
Clean Dish Table		
30" x 36" Stainless Steel Worktable		
Air Curtain		

Attachments: A-1 Preliminary Structure Floor Plan

A-2 Equipment Specifications

EXHIBIT B – ANCILLARY SERVICES

Ancillary Services to be provided will include:

1. Final Design of Modular Kitchen

Final Design of Modular Kitchen services shall include the following:

Contractor will provide design consulting services for development of a code compliant, custom design for a Factory-Built Modular Kitchen consisting of a 12' x 38' (twelve foot by thirty-eight foot) Modular Kitchen with an attached 8' x 10' (eight foot by ten foot) Walk-In Cooler. Final Design of Modular Kitchen services will develop the design for the above-reference Project through final construction documents, including:

1. Programming Response & Conceptual Design phase
2. Schematic Design phase
3. Design Development phase
4. Final Construction Documents
 - a. Submittals to third party inspector for certification by the California Department of Housing and Community Development (HCD) and completed certification
 - b. Submittal package for County Health Department permitting review
 - c. Support for the County Health Department Plan Check, comments and back check process

Programming Response & Conceptual Design Phase:

The Programming, Response & Conceptual Design phase includes work to define the general scope, scale, functional relationship of spaces and of the modular building(s) to the Project site, in conjunction with all relevant property reports provided by the Customer with respect to the Project site, including but not limited to the preliminary site plan, and geotechnical testing reports for the Project site.

Deliverables shall include Programming Response Concept Review, Floor Plans, and Elevations.

The Programming, Response & Conceptual Design Phase shall include 2 virtual or telephonic meetings with the City. Additional meetings or in person meetings, if requested by the City, will be provided as Additional Services. This phase shall be completed within approximately fifteen (15) business days.

Schematic Design Phase:

The Schematic Design Phase includes work to define the general scope, scale, and functional relationship of spaces. The documents will identify both site planning and building planning including area allocations, conceptual organization of exterior and

interior spaces, conceptual image, and usage of feature interior and exterior materials, selection of structural, mechanical, plumbing and electrical system concepts. Upon acceptance of the Schematic Design Package, the City will approve the conceptual direction for further development in subsequent phases.

Deliverables shall include 25% complete Construction Documents including Building Planning, Outline Specifications, Floor Plan, Elevations, Reflected Ceiling Plan, HVAC Layout, Electrical Layout, Cross Sections and Foundation Plan. Deliverables shall be presented and submitted in electronic form.

The Schematic Design Phase shall include two (2) virtual or telephonic meetings with the City. Additional meetings or in person meetings, if requested by the City, will be provided as Additional Services. This phase shall be completed within approximately twenty (20) business days following completion of the Programming Response & Conceptual Design phase.

Design Development Phase:

The Design Development phase includes work to complete design development documents that clearly identify the developed architectural, structural, mechanical, electrical, plumbing and fire protection design solutions for the Project. All major features and components of the design solution will be documented changes requested by the City to the specifications, plans, elevations, building systems or other elements of the Project contained in the design development documents following this phase and may impact the estimated design fees for the construction documents phase unless changes are related to errors and omissions by the Contractor.

Deliverables shall include 80% complete Design Documents including Building Planning, Specifications, Floor Plan, Elevations, Reflected Ceiling Plan, HVAC Layout, Electrical Layout, Cross Sections and Foundation Plan. Deliverables shall be presented and submitted in electronic form.

The Design Development Phase shall include two (2) virtual or telephonic meetings with the City. Additional meetings or in person meetings, if requested by the City, will be provided as Additional Services. This phase shall be completed within approximately thirty (30) business day following completion of the Schematic Design Phase.

Final Construction Documents Phase:

The Final Construction Documents phase will define completed Construction Plans and Specifications, State of California Certification Document Development and Submittal, and Approval. County Health plan check and local permit submittal packages are included along with required revisions. Design of Modular Kitchen is deemed final upon approval of plans by the City of Tracy Building Safety and Inspection. Completed Construction Plans and Specifications shall be signed and stamped by architects/engineers licensed by the State of California.

Deliverables shall include 100% complete Final Construction Documents including final Building Planning, Specifications, Floor Plan, Elevations, Reflected Ceiling Plan, HVAC Layout, Electrical Layout, Cross Sections and Foundation Plan including all required work for Walk-In Cooler. Deliverables shall be presented and submitted in electronic form.

Fabrication and Manufacture of Modular Kitchen shall include all time, materials, labor, equipment, furnishings to provide a complete and fully functioning commercial kitchen.

Construction Administration Phase services shall include coordination with equipment manufacturers, suppliers, City General Contractor and other involved in the construction of the site improvements and Project.

Delivery of the Modular Kitchen to the Project Site shall include all transportation, scheduling, and providing required equipment to bring modular kitchen to site.

Installation and Construction of Modular Kitchen at Project Site shall include all required labor, scheduling and equipment required to place modular kitchen on foundation at site and connect kitchen to all site utilities for full operation. Connection to onsite water and sewer systems are included. Final testing and calibration of all kitchen systems and equipment, final clean and formal handoff and safety training shall be included.

Coordination with Local Architect and Engineer of Record for Project Site Activities shall include all required labor, scheduling, and efforts to relay construction processes and plan approval of modular kitchen facility after onsite delivery and site hookup including coordination after installation and onsite technical support. As-Built documentation shall be delivered to A/E of Record and City.

Coordination with Site General Contractor and City on Delivery Timeframes shall include additional meetings and project site visits as needed for coordination efforts required under this contract.

Payment Schedule – Ancillary Services

Payment shall be made on the following schedule:

1. Retainer Payment – 25% of Design Services Compensation	\$5,150.00.
2. Progress Payment 1 – at completion of Conceptual Design Phase	\$3,862.50
3. Progress Payment 2 – at completion of Schematic Design Phase	\$3,862.50
4. Progress Payment 3 – at 50% completion of Design Development Phase	\$3,862.50
5. Progress Payment 4 – at 100% completion of Design Development Phase	\$3,862.50

Additional Services

"Additional Services" are services not expressly included in the Basic Services set forth in this Proposal or any exhibits hereto. In the event that Additional Services are requested by Customer or required for the Project, the Parties hereto may agree for Consultant, or its third-party consultant architects/engineers, to perform such Additional Services for a mutually agreeable lump sum amount or at mutually agreeable hourly rates. Such agreement shall be set forth in writing (which may be made via email). In the event of a material change in the scope of the Project, the Parties shall negotiate the amount of compensation set forth above in good faith to account for the added effort, time, and expense expected to be incurred by Consultant in completing its services on the Project. Consultant shall not be obligated to complete any services arising from a material change in the scope of the Project absent agreement with the Customer as to such compensation. Standard hourly rates for KTG Employees are as follows:

Executive Principal	\$325.00/hour
Principal	\$275.00/hour
Director	\$185.00/hour
Project Manager/Project Designer	\$150.00/hour
Project Associate/Revit Associate	\$125.00/hour

Excluded Services:

- Low Voltage System Design/ Installation (Data, phone, security, fire monitoring, etc.)
- Permit / Plan Check Fees
- Site Improvement Work (unrelated to kitchen structure and foundation)
- Utility Connections (unrelated to kitchen structure and foundation)
- Exterior paint (as directed by The KPA Group)
- Standalone exterior lighting not a part of the building electrical distribution system
- Landscaping

WORK BY OTHERS:

The following items have been completed by the City and are available for the Contractor's reference. These tasks are excluded from the Contractor Scope of Work.

Site Plan Permit Submittal Set 1: Gen. Civil & Landscaping, Temporary Emergency Housing Facility on Arbor Avenue / Site Civil Design including:

1. Drainage analysis of, and computations with respect to, the proposed Project site
2. Project site plan, grading and drainage plans

3. Preliminary landscape plan
4. Site parking and accessibility plan
5. Site Utility Plan including: Water and wastewater lines from the property line to the building point of connection
6. Electrical service main, diagram and/or isometrics
7. Fire Alarm Plan
8. Data, Telephone or Security Plans
9. Building Approach and Accessibility Plans
10. Geotechnical Testing and all other environmental and reports regarding existing conditions at the Project Site
11. Survey of the Project Site - The topographic improvements and boundary survey shall be provided to Contractor, if required, prior to, and as a condition precedent to, the commencement of the Schematic Design Phase.

EXHIBIT C – DELIVERY TIMELINE

The total anticipated time from Notice to Proceed to Final installation is 225 Business days.

The delivery timeline for the following scope items is as follows:

Final Design of Modular Kitchen:

Programming Response & Conceptual Design – Within 15 Business Days of NTP

Schematic Design – Within 20 Business Days of Programming Response & Conceptual Design

Design Development – Within 21 Business Days of Schematic Design

Final Construction Documents – Estimated within 40 Business Days of Design Development, provided, however, that such estimate is contingent upon the State of California lead time.

Fabrication and Manufacture of Modular Kitchen – Within 100 Business Days of completion and approval of Final Construction Documents. Fabrication cannot start until Final Construction Documents are complete, which is contingent upon the State of California's process.

Delivery of the Modular Kitchen to the Project Site: - Within 14 Business Days of completion of Fabrication and Manufacture of Modular Kitchen at a time coordinated with the City and the General Contractor

Installation and Construction of Modular Kitchen at Project Site: - Within 15 Business Days of Delivery of Modular Kitchen to Project Site

Construction Administration Phase – No defined timeline for services

Coordination with Local Architect and Engineer of Record for Project Site Activities – No defined timeline for services

Coordination with Site General Contractor and City of Delivery Timeframes – No defined timeline for services

Business Days are defined as all Mondays, Tuesdays, Wednesdays, Thursdays, and Fridays regardless of City of Tracy business operations or holidays. The parties acknowledge that there are currently supply chain delays within the industry, and some components and equipment leased hereunder may have longer lead times, which may delay the anticipated timelines. Notwithstanding anything herein to the contrary, all timelines in this Exhibit C will be subject to Equipment availability.

EXHIBIT D – PURCHASE PRICE

GOODS – As described in Exhibit A:

- 1) Code Compliant, HCD Certified, County Health Approved, fully equipped and self-contained Prefabricated 12' x 38' Modular Kitchen with attached 8' x 10' Walk-In Cooler, including all taxes, transfer fees and licenses.

Total Goods: \$ \$735,959.00

ANCILLARY SERVICES – As described in Exhibit B Total Services: \$ 21,600.00

5% Contingency for Equipment Escalation and unforeseen expenses: \$ 36,797.95

APPLICABLE SALES TAX: \$ 65,534.45

Agreement Not to Exceed Amount: \$ \$859,891.40

Payment Schedule

All Payments will be made in accordance with Section 3 of the Agreement.

Payment Schedule – Ancillary Services

Invoices for Payment shall be submitted on the following schedule:

1. Retainer Payment – 25% of Design Services Compensation \$5,150.00.
2. Progress Payment 1 – at completion of Conceptual Design Phase \$3,862.50
3. Progress Payment 2 – at completion of Schematic Design Phase \$3,862.50
4. Progress Payment 3 – at 50% completion of Design Development Phase \$3,862.50
5. Progress Payment 4 – at 100% completion of Design Development Phase \$3,862.50

Structure Payment Schedule

Upon the City's approval of the design plans and notice to proceed with manufacturing, invoices for Payment of Goods shall be submitted on the following schedule:

1. Thirty percent (30%) upon notice to proceed
2. Forty percent (40%) upon completion of manufacturing of the Goods
3. Twenty percent (20%) upon delivery, installation at the project site and final testing of all systems and equipment.
4. Ten percent (10%) upon written acceptance by the City.

EXHIBIT E

LIMITED WARRANTY

Products Warranted

This Limited Warranty applies to the Goods (hereinafter, "Products"), as defined in the Purchase Agreement for Goods, Commodities, And Ancillary Services (the "Agreement") between McGrath RentCorp, dba Kitchens To Go By Mobile Modular ("KTG" or "Vendor") and the City of Tracy ("Customer" or "City").

Warranty Period

KTG warrants that new Products will be free of defects in material and workmanship under normal use and service (the "Limited Warranty") for a period of one (1) year after the date of delivery of the Product(s) (the "Warranty Period") to the Customer. KTG does not warrant any equipment, materials, parts, or other components that are not manufactured for or by KTG, except to the extent of the warranty that KTG may receive from the manufacturer of such items. If assignable, KTG hereby assigns all manufacturers' warranties for such other equipment, materials, parts, or other components that are not manufactured for or by KTG, which shall be subject to the specific manufacturer's warranty provisions and time periods. This Limited Warranty is not transferable.

Coverage

During the Warranty Period, the Customer shall promptly notify KTG in writing if the Product(s) fail to comply with the Limited Warranty, which notification must be made within 96 hours of identification of the alleged defect, and which notification shall describe the alleged defect in sufficient detail to permit KTG to investigate and remedy the alleged defect consistent with the terms of the Limited Warranty. Following said notice, KTG shall test the Product(s) in order to isolate any malfunctions and/or defects in the Product(s). If KTG determines that the Product(s) contains malfunctions due to defects in workmanship or materials, then KTG shall promptly correct, repair, or replace the nonconforming or defective Product(s), material, or workmanship that is/are covered under the Limited Warranty. KTG shall cover the cost of labor to the extent reasonably necessary to repair or replace the nonconforming or defective Product(s), material, or workmanship that is/are covered under this Limited Warranty. Without limiting the indemnity obligations or other obligations set forth in the Agreement, the remedies set forth in this paragraph are exclusive and correction by KTG of Product(s) non-conformities in the manner provided above shall constitute fulfillment of all liabilities and obligations of KTG.

Customer Responsibilities

The Customer is responsible for proper inspection, installation, maintenance, use and operation of the Product(s), including, but not limited to, accompanying fixtures, devices, plugs, equipment, power supply, winterization, and cleaning the interior/exterior of the Product(s). The Customer shall also be responsible to store defective material as to not cause further damage and prepare the defective material or Product(s) for shipment at KTG's reasonable instructions and direction. If requested by KTG, Product(s) and/or parts for which a warranty claim is made are to be returned to KTG at KTG's cost and expense. If any alterations are made by someone other than a duly authorized representative of KTG, then this Warranty is void.

Labor Reimbursement Policy

All Warranty labor and travel allowance must be approved in advance, in writing, by KTG prior to any work being performed.

Disclaimer

KTG's obligation under this Limited Warranty is expressly limited to the conditions as stated above and shall not include duty, taxes, or any other charges whatsoever, or any liability for direct, indirect, incidental, or consequential damage or delay. THE WARRANTIES CONTAINED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, AND KTG HEREBY DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. THIS LIMITED WARRANTY IS EFFECTIVE FOR ONE (1) YEAR FROM THE DELIVERY DATE THEREOF. KTG MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN EXPRESSED HEREIN, AND SHALL NOT BE LIABLE FOR ANY DIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF USE WHICH CUSTOMER MAY SUFFER, EXCEPT AS MAY OTHERWISE BE REQUIRED BY LAW. KTG SHALL NOT BE RESPONSIBLE FOR DEFECTS DUE TO FIRE, FLOOD, FAULTY ELECTRICAL CURRENTS, ACTS OF WAR AND TERRORISM, OR ANY OTHER FACT OR CIRCUMSTANCE OUTSIDE KTG'S CONTROL. No employee or representative is authorized to change this Limited Warranty in any way or grant any other warranty unless such change is made in writing and signed by an officer of KTG.

Exclusion / Warranty Does Not Cover / Warranty is Void

This Limited Warranty does not apply to: (i) any first articles, prototypes, pre-production units, test units of a Product(s); (ii) any Product(s) which have been repaired by Customer or a third party (unless such repair is with KTG's prior consent); (iii) any Product(s) which have been altered or modified in any way by Customer or third party; or (iv) any Product(s) which have been subject to insufficient maintenance, improper operation, misuse, abnormal and/or excessive use, accident, or neglect.

This Limited Warranty shall not apply to general maintenance services (including but not limited to equipment services and adjustments, proper drainage, cleaning, winterizing, etc.) or to general maintenance parts (including, but not limited, to HVAC filters, fluids, lubricants, light bulbs, devices, etc.). In addition, this Limited Warranty shall not apply to acts of God (hail, storms, earthquakes, floods, etc.) or equipment, materials, parts, or other components not manufactured by KTG, including but not limited to mechanical, plumbing, or electrical components (e.g., fixtures, devices, equipment).

KTG and Customer expressly agree that upon termination of the Warranty Period, the Product(s) carry no warranty whatsoever.

Applicable Law

This Limited Warranty shall be governed by and interpreted in accordance with the laws of the State of California.

Inspections and Warranty Registration Procedure

The Customer Acceptance form and a Warranty Claim form will be included with the Product(s) shipped from KTG's manufacturing facilities. A PDF copy of Customer Acceptance and Warranty Claim forms are available upon request. Upon delivery, the Customer is advised, but has no obligation, to complete a thorough inspection to ensure that the Product(s) has/have arrived in satisfactory condition and notify KTG of any defects within ten (10) days of installation completion.

Warranty Claim Procedure

A Warranty Claim form will be shipped with new Product(s) and will be available in PDF format from KTG. To initiate a warranty claim:

A.) Completely fill out the Warranty Claim form and submit to KTG via email to warranty@kitchenstogo.com within 72 hours of discovering the defect.

B.) All defective parts must be kept and fully protected from further damage until a determination is made by KTG (See Return Material Authorization Procedure).

Return Material Authorization (RMA) Procedure

KTG shall make any and all final decisions on warranty claimed material and provide a Return Material Authorization (RMA) Number to the claimant. KTG will specify the type of transportation regarding freight and carrier for all returns. Replacement parts will be billed at list price and credited when the defective component has been returned and a determination has been made in favor of the claimant by KTG. KTG may from time to time specify other parts, or components to be returned for analysis, problem solving, and cost recovery from suppliers. All replacement parts will be shipped standard freight. Overnight freight will be accommodated at the claimant's request and expense. All items are subject to be returned to KTG.

To return items for warranty:

A.) Obtain a returned goods authorization (RMA) number from KTG.

B.) All material for return must have a return material authorization (RMA) number on all packaging and documents.

C.) Contact KTG when returning material is properly packaged, secured, and ready for pickup.

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

(1) DETERMINING THAT COMPLIANCE WITH STANDARD PROCUREMENT PROCESS IS NOT IN THE BEST INTEREST OF THE CITY AND DISPENSING WITH BIDDING REQUIREMENTS FOR THE PURCHASE OF A FULLY SELF-CONTAINED PRE-MANUFACTURED COMMERCIAL KITCHEN, FROM MCGRATH RENTCORP, DBA KITCHENS TO GO BY MOBILE MODULAR, PURSUANT TO CALIFORNIA PUBLIC CONTRACT CODE SECTION 22050 AND TRACY MUNICIPAL CODE SECTION 2.20.270(A); AND

(2) APPROVING A PURCHASE AGREEMENT WITH MCGRATH RENTCORP, INC., dba KITCHENS TO GO BY MOBILE MODULAR, OF LIVERMORE, CALIFORNIA, A CALIFORNIA CORPORATION, FOR THE PURCHASE OF A FULLY SELF-CONTAINED PRE-MANUFACTURED COMMERCIAL KITCHEN, COMPRISED OF A TWELVE (12) FOOT BY THIRTY-EIGHT (38) FOOT PRE-MANUFACTURED STRUCTURE WITH AN ATTACHED EIGHT (8) FOOT BY TEN (10) FOOT DUAL TEMPERATURE WALK IN COOLER, TO BE INSTALLED AS PART OF THE PHASE II 2024 SITE IMPROVEMENTS AT THE TEMPORARY EMERGENCY HOUSING FACILITY PROJECT, CIP 71112, AT 370 W. ARBOR AVENUE, FOR A NOT-TO-EXCEED AMOUNT OF \$859,891

WHEREAS, on March 10, 2020, City Council adopted Resolution No. 2020-050, which declared a shelter crisis pursuant to California Government Code Section 8698.2; and

WHEREAS, on September 1, 2020, City Council authorized the creation of a Capital Improvement Project (CIP) for the Temporary Emergency Housing Project on Arbor Avenue, CIP 71112 (Project) to create a safe and dignified facility for residents experiencing homelessness; and

WHEREAS, City Council authorized the direct purchase of the pre-manufactured kitchen from McGrath RentCorp, Inc., dba Kitchens To Go by Mobile Modular pursuant to Resolution 2021-197; and

WHEREAS, bids for the Phase II 2024 Site Improvements, including the construction of the pre-manufactured kitchen structure foundation, were received on May 7, 2024, and the Notice of Award was approved by City Council pursuant to Resolution 2024-123 on July 2, 2024; and

WHEREAS, the Temporary Emergency Homeless Shelter, CIP 71112, is an approved Capital Improvement Project with a total budget of \$22,093,254 and sufficient funds are available in the project for the purchase of the pre-manufactured kitchen structure; and

NOW THEREFORE, be it

RESOLVED: That the City Council for the City of Tracy hereby finds the actions approved by this resolution exempt from California Environmental Quality Act (CEQA) review pursuant to Government Code section 8698.4 as provided for homeless shelters, and as consistent with the project for which a Notice of Exemption was issued on October 16, 2020, for the Temporary Emergency Housing site at 500 Arbor Avenue in accordance with Government Code sections 65660-65662 for Low Barrier Navigation Centers and Section 15269(c) of the CEQA Guidelines (14 Cal. Code Regs. 15269(c) for (Emergency Projects); and be it further

RESOLVED: That the City Council for the City of Tracy determines by a four-fifth majority that compliance with standard procurement process is not in the best interest of the City and dispensing with the bidding requirement for the purchase of a fully self-contained pre-manufactured kitchen from McGrath RentCorp, Inc., dba Kitchens To Go by Mobile Modular, pursuant to California Public Contract Code Section 22050 and Tracy Municipal Code Section 2.20.270(a); and be it further

RESOLVED: That the City Council approves a Purchase Agreement with McGrath RentCorp, Inc., dba Kitchens To Go by Mobile Modular for the purchase of a fully self-contained commercial kitchen, comprised of a twelve (12) foot by thirty-eight (38) foot pre-manufactured structure with an attached eight (8) foot by ten (10) foot dual temperature walk in cooler, to be installed as part of the Site Improvements at the Temporary Emergency Housing Facility Project (TEHF), Phase II, CIP 71112, at 370 W. Arbor Avenue., attached hereto as Exhibit 1; and be it further

RESOLVED: That the Mayor is authorized to execute the Purchase Agreement with McGrath RentCorp, Inc., dba Kitchens To Go by Mobile Modular for the Temporary Emergency Housing Facility Project, CIP 71112, at 370 W. Arbor Avenue, attached hereto as Exhibit 1.

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on February 18, 2025, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST: _____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of the
City of Tracy, California

Exhibits:

(1) Purchase Agreement with McGrath RentCorp, Inc., dba Kitchens To Go by Mobile Modular

*Purchase Agreement between:
The City of Tracy and McGrath RentCorp, dba Kitchens to Go by Mobile Modular*

**CITY OF TRACY
PURCHASE AGREEMENT FOR GOODS, COMMODITIES,
AND ANCILLARY SERVICES WITH McGRATH RENTCORP, INC., dba KITCHENS TO GO
BY MOBILE MODILAR, LIVERMORE, CALIFORNIA**

This Purchase Agreement for Goods, Commodities, and Ancillary Services (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and McGrath RentCorp, Inc., dba Kitchens to Go by Mobile Modular, a California Corporation (**Vendor**). City and Vendor are sometimes referred to individually as "**Party**" and collectively as "**Parties**."

Recitals

- A. City is actively pursuing the construction of Temporary Emergency Housing, CIP 71112, pursuant to which the City may provide up to 154 beds on a nightly basis to unhoused residents in the City, along with ancillary services (**Project**), on City-owned land of 4.8 acres located at Arbor Avenue (**Project Site**).
- B. The Project is being funded by Community Development Block Grant (**CDBG**) funds, American Rescue Plan Act (ARPA) funds, Homeless Housing, Assistance and Prevention (**HHAP**) funds, Department of Housing and Urban Development (**HUD**) Community Project Funding Grant funds, and other grant funding sources.
- C. During preliminary design City staff researched all the available the options for providing a fully outfitted self-contained prefabricated kitchen structure (as further described in **Exhibit A** attached hereto, Goods) for use at the Temporary Emergency Housing Facility, CIP 71112. The Vendor was the only local manufacturer able to provide the required structure and furnishings that meet the City's requirements for permanent installation at the project site.
- D. Staff determined that Vendor possesses the skills, experience, and certifications required to provide the requisite Goods for the Project and that the Vendor was the only manufacturer able to provide the City with the required Goods within the City's timelines.
- E. Under Chapter 14.1.4 Non-competitive Proposals section of the CDBG procurement guidelines, the City can procure an item without competitive bidding when that item is only available from that single source.
- F. After negotiations between the City and Vendor, the Parties have reached an agreement for the performance of the Services in accordance with the terms set forth in this Agreement.
- G. This Agreement is being executed pursuant to Resolution No. 2021-197, which was adopted by the City Council for the City of Tracy on December 21, 2021.

Now, therefore, the Parties mutually agree as follows:

1. **CITY PURCHASE.**

1.1. **GOODS.** The City agrees to purchase, and the Vendor agrees to sell, the Goods as more specifically outlined and described in the attached **Exhibit A**, which is incorporated herein by this reference. The Goods shall comply with all of the standards and specifications outlined in **Exhibit A**.

1.2. **SERVICES.** The City also agrees to purchase from Vendor the services related to the design, approval and delivery, and installation of such Goods, as more specifically outlined and described in the attached **Exhibit B (Ancillary Services)**, which is incorporated herein by this reference. Ancillary Services shall be provided in a manner consistent with the level of care and skill ordinarily exercised by members in the same profession, practicing in the same locality under similar conditions.

1.3. **NO SUBSTITUTIONS; AUTHORIZED REPRESENTATIVE.** There shall be no substitution of Goods or Ancillary Services, without the prior written authorization of the City. All Ancillary Services shall be performed by or under the direct supervision of, the Vendor's Authorized Representative: Sam Proserpi, Account Executive. Vendor shall not replace its Authorized Representative without City's prior written consent. If Vendor fails to obtain the City's prior written consent for any change or replacement in personnel, Goods, or Ancillary Services, the City may terminate this Agreement.

2. **DELIVERY DATES.** The Vendor shall ship Goods, and the Goods must arrive at the destination of 370 W Arbor Avenue, Tracy CA, 95304 and Ancillary Services must be provided by the Vendor as outlined in the detailed Delivery Timeline, specified in **Exhibit C**.

2.1 Any failure by the vendor to meet the Delivery Timeline will constitute a material default of this Agreement. If the Vendor fails to meet the delivery timeline set out in this Agreement in Exhibit C, the City may cancel the order of any Goods and Ancillary Services not delivered by the required time, without liability, and/or may terminate this Agreement. The Vendor must notify the City immediately if the Vendor reasonably believes the Vendor will not be able to meet the Delivery Timeline for any reason and provide the City with a schedule that the Vendor reasonably believes it will be able to meet. It is within the City's discretion whether it will accept the revised timeline.

3. **PURCHASE PRICE.** City shall pay Vendor on a fixed fee basis, at the fee amounts outlined in **Exhibit D**, attached hereto and incorporated herein by this reference. The purchase price will be broken down by price of the Goods, and the price of the Ancillary Services, with a total calculation at the end.

- 3.1 NOT TO EXCEED AMOUNT.** Vendor's total contract amount, for the aggregate of the Goods and the Ancillary Services, under this Agreement shall not exceed \$859,891.40. The Not to Exceed Amount includes all applicable sales taxes, license, and transfer fees. Unless specifically stated otherwise or agreed to in a writing signed by all Parties, the fees proposed by Vendor, as set forth in Exhibit D hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement. It is understood and agreed that Vendor may not receive compensation up to the "not-to-exceed" amount (or any other amount), and Vendor's total compensation under this Agreement will depend on the scope of the Services requested and approved by the City. Vendor's billing rates shall cover all costs and expenses for Vendor's performance of this Agreement. No work shall be performed by Vendor in excess of the "not-to-exceed" amount provided in this section without the City's prior written approval.
- 3.2 INVOICES.** Vendor shall submit invoice(s) in accordance with the payment schedule as shown in Exhibit D.
- 3.3 PAYMENT.** Within 30 days after the City's receipt of the invoice(s), City shall make payment to the Vendor based upon the services described on the invoice(s) and approved by the City.
- 3.4 FINAL PAYMENT.** The acceptance by Vendor of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for payment to Vendor for the Goods and Ancillary Services. Vendor agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Vendor or its employees, subcontractors, agents and subconsultants for the accuracy and competency of the information provided and/or services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the Services performed by Vendor, its employees, subcontractors, agents and subconsultants.
- 3.5 BOOKS AND ACCOUNTS.** Vendor agrees to maintain books, accounts, payroll records and other information relating to the performance of Vendor's obligations under the Agreement, which shall adequately and correctly reflect the expenses incurred by the Vendor in the performance of Vendor's work under the Agreement. Such books and records shall be open to inspection and audit by the City during regular business hours for three years after expiration or termination of this Agreement at City's sole cost and expense, for the limited purpose of ensuring proper billing.

4. **CANCELLATION AND TERMINATION.** The City reserves the right to terminate or cancel any portion of this Agreement at any time prior to the delivery of Goods and Ancillary Services, for cause in the event of a breach of this Agreement by Vendor, by giving Vendor written notice as set forth in Section 14 below. There shall be no period of grace after giving the notice of cancellation or termination. Notwithstanding the terms of Section 14 below, cancellation or termination shall become effective immediately upon the date the written notice is delivered to Vendor. Notwithstanding anything herein to the contrary, it is understood and agreed that upon the City's execution of this Agreement, Vendor shall proceed with procurement of any materials, equipment, labor, or otherwise in the performance of its obligations hereunder and in so doing, may incur extraordinary costs and expenses. City may not cancel and portion of the work or terminate the agreement, except for cause as set forth above. In the event that the Agreement is terminated for cause, the City shall receive reimbursement for all partial payments.
5. **BREACH.** In the event of a breach of the Agreement by Vendor, City may terminate the Agreement immediately without notice, may reduce payment to the Vendor in the amount necessary to offset City's resulting damages, may procure substitute Goods or Ancillary Services at Vendor's expense, and/or may pursue any other available recourse against Vendor. Vendor may only terminate the Agreement if City breaches a material provision of this Agreement, and such breach continues for a period of 30 days after written notice describing the breach.
6. **DELIVERY RISK OF LOSS.** All orders will be Free on Board (FOB) destination if not otherwise specified. Risk of loss or damage to the Goods shall remain with the Vendor until the Goods have been delivered to the City. All Goods and Ancillary Services will be received by the City subject to its right of inspection, rejection, and revocation of acceptance under the Uniform Commercial Code. The City will be allowed a reasonable period of time to inspect the Goods and Ancillary Services and to notify Vendor of any nonconformance with the terms and conditions of the specifications. The City may reject any Goods and Ancillary Services that do not conform to the terms and conditions outlined under **Exhibits A** through E. Any Goods and Ancillary Services rejected may be returned to the Vendor at the Vendor's risk and expense. Any loss of or damage to the Goods after delivery shall not alleviate City's obligation to pay Vendor any remaining balance of the purchase price existing at the time of the loss, except to the extent any such loss or damage is caused by negligence or willful misconduct, or by the failure of the Goods to conform to the warranties or specifications set forth in this Agreement (including without limitation any Exhibits hereto). Title to the Goods shall not pass to the City before the entire purchase price has been paid to Vendor.
7. **INDEMNIFICATION.** Vendor shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against, and reimburse the City for, any and all third party liabilities, obligations, losses, damages, injunctions, suits, actions, fines, penalties, claims, demands, administrative and judicial proceedings and order, judgments, remedial action requirements, costs and expenses of every kind or nature, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and court costs ("**Claims**") arising directly or indirectly from or out of (including any and all related costs and expenses), relating or pertaining to or resulting from, in whole or in

part, this Agreement; the Goods and the Ancillary Services; any act, omission, or event relating in any way to Vendor's obligations under this Agreement, but only to the extent such Claim is caused by the negligence or willful misconduct of the Vendor. In this Section 7, "City" means the City, its officials, officers, agents, employees and volunteers; "Vendor" means the Vendor, its employees, agents and subcontractors.

In the event there is a finding and/or determination that Vendor is not an independent contractor and/or is an employee of City, including but not limited to any such finding and/or determination made by the California Public Employees' Retirement System (CalPERS), the Department of Industrial Relations (DIR), or the Internal Revenue Service (IRS), Vendor shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the City from and against any and all Claims relating to or in connection with such a finding and/or determination.

(The duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

Vendor and City mutually waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination of this Agreement.

Vendor is an independent contractor and is solely responsible for the acts of its employees or agents or anyone acting on Vendor's behalf, including any negligent acts or omissions. Vendor is not City's employee, and Vendor shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Vendor, and its agents or employees, are not entitled to City benefits. Vendor shall be solely responsible for, and shall save the City harmless from, all matters relating to the payment of Vendor's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and State income tax withholding and all other regulations governing employer-employee relations.

The City shall indemnify and hold Vendor harmless from any and all Claims arising out of or relating to (A) the City's negligence or willful misconduct; (B) the City's failure to comply with applicable law; and/or (C) the City's modification of the Goods or the removal, application, or use of attachments, accessories, or parts on Goods, which have not been given approval in writing by an officer of Vendor.

The provisions of this section survive the expiration or the termination of this Agreement and are not limited by the provisions of Section 8 relating to insurance.

8. **INSURANCE**. Vendor shall, throughout the duration of this Agreement, maintain insurance to cover Vendor, its agents, representatives, and employees in connection with the performance of the Services under this Agreement at the minimum levels set forth herein.

- 8.1 COMMERCIAL GENERAL LIABILITY** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 8.2 AUTOMOBILE LIABILITY** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 8.3 WORKERS' COMPENSATION** coverage shall be maintained as required by the State of California.
- 8.4 ENDORSEMENTS**. Vendor shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:
- 8.4.1** The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
- 8.4.2** To the extent of the liabilities assumed by Vendor under this Agreement, Vendor's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Vendor's insurance and shall not contribute with it.
- 8.5 NOTICE OF CANCELLATION**. Vendor shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Vendor shall immediately obtain a replacement policy.
- 8.6 AUTHORIZED INSURERS**. All insurance companies providing coverage to Vendor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California
- 8.7 INSURANCE CERTIFICATE**. Vendor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement and, in any event, within five (5) days of such request.

- 8.8 **SUBSTITUTE CERTIFICATES.** Vendor shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.
- 8.9 **VENDOR'S OBLIGATION.** Maintenance of insurance by the Vendor as specified in this Agreement shall in no way be interpreted as relieving the Vendor of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Vendor may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.
- 8.10 **CITY'S INSURANCE OBLIGATION.** Upon delivery of the Goods and until the City has paid for the Goods in full, City shall provide, maintain, and pay all premiums for property insurance covering the loss, theft, destruction, or damage to the Goods in an amount not less than the full replacement value and will name Vendor as loss payee of the proceeds, unless City has paid Vendor the entire purchase price in full prior to the scheduled delivery of the Goods. The City shall also provide, maintain, and pay all premiums for general liability insurance in the amount of \$1,000,000.00 (one million dollars) and name Vendor as an additional insured, but only until the City has paid for the Goods in full. All insurance shall be in a form and with a company having an A.M. Best rating of A- or better and shall not be subject to cancellation without thirty (30) days prior written notice to Vendor. The City shall deliver to Vendor insurance certificates, or evidence of insurance proving the existence of policies meeting the above requirements, upon execution of the Agreement. Notwithstanding the foregoing, subject to the City providing to Vendor proof of self-insurance satisfying requirements equivalent to those imposed under this Section 8.10, the City may maintain self-insurance sufficient to satisfy the potential liabilities arising hereunder, in full satisfaction of the above insurance requirements
9. **PACKING AND SHIPPING.** Deliveries must be made as specified in **Exhibit C**, without charge, for boxing, crating, or storage unless otherwise specified. As set forth in this Agreement and the exhibits hereto, Vendor will construct and assemble certain structures away from the Project Site and deliver (or cause to be delivered) said pre-constructed structures to the Project Site. Vendor, not the City or any of its employees, shall accept all deliveries under this Agreement (including pieces of equipment that were not included in the original pre-constructed structure) for installation at a secure location and safeguard such deliveries until they are installed at the Project Site. The Vendor shall not direct deliveries of equipment to be installed within the pre-constructed structure to the Project Site or any other City facility or location, unless Vendor will be on site to accept and safeguard such delivery. City will not receive any deliveries on the Vendor's behalf at any City facility. Goods must be suitably packed to secure the lowest transportation costs and, in accordance with the requirements of common carriers, in a manner to assure against damage from weather or

transportation. The City's order numbers and symbols must be plainly marked on all invoices, packages, and shipping orders. Packing lists specifying the quantity, description, and Purchase Agreement Number must accompany each box or packing shipment and must be submitted to the City as verification that the installed equipment is per the final design and Agreement.

10. **TAXES**. The Vendor must separately state on all invoices any taxes imposed by the local, state, or federal state government applicable to furnishing of Goods and Ancillary Services; provided, however, where a tax exemption is available, the tax must be subtracted from the total price and identified. Unless otherwise outlined in the Purchase Agreement, the Purchase Price will be considered to include state and city sales or use tax.
11. **WARRANTY**. The Vendor warrants and represents that the Goods being sold pursuant to this Agreement will conform to the description set forth on this Agreement, including all attachments hereto. Except for the foregoing sentence and the Limited Warranty provided in **Exhibit E** hereto, VENDOR MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, EXCEPT AS SPECIFICALLY SET FORTH WITHIN THE LIMITED WARRANTY ATTACHED HERETO AS EXHIBIT E. The City hereby acknowledges that it has received and reviewed said Limited Warranty. Without limiting Vendor's indemnification obligations set forth in Section 7 above, correction by Vendor of nonconformities, whether patent or latent, within the applicable warranty period shall constitute fulfillment of all liabilities of Vendor for such nonconformities, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise with respect to such Goods.
12. **REBATES, KICKBACKS, OR OTHER UNLAWFUL CONSIDERATIONS**. Vendor warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For any breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price the value of the rebate, kickback, or other unlawful consideration; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.
13. **NOTICES**. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:
Ilene Macintire, P.E.
Senior Civil Engineer, Utilities Division
City of Tracy, Operations & Utilities
3900 Holly Drive
Tracy, CA 95304

To Vendor:
Sam Prosperi, Account Executive
McGrath RentCorp
5700 Las Positas Road
Livermore, CA 94551

With a copy to:
City Attorney
333 Civic Center Plaza
Tracy, CA 95376

14. MISCELLANEOUS

- 14.1 STANDARD OF CARE.** Unless otherwise specified in this Agreement, the standard of care applicable to Vendor's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.
- 14.2 AMENDMENTS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.
- 14.3 WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. No waiver shall be effective unless it is in writing and signed by the waiving party.
- 14.4 ASSIGNMENT AND DELEGATION.** Vendor may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment, transfer or delegation shall not be deemed to be a consent to any subsequent assignment, transfer or delegation.
- 14.5 JURISDICTION AND VENUE.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 14.6 COMPLIANCE WITH THE LAW.** The Parties shall comply with all applicable local, state, and federal laws, including, without limitation, those identified below, whether or not such laws are expressly stated in this Agreement.
- 14.6.1 HAZARDOUS MATERIAL.** Vendor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of performing their services, but only to the extent such spill is

caused or contributed to by Vendor's negligence, willful misconduct, or otherwise culpable act.

14.6.2 NON-DISCRIMINATION. Vendor represents and warrants that it is an equal opportunity employer, and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, or age. Consultant shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

14.7 BUSINESS ENTITY STATUS. Vendor is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Vendor. By entering into this Agreement, Vendor represents that it is authorized to do business in California, in good standing with the Secretary of State, and in good standing with all agencies having jurisdiction over Vendor (including any licensing agencies). If Vendor is a suspended entity at the time, it enters this Agreement, City may take steps to have this Agreement declared voidable.

14.8 BUSINESS LICENCE. Before the City signs this Agreement, Vendor shall obtain a City of Tracy Business License. Vendor shall maintain an active City of Tracy Business License during the term of this Agreement.

14.9 SUCCESSORS AND ASSIGNS. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

14.10 CONSTRUCTION OF AGREEMENT. Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.

14.11 SEVERABILITY. If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

14.12 CONTROLLING PROVISIONS. In the case of any conflict between the terms of this Agreement and the Exhibits hereto and Vendor's proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Vendor's proposal (if any), the Exhibits shall control.

14.13 ENTIRE AGREEMENT. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed and the matters contemplated herein. This Agreement supersedes all prior negotiations, representations or agreements (in each case, whether oral or in writing). All exhibits attached hereto are incorporated by reference herein.

- 14.14 COUNTERPARTS.** City and Vendor agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original
- 14.15 EXPENSES FOR ENFORCEMENT.** Vendor and City agree that the prevailing party's reasonable costs, attorneys' fees and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.
- 14.16 Ownership of Work.** All original documents prepared by Vendor relating to the Goods or Ancillary Services, whether complete or in progress, are the property of the City, and shall be given to the City upon termination of this Agreement or within five (5) days of any demand from the City. No such documents shall be revealed or made available by Vendor to any third party without the City's prior written consent.
- 15. SIGNATURES.** The individuals executing this Agreement on behalf of Vendor represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of Vendor.

[Signature Page to Follow]

Purchase Agreement between:
The City of Tracy and McGrath RentCorp, dba Kitchens to Go by Mobile Modular

The Parties agree to the full performance of the terms set forth in this Agreement and have caused this Agreement to be duly executed.

City of Tracy, a Municipal Corporation

By: _____
Midori Lichtwardt, City Manager
Title: _____
Date: _____

Attest:

Necy Lopez, Interim City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

**McGrath RentCorp, dba Kitchens to Go by
Mobile Modular**

By: 
Dave Whitney
Title: Chief Financial Officer
Date: 2/6/2025

Federal Employer Tax ID No. 94-2579843

By: Philip Hawkins
Signature ID: F1FE43ZKT6...
Phil Hawkins

Title: Chief Operating Officer
Date: 2/6/2025

Exhibits:

Exhibit A:	Description of Goods
Exhibit B:	Description of Ancillary services
Exhibit C:	Delivery Timeline
Exhibit D:	Purchase Price & Payment Schedule
Exhibit E:	Warranty

EXHIBIT A – DESCRIPTION OF GOODS

The Vendor shall design and construct a fully code compliant twelve (12) foot by thirty-eight (38) foot pre-manufactured kitchen structure with an attached eight (8) foot by ten (10) foot walk in cooler, fully furnished with commercial kitchen equipment as listed below and as determined during design.

The structure design must have California Department of Housing and Community Development (HCD) review and approval, prior to the start of fabrication. The kitchen structure will be installed by the Vendor on a foundation at the project site constructed by the City's General Contractor. The kitchen structure shall include all plumbing, electrical and mechanical (HVAC) components required for a fully self-contained kitchen that will be connected by the City's General Contractor to the project site water, power, sewer, and communications & data infrastructure.

Upon receipt of City approval of the HCD approved stamped engineering design drawings, the Vendor shall manufacture the structures as described in the Exhibits A thru E fabricating all required structure components, providing all labor and materials, shipping the completed pre-manufactured structure to the City's project site at 370 Arbor Avenue to arrive at a time coordinated with the City and the City's General Contractor, and completing the installation and testing of all equipment once installed on site. The Vendor shall schedule an equipment instruction period with the City and facility users after installation and testing are complete.

The cost of the following services are considered to be included in the purchase price of the Goods:

1. Fabrication and Manufacture of Modular Kitchen
2. Construction Administration Phase services
3. Freight and Delivery of Modular Kitchen to Project Site
4. Installation of Modular Kitchen at Project Site
5. Coordination with Local Architect and Engineer of Record for Project Site Activities
6. Coordination with Site General Contractor and City on Delivery Timeframes, coordination of the requirements for installation on the foundation, testing, etc.

LIST OF GOODS

COMMERCIAL KITCHEN EQUIPMENT	MODEL DETAILS **	MODEL No. **
Dishwasher		
Soiled Dish Table with Pre-Rinse – 48"		
Floor Sinks		
Stainless Steel Wall Mounted Shelf – 12" x 84"		
Stainless Steel Wall Mounted Shelf – 12" x 36"		
Stainless Steel Wall Mounted Shelf – 12" x 60"		

Three Compartment Sink		
Water Heater		
Wire Shelving – 24” x 48”		
Wire Shelving – 24” x 48”		
Stainless Steel Exterior Service Counter		
Serving Window		
30” x 72” Stainless Steel Worktable		
Reach-In Refrigerator – 2 Door		
Fire Extinguisher – “K” Type		
Wire Shelving – 18” x 48”		
Electrical Panel		
36” Entry Doors		
Fire Extinguisher – “ABC” Type		
Hand Sink with Side Splash Guards		
Reach-In Freezer – 1 Door		
Mixer – 20 Qt.		
Equipment Stand		
Fire Suppression System		
Six (6) Burner Electric Range with Standard Oven Below		
24” Charbroiler on Stand		
Flat Top Cooking Surface		
Stainless Steel Canopy Hood		
Tilt Skillet -16 Gallon		
Dual Stack Convection Oven		
Two Compartment Sink		
Wire Shelving – 24” x 36”		
HVAC Unit		
Clean Dish Table		
30” x 36” Stainless Steel Worktable		
Air Curtain		

Attachments: A-1 Preliminary Structure Floor Plan

A-2 Equipment Specifications

EXHIBIT B – ANCILLARY SERVICES

Ancillary Services to be provided will include:

1. Final Design of Modular Kitchen

Final Design of Modular Kitchen services shall include the following:

Contractor will provide design consulting services for development of a code compliant, custom design for a Factory-Built Modular Kitchen consisting of a 12' x 38' (twelve foot by thirty-eight foot) Modular Kitchen with an attached 8' x 10' (eight foot by ten foot) Walk-In Cooler. Final Design of Modular Kitchen services will develop the design for the above-reference Project through final construction documents, including:

1. Programming Response & Conceptual Design phase
2. Schematic Design phase
3. Design Development phase
4. Final Construction Documents
 - a. Submittals to third party inspector for certification by the California Department of Housing and Community Development (HCD) and completed certification
 - b. Submittal package for County Health Department permitting review
 - c. Support for the County Health Department Plan Check, comments and back check process

Programming Response & Conceptual Design Phase:

The Programming, Response & Conceptual Design phase includes work to define the general scope, scale, functional relationship of spaces and of the modular building(s) to the Project site, in conjunction with all relevant property reports provided by the Customer with respect to the Project site, including but not limited to the preliminary site plan, and geotechnical testing reports for the Project site.

Deliverables shall include Programming Response Concept Review, Floor Plans, and Elevations.

The Programming, Response & Conceptual Design Phase shall include 2 virtual or telephonic meetings with the City. Additional meetings or in person meetings, if requested by the City, will be provided as Additional Services. This phase shall be completed within approximately fifteen (15) business days.

Schematic Design Phase:

The Schematic Design Phase includes work to define the general scope, scale, and functional relationship of spaces. The documents will identify both site planning and building planning including area allocations, conceptual organization of exterior and

interior spaces, conceptual image, and usage of feature interior and exterior materials, selection of structural, mechanical, plumbing and electrical system concepts. Upon acceptance of the Schematic Design Package, the City will approve the conceptual direction for further development in subsequent phases.

Deliverables shall include 25% complete Construction Documents including Building Planning, Outline Specifications, Floor Plan, Elevations, Reflected Ceiling Plan, HVAC Layout, Electrical Layout, Cross Sections and Foundation Plan. Deliverables shall be presented and submitted in electronic form.

The Schematic Design Phase shall include two (2) virtual or telephonic meetings with the City. Additional meetings or in person meetings, if requested by the City, will be provided as Additional Services. This phase shall be completed within approximately twenty (20) business days following completion of the Programming Response & Conceptual Design phase.

Design Development Phase:

The Design Development phase includes work to complete design development documents that clearly identify the developed architectural, structural, mechanical, electrical, plumbing and fire protection design solutions for the Project. All major features and components of the design solution will be documented changes requested by the City to the specifications, plans, elevations, building systems or other elements of the Project contained in the design development documents following this phase and may impact the estimated design fees for the construction documents phase unless changes are related to errors and omissions by the Contractor.

Deliverables shall include 80% complete Design Documents including Building Planning, Specifications, Floor Plan, Elevations, Reflected Ceiling Plan, HVAC Layout, Electrical Layout, Cross Sections and Foundation Plan. Deliverables shall be presented and submitted in electronic form.

The Design Development Phase shall include two (2) virtual or telephonic meetings with the City. Additional meetings or in person meetings, if requested by the City, will be provided as Additional Services. This phase shall be completed within approximately thirty (30) business day following completion of the Schematic Design Phase.

Final Construction Documents Phase:

The Final Construction Documents phase will define completed Construction Plans and Specifications, State of California Certification Document Development and Submittal, and Approval. County Health plan check and local permit submittal packages are included along with required revisions. Design of Modular Kitchen is deemed final upon approval of plans by the City of Tracy Building Safety and Inspection. Completed Construction Plans and Specifications shall be signed and stamped by architects/engineers licensed by the State of California.

Deliverables shall include 100% complete Final Construction Documents including final Building Planning, Specifications, Floor Plan, Elevations, Reflected Ceiling Plan, HVAC Layout, Electrical Layout, Cross Sections and Foundation Plan including all required work for Walk-In Cooler. Deliverables shall be presented and submitted in electronic form.

Fabrication and Manufacture of Modular Kitchen shall include all time, materials, labor, equipment, furnishings to provide a complete and fully functioning commercial kitchen.

Construction Administration Phase services shall include coordination with equipment manufacturers, suppliers, City General Contractor and other involved in the construction of the site improvements and Project.

Delivery of the Modular Kitchen to the Project Site shall include all transportation, scheduling, and providing required equipment to bring modular kitchen to site.

Installation and Construction of Modular Kitchen at Project Site shall include all required labor, scheduling and equipment required to place modular kitchen on foundation at site and connect kitchen to all site utilities for full operation. Connection to onsite water and sewer systems are included. Final testing and calibration of all kitchen systems and equipment, final clean and formal handoff and safety training shall be included.

Coordination with Local Architect and Engineer of Record for Project Site Activities shall include all required labor, scheduling, and efforts to relay construction processes and plan approval of modular kitchen facility after onsite delivery and site hookup including coordination after installation and onsite technical support. As-Built documentation shall be delivered to A/E of Record and City.

Coordination with Site General Contractor and City on Delivery Timeframes shall include additional meetings and project site visits as needed for coordination efforts required under this contract.

Payment Schedule – Ancillary Services

Payment shall be made on the following schedule:

1. Retainer Payment – 25% of Design Services Compensation	\$5,150.00.
2. Progress Payment 1 – at completion of Conceptual Design Phase	\$3,862.50
3. Progress Payment 2 – at completion of Schematic Design Phase	\$3,862.50
4. Progress Payment 3 – at 50% completion of Design Development Phase	\$3,862.50
5. Progress Payment 4 – at 100% completion of Design Development Phase	\$3,862.50

Additional Services

"Additional Services" are services not expressly included in the Basic Services set forth in this Proposal or any exhibits hereto. In the event that Additional Services are requested by Customer or required for the Project, the Parties hereto may agree for Consultant, or its third-party consultant architects/engineers, to perform such Additional Services for a mutually agreeable lump sum amount or at mutually agreeable hourly rates. Such agreement shall be set forth in writing (which may be made via email). In the event of a material change in the scope of the Project, the Parties shall negotiate the amount of compensation set forth above in good faith to account for the added effort, time, and expense expected to be incurred by Consultant in completing its services on the Project. Consultant shall not be obligated to complete any services arising from a material change in the scope of the Project absent agreement with the Customer as to such compensation. Standard hourly rates for KTG Employees are as follows:

Executive Principal	\$325.00/hour
Principal	\$275.00/hour
Director	\$185.00/hour
Project Manager/Project Designer	\$150.00/hour
Project Associate/Revit Associate	\$125.00/hour

Excluded Services:

- Low Voltage System Design/ Installation (Data, phone, security, fire monitoring, etc.)
- Permit / Plan Check Fees
- Site Improvement Work (unrelated to kitchen structure and foundation)
- Utility Connections (unrelated to kitchen structure and foundation)
- Exterior paint (as directed by The KPA Group)
- Standalone exterior lighting not a part of the building electrical distribution system
- Landscaping

WORK BY OTHERS:

The following items have been completed by the City and are available for the Contractor's reference. These tasks are excluded from the Contractor Scope of Work.

Site Plan Permit Submittal Set 1: Gen. Civil & Landscaping, Temporary Emergency Housing Facility on Arbor Avenue / Site Civil Design including:

1. Drainage analysis of, and computations with respect to, the proposed Project site
2. Project site plan, grading and drainage plans

3. Preliminary landscape plan
4. Site parking and accessibility plan
5. Site Utility Plan including: Water and wastewater lines from the property line to the building point of connection
6. Electrical service main, diagram and/or isometrics
7. Fire Alarm Plan
8. Data, Telephone or Security Plans
9. Building Approach and Accessibility Plans
10. Geotechnical Testing and all other environmental and reports regarding existing conditions at the Project Site
11. Survey of the Project Site - The topographic improvements and boundary survey shall be provided to Contractor, if required, prior to, and as a condition precedent to, the commencement of the Schematic Design Phase.

EXHIBIT C – DELIVERY TIMELINE

The total anticipated time from Notice to Proceed to Final installation is 225 Business days.

The delivery timeline for the following scope items is as follows:

Final Design of Modular Kitchen:

Programming Response & Conceptual Design – Within 15 Business Days of NTP

Schematic Design – Within 20 Business Days of Programming Response & Conceptual Design

Design Development – Within 21 Business Days of Schematic Design

Final Construction Documents – Estimated within 40 Business Days of Design Development, provided, however, that such estimate is contingent upon the State of California lead time.

Fabrication and Manufacture of Modular Kitchen – Within 100 Business Days of completion and approval of Final Construction Documents. Fabrication cannot start until Final Construction Documents are complete, which is contingent upon the State of California's process.

Delivery of the Modular Kitchen to the Project Site: - Within 14 Business Days of completion of Fabrication and Manufacture of Modular Kitchen at a time coordinated with the City and the General Contractor

Installation and Construction of Modular Kitchen at Project Site: - Within 15 Business Days of Delivery of Modular Kitchen to Project Site

Construction Administration Phase – No defined timeline for services

Coordination with Local Architect and Engineer of Record for Project Site Activities – No defined timeline for services

Coordination with Site General Contractor and City of Delivery Timeframes – No defined timeline for services

Business Days are defined as all Mondays, Tuesdays, Wednesdays, Thursdays, and Fridays regardless of City of Tracy business operations or holidays. The parties acknowledge that there are currently supply chain delays within the industry, and some components and equipment leased hereunder may have longer lead times, which may delay the anticipated timelines. Notwithstanding anything herein to the contrary, all timelines in this Exhibit C will be subject to Equipment availability.

EXHIBIT D – PURCHASE PRICE

GOODS – As described in Exhibit A:

- 1) Code Compliant, HCD Certified, County Health Approved, fully equipped and self-contained Prefabricated 12' x 38' Modular Kitchen with attached 8' x 10' Walk-In Cooler, including all taxes, transfer fees and licenses.

Total Goods: \$ \$735,959.00

ANCILLARY SERVICES – As described in Exhibit B Total Services: \$ 21,600.00

5% Contingency for Equipment Escalation and unforeseen expenses: \$ 36,797.95

APPLICABLE SALES TAX: \$ 65,534.45

Agreement Not to Exceed Amount: \$ \$859,891.40

Payment Schedule

All Payments will be made in accordance with Section 3 of the Agreement.

Payment Schedule – Ancillary Services

Invoices for Payment shall be submitted on the following schedule:

1. Retainer Payment – 25% of Design Services Compensation \$5,150.00.
2. Progress Payment 1 – at completion of Conceptual Design Phase \$3,862.50
3. Progress Payment 2 – at completion of Schematic Design Phase \$3,862.50
4. Progress Payment 3 – at 50% completion of Design Development Phase \$3,862.50
5. Progress Payment 4 – at 100% completion of Design Development Phase \$3,862.50

Structure Payment Schedule

Upon the City's approval of the design plans and notice to proceed with manufacturing, invoices for Payment of Goods shall be submitted on the following schedule:

1. Thirty percent (30%) upon notice to proceed
2. Forty percent (40%) upon completion of manufacturing of the Goods
3. Twenty percent (20%) upon delivery, installation at the project site and final testing of all systems and equipment.
4. Ten percent (10%) upon written acceptance by the City.

EXHIBIT E

LIMITED WARRANTY

Products Warranted

This Limited Warranty applies to the Goods (hereinafter, "Products"), as defined in the Purchase Agreement for Goods, Commodities, And Ancillary Services (the "Agreement") between McGrath RentCorp, dba Kitchens To Go By Mobile Modular ("KTG" or "Vendor") and the City of Tracy ("Customer" or "City").

Warranty Period

KTG warrants that new Products will be free of defects in material and workmanship under normal use and service (the "Limited Warranty") for a period of one (1) year after the date of delivery of the Product(s) (the "Warranty Period") to the Customer. KTG does not warrant any equipment, materials, parts, or other components that are not manufactured for or by KTG, except to the extent of the warranty that KTG may receive from the manufacturer of such items. If assignable, KTG hereby assigns all manufacturers' warranties for such other equipment, materials, parts, or other components that are not manufactured for or by KTG, which shall be subject to the specific manufacturer's warranty provisions and time periods. This Limited Warranty is not transferable.

Coverage

During the Warranty Period, the Customer shall promptly notify KTG in writing if the Product(s) fail to comply with the Limited Warranty, which notification must be made within 96 hours of identification of the alleged defect, and which notification shall describe the alleged defect in sufficient detail to permit KTG to investigate and remedy the alleged defect consistent with the terms of the Limited Warranty. Following said notice, KTG shall test the Product(s) in order to isolate any malfunctions and/or defects in the Product(s). If KTG determines that the Product(s) contains malfunctions due to defects in workmanship or materials, then KTG shall promptly correct, repair, or replace the nonconforming or defective Product(s), material, or workmanship that is/are covered under the Limited Warranty. KTG shall cover the cost of labor to the extent reasonably necessary to repair or replace the nonconforming or defective Product(s), material, or workmanship that is/are covered under this Limited Warranty. Without limiting the indemnity obligations or other obligations set forth in the Agreement, the remedies set forth in this paragraph are exclusive and correction by KTG of Product(s) non-conformities in the manner provided above shall constitute fulfillment of all liabilities and obligations of KTG.

Customer Responsibilities

The Customer is responsible for proper inspection, installation, maintenance, use and operation of the Product(s), including, but not limited to, accompanying fixtures, devices, plugs, equipment, power supply, winterization, and cleaning the interior/exterior of the Product(s). The Customer shall also be responsible to store defective material as to not cause further damage and prepare the defective material or Product(s) for shipment at KTG's reasonable instructions and direction. If requested by KTG, Product(s) and/or parts for which a warranty claim is made are to be returned to KTG at KTG's cost and expense. If any alterations are made by someone other than a duly authorized representative of KTG, then this Warranty is void.

Labor Reimbursement Policy

All Warranty labor and travel allowance must be approved in advance, in writing, by KTG prior to any work being performed.

Disclaimer

KTG's obligation under this Limited Warranty is expressly limited to the conditions as stated above and shall not include duty, taxes, or any other charges whatsoever, or any liability for direct, indirect, incidental, or consequential damage or delay. THE WARRANTIES CONTAINED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, AND KTG HEREBY DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. THIS LIMITED WARRANTY IS EFFECTIVE FOR ONE (1) YEAR FROM THE DELIVERY DATE THEREOF. KTG MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN EXPRESSED HEREIN, AND SHALL NOT BE LIABLE FOR ANY DIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF USE WHICH CUSTOMER MAY SUFFER, EXCEPT AS MAY OTHERWISE BE REQUIRED BY LAW. KTG SHALL NOT BE RESPONSIBLE FOR DEFECTS DUE TO FIRE, FLOOD, FAULTY ELECTRICAL CURRENTS, ACTS OF WAR AND TERRORISM, OR ANY OTHER FACT OR CIRCUMSTANCE OUTSIDE KTG'S CONTROL. No employee or representative is authorized to change this Limited Warranty in any way or grant any other warranty unless such change is made in writing and signed by an officer of KTG.

Exclusion / Warranty Does Not Cover / Warranty is Void

This Limited Warranty does not apply to: (i) any first articles, prototypes, pre-production units, test units of a Product(s); (ii) any Product(s) which have been repaired by Customer or a third party (unless such repair is with KTG's prior consent); (iii) any Product(s) which have been altered or modified in any way by Customer or third party; or (iv) any Product(s) which have been subject to insufficient maintenance, improper operation, misuse, abnormal and/or excessive use, accident, or neglect.

This Limited Warranty shall not apply to general maintenance services (including but not limited to equipment services and adjustments, proper drainage, cleaning, winterizing, etc.) or to general maintenance parts (including, but not limited, to HVAC filters, fluids, lubricants, light bulbs, devices, etc.). In addition, this Limited Warranty shall not apply to acts of God (hail, storms, earthquakes, floods, etc.) or equipment, materials, parts, or other components not manufactured by KTG, including but not limited to mechanical, plumbing, or electrical components (e.g., fixtures, devices, equipment).

KTG and Customer expressly agree that upon termination of the Warranty Period, the Product(s) carry no warranty whatsoever.

Applicable Law

This Limited Warranty shall be governed by and interpreted in accordance with the laws of the State of California.

Inspections and Warranty Registration Procedure

The Customer Acceptance form and a Warranty Claim form will be included with the Product(s) shipped from KTG's manufacturing facilities. A PDF copy of Customer Acceptance and Warranty Claim forms are available upon request. Upon delivery, the Customer is advised, but has no obligation, to complete a thorough inspection to ensure that the Product(s) has/have arrived in satisfactory condition and notify KTG of any defects within ten (10) days of installation completion.

Warranty Claim Procedure

A Warranty Claim form will be shipped with new Product(s) and will be available in PDF format from KTG. To initiate a warranty claim:

A.) Completely fill out the Warranty Claim form and submit to KTG via email to warranty@kitchenstogo.com within 72 hours of discovering the defect.

B.) All defective parts must be kept and fully protected from further damage until a determination is made by KTG (See Return Material Authorization Procedure).

Return Material Authorization (RMA) Procedure

KTG shall make any and all final decisions on warranty claimed material and provide a Return Material Authorization (RMA) Number to the claimant. KTG will specify the type of transportation regarding freight and carrier for all returns. Replacement parts will be billed at list price and credited when the defective component has been returned and a determination has been made in favor of the claimant by KTG. KTG may from time to time specify other parts, or components to be returned for analysis, problem solving, and cost recovery from suppliers. All replacement parts will be shipped standard freight. Overnight freight will be accommodated at the claimant's request and expense. All items are subject to be returned to KTG.

To return items for warranty:

A.) Obtain a returned goods authorization (RMA) number from KTG.

B.) All material for return must have a return material authorization (RMA) number on all packaging and documents.

C.) Contact KTG when returning material is properly packaged, secured, and ready for pickup.

Agenda Item 1.C

RECOMMENDATION

Staff recommends that the City Council adopt a Resolution 1)authorizing the purchase of one new, unused MY 2023 Ford F-350 from Rush Truck Centers utilizing Sourcewell Cooperative Program in the amount of \$72,114 for the Building Maintenance Department and 2) declaring the existing F-250 as surplus and approving its disposition pursuant to Tracy Municipal Code Section 2.20.310

EXECUTIVE SUMMARY

This agenda item seeks adoption of a Resolution by the City Council authorizing the purchase of one new, unused MY 2023 Ford F-350 from Rush Truck Centers utilizing the Sourcewell Cooperative Program in the amount of \$72,114 for the Building Maintenance Department. Staff is also requesting the City Council to adopt a Resolution declaring the existing F-250 as surplus and approving its disposition pursuant to Tracy Municipal Code Section 2.20.310. This action addresses an urgent need to replace a vehicle rendered inoperable due to internal engine malfunction.

BACKGROUND

The Operations Division of the Public Works Department is tasked with managing, maintaining, and replacing most of the City's vehicle and equipment fleet. As a part of that assignment, the Operations Division must maintain a vehicle and equipment replacement program to ensure future funding for replacement of purchased equipment and vehicles that reach their useful life or must be replaced due to irreparable condition. The Operations Division has an existing need to replace a failing vehicle under this program.

The Ford F-350 is needed to ensure the consistent maintenance of City facilities by providing the necessary towing and hauling capacity for transporting heavy equipment, tools, and materials. Its durability makes it ideal for supporting facility repairs and responding to maintenance emergencies. Replacing an aging vehicle with a new F-350 will improve operational efficiency, reduce maintenance costs, and enhance the department's ability to perform critical tasks. Without this truck the Building Maintenance Department would be shorthanded a vehicle risking potential service disruptions and limiting its ability to provide essential services to City buildings.

This acquisition was originally scheduled for FY23/24 under the City's equipment replacement program but was delayed due to supply chain constraints.

ANALYSIS

City staff requested bids from Sourcewell. Sourcewell serves government and education organizations with a cooperative purchasing program that manages a competitive solicitation process offering its members an established network of awarded contracts that meet local requirements. The City of Tracy is an established customer with Sourcewell and is authorized to make purchases using Sourcewell cooperative purchasing agreements, per Tracy Municipal Code section 2.20.220.

Sourcewell contracts purchasing solutions that are competitively solicited nationally, offering awarded contracts to companies like Rush Truck Centers. Rush Truck Centers is a Sourcewell awarded contract company, and the City is proposing the purchase of the equipment from this vendor.

The City will contract directly with Rush Truck Centers “piggybacking” on the Sourcewell cooperative agreement, through a purchase order that will incorporate the Sourcewell cooperative agreement terms and conditions. As there are no customized design standards or other requirements needed here, staff recommends proceeding with this contracting approach.

The existing failing F-250 will be sold at public auction to the highest bidder for disposal. The disposal of surplus equipment and commodities or other property no longer needed by any department of the City is governed by Section 2.20.310 of the Tracy Municipal Code (TMC) which identifies the method of disposition of surplus property. Per the TMC, surplus items are sold at public auction to the highest bidder. Funds recovered from auction are typically returned to the department to offset replacement costs. This ensures that any losses incurred are mitigated, allowing the department to maintain financial stability and continue its operations effectively. Items which are not sold at public auction will be reviewed for value, and if appropriate, sold for scrap value.

Staff recommends the purchase at a cost of \$72,114, to be funded through the Fleet Replacement Fund and that the existing F-250 be declared surplus and approved for disposition.

Below is a list of equipment that will be purchased.

Description	Vendor	Cost	Public Bidding Procedure
2023 Ford F-350 Super Duty Truck	Rush Truck Centers	\$72,114	Sourcewell (NJPA) 060920-NVS

Below is a list of the equipment that will be removed from service and surplus.

Retiring Equipment	Equipment Age	Repair Cost	Equipment Condition
2309	2009 Year 46,014 Miles	Total cost of repairs \$15,763	Poor condition, engine has developed a knocking internally in the engine

FISCAL IMPACT

The funding for the purchase of the F-350 in the amount of \$72,114 is available in the Fleet Replacement Fund (FD 605). The proceeds from the surplus of the existing F-250 will be placed in the Fleet Replacement Fund to offset future purchases, as needed.

STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to the City Council’s Strategic Plans.

CEQA REVIEW

The item is categorically exempt from the California Environmental Quality Act pursuant to CEQA Guidelines section 15378, subdivisions (b)(2 & 5) as the acquisition of a truck is an administrative activity of government with no possibility of a significant environmental effect.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a Resolution authorizing 1) the purchase of one new Ford F-350 from Rush Truck Centers utilizing competitively bid Sourcewell Cooperative Program in the amount of \$72,114 for the Building Maintenance Department; and 2) declaring the existing F-250 as surplus and approving its disposition pursuant to Tracy Municipal Code Section 2.20.310.

Prepared by: Adrian Taylor, Fleet Supervisor

Reviewed by: David Murphy, Assistant Director of Operations
Jim Thompson, Operations Superintendent
Stephanie Reyna-Hiestand, Assistant Director of Utilities
Kamalpreet Gill, Deputy City Attorney
Sara Castro, Director of Finance
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

- A – Sourcewell Contract 091521
- B – Rush Truck Centers Quote
- C – Purchase Agreement Rush Medium Duty Truck Centers of California, Inc.

**Solicitation Number: RFP #032824****CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Rush Truck Centers of Texas, L.P., 555 IH-35 South Ste. 500, New Braunfels, TX 78130 (Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Class 4-8 Chassis and Cabs with Related Equipment, Accessories, and Services from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities located in the United States that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.

EXPIRATION DATE AND EXTENSION. This Contract expires July 9, 2028, unless it is cancelled sooner pursuant to Article 22. This Contract allows up to three additional one-year extensions upon the request of Sourcewell and written agreement by Supplier. Sourcewell retains the right to consider additional extensions beyond seven years as required under exceptional circumstances.

B. **SURVIVAL OF TERMS.** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All other rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

A. EQUIPMENT, PRODUCTS, OR SERVICES. Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above. Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. WARRANTY. Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, subject to the Notice of Security Interest attached hereto as Exhibit A for Participating Entities with deferred payment terms. Any warranties on any Equipment and Products sold by Rush are limited only to any printed warranty provided by the applicable manufacturer of the Equipment or Product. Supplier agrees to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Supplier warrants that all services performed by Supplier for a Participating Entity, including repair, maintenance, and installation services ("Services"), will be performed in a good and workmanlike manner in accordance with industry standards ("Services Warranty"). The Services Warranty is valid for a period of ninety (90) days from the date the Service is completed.

C. DEALERS, DISTRIBUTORS, AND/OR RESELLERS. Equipment, Products and Services will be offered for sale to Participating Entities through Supplier and its affiliates as stated in Supplier's Proposal. Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered

Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. **SALES TAX.** Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. **HOT LIST PRICING.** At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;
- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Change Request Form will become an amendment to this Contract and will be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities located in the United States that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum, the terms of which will be negotiated directly between the Participating Entity and the Supplier or its authorized dealers, distributors, or resellers, as applicable. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. **GOVERNING LAW AND VENUE.** The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. **PRIMARY ACCOUNT REPRESENTATIVE.** Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

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

B. **BUSINESS REVIEWS.** Supplier must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, performance issues, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. **CONTRACT SALES ACTIVITY REPORT.** Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcewell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;

- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

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

The Supplier will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. AUDIT. Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the

end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. ASSIGNMENT. Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. AMENDMENTS. Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. WAIVER. Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

E. CONTRACT COMPLETE. This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. RELATIONSHIP OF THE PARTIES. The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, brought or alleged by unaffiliated third parties arising out of any negligent act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by the negligent act or omission of Supplier relating to the Equipment, Products, or Services provided by Supplier under this Contract. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell

under this Contract and as it applies to all data created, collected, received, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:

- a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.
- b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.

2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers, resellers, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. *Use; Quality Control.*

- a. Neither party may alter the other party's trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.
- b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's trademarks only in good faith and in a dignified manner consistent with such party's use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. *Termination.* Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. **PUBLICITY.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. **MARKETING.** Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

D. **ENDORSEMENT.** The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed

work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. **REQUIREMENTS.** At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

- \$500,000 each accident for bodily injury by accident
- \$500,000 policy limit for bodily injury by disease
- \$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage
\$1,000,000 Personal and Advertising Injury
\$2,000,000 aggregate for products liability-completed operations
\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance.* During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

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

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. **WAIVER OF SUBROGATION.** Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. **UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION.** The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. **LAWS AND REGULATIONS.** All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. **LICENSES.** Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcewell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcewell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the

procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier’s Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.

C. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5).

Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring

solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier cannot use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by a Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

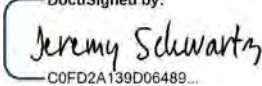
T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

22. CANCELLATION

Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days’ written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier’s Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

Rush Truck Centers of Texas, L.P.

DocuSigned by:

C0FD2A139D06489...
By: _____
Jeremy Schwartz
Title: Chief Procurement Officer
Date: 7/16/2024 | 5:23 PM CDT

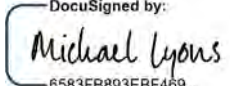
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6583FB893EBF469...
By: _____
Michael Lyons
Title: Associate General Counsel
Date: 7/16/2024 | 4:41 PM CDT

Exhibit A

Notice of Security Interest

Notice Regarding Security Interest and Payment of Purchase Price

1. BMO Harris Bank N.A. or Navistar Capital (collectively, "Bank") financed or will finance the acquisition of each vehicle that Rush Enterprises, Inc. and its subsidiaries ("Rush") will in turn sell to you on deferred payment terms ("Vehicle"). Bank's agreement with Rush requires that Bank's security interest in each Vehicle continue until Bank receives the full amount that Bank financed for such Vehicle. Based on that agreement, your purchase of a Vehicle will be subject to Bank's prior, unrelinquished security interest, which will continue until Bank receives the total amount that Bank financed for such Vehicle.
2. By written notice to you, Bank may require you to pay the purchase price for Vehicles directly to Bank. If you pay any portion of the purchase price for a Vehicle directly to Bank, Rush will credit such payment(s) against the amount you owe to Rush.

RFP 032824 - Class 4-8 Chassis and Cabs with Related Equipment, Accessories, and Services

Vendor Details

Company Name: Rush Enterprises

Does your company conduct business under any other name? If yes, please state: Rush Truck Centers of Texas, LP

Address: 555 IH 35 S.
New Braunfels, Texas 78130

Contact: Colton Kruse

Email: krusec@rushenterprises.com

Phone: 830-302-5200 5219

HST#: 74-2786264

Submission Details

Created On: Saturday March 23, 2024 12:59:22

Submitted On: Thursday March 28, 2024 14:25:34

Submitted By: Colton Kruse

Email: krusec@rushenterprises.com

Transaction #: 2a729aea-e652-4465-b1a3-ec0fab14dedf

Submitter's IP Address: 155.190.8.4

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *	
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	Rush Truck Centers of Texas, L.P.	*
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	Rush Truck Centers of Texas, L.P. (RTC Texas) is a limited partnership formed in the state of Texas. Rush Truck Centers of Texas, L.P. has two partners: Rushtex, Inc. (a Delaware corporation) is the General Partner and Rushco, Inc. (a Delaware corporation) is the Limited Partner. Rushtex, Inc. and Rushco, Inc. are wholly owned subsidiaries of Rush Enterprises, Inc. Rush Enterprises, a public company traded on NASDAQ under the symbols RUSHA and RUSHB, began operations in Texas in 1965. Rush Enterprises operates its dealer network through state-based legal entities. A separate legal entity has been established for each state in which Rush operates, each of which is a wholly-owned subsidiary of Rush Enterprises. The following is a list of affiliates of RTC Texas that will be utilized to serve Participating Dealers outside of Texas under a resulting contract: Rush Truck Centers of Alabama, Inc., Rush Truck Centers of Arizona, Inc., Rush Truck Centers of Arkansas, Inc., Rush MD Truck Centers of California, Inc., Rush Truck Centers of California, Inc., Rush Truck Centers of Colorado, Inc., Rush Truck Centers of Florida, Inc., Rush Truck Centers of Georgia, Inc., Rush Truck Centers of Idaho, Inc., Rush Truck Centers of Illinois, Inc., Rush Truck Centers of Indiana, Inc., Rush Truck Centers of Kansas, Inc., Rush Truck Centers of Kentucky, Inc., Rush Truck Centers of Missouri, Inc., Rush Truck Centers of Nevada, Inc., Rush Truck Centers of New Mexico, Inc., Rush Truck Centers of North Carolina, Inc., Rush Truck Centers of Ohio, Inc., Rush Truck Centers of Oklahoma, Inc., Rush Truck Centers of Tennessee, Inc., Rush Truck Centers of Utah, Inc., Rush Truck Centers of Virginia, Inc.	*
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	Rush Truck Center Phoenix, Rush Truck Center, Tucson, Rush Truck Center, Lowell, Rush Truck Center, Ceres, Rush Truck Center, Fontana Medium Duty, Rush Truck Center, Los Angeles, Rush Truck Center, San Diego, Rush Truck Center, Whittier, Rush Truck Center, Denver Medium Duty, Rush Truck Center, Denver, Rush Truck Center, Jacksonville, Rush Truck Center, Orlando, Rush Truck Center, Orlando Light & Medium Duty, Rush Truck Center, Orlando North, Rush Truck Center, Orlando South, Rush Truck Center, Atlanta, Rush Truck Center, Columbus, Rush Truck Center, Doraville, Rush Truck Center, Smyrna, Rush Truck Center, Tifton, Rush Int'l Truck Center, Boise, Rush Int'l Truck Center, Twin Falls, Rush Truck Center Bloomington, Rush Truck Center, Chicago Light & Medium Duty, Rush Truck Center, Elk Grove, Rush Truck Center, Olathe, Rush Truck Center, Springfield, Rush Truck Center, Las Vegas, Rush Int'l Truck Center, Charlotte, Rush Truck Center, Cincinnati, Rush Truck Center, Columbus, Rush Truck Center, Dayton, Rush truck Center, Oklahoma City, Rush Truck Center, Tulsa, Rush Truck Center, Memphis, Rush Truck Center, Amarillo, Rush Truck Center, Austin, Rush Truck Center, College Station, Rush Truck Center, Corpus Christi, Rush Truck Center, Dallas Light & Medium Duty, Rush Truck Center, Dallas Medium Duty, Rush Truck Center, El Paso, Rush Truck Center, Houston, Rush Truck Center, Houston Medium Duty, Rush Truck Center, Houston Northwest, Rush Truck Center, Laredo, Rush truck Center, Lubbock, Rush Truck Center, Pharr, Rush Truck Center, San Antonio, Rush Truck Center, Sealy, Rush Truck Center, Texarkana, Rush Truck Center, Waco, Rush Truck Center, Chester Other Rush locations that can support ancillary parts and service needs are: Rush Truck Center, Chicago, Rush Truck Center, Cleveland, Rush Truck Center, Colorado Springs, Rush Truck Center, Cotulla, Rush Truck Center, Dalhart, Rush Truck Center, Dallas, Rush Truck Center, Dallas South, Rush Truck Center, Effingham, Rush Truck Center, Farmington, Rush Truck Center, Flagstaff, Rush Truck Center, Fontana, Rush Truck Center, Fontana MD, Rush Truck Center, Fontana Vocational, Rush Truck Center, Ft. Worth, Rush Truck Center, Gainesville , Rush Truck Center, Gary, Rush Truck Center, Greeley, Rush Truck Center, Haines City , Rush Truck Center, Hickory, Rush Truck Center, Houston, Rush Truck Center, Houston MD, Rush Truck Center, Houston NW, Rush Truck Center, Huntley, Rush Truck Center, Idaho Falls , Rush Truck Center, Indianapolis, Rush Truck Center, Jacksonville East, Rush Truck Center, Jefferson City, Rush Truck Center, Joliet, Rush Truck Center, Jonesboro, Rush Truck Center, Joplin, Rush Truck Center, Kansas City , Rush Truck Center, Lake City, Rush Truck Center, Las Cruces, Rush Truck Center, Leviston, Rush Truck Center, Lima, Rush Truck Center, Long Beach, Rush Truck Center, Lufkin, Rush Truck Center, Macon, Rush Truck Center, Memphis West, Rush Truck Center, Mobile, Rush Truck Center, Nashville, Rush Truck Center, North Little Rock, Rush Truck Center, Odessa, Rush Truck Center, Ogden, Rush Truck Center, Olathe, Rush Truck Center, Otay Mesa, Rush Truck Center, Phoenix East, Rush Truck Center, Pontoon Beach, Rush Truck Center, Pueblo, Rush Truck Center, Quincy, Rush Truck Center, Richmond, Rush Truck Center, Russellville, Rush Truck Center, Saint Joseph, Rush Truck Center, Salina, Rush Truck Center, Salt Lake City, Rush Truck Center, Sedalia, Truck Center, Springfield IL, Rush Truck Center, Springville, Rush Truck Center, St. George ,Rush Truck Center, St. Peters, Rush Truck Center, Sylmar, Rush Truck Center, Tampa, Rush Truck Center, Topeka, Rush Truck Center, Tyler, Rush Truck Center, Valdosta, Rush Truck Center, Ventura, Rush Truck Center, Victoria, Rush Truck Center, Victorville, Rush Truck Center, West Plains, Rush Truck Center, Wichita, Rush Truck Center, Wichita Falls, Rush Truck Center, Yuma	*
4	Provide your CAGE code or Unique Entity Identifier (SAM):	RTC Dallas Light & Medium Duty - 9L0Y5/DBT5CJKUV7S3 RTC San Antonio - 8LKV5/N19JWEGVFM79 List of CAGE Codes/UEIs for all other Rush locations with a SAM account is available on request.	*
5	Proposer Physical Address:	555 IH 35 South Ste. 500 New Braunfels, Texas 78130	*
6	Proposer website address (or addresses):	www.rushtruckcenters.com	*
7	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Whitt Michael Senior Director of Medium Duty Sales 555 IH-35 South Ste. 500 New Braunfels, Texas 78130 michaelw@rushenterprises.com (830) 302-5242	*
8	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Colton Kruse National Account Sales Manager 555 IH-35 South Ste. 200 New Braunfels, Texas 78130 krusec@rushenterprises.com (830) 302-5219	*
9	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	N/A	

Table 2: Company Information and Financial Strength

Line Item	Question	Response *	
10	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	Rush Truck Centers of Texas, L.P. (RTC Texas) is a limited partnership formed in the state of Texas. Rush Truck Centers of Texas, L.P. has two partners: Rushtex, Inc. (a Delaware corporation) is the General Partner and Rushco, Inc. (a Delaware corporation) is the Limited Partner. Rushtex, Inc. and Rushco, Inc. are wholly owned subsidiaries of Rush Enterprises, Inc. Rush Enterprises, Inc. was founded in 1965 with (1) GMC dealership in Houston, Texas. Today we are publicly traded with over (140) locations representing (8) OEMs nationwide. Across those locations Rush Truck Centers employs over 8,000 people helping us to achieve an annual revenue of \$7.2B at the close of 2023. Rush Enterprises, is traded on NASDAQ under the symbols RUSHA and RUSHB. Productivity, fairness, positive attitude, excellence, and integrity are the core values that Rush Truck Centers pushes each employee to embody every day. We work to continually make sure that our sales, parts, service & admin teams have any and all tools necessary to accomplish this mission ultimately resulting in the best customer experience possible. At Rush Truck Centers, our business philosophy is to truly create a welcome atmosphere where our industry experts and can help customers purchase equipment and keep their equipment on the road. We aim to do that through top notch customer service, as well as expanding our national dealer network to add more locations to better service our customer base. We are always looking for opportunities to grow and expand.	+
11	What are your company's expectations in the event of an award?	If awarded, Rush Truck Centers intends to showcase the award to all of our municipal, education and not for profit customers. As our sales, parts & service teams go out and call on this business sector we will use our industry knowledge and experience to provide a single source solution option to the customer base. The capability of bringing the ease of purchase through the Sourcewell contract with the customer base while offering Rush's top tier industry experience will make this a win win for any of our clients.	+
12	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Rush Truck Centers is publicly traded on the Nasdaq, in 2023 Rush Enterprises reported \$7.92B in revenue. We have attached our most recent SEC filing in the document upload section.	+
13	What is your US market share for the solutions that you are proposing?	The overall market share in 2023 for Rush Truck Centers was 6.2% of the Class 8 US Truck Market and 5.7% of the Class 4-7 US Truck Market.	+
14	What is your Canadian market share for the solutions that you are proposing?	Rush Truck Centers is not currently proposing a solution for the Canadian market.	+
15	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No	+
16	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	Rush Truck Centers is best described as a distributor/dealer/reseller for this proposal. Rush is a contracted franchisee of the specific manufacturers represented on this proposal.	+
17	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	The Rush entities listed in item 2 are licensed in each applicable state as a representative of the manufacturers presented in this proposal. In addition, we have franchise contracts in place with each of the manufacturers on this proposal.	+
18	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	Does not apply.	+

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *	
19	Describe any relevant industry awards or recognition that your company has received in the past five years	Rush Truck Centers has been recognized by each of the manufacturers represented for performance and customer service levels.	+
20	What percentage of your sales are to the governmental sector in the past three years	Approximately 15%, market dependent.	+
21	What percentage of your sales are to the education sector in the past three years	Approximately 5%, market dependent.	+
22	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	Buyboard both State & National & H-GAC comprise between 250-350 units per year for an annual revenue in 2023 of \$39.5MM.	+
23	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	Rush does not have any formal contracts in place with the GSA.	+

Table 4: References/Testimonials

Line Item 24. Supply reference information from three customers who are eligible to be Sourcewell participating entities.

Entity Name *	Contact Name *	Phone Number *	
City of Austin, Texas	Janet Opheim	(512) 978-2634	*
City of Euless, Texas	Kyle McAdams	(817) 685-1598	*
City of DeSoto, Texas	Wade Williams	(972) 230-5714	*
City of Cedar Hill, Texas	Kenneth Atkins	(972) 291-5126 ext. 2840	
City of Houston, Texas	Daniel Davis	(281) 740-8030	

Table 5: Top Five Government or Education Customers

Line Item 25. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
City of Austin	Government	Texas - TX	Provided chassis and bodied up equipment to the City of Austin.	108	\$21,700,396.98	*
City of Phoenix	Government	Arizona - AZ	Provided chassis and bodied up equipment to the City of Phoenix.	86	\$28,355,662.56	*
Virginia Department of Transportation	Government	Virginia - VA	Provided chassis and bodied up equipment to the Virginia Department of Transportation.	110	\$18,650,715.50	*
Illinois Department of Transportation	Government	Illinois - IL	Provided chassis and bodied up equipment to the the Illinois Department of Transportation.	104	\$14,934,920.93	*
Ohio Department of Transportation	Government	Ohio - OH	Provided chassis and bodied up equipment to the Ohio Department of Transportation.	78	\$8,835,185.02	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcewell participating entities across the US and Canada, as applicable.

Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *	
26	Sales force.	Rush Truck Centers has a nationwide truck sales staff of approximately 275 people who maintain direct contact with our customers. The sales team is supported by a team within each dealership that handles finance, title work, as well as other administrative duties so that the sales team can stay customer focused. Rush Truck Centers also maintains very close relationships with our vendors to provide new and used vehicles, as well as parts & service solutions to our customer base. This includes organizations like Knapheide Manufacturing, Federal Signal, Wabash, Morgan Corporation, and Reading Truck Body to name a few.	*
27	Dealer network or other distribution methods.	With over 140 locations across the nation, Rush's capability to service customers in the U.S. is unparalleled in the industry. Rush Truck Centers maintains \$350MM in on hand parts inventory nationwide. This provides the ability to move parts across the nation between our locations as needed. Beyond that, being a Hino, Dennis Eagle, Ford & Isuzu franchised dealer we also have the ability to utilize the overall OEM dealer network for warranty repairs & service should occasion call for it.	*
28	Service force.	Rush Truck Centers alone currently has over 1,400 technicians nationwide and over 350 outside parts and service personnel that actively work to keep our customer's equipment on the road. At Rush we work tirelessly to make sure that our technicians/service teams have the most up to date training, equipment, and tooling in an effort to minimize customer down time. Outside of the Rush dealer network, we also maintain very close relationships with our OEMs to make sure that our customers can be serviced anywhere in the nation.	*
29	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	Rush Truck Centers believes in a boots on the ground approach. We task our sales, parts & service teams to actively call on customers to understand their business and to provide solutions for the issues that they have. When a member of the sales team gains an opportunity to quote a Sourcewell member, the local salesperson will gather all of the details, and build a spec that will best work for the customer based on the customer's needs. If there is a need for a body or upfit, Rush will engage our partners to facilitate the request or work with the customer's requested upfitter. From there the local representative will work with our corporate team to build a Sourcewell compliant quote for the customer. Once approved for purchase and a P.O. is received, Rush will process the P.O. immediately and will work to get the unit/part or service requested delivered as quickly as possible.	*
30	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	Rush Truck Centers prides itself in being timely. Our sales, parts and service teams will work to get quotes back from vendors and make sure that the customer has the final numbers as quickly as possible. We utilize our preferred vendor partnerships to maintain the shortest lead times possible for both quotes and deliveries. During the purchasing process our sales, parts and service teams will work to keep the customer informed of unit's status as it moves through the various stages of completion prior to delivery. Using our customer first philosophy we strive to provide the best customer service in the industry.	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	Rush Truck Centers is prepared to offer products and services nationwide. We have a national account presence with several large fleets that operate equipment across the United States. Rush Truck Centers intends to use that same business model to service Sourcewell clients regardless of their geographical location in the United States. Primarily utilizing the more than 2,000 sales, parts and service personnel that are employed by Rush Truck Centers nationwide.	*
32	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	At this time, we are not prepared to expand these proposed solutions into Canada.	*
33	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	Rush is uniquely positioned to service all government, education, and not for profit customers in the United States. Each customer will be taken care of by one of our industry experts depending on their geographic location and need.	*
34	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	Except for the Federal government, as discussed below, Rush Truck Centers is willing to serve all participating entity sectors. As we currently hold Buyboard & H-GAC contracts, we do not have any type of exclusivity agreement in place. Rush's presence is national, and our goal is to serve every customer possible in the United States. Being awarded the Sourcewell contract would open another avenue for Rush Truck Centers to do just that. Regarding the Federal government, our ability to serve Federal agencies will be determined by Rush on a case-by-case as there may be certain Federal requirements that Rush or its suppliers cannot meet.	*
35	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	Logistical/Transportation cost will be a limiting factor. As equipment is moved to ports, there are loading fees, freight costs, and other logistical expenses that would be incurred to deliver units to Alaska, Hawaii and other U.S. Territories. These costs would of course need to be factored into sales price of the vehicle during the quote process.	*

Table 7: Marketing Plan

Line Item	Question	Response *
36	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	Our marketing strategy is multifaceted. We rely heavily on digital marketing through our website, e-blast, social media platforms to reach our customer base. While also using more traditional forms of marketing such as mailers, print adds in magazines, NASCAR sponsorships, even wrapping our mobile trucks as well as many other media to ensure we are reaching as many prospects as possible. This broad-spectrum approach is ultimately anchored by our most important asset, our people, that ensure that the personal touch and support remain in the sales process with our customers while delivering the message of the capabilities that Rush Truck Centers has to offer. We have found that through this process we reach a relatively broad demographic of clientele creating a well-diversified portfolio of customers.
37	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	Rush Truck Centers uses a host of social media platforms to reach new/prospective clients. Platforms such as LinkedIn, Facebook, and others allow us to both reach out to customers directly via direct message as well as through broader marketing strategies such as government/educational/not for profit specific posts. We also monitor comments and messages on these platforms to either facilitate requests or respond to questions that clients may have. The goal of our marketing campaigns is to maximize click through. Rush has found that offering a more targeted marketing approach offers the best results where even our e-blasts are tailored to the business segment we serve. This approach ensures that our message is relevant to the specific clients that we are targeting.
38	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	Sourcewell is a very well known purchasing cooperative entity and is trusted by many of the municipal and not for profit organizations in the U.S.. If awarded, Rush intends to showcase the award to all of our clients through email campaigns, trade shows, in person meetings, as well as through our vendor relationships. In short, Sourcewell's members trust the cooperative and are loyal. Rush aims to build upon the brand recognition Sourcewell brings through communication with our industry experts, highlighting our complete offering of service capabilities. Allowing Sourcewell members to work with our industry experts for their fleet needs, while offering customers the flexibility of purchasing through a cooperative contract. Rush Enterprises goal if awarded is to combined Sourcewell (one of the largest purchasing cooperative in the nation) with the largest commercial truck dealer group in the nation to provide single source solutions to as many government, education and not for profit entities as possible.
39	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	Due to the variance in specifications in the vehicles that we provide, Rush prefers each client request be handled by one of our industry experts to ensure the right product is provided for the application. This approach allows Rush to have more interaction with the customer to offer solutions that they may not know is available to them. Our sales teams are trained to be solution minded and to make sure we offer customers all potential solutions that we feel may help their business, this is best accomplished with personal interaction. In support of this customer base, we do offer an ecommerce solution to sourcing parts and receiving service from our locations across the United States. This customer-based solutions allows for comprehensive parts pricing, sourcing, and research. In addition we offer an extensive service incident management platform for managing vehicles that are being serviced and repaired in our dealerships. Real-time status updates, estimate review and approval, and historical repair reference are just some of the features of this platform that are available to Sourcewell members to assist with their fleet management.

Table 8: Value-Added Attributes

Line Item	Question	Response *
40	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	Rush works closely with our original equipment manufacturers as well as body upfitters and vendors to provide a comprehensive training strategy for vehicles and equipment provided. These programs are tailored to meet the specific needs of the Sourcewell member and will be developed as requested. Any associated costs for this training will be discussed upfront after maximizing support from all involved.
41	Describe any technological advances that your proposed products or services offer.	Working in concert with our represented OEM's in advancing fleet management technologies, Rush Truck Centers works to simplify the application of these technologies for the Sourcewell member. Through the development of our RushCare system, we offer real-time communication platforms that are often communicating with the technologies incorporated in the equipment provided. Monitored by our 24/7 call center, we aid customers in predictive incident and preventative maintenance of their fleets. Through our dedicated telematics division, Rush remains on the forefront of new and emerging technologies ensuring maximum uptime for our customers and solutions for their fleet needs.
42	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	Being a leader in emerging technologies, Rush again led the industry in the adoption of alternate-fuel vehicles and environmentally-focused dealer operations. This was evident of the early development of it's own CNG fuel systems, incorporating them into the vehicles provided to similarly-minded customers. It continues with the dedication to the electric initiatives in support of the adoption of these vehicles in the market by providing battery charging stations at our facilities, supported by solar panel based energy storage and delivery systems. In fact, the dedication to this initiative is evident by operating electric vehicles in our own delivery fleet. Our commitment to these environmental-based technologies will remain a focus and will continue to expand as more opportunities arise.
43	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	Ratings and certifications for the products included in the proposal are typically attained and managed at the original equipment manufacturer level. As a distributor that represents these manufacturers, we fully support the initiatives set forth to accomplish and maintain these sustainability recognitions.
44	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or HUB partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	Rush Truck Centers does not hold any of these certifications.
45	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	Being the largest commercial truck dealer group in the nation, Rush Truck Centers offers an expansive sales, parts, service and administrative team that offers top tier customer service. We pride ourselves on being a dedicated commercial dealer group that has extensive knowledge of commercial vehicle capabilities along with the industry expertise that our body/upfit partners provide. Clients will have a wealth of industry knowledge at their disposal while working with our expert teams.

Table 9A: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure.

You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
46	Do your warranties cover all products, parts, and labor?	All product warranty coverages in reference to this proposal are provided to the end user by the original equipment manufacturer or upfitter. We have attached copies of the standard warranty coverage for each OEM that we are offering on this proposal.	*
47	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	Each OEM warranty has different usage restrictions and limitations. We have attached the standard warranty coverage for each of the manufacturers we are offering on this proposal.	*
48	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Case dependent; typically the warranty coverage offered by the OEM does not include travel or mileage if mobile service is requested. Any associated costs with these services will be presented prior to any services being performed. In terms of towing, some OEMs will cover the expense of a tow into the closest factory certified warranty facility if the unit is undrivable.	*
49	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	Any potential geographic restrictions will be discussed with the client at the time of quote to ensure that the vehicle can be properly serviced and maintained for the Sourcewell member. We will work to spec equipment that maximizes operating capability, but also maximizes access to service support for the client whether through the OEM network or our network of Rush Enterprises locations.	*
50	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	All warranty coverage is passed on from the OEM.	*
51	What are your proposed exchange and return programs and policies?	Rush Truck Centers does not offer an exchange or return policy.	*
52	Describe any service contract options for the items included in your proposal.	Extended service contracts are offered through OE programs as well as from Rush through our third-party partners. However, these extended service contracts are somewhat customizable and need to be discussed, quoted and evaluated with each client on a case-by-case basis.	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
53	Describe your payment terms and accepted payment methods.	Rush Truck Centers does offer NET30 terms from the date of delivery (upon credit risk approval by the Rush credit team).	*
54	Describe any leasing or financing options available for use by educational or governmental entities.	Rush Enterprises does offer municipal leasing and financing options through our third-party lending partners. At the time the vehicle is quoted we will gladly review these options with Sourcewell members to find the best option for them. Any leasing or financing terms would be agreed to separately by the customer and the leasing/financing company.	*
55	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	Rush Truck Centers requires a Retail Sales Order, Delivery Receipt, and a CARB Attestation form. The State of Attestation/Domicile form is required by Rush to be signed by the customer to make sure that non-California compliant trucks ultimately won't registered or primarily operated in the State of California due to new CARB, ACT, ACF, and Low Nox Omnibus regulations. Other forms may include warranty start forms depending on the OEM.	*
56	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Rush Truck Centers does except P-cards for payment on parts and service without a credit card processing fee.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcwell Price and Product Change Request Form.

Line Item	Question	Response *	
57	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcwell discounted price) on all of the items that you want Sourcwell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Rush Truck Centers will offer a discount off of List/MSRP for 3 of the 4 OEMs included in this proposal, the OEM that will not show a discount off of pricing is Dennis Eagle which does not have a List Price or MSRP. In the case of Dennis Eagle, the pricing shown is the Sourcwell member's price before any volume discounts are applied. Please note this is for the chassis only as any upfit that is requested or needed will need to be added to the quote to provide a complete price for the customer.	*
58	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	Rush Truck Centers is prepared to offer the following minimum discount range off of List/MSRP per OEM: Ford Motor Company: 1.50% to 7.00% Hino: 10% to 15% Isuzu: 10% to 15% Dennis Eagle: 0% as Dennis Eagle does not have a List/MSRP	*
59	Describe any quantity or volume discounts or rebate programs that you offer.	Any Sourcwell member looking to purchase 10 or more units, please contact us for additional price concession.	*
60	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	Products or Goods sourced through open market channels will be quoted with additional markup not to exceed 15% of the MSRP of the goods Products or Goods quoted to Rush Truck Centers.	*
61	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	From a chassis perspective we have included all applicable charges in our attached pricing list. If there is a specific need, training or special installation we will include that with the upfit portion of the quote to the Sourcwell members.	*
62	If freight, delivery, or shipping is an additional cost to the Sourcwell participating entity, describe in detail the complete freight, shipping, and delivery program.	Some of the OEMs allow for courtesy delivery by other dealers in the OEM dealer network to minimize any additional freight cost. If this resource is available through the specific OEM quoted, or if the equipment quoted doesn't require any upfit and we're able to ship directly to the end user from the factory we will certainly do so. However, if the unit requires additional equipment to be added or an upfit prior to delivery then there will be freight cost incurred to move the unit from the body company to the dealership or its final destination.	*
63	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	Shipping to Alaska, Hawaii, Canada and other off shore entities present several logistical hurdles that will require additional expense such as port fees, loading fees, etc.. These additional expenses will be listed out on the customer's quote for their review.	*
64	Describe any unique distribution and/or delivery methods or options offered in your proposal.	In addition to working with the franchised dealer network of the represented OEMs, Rush will utilize its extensive network of dealerships to optimize delivery to the Sourcwell member while minimizing associated costs.	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
65	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	Rush Truck Centers is offering Sourcwell pricing that is more aggressive than we've priced on other cooperative contracts.

Table 13: Audit and Administrative Fee

Line Item	Question	Response *	
66	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcwell. This process includes ensuring that Sourcwell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcwell. Provide sufficient detail to support your ability to report quarterly sales to Sourcwell as described in the Contract template.	Rush Truck Centers has a strict self-audit process in place to help ensure compliance to not only company policy and procedures, but also to requirements of contracts with our customer base. This oversight is provided by our internal audit staff in our accounting department as well as auditors from our Ethics and Compliance division based at corporate headquarters. The Rush Sales Operations group will also help ensure compliance with the business requirements of the contract in place as well as providing reporting based on the terms requested in the contract.	*
67	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	This Sales Operation Team will track the performance of the contract in place. While using a broad distribution model to approach this opportunity, the management of the contract will be handled centrally by the responsible representative assigned to the contract with senior leadership oversight. Extensive reporting tools are in place to assist with this management.	*
68	Identify a proposed administrative fee that you will pay to Sourcwell for facilitating, managing, and promoting the Sourcwell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	Rush is prepared to offer a per unit fee of: \$400.00 for all units class 3-5 \$750.00 for all units class 6-8	*

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Proposers submitting a proposal in Category 1 as defined herein will be submitting in the broad category that includes all types of engines, fuel, and propulsion systems. For example, if a Proposer offers chassis and cabs with Internal Combustion Engines (ICE) as well as chassis and cabs with electric propulsion systems the Proposer should designate it is seeking an award in Category 1 **only**. Proposers seeking an award in Category 2, as defined herein, must include at least one solution offered within the scope of Category 2 for electric propulsion systems **only**.

Line Item	Category Selection *	
69	Category 1: All engines, fuel, and propulsion type chassis and cabs	*

Table 14B: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *	
70	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	Rush Truck Centers is offering (4) OEMs on this proposal comprising of (39) individual models with even more specific order codes under each model. We are also offering a range of upfit options from spray in bed liners and toolboxes to service bodies, refuse equipment and sewer inspection equipment. To provide a complete solution to meet the customer's needs Rush Enterprises will work with our extensive list of vendors and even work with vendors specifically requested by the Sourcwell member (once approved by Rush Truck Centers risk team).	*
71	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	Our subcategories will be broken down by Make, Model, and trim level (where applicable).	
72	Describe any manufacturing processes or materials utilized that contribute to chassis strength, cab strength, overall durability, driver safety.	Rush Truck Centers has the utmost confidence in the manufacturers we represent to produce the highest quality products available on the market.	
73	Describe any differentiating serviceability attributes (remote diagnostics, etc.) your proposal offers.	As detailed above, Rush Truck Centers offers a unique business case to Sourcwell members. Its network and forward-looking approach to solutions technologies positions Rush to offer products and services at a customizable-level to meet any transportation need proposed. Between the tools developed and available to the Sourcwell member base and the team of experts assembled to provide the solutions, Rush is a differentiator in the industry. Whether it be the widely available, pre-upfitted quick delivery inventory of vehicles, extensive and diverse parts inventory, or available service bays at our state-of-the-art facilities supported by a fleet of 600+ mobile service technicians, Rush Truck Centers is prepared to offer solutions to Sourcwell members.	

Table 15: Category 1 - Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Proposers submitting a proposal in Category 1 will be submitting in the broad category that includes all types of engines, fuel, and propulsion systems. See RFP Section II. B. 1 for details.

☐ We will not be submitting for Table 15: Category 1 - Depth and Breadth of Offered Equipment Products and Services

Line Item	Category or Type	Offered *	Chassis Type (ICE and/or BEV)	Comments	
74	Class 4 chassis	☒ Yes ☐ No	Internal Combustion Engine fuel types (ICE)	The OEMs Rush is offering currently only offer ICE solutions for the class 4 space.	*
75	Class 5 chassis	☒ Yes ☐ No	Both Chassis Types (ICE and BEV)	None of the OEMs Rush is offering currently offer BEV solutions for the class 5 space. However, Isuzu is releasing a BEV class 5 that is projected to be available in 2025. We are looking to offer that product once pricing is published and able to be ordered.	*
76	Class 6 chassis	☒ Yes ☐ No	Internal Combustion Engine fuel types (ICE)	None of the OEMs Rush is offering currently offer BEV solutions for the class 6 space. Although Hino is projecting to announce a class 7 BEV in 2025 at which time we will work with Sourcwell to have the product added to the contract.	*
77	Class 7 chassis	☒ Yes ☐ No	Internal Combustion Engine fuel types (ICE)	None of the OEMs Rush is offering currently offer BEV solutions for the class 7 space. Although Hino is projecting to announce a class 7 BEV in 2025 at which time we will work with Sourcwell to have the product added to the contract.	*
78	Class 8 chassis	☒ Yes ☐ No	Internal Combustion Engine fuel types (ICE)	None of the OEMs Rush is offering on this proposal offer BEV solutions for the class 8 space.	*
79	Related equipment, accessories, parts, upfitting, services, used chassis and Class 3 chassis	☒ Yes ☐ No	Both Chassis Types (ICE and BEV)	Through Ford Rush is offering both ICE & BEV on the Transit T-250 & T-350 in the class 3 space. The Super Duty line, more specifically F-250 & F-350 are offered as ICE only.	

Table 16: Category 2 - Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Proposers seeking an award in Category 2, as defined herein, must include at least one solution offered within the scope of Category 2 for electric propulsion systems **only**. See RFP Section II. B. 1 for details.

☐ We will not be submitting for Table 16: Category 2 - Depth and Breadth of Offered Equipment Products and Services

Line Item	Category or Type	Offered *	Comments
80	Battery Electric Vehicle (BEV) Class 4 Chassis	☐ Yes ☒ No	Rush Truck Centers is not offering an OEM that has a BEV vehicle for the class 4 space.
81	Battery Electric Vehicle (BEV) Class 5 Chassis	☒ Yes ☐ No	Isuzu is looking to offer a BEV class 5 unit towards the end of 2024/beginning of 2025. Although pricing isn't currently available, once made available to Rush Truck Centers, we intend to work with Sourcewell to have this model added to the contract.
82	Battery Electric Vehicle (BEV) Class 6 Chassis	☐ Yes ☒ No	Rush Truck Centers is not offering an OEM that has a BEV vehicle for the class 6 space on.
83	Battery Electric Vehicle (BEV) Class 7 Chassis	☐ Yes ☒ No	Rush Truck Centers is not offering an OEM that has a BEV vehicle for the class 7 space.
84	Battery Electric Vehicle (BEV) Class 8 Chassis	☐ Yes ☒ No	Rush Truck Centers is not offering an OEM that has a BEV vehicle for the class 8 space.
85	Related equipment, accessories, parts, upfitting, services, used chassis and Class 3 chassis	☒ Yes ☐ No	Rush Truck Centers is offering the Ford E-Transit line which we are offering on this proposal.

Exceptions to Terms, Conditions, or Specifications Form

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

Documents

Ensure your submission document(s) conforms to the following:

- Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
 - Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.
 - Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.
 - If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."
- [Pricing](#) - MSRP Pricing.zip - Thursday March 28, 2024 13:53:27
 - [Financial Strength and Stability](#) - 2023 10-K Final.pdf - Tuesday March 26, 2024 10:49:33
 - Marketing Plan/Samples (optional)
 - WMBE/MBE/SBE or Related Certificates (optional)
 - [Warranty Information](#) - Exhibit C - Rush Limited Warranty.pdf - Thursday March 28, 2024 12:41:37
 - [Standard Transaction Document Samples](#) - Sourcewell Docs Example.pdf - Thursday March 28, 2024 14:24:57
 - [Requested Exceptions](#) - RFP_033824_Class_4-8_Chassis_&_Cabs_Contract_Template_Rush revisions.docx - Tuesday March 26, 2024 11:39:46
 - [Upload Additional Document](#) - Additional Documents.zip - Thursday March 28, 2024 12:40:50

Addenda, Terms and Conditions

PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
 1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
 2. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or
 3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☒ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Whitt Michael, Senior of Medium Duty Sales, Rush Truck Centers of Texas, LP

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

☒ Yes ☐ No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.
Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_7_Class 4-8 Chassis and Cabs _RFP_032824 Thu March 21 2024 08:45 AM		1
Addendum_6_Class 4-8 Chassis and Cabs _RFP_032824 Wed March 20 2024 12:36 PM		3
Addendum_5_Class 4-8 Chassis and Cabs _RFP_032824 Mon March 18 2024 12:01 PM		1
Addendum_4_Class 4-8 Chassis and Cabs _RFP_032824 Wed March 6 2024 09:38 AM		1
Addendum_3_Class 4-8 Chassis and Cabs _RFP_032824 Wed February 21 2024 04:08 PM		2
Addendum_2_Class 4-8 Chassis and Cabs _RFP_032824 Wed February 14 2024 04:12 PM		1
Addendum_1_Class 4-8 Chassis and Cabs _RFP_032824 Thu February 8 2024 04:24 PM		1



1720 Herndon Rd
Ceres, CA 95307-4421
(209) 857-7400

Customer Proposal Letter

City of Tracy
520 N Tracy Blvd
Tracy 95376-4917

Thank you for trusting us with your business. Please review the proposal below, and if you approve, sign and return to us at your convenience. We look forward to working with you and will continue to do our best to earn your trust now and in the future.

VEHICLE INFORMATION

Year 2023 Make Ford Model F-350 Stock # 1641677 Serial # 1FT8X3BA3PEC94092

Additional Vehicle Details: SOURCEWELL CONTRACT #032824-RTG

Quantity		Total
Truck Price per Unit	\$ 65,000.00	\$ 65,000.00
F.E.T. (Factory & Dealer Paid)	\$ 0.00	
Net Sales Price	\$ 65,000.00	\$ 65,000.00
Optional Extended Warranty(ies)		
State Sales Tax	\$ 5,492.86	\$ 5,492.86
Documentary Fee	\$ 80.00	\$ 80.00
Administration Fee	\$ 250.00	\$ 250.00
Electronic Filing	\$ 33.00	\$ 33.00
Tire Recycling Program	\$ 8.75	\$ 8.75
RushCare Service Subscription ⁽¹⁾⁽²⁾ 0 months	\$ 1,250.00	\$ 1,250.00
Total Sales Price	\$ 72,114.61	\$ 72,114.61
Trade Allowance (see DISCLAIMER Below)		
Deposit / Down Payment		
Unpaid Balance Due on Delivery	\$ 72,114.61	\$ 72,114.61

Sales Representative

Signature

Carlos Perez

Printed Name

Date

Purchaser

Signature

Printed Name / Title

Date

Accepted by Sales Manager
or General Manager

Signature

Printed Name

Date

Quote good until 1/31/2025

Note: The above Customer Proposal is a quotation only. Sale terms subject to approval of Sales Manager of Dealer.

DISCLAIMER: Any order based on this Proposal is subject to Customer executing Dealer's standard form Retail Sales Order and other required documents incorporating the above terms. Any documentary fees, FET, state tax, title, registration and license fees subject to adjustment and change. This Proposal is based upon Dealer's current and expected inventory, which is subject to change. Dealer is not obligated to retain any specific vehicles in stock, nor maintain specific inventory levels. Dealer shall not be obligated to fulfill Proposal in event quoted vehicle(s) is not in stock or available within requested delivery schedule. Manufacturer has reserved the right to change the price to Dealer of any vehicle not currently in Dealer's stock, without notice to Dealer and Dealer reserves the right to change Quotation Total to reflect any price increases from Manufacturer. Dealer shall not be liable for any delay in providing or inability to provide Quoted Vehicle(s). Above listed Trade Value based upon current appraisal of Trade Vehicle(s). Dealer may adjust Trade Value of Trade Vehicle(s) to reflect changes in condition and/or mileage of Trade Vehicle(s) between date of current appraisal and acceptance of the Trade Vehicle by Customer.

⁽¹⁾ Includes subscription period for # of specified months. ⁽²⁾ Customer's use of RushCare Service is governed by the RushCare User Agreement located at <https://www.rushtruckcenters.com/rushcare-user-agreement>. ⁽³⁾ Customer's use of Telematics Services is governed by separate 3rd party license terms and Rush is not liable for the Telematics Service. ⁽⁴⁾ Gap Coverage is provided and administered by an independent 3rd party provider under a separate contract directly between Customer and the 3rd party provider.

**CITY OF TRACY
PURCHASE AGREEMENT FOR EQUIPMENT WITH RUSH MEDIUM DUTY
TRUCK CENTERS OF CALIFORNIA, INC., DBA RUSH TRUCK CENTER**

This Purchase Agreement for Equipment, ("**Agreement**") is entered into between the City of Tracy, a municipal corporation ("**City**"), and Rush Medium-Duty Truck Centers of California, Inc. dba Rush Truck Center, Ceres, California ("**Supplier**"). City and Supplier are sometimes referred to individually as "**Party**" and collectively as "**Parties**."

Recitals

- A. City desires to retain Supplier to provide a 2023 Ford F-350 Super Duty and related accessories and supplies.
- B. Pursuant to Tracy Municipal Code 2.20.220, the City is utilizing a Sourcewell cooperative purchasing agreement to purchase the equipment.
- C. Sourcewell and the Supplier entered into an agreement for the purchase of equipment referred to as contract with Solicitation #032824 ("**Contract**").
- D. After negotiations between the City and the Supplier, the parties have reached an agreement for purchase of such equipment in accordance with the terms set for in this agreement.
- E. This Agreement is being executed pursuant to Resolution No. _____, which was adopted by the City Council for the City of Tracy on _____

Now therefore, the parties mutually agree as follows:

1. **CONTRACT APPLICABILITY.** The Contract is fully incorporated herein by reference, except as expressly modified herein, and the Parties agree to abide by the terms set forth therein. All capitalized terms used herein but not defined shall have the meaning attributed to them in the Contract.
 - 1.1. **EQUIPMENT.** The City agrees to purchase, and the Supplier agrees to sell, the Equipment as more specifically outlined and described in Exhibit A attached hereto and incorporated by reference. The Equipment shall comply with all of the standards and specifications outlined in Contract.
 - 1.2 **NO SUBSTITUTIONS: AUTHORIZED REPRESENTATIVE.** There shall be no substitution for the Equipment, without the prior written authorization of the City. All Services shall be performed by or under the direct supervision of, the Supplier's Authorized Representative: Chris Faircloth, General Manager. Supplier shall not replace its Authorized Representative without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel may result in the termination of this Agreement.

2. **DELIVERY DATES.** The Equipment must be shipped and must arrive at the destination of 520 Tracy Blvd. Tracy, Ca. 95376.
 - 2.1 Supplier will provide an estimated delivery date at time of order. All delivery information provided by Supplier is approximate based on the manufacturer's lead time estimates and Supplier cannot guarantee a delivery date. The Supplier must notify the City immediately if the Supplier reasonably believes the Supplier will not be able to meet the delivery timeline for any reason and will work in good faith with the City and the manufacturer(s) to mitigate such delays.
3. **PURCHASE PRICE.** City shall pay Supplier on a fixed fee basis, at the fee amounts outlined in Exhibit A ("Purchase Price").
 - 3.1 **NOT TO EXCEED AMOUNT.** Supplier's total contract amount, under this Agreement shall not exceed \$72,114.61.
 - 3.2 The Purchase Price is due and payable net thirty (30) days from delivery of the Equipment to the City.
4. **Reserved.**
5. **BREACH.** In the event of a material breach of the Agreement by a party, the other party may, by written notice given to the breaching party, declare the breaching party in default of the Agreement, specifying with particularity the basis for such breach in the written notice. The breaching party must deliver a response thereto in writing to the other party within ten (10) business days of receipt of the notice, setting forth a reasonable proposal to cure the default. If the breaching party fails to deliver the foregoing response on time or fails to cure the default within thirty (30) days after receipt of the notice (or within such additional time the parties may agree upon in writing), the non-breaching party may elect to terminate this Agreement for cause by serving written notice thereof to the breaching party. Supplier and the City may not terminate this Agreement except for cause in accordance with the foregoing.
6. **DELIVERY RISK OF LOSS.** All orders will be Free on Board (**FOB**) destination. Risk of loss or damage to the Equipment must remain with the Supplier until the equipment has been delivered to the City. All equipment will be received by the City subject to its right of inspection, rejection, and revocation of acceptance under the Uniform Commercial Code. The City will be allowed five (5) business days after delivery of the Equipment ("Inspection Period") to inspect the Equipment and to notify Supplier of any nonconformance with the terms and conditions of the specifications as set forth in this Agreement ("Specifications"). The City may reject any Equipment that does not conform to the Specifications by written notice to the Supplier within the Inspection Period. If the City rejects the Equipment, Supplier has sixty (60) days to promptly repair or place the nonconforming Equipment and pay for all related expenses, including, but not limited to, transportation charges, for the repair/return of the defective Equipment and/or the delivery of replacement Equipment. If City fails to notify Supplier in writing that it is rejecting the Equipment within the Inspection Period, City will be deemed to have accepted the Equipment. City's acceptance or deemed acceptance of the Equipment under this section shall not be deemed a waiver of any of warranties on the Equipment as set forth in the Agreement. Supplier will transfer title in the Equipment to City on delivery and acceptance of the Equipment. Prior to acceptance of the Equipment, City assumes risk of loss for the Equipment on delivery of the

Equipment to City while the Equipment is under the City's care, custody and control. On acceptance of the Equipment, as between Supplier and City, City assumes all risk of loss relating to the Equipment. Any Equipment rejected may be returned to the Supplier at the Supplier's risk and expense.

7. **INDEMNIFICATION: LIMITATION OF LIABILITY.** Supplier shall, to the fullest extent permitted by law, indemnify, defend (with counsel approved by the City in its reasonable discretion, such approval not to be unreasonably withheld, conditioned or delayed), and hold harmless the City from and against any Claims brought or alleged against the City by a third party to the extent arising out of: (a) Supplier's breach of this Agreement; and (b) the negligence or intentional misconduct of Supplier, except, in each case, to the extent caused by the negligence or willful misconduct of the City.
- 7.1 **DEFINITION.** For the purposes of this section, "City" means the City, its officials, officers, agents, employees, and volunteers; "Supplier " means the Supplier , its employees, and agents; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".
- 7.2 **PROVISION SURVIVAL.** The provisions of this Section 7 survive the completion of the services or the termination of this Agreement and are not limited by the provisions of Section 7 relating to insurance.
- 7.3 **PROCEDURE.** Supplier's obligations under this Section 7 are expressly conditioned on the following: City (a) will promptly notify Supplier in writing of any such Claim of which City has actual knowledge (provided that failure to do so will only release Supplier from the foregoing indemnification and defense obligations to the extent that such failure led to material prejudice), (b) grants Supplier sole control of the defense of any such Claim and of all negotiations for its settlement or compromise (provided that no such settlement or compromise may impose any liability or other obligations on City), and (c) will reasonably cooperate with Supplier to facilitate the settlement or defense of the Claim. Subject to the foregoing, City may participate, at City's own expense, in the defense of a Claim.

The parties agree that in the event of any claim, litigation, civil action or any other legal or administrative proceeding brought by one party against the other, except with respect to Supplier's indemnification obligations for third party claims, neither party shall be entitled to recover any incidental or consequential damages as defined in the Uniform Commercial Code, including but not limited to indirect or special damages, loss of income or anticipated profits, or down-time, or any punitive damages.

8. **INSURANCE.** Supplier shall, throughout the duration of this Agreement, maintain insurance to cover, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein, which may be achieved with an equivalent umbrella policy.

- 8.1 **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- 8.2 **AUTOMOBILE LIABILITY.** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 8.3 **WORKERS' COMPENSATION.** coverage shall be maintained as required by the State of California.
- 8.4 **ENDORSEMENTS.** Supplier shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:
- 8.4.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
- 8.4.2 For any claims related to this Agreement, Supplier's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Supplier's insurance and shall not contribute with it.
- 8.5 **NOTICE OF CANCELLATION.** Supplier shall notify the City if the policy is canceled before the expiration date. For this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Supplier shall immediately obtain a replacement policy.
- 8.6 **INSURANCE CERTIFICATE.** Supplier shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.
- 8.7 **SUBSTITUTE CERTIFICATES.** Supplier shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.
- 8.8 **SUPPLIER'S OBLIGATION.** Maintenance of insurance by the Supplier as specified in this Agreement shall in no way be interpreted as relieving the Supplier of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Supplier may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.
9. **PACKING AND SHIPPING.** Deliveries must be made as specified, without charge, for boxing, crating, or storage unless otherwise specified. Equipment must be suitably packed to secure the lowest transportation costs and, in accordance with the requirements of common carriers, in a manner to assure against damage from weather or transportation.

10. **TAXES.** The Supplier must separately state on all invoices any taxes imposed by the local, state, or federal state government applicable to furnishing the Equipment; however, where a tax exemption is available, the tax must be subtracted from the total price and identified. Unless otherwise outlined in the Agreement, the Purchase Price will be considered to include state and city sales or use tax.
11. **WARRANTY.** The Supplier warrants that on delivery all Equipment will conform to the applicable specifications set forth in Exhibit A ("Specifications"). Any warranties on the Equipment are limited only to any printed warranty provided by the applicable manufacturer of the Equipment. Supplier agrees to assist the City in reaching a resolution in any dispute over warranty terms with the manufacturer. Supplier warrants that all services performed by Supplier for City, including repair, maintenance, and installation services ("Services"), will be performed in a good and workmanlike manner in accordance with industry standards ("Services Warranty"). The Services Warranty is valid for a period of ninety (90) days from the date the Service is completed.
12. **Reserved.**
13. **REBATES, KICKBACKS, OR OTHER UNLAWFUL CONSIDERATIONS.** Supplier warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work performed, or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.
14. **NOTICES.** All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party at the addresses listed below. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:
Assistant Director – Operations
520 N. Tracy Blvd.
Tracy, CA 95376

To Supplier:
Rush Medium-Duty Truck Centers Inc.
1720 Herndon Rd.
Ceres, Calif. 95307
Attn: General Manager

With a copy to:
City Attorney
333 Civic Center Plaza
Tracy, CA 95376

Rush Enterprises Legal Department
555 IH35 South
New Braunfels, TX 78130

15. **MISCELLANEOUS**

15.1 **Reserved.**

15.2 **AMENDMENTS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

15.3 **WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

15.4 **ASSIGNMENT AND DELEGATION.** Supplier may not assign, transfer, or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be consent to any subsequent assignment. Notwithstanding the foregoing, Supplier may engage subcontractors to provide or assist in providing services to City, in which case Supplier remains responsible for the fulfillment of its obligations under this Agreement and for the performance of the services. Supplier will be further responsible for the acts and omissions of its subcontractors to the same extent as if done by Supplier directly.

15.5 **JURISDICTION AND VENUE.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

15.6 **COMPLIANCE WITH THE LAW.** Supplier shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

15.6.1 **HAZARDOUS MATERIAL.** Supplier is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled to the extent caused by Supplier in the course of performing their services.

15.6.2 **NON-DISCRIMINATION.** Supplier represents and warrants that it is an equal opportunity employer, and it shall not discriminate against any third-party Supplier, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, or age. Supplier shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

15.7 **BUSINESS ENTITY STATUS.** Supplier is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Supplier. By entering into this Agreement, Supplier represents that it is not a suspended corporation. If Supplier is a suspended corporation at the time, it enters this Agreement, City may take steps to have this Agreement declared voidable.

15.8 **SUCCESSORS AND ASSIGNS.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

15.9 **CONSTRUCTION OF AGREEMENT.** Each Party hereto has had an equivalent

opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.

- 15.10 **SEVERABILITY**. If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 15.11 **CONTROLLING PROVISIONS**. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, Contract and Supplier's proposal (if any), the Agreement shall control.
- 15.12 **ENTIRE AGREEMENT**. This Agreement, the Contract and attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations, or agreements. All exhibits attached hereto are incorporated by reference herein.
16. **SIGNATURES**. The individuals executing this Agreement on behalf of Supplier represent and warrant that they have the right, power, legal capacity, and authority to enter and execute this Agreement on behalf of Supplier.

[SIGNATURES ON FOLLOWING PAGE]

The Parties agree to the full performance of the terms set forth here.

City of Tracy

By: Dan Arriola

Title: Mayor

Date: _____

Attest:

Adrianne Richardson, City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

Supplier

Rush Medium-Duty Truck Centers, Inc.
Ceres, California

X Chris Faircloth

By: Chris Faircloth

Title: General Manager

Date: 1/22/2025

Federal Employer Tax ID No. 83-2426170

By: _____

Title: _____

Date: _____

Exhibit A

Equipment

SEE ATTACHED



Rush Medium-Duty Truck Centers of California, Inc. dba Rush Truck Center, Ceres

1720 Herndon Rd
Ceres, CA 95307-4421
(209) 857-7400

Customer Proposal Letter

City of Tracy
520 N Tracy Blvd
Tracy 95376-4917

Thank you for trusting us with your business. Please review the proposal below, and if you approve, sign and return to us at your convenience. We look forward to working with you and will continue to do our best to earn your trust now and in the future.

VEHICLE INFORMATION

Year 2023 Make Ford Model F-350 Stock # 1641677 Serial # 1FT8X3BA3PEC94092

Additional Vehicle Details: SOURCEWELL CONTRACT #032824-RTG

Quantity		Total
Truck Price per Unit	\$ 65,000.00	\$ 65,000.00
F.E.T. (Factory & Dealer Paid)	\$ 0.00	
Net Sales Price	\$ 65,000.00	\$ 65,000.00
Optional Extended Warranty(ies)		
State Sales Tax	\$ 5,492.86	\$ 5,492.86
Documentary Fee	\$ 80.00	\$ 80.00
Administration Fee	\$ 250.00	\$ 250.00
Electronic Filing	\$ 33.00	\$ 33.00
Tire Recycling Program	\$ 8.75	\$ 8.75
RushCare Service Subscription ⁽¹⁾⁽²⁾ 0 months	\$ 1,250.00	\$ 1,250.00
Total Sales Price	\$ 72,114.61	\$ 72,114.61
Trade Allowance (see DISCLAIMER Below)		
Deposit / Down Payment		
Unpaid Balance Due on Delivery	\$ 72,114.61	\$ 72,114.61

Sales Representative

Signature

Carlos Perez

Printed Name

Date

Purchaser

Signature

Printed Name / Title

Date

Accepted by Sales Manager
or General Manager

Signature

Printed Name

Date

Quote good until 1/31/2025

Note: The above Customer Proposal is a quotation only. Sale terms subject to approval of Sales Manager of Dealer.

DISCLAIMER: Any order based on this Proposal is subject to Customer executing Dealer's standard form Retail Sales Order and other required documents incorporating the above terms. Any documentary fees, FET, state tax, title, registration and license fees subject to adjustment and change. This Proposal is based upon Dealer's current and expected inventory, which is subject to change. Dealer is not obligated to retain any specific vehicles in stock, nor maintain specific inventory levels. Dealer shall not be obligated to fulfill Proposal in event quoted vehicle(s) is not in stock or available within requested delivery schedule. Manufacturer has reserved the right to change the price to Dealer of any vehicle not currently in Dealer's stock, without notice to Dealer and Dealer reserves the right to change Quotation Total to reflect any price increases from Manufacturer. Dealer shall not be liable for any delay in providing or inability to provide Quoted Vehicle(s). Above listed Trade Value based upon current appraisal of Trade Vehicle(s). Dealer may adjust Trade Value of Trade Vehicle(s) to reflect changes in condition and/or mileage of Trade Vehicle(s) between date of current appraisal and acceptance of the Trade Vehicle by Customer.

⁽¹⁾ Includes subscription period for # of specified months. ⁽²⁾ Customer's use of RushCare Service is governed by the RushCare User Agreement located at <https://www.rushtruckcenters.com/rushcare-user-agreement>. ⁽³⁾ Customer's use of Telematics Services is governed by separate 3rd party license terms and Rush is not liable for the Telematics Service. ⁽⁴⁾ Gap Coverage is provided and administered by an independent 3rd party provider under a separate contract directly between Customer and the 3rd party provider.

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

1) AUTHORIZING THE PURCHASE OF ONE NEW 2023 FORD F-350 FROM RUSH TRUCK CENTERS UTILIZING A COMPETITIVELY BID SOURCEWELL COOPERATIVE PROGRAM IN THE AMOUNT OF \$72,114 FOR THE BUILDING MAINTENANCE DEPARTMENT; AND 2) DECLARING THE EXISTING F-250 AS SURPLUS AND APPROVING ITS DISPOSITION PURSUANT TO TRACY MUNICIPAL CODE SECTION 2.20.310

WHEREAS, the Operations Division of the Public Works Department is tasked with managing, maintaining, and replacing most of the City of Tracy (City's) vehicle and equipment fleet; and

WHEREAS, as a part of that assignment, the Operations Division must maintain a vehicle and equipment replacement program to ensure future funding for replacement of purchased equipment and vehicles that reach their useful life or must be replaced due to irreparable condition; and

WHEREAS, the Operations Division has an existing need to replace a failing vehicle under this program as it is discovered through the Faster Web Fleet Asset Management program that the unit is now eleven months past its expected end-of-life and has developed an internal engine knock and the estimated cost of repairs would exceed the vehicle's current value, making continued maintenance impractical; and

WHEREAS, on April 17, 2024, City staff requested bids from Sourcewell (formerly National Joint Powers Alliance (NJPA) which serves government and education organizations with a cooperative purchasing program that manages a competitive solicitation process offering its members an established network of awarded contracts that meet local requirements; and

WHEREAS, City is an established customer with Sourcewell (customer number 18531) and is authorized to make purchases using Sourcewell cooperative purchasing Program, per Tracy Municipal Code section 2.20.220; and

WHEREAS, Sourcewell contracts purchasing solutions that are competitively solicited nationally, offering awarded contracts to companies like Rush Truck Centers, a California Company, located at 1720 Herndon Rd, Ceres, CA and is a qualified vendor of the F-350 the City needs to replace; and

WHEREAS, the City will contract directly with Rush Truck Centers "piggybacking" on the Sourcewell cooperative agreement, through a purchase order that will incorporate the Sourcewell cooperative agreement terms and conditions; and

WHEREAS, the existing failing F250 will be sold at public auction to the highest bidder for disposal which is governed by Section 2.20.310 of the Tracy Municipal Code (TMC); and

WHEREAS, below is a list of equipment that will be purchased.

Description	Vendor	Cost	Public Bidding Procedure
2023 Ford F-350 Super Duty Truck	Rush Truck Centers	\$72,114	Sourcewell (NJPA) 060920-NVS

Below is a list of the equipment that will be removed from service and surplus.

Retiring Equipment	Equipment Age	Repair Cost	Equipment Condition
2309	2009 Year 46,014 Miles	Total cost of repairs \$15,763	Poor condition, engine has developed a knocking internally in the engine

and;

WHEREAS, the funding for the purchase of the F-350 in the amount of \$72,114 is available in the Fleet Replacement Fund (FD 605); now, therefore, be it

RESOLVED: That the City Council of the City of Tracy adopt a Resolution authorizing the purchase of one new Ford F-350 from Rush Truck Centers utilizing a competitively bid Sourcewell Cooperative Program in the amount of \$72,114 for the Building Maintenance Department; and be it

FURTHER RESOLVED: That the City Council of the City of Tracy declare the existing Ford F-250 as surplus and approve of its disposition pursuant to Tracy Municipal Code Section 2.20.310.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 18th day of February, 2025, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTENTION: COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST: _____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of the
City of Tracy, California

Agenda Item 1.D

RECOMMENDATION

Staff recommends that the City Council adopt a resolution:

- 1) Approving the General Services Agreement with Imperial Bag & Paper Co. LLC for the janitorial supplies and delivery services for an initial term of two-years with compensation not to exceed \$39,000 annually.**
- 2) Authorizing an administrative extension up to an additional five (5) years contingent upon satisfactory performance and budget availability.**

EXECUTIVE SUMMARY

This agenda items seeks adoption of a resolution approving a General Services Agreement (GSA) with Imperial Bag & Paper Co. LLC, DBA Imperial Dade (Contractor) to provide janitorial supplies and delivery for City facilities from March 1, 2025 to February 28, 2027 for a not to exceed (NTE) amount of \$39,000 annually.

BACKGROUND AND LEGISLATIVE HISTORY

The City of Tracy requires a reliable supplier of janitorial supplies to maintain cleanliness and hygiene in various City facilities. The City does not have a current agreement for these services, necessitating a new contract to ensure uninterrupted supply of essential cleaning materials.

ANALYSIS

Pursuant to the Tracy Municipal Code (TMC), Section 2.20.180, the City issued a Notice Inviting Bids for Contractor to provide Janitorial Supplies and Delivery on October 1, 2024. On October 29, 2024, three (3) responsive bid packages were received summarized as follows:

Vendor's Name	Annual Prices
Conserve Company	\$ 35,717.00
Imperial Bag & Paper Co. LLC	\$ 34,071.00
Waxie Sanitary Supply	\$ 34,384.55

Imperial Bag & Paper Co. LLC, DBA Imperial Dade submitted the lowest responsive bid, which was based on meeting the bid requirements.

The initial term of the Agreement will be from March 1, 2025, through February 28, 2027. At the end of the initial contract term, if the City determines that the Contractor has satisfactorily performed all requirements in this Agreement, and upon recommendation from the Public Works Director to the City Manager, an administrative approval may extend this Agreement for up to an

additional five (5) years in any combination, not to exceed a total agreement length of seven (7) years.

FISCAL IMPACT

The cost of goods and services provided by the vendor is accounted for in the adopted FY24-25 annual budget, out of the Internal Services account of Public Works.

STRATEGIC PLAN

This agenda item is consistent with the City's Quality of Life Strategy and meets the goals to ensure physical infrastructure and systems necessary for the health and safety of the Tracy community and staff.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution:

- 1) Approving the General Services Agreement with Imperial Bag & Paper Co. LLC for the janitorial supplies and delivery services for an initial term of two-years with compensation not to exceed \$39,000 annually.
- 2) Authorizing an administrative extension up to an additional five (5) years contingent upon satisfactory performance and budget availability.

Prepared by: Jim Thompson, Superintendent, Operations

Reviewed by: Gordon MacKay, Interim Public Works Director
David Murphy, Assistant Director of Operations
Sara Castro, Director of Finance
Andrew Shen, Interim City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

A - GSA Imperial Bag & Paper Co., LLC

CITY OF TRACY GENERAL SERVICES AGREEMENT

This General Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and Imperial Bag & Paper Co. LLC, a Delaware limited liability corporation (**Contractor**). City and Contractor are referred to individually as “Party” and collectively as “Parties.”

Recitals

A. City desires to retain Contractor to provide janitorial supplies and delivery services; and

B. On October 1, 2024, the City issued a Notice Inviting Bids (NIB) for the Janitorial Supplies and Delivery Services 2025-2026 (**Project**). On October 29, 2024, the City received three (3) bids. After reviewing the bids, City has determined that Contractor possesses the skills, experience and certification required to provide the services in pursuant of the Tracy Municipal Code 2.20.180.

C. After negotiations between the City and Contractor, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

D. This Agreement is being executed pursuant to Resolution No. 2025-____ approved by Tracy City Council on _____, 2025.

Now therefore, the Parties mutually agree as follows:

1. Scope of Work. Contractor shall perform the services described in Exhibit “A” attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Contractor’s Authorized Representative: Steve Festa, Account Consultant. Contractor shall not replace its Authorized Representative, nor shall Contractor use or replace any subcontractors or subconsultants, without City’s prior written consent. A failure to obtain the City’s prior written consent for any change or replacement in personnel or subcontractor may result in the termination of this Agreement.

2. Time of Performance. Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Any services for which times for performance are not specified in this Agreement shall be started and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Contractor. Contractor shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1 Term. The term of this Agreement shall begin on March 1, 2025 and end on February 28, 2027, unless terminated in accordance with Section 6. This Agreement may be extended for an additional five years by the City Manager following a written determination that Contractor has satisfactorily met all the requirements of this Agreement.

3. Compensation. City shall pay Contractor on a time and expense basis, at the billing rates set forth in Exhibit “B,” attached and incorporated by reference for services performed under this Agreement.

3.1 Not to Exceed Amount. Contractor’s total compensation under this Agreement shall not exceed \$39,000 annually. Contractor’s billing rates shall cover all costs and expenses for Contractor’s performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City’s prior written approval.

3.2 Invoices. Contractor shall submit monthly invoices to the City that describe the services performed, including times, dates, and names of persons performing the services.

3.2.1. Contractor's failure to submit invoices in accordance with these requirements may result in the City rejecting said invoices and thereby delaying payment to Contractor.

3.3 Payment. Within 30 days after the City's receipt of invoice, City shall make payment to the Contractor based upon the services described on the invoice and approved by the City.

4. Indemnification. Contractor shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Contractor's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Contractor" means the Contractor, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

The provisions of this section survive completion of the services or the termination of this Agreement, and are not limited by the provisions of Section 5 relating to insurance.

5. Insurance. Contractor shall, throughout the duration of this Agreement, maintain insurance to cover Contractor, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

5.1 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

5.2 Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

5.3 Workers' Compensation coverage shall be maintained as required by the State of California.

5.4 Professional Liability "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Contractor in an amount not less than \$1,000,000 per claim.

5.5 Endorsements. Contractor shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:

5.5.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

5.5.2 For any claims related to this Agreement, Contractor's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

5.6 Notice of Cancellation. Contractor shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Contractor shall immediately obtain a replacement policy.

5.7 Authorized Insurers. All insurance companies providing coverage to Contractor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

5.8 Insurance Certificate. Contractor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

5.9 Substitute Certificates. Contractor shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.

5.10 Contractor's Obligation. Maintenance of insurance by the Contractor as specified in this Agreement shall in no way be interpreted as relieving the Contractor of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Contractor may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

6. Termination. The City may terminate this Agreement by giving ten days' written notice to Contractor. Upon termination, Contractor shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Contractor for this Agreement. The City shall pay Contractor for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

7. Dispute Resolution. If any dispute arises between the City and Contractor that cannot be settled after engaging in good faith negotiations, City and Contractor agree to resolve the dispute in accordance with the following:

7.1 Each Party shall designate a senior management or executive level representative to negotiate the dispute;

7.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

7.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiations between legal counsel. If the aforementioned process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

7.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.

7.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

7.6 The dispute resolution process is a material condition to this Agreement and must be exhausted prior to either Party initiating legal action. This dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 et seq.

8 Labor Code Compliance. Contractor is aware of the requirements of Chapter 1 of Part 7 of Division 2 of the California Labor Code and applicable regulations which require the payment of prevailing wage rates (§1771, §1774, and §1775); employment of apprentices (§1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. The services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, Contractor agrees to fully comply with such Prevailing Wage Laws.

8.1 Rates. These prevailing wage rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to perform the services described herein. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. Contractor assumes all responsibility for such payments and shall defend, indemnify and

hold the City harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker, or any other third party.

8.2 Registration with DIR. Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform the services consistent with Labor Code section 1725.5.

8.3 Monitoring. This Agreement will be subject to compliance monitoring and enforcement by the DIR, under Labor Code section 1771.4.

9. Ownership of Work. All original documents prepared by Contractor for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Contractor's services, or upon demand from the City. No such documents shall be revealed or made available by Contractor to any third party without the City's prior written consent.

10. Independent Contractor Status. Contractor is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Contractor is not City's employee and Contractor shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Contractor is free to work for other entities while under contract with the City. Contractor, and its agents or employees, are not entitled to City benefits.

11. Conflicts of Interest. Contractor (including its employees, agents, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Contractor maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Contractor's conflicting interest.

12. Rebates, Kickbacks, or Other Unlawful Consideration. Contractor warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

13. Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

City of Tracy
Attn: David Murphy, Operations Assistant Director
333 Civic Center Plaza
Tracy, CA 95376

To Contractor:

Imperial Bag & Paper Co. LLC
Attn: Steve Festa
P.O. Box 103264
Pasadena, CA 91189

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

14. Miscellaneous.

14.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Contractor's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

14.2 Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

14.3 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

14.4 Assignment and Delegation. Contractor may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

14.5 Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

14.6 Compliance with the Law. Contractor shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

14.6.1 Hazardous Materials. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of performing their services.

14.6.2 Non-discrimination. Contractor represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Contractor shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

14.7 Business Entity Status. Contractor is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Contractor. By entering into this Agreement, Contractor represents

that it is not a suspended corporation. If Contractor is a suspended corporation at the time it enters this Agreement, City may take steps to have this Agreement declared voidable.

14.8 Business License. Before the City signs this Agreement, Contractor shall obtain a City of Tracy Business License. Contractor shall maintain an active City of Tracy Business License during the term of this Agreement.

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14.10 Construction of Agreement. Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.

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14.12 Controlling Provisions. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Contractor's proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Contractor's proposal (if any), the Exhibits shall control.

14.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.

15. Signatures. The individuals executing this Agreement on behalf of Contractor represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Contractor.

[SIGNATURES ON FOLLOWING PAGE]

The Parties agree to the full performance of the terms set forth here.

City of Tracy

By: Dan Arriola
Title: Mayor
Date:

Contractor

DocuSigned by:
Paul M. Cervino
By: Paul M. Cervino
Title: Chief Administrative Officer
Date: 1/8/2025 | 7:33 AM EST

Federal Employer Tax ID No. 20-5963953

Attest:

Necy Lopez, Interim City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

- Exhibits:
- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
 - B Compensation (See Agreement section 3.)

EXHIBIT A - Scope of Work

Contractor shall supply and deliver janitorial supplies to one or more facilities within the City of Tracy.

The City makes no representation and provides no guarantee as to the minimum, average or maximum volume of purchases made under this contract.

1. **Brand Requirements:** Any manufacturers' names, trade names, brand names, or catalog numbers used in the specification are there for the purpose of establishing and describing product size, product volume, and quality. Such references are not intended to be restrictive, and bids are invited on these and comparable brands or products of any manufacturer.

Below is the table of sample janitorial supplies and estimated annual usage. The City may reserve the right to order more supplies than the listed ones. There shall be no guarantee as to actual quantities required during the period of the Agreement.

Item Description	Quantity
Waxie 1957 Clean & Soft White	147
01804 Scott Multifold Towels Pack 16/250	161
01005 Scott Universal Roll Pack 6/1000'	253
Waxie 041 Toilet Seat Covers	35
Spartan NABC 4/GL	2
Waxie 1985 Kleenline 2-ply 9 In	88
Waxed Kraft Liners for Wall Pack 500	8
Waxie Foaming Enriched Hand Soap W/W-Fitment 1000 ML 4/CS	2
Waxie Counter Mount Dispenser	4
Kutol Foaming Luxury Hand Soap Pack 6/1000M	20
Waxie White Lanolin Hand Soap	9
1525-5 Urinal Mat Fresh Blast	29
Waxie White Lanolin Hand Soap	41
Kutol 64331 EZ Foam Moist. CM2	2
273-103 Bobrick Spindle Pack	7
Kleenline 041 Half-Fold	4
Towel Roll Softone 8" White 6/800	33
Seat Cover Softone 1/2-Fold 20/250CS	2
Glove Nitrile PF Exam Med Blu 10/100	17
Cleaner Arsenal 1 Top Clean 2.5L 4/CS	5
Tissue Bath Rolls Softone 2ply 96/500/CS	8
40X48 16 Micron High Density	5
Soap Foam Antibacterial KC LT 6/CS	4
Wipers Boxed Wypall Popup X70 KC 41455	3
24X23 Black 7 GA Can Liner 500/CS	3
Roll Towel tad White 1/CS	5
Individual Pearl White Liquid Soap GL 4/CS	1
Individual Pot & Pan Detergent GL 4/CS	1

Soap Hand Antiseptic Spar GL 4/CS	5

2. **Order Process:** The selected City Janitorial Service Contractor shall order the paper products and hand soaps as needed and the Successful Bidder shall deliver the products to the designated location as requested by the Service Contractor and invoice the City monthly.

Preference shall be given to vendors without a minimum order requirement. Proposals indicating a minimum order requirement may be rejected; however, please note that the City shall make every effort to consolidate orders.

3. **Packaging:** All items shall be new and, in the manufacturer's, individual original, standard package, clearly marked as to contents.
4. **Packing List:** Each delivery shall include a complete packing list. The packing list shall include name of City employee placing order, delivery location, City account number, date, items delivered, and items backordered.
5. **Adequate Stock:** The vendor shall maintain an adequate inventory of janitorial supplies in order to accommodate City's needs throughout the term of the contract. Failure to maintain adequate stock may be deemed a breach of contract and may result in termination of the contract.
6. **Return Policy:** The successful vendor shall accept the return of unused items as described in the vendor's proposal.
7. **Emergencies:** Vendor shall provide the name and contact information of a representative who shall be available 24 hours a day, 7 days a week, in the event of an emergency. During the emergency, Successful Bidder shall provide the City of Tracy with all available supplies, materials, equipment and/or services on a priority basis.

The City expects initial delivery to occur within 4 hours of order placement and may be required during evenings, weekends, and holidays. Time is of the essence for delivery. Delivery location(s) and estimated arrival shall be mutually agreed upon, by the City and vendor, at time of order and shall be determined based on need and existing conditions. It is understood that current conditions, such as power outages, road closures, and damages to the vendor's facility and/or equipment, shall be taken into consideration.

EXHIBIT B – Compensation

Incumbent Item	UOM	Estimated Usage Quantity	Proposed Product	Unit Price	Total Price
Bath issue: 2-Ply FSC Embossed Bath Tissue	96 rolls (500 sheets per roll)	160	TORAL TM161605	43.60	6976.00
Multi-Fold Paper Towels	Packs of 250 (cases of 16 packs)	160	KL 01804	34.02	5443.20
Commercial Paper Towels (Universal Roll Pack)	6 rolls (8 inches wide X 1,000 feet long)	280	KL 01005	45.69	12793.20
Half-Fold Toilet Seat Covers	5000/case	50	VIL BAY SHIELD	28.60	1430.00
Neutral Disinfectant Cleaner	4 one-gallon containers per case	5	MAINTEX 1454064	44.80	224.00
Bath Tissue: 2-Ply Jumbo Roll	12 rolls per case, 1,000 feet per roll, 9" diameter	100	VIL BAY VBJT2100	24.72	~~2472.00~~ 2472.00
Liners for Wall Unit	500 per case	10	HOSPLO KL260	19.90	199.00
Foaming Enriched Hand Soap W/W-Fitment	4/1000ml per case	10	TECHNICAL CONCEPTS 401311	44.44	444.40
Counter Mount Dispenser		5	TC 402241	NO CHARGE	—
Luxury Hand Soap Pack	6/1000ml per case	20	KUTOL 69041	52.66	1052.00
White Lanolin Hand Soap	4/Cs	50	VIL BAY 100019	26.44	1322.00
Urinal Mat		30	IMPACT 1525-5	39.36	1180.80
Bobrick Spindle Rack		10	BOBRICK B273103	6.00	60.00
Cleaner Arsenal 1 Top Clean 2.5L	4/case	5	BETLO 17847	94.88	474.40

Percentage Discount off of the Manufacturer's Suggested List Pricing for miscellaneous items: 12 %

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

-
- 1) APPROVING THE GENERAL SERVICES AGREEMENT WITH IMPERIAL BAG & PAPER CO. LLC FOR THE JANITORIAL SUPPLIES AND DELIVERY SERVICES FOR AN INITIAL TERM OF TWO-YEARS WITH COMPENSATION NOT TO EXCEED \$39,000 ANNUALLY; AND**
 - 2) AUTHORIZING AN ADMINISTRATIVE EXTENSION UP TO AN ADDITIONAL FIVE-YEAR CONTINGENT UPON SATISFACTORY PERFORMANCE AND BUDGET AVAILABILITY.**

WHEREAS, the City of Tracy (City) requires a reliable supplier for janitorial supplies to maintain cleanliness and hygiene for various City facilities; and

WHEREAS, the City currently has no agreement for these supplies and services; and

WHEREAS, on October 1, 2024, staff followed established procedures, in accordance with Tracy Municipal Code, Section 2.20.180, and issued a Notice Inviting Bids for these supplies and services; and

WHEREAS, prior to the deadline, the City received three (3) responsive bid proposals, one of which is Imperial Bag & Paper Co. LLC (Contractor); and

WHEREAS, Contractor was the lowest responsive and qualified bidder and has the expertise and experience required to provide the necessary and desired supplies and services; and

WHEREAS, staff is requesting that the City Council authorize the execution of the General Services Agreement with Contractor, in the form attached as Exhibit 1, for the initial term of two years with compensation of \$39,000 annually to provide the supplies and services to the various City facilities; and

WHEREAS, staff is also requesting the City Council to grant authority for administrative extensions by City Manager for five (5) additional years upon satisfactory performance by the Contractor and budget availability; now, therefore, be it

RESOLVED: That the above recitals are true and correct; and be it

FURTHER RESOLVED: That the City Council of the City of Tracy, hereby approves the General Services Agreement with Imperial Bag & Paper Co. LLC, attached as Exhibit 1, for the initial term of two years with compensation of \$39,000 annually to provide the supplies and services to the various City facilities; and be it

FURTHER RESOLVED: That the City Council authorizes an administrative extension up to five (5) additional years upon a satisfactory performance and budget availability.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 18th day of February, 2025 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST: _____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of the
City of Tracy, California

Exhibits:

Exhibit 1 - GSA Imperial Bag & Paper Co., LLC

CITY OF TRACY GENERAL SERVICES AGREEMENT

This General Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and Imperial Bag & Paper Co. LLC, a Delaware limited liability corporation (**Contractor**). City and Contractor are referred to individually as “Party” and collectively as “Parties.”

Recitals

A. City desires to retain Contractor to provide janitorial supplies and delivery services; and

B. On October 1, 2024, the City issued a Notice Inviting Bids (NIB) for the Janitorial Supplies and Delivery Services 2025-2026 (**Project**). On October 29, 2024, the City received three (3) bids. After reviewing the bids, City has determined that Contractor possesses the skills, experience and certification required to provide the services in pursuant of the Tracy Municipal Code 2.20.180.

C. After negotiations between the City and Contractor, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

D. This Agreement is being executed pursuant to Resolution No. 2025-____ approved by Tracy City Council on _____, 2025.

Now therefore, the Parties mutually agree as follows:

1. Scope of Work. Contractor shall perform the services described in Exhibit “A” attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Contractor’s Authorized Representative: Steve Festa, Account Consultant. Contractor shall not replace its Authorized Representative, nor shall Contractor use or replace any subcontractors or subconsultants, without City’s prior written consent. A failure to obtain the City’s prior written consent for any change or replacement in personnel or subcontractor may result in the termination of this Agreement.

2. Time of Performance. Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Any services for which times for performance are not specified in this Agreement shall be started and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Contractor. Contractor shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1 Term. The term of this Agreement shall begin on March 1, 2025 and end on February 28, 2027, unless terminated in accordance with Section 6. This Agreement may be extended for an additional five years by the City Manager following a written determination that Contractor has satisfactorily met all the requirements of this Agreement.

3. Compensation. City shall pay Contractor on a time and expense basis, at the billing rates set forth in Exhibit “B,” attached and incorporated by reference for services performed under this Agreement.

3.1 Not to Exceed Amount. Contractor’s total compensation under this Agreement shall not exceed \$39,000 annually. Contractor’s billing rates shall cover all costs and expenses for Contractor’s performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City’s prior written approval.

3.2 Invoices. Contractor shall submit monthly invoices to the City that describe the services performed, including times, dates, and names of persons performing the services.

3.2.1. Contractor's failure to submit invoices in accordance with these requirements may result in the City rejecting said invoices and thereby delaying payment to Contractor.

3.3 Payment. Within 30 days after the City's receipt of invoice, City shall make payment to the Contractor based upon the services described on the invoice and approved by the City.

4. Indemnification. Contractor shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Contractor's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Contractor" means the Contractor, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

The provisions of this section survive completion of the services or the termination of this Agreement, and are not limited by the provisions of Section 5 relating to insurance.

5. Insurance. Contractor shall, throughout the duration of this Agreement, maintain insurance to cover Contractor, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

5.1 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

5.2 Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

5.3 Workers' Compensation coverage shall be maintained as required by the State of California.

5.4 Professional Liability "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Contractor in an amount not less than \$1,000,000 per claim.

5.5 Endorsements. Contractor shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:

5.5.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

5.5.2 For any claims related to this Agreement, Contractor's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

5.6 Notice of Cancellation. Contractor shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Contractor shall immediately obtain a replacement policy.

5.7 Authorized Insurers. All insurance companies providing coverage to Contractor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

5.8 Insurance Certificate. Contractor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

5.9 Substitute Certificates. Contractor shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.

5.10 Contractor's Obligation. Maintenance of insurance by the Contractor as specified in this Agreement shall in no way be interpreted as relieving the Contractor of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Contractor may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

6. Termination. The City may terminate this Agreement by giving ten days' written notice to Contractor. Upon termination, Contractor shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Contractor for this Agreement. The City shall pay Contractor for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

7. Dispute Resolution. If any dispute arises between the City and Contractor that cannot be settled after engaging in good faith negotiations, City and Contractor agree to resolve the dispute in accordance with the following:

7.1 Each Party shall designate a senior management or executive level representative to negotiate the dispute;

7.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

7.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiations between legal counsel. If the aforementioned process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

7.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.

7.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

7.6 The dispute resolution process is a material condition to this Agreement and must be exhausted prior to either Party initiating legal action. This dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 et seq.

8 Labor Code Compliance. Contractor is aware of the requirements of Chapter 1 of Part 7 of Division 2 of the California Labor Code and applicable regulations which require the payment of prevailing wage rates (§1771, §1774, and §1775); employment of apprentices (§1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. The services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, Contractor agrees to fully comply with such Prevailing Wage Laws.

8.1 Rates. These prevailing wage rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to perform the services described herein. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. Contractor assumes all responsibility for such payments and shall defend, indemnify and

hold the City harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker, or any other third party.

8.2 Registration with DIR. Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform the services consistent with Labor Code section 1725.5.

8.3 Monitoring. This Agreement will be subject to compliance monitoring and enforcement by the DIR, under Labor Code section 1771.4.

9. Ownership of Work. All original documents prepared by Contractor for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Contractor's services, or upon demand from the City. No such documents shall be revealed or made available by Contractor to any third party without the City's prior written consent.

10. Independent Contractor Status. Contractor is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Contractor is not City's employee and Contractor shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Contractor is free to work for other entities while under contract with the City. Contractor, and its agents or employees, are not entitled to City benefits.

11. Conflicts of Interest. Contractor (including its employees, agents, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Contractor maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Contractor's conflicting interest.

12. Rebates, Kickbacks, or Other Unlawful Consideration. Contractor warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

13. Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

City of Tracy
Attn: David Murphy, Operations Assistant Director
333 Civic Center Plaza
Tracy, CA 95376

To Contractor:

Imperial Bag & Paper Co. LLC
Attn: Steve Festa
P.O. Box 103264
Pasadena, CA 91189

With a copy to:
City Attorney
333 Civic Center Plaza
Tracy, CA 95376

14. Miscellaneous.

14.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Contractor's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

14.2 Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

14.3 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

14.4 Assignment and Delegation. Contractor may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

14.5 Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

14.6 Compliance with the Law. Contractor shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

14.6.1 Hazardous Materials. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of performing their services.

14.6.2 Non-discrimination. Contractor represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Contractor shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

14.7 Business Entity Status. Contractor is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Contractor. By entering into this Agreement, Contractor represents

that it is not a suspended corporation. If Contractor is a suspended corporation at the time it enters this Agreement, City may take steps to have this Agreement declared voidable.

14.8 Business License. Before the City signs this Agreement, Contractor shall obtain a City of Tracy Business License. Contractor shall maintain an active City of Tracy Business License during the term of this Agreement.

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[SIGNATURES ON FOLLOWING PAGE]

The Parties agree to the full performance of the terms set forth here.

City of Tracy

By: Dan Arriola
Title: Mayor
Date:

Attest:

Necy Lopez, Interim City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

Contractor

DocuSigned by:
Paul M. Cervino
By: Paul M. Cervino
Title: Chief Administrative Officer
Date: 1/8/2025 | 7:33 AM EST

Federal Employer Tax ID No. 20-5963953

Exhibits:

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)

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Kleenline 041 Half-Fold	4
Towel Roll Softone 8" White 6/800	33
Seat Cover Softone 1/2-Fold 20/250CS	2
Glove Nitrile PF Exam Med Blu 10/100	17
Cleaner Arsenal 1 Top Clean 2.5L 4/CS	5
Tissue Bath Rolls Softone 2ply 96/500/CS	8
40X48 16 Micron High Density	5
Soap Foam Antibacterial KC LT 6/CS	4
Wipers Boxed Wypall Popup X70 KC 41455	3
24X23 Black 7 GA Can Liner 500/CS	3
Roll Towel tad White 1/CS	5
Individual Pearl White Liquid Soap GL 4/CS	1
Individual Pot & Pan Detergent GL 4/CS	1

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EXHIBIT B – Compensation

Incumbent Item	UOM	Estimated Usage Quantity	Proposed Product	Unit Price	Total Price
Bath issue: 2-Ply FSC Embossed Bath Tissue	96 rolls (500 sheets per roll)	160	TORAL TM161605	43.60	6976.00
Multi-Fold Paper Towels	Packs of 250 (cases of 16 packs)	160	KL 01804	34.02	5443.20
Commercial Paper Towels (Universal Roll Pack)	6 rolls (8 inches wide X 1,000 feet long)	280	KL 01005	45.69	12793.20
Half-Fold Toilet Seat Covers	5000/case	50	VIL BAY SHIELD	28.60	1430.00
Neutral Disinfectant Cleaner	4 one-gallon containers per case	5	MAINTEX 1454064	44.80	224.00
Bath Tissue: 2-Ply Jumbo Roll	12 rolls per case, 1,000 feet per roll, 9" diameter	100	VIL BAY VBJT2100	24.72	~~2472.00~~ 2472.00
Liners for Wall Unit	500 per case	10	HOSPLO KL260	19.90	199.00
Foaming Enriched Hand Soap W/W-Fitment	4/1000ml per case	10	TECHNICAL CONCEPTS 401311	44.44	444.40
Counter Mount Dispenser		5	TC 402241	NO CHARGE	—
Luxury Hand Soap Pack	6/1000ml per case	20	KLUTOL 69041	52.66	1052.00
White Lanolin Hand Soap	4/Cs	50	VIL BAY 100019	26.44	1322.00
Urinal Mat		30	IMPACT 1525-5	39.36	1180.80
Bobrick Spindle Rack		10	BOBRICK B273103	6.00	60.00
Cleaner Arsenal 1 Top Clean 2.5L	4/case	5	BETLO 17847	94.88	474.40

Percentage Discount off of the Manufacturer's Suggested List Pricing for miscellaneous items: 12 %

Agenda Item 1.E

RECOMMENDATION

Staff recommends that the City Council adopt a Resolution authorizing the execution of a Purchase Agreement with Public Restroom Company for the purchase of a premanufactured restroom building utilizing the Sourcewell Cooperative Program in the amount of \$363,496 pursuant to Tracy Municipal Code Section 2.20.220 for CIP 78170, Gretchen Talley Park – Phase III.

EXECUTIVE SUMMARY

This agenda item seeks adoption of a Resolution by the City Council authorizing the execution of a Purchase Agreement (Agreement) with Public Restroom Company (PRC) for the purchase of a premanufactured restroom building for Gretchen Talley Park – Phase III, CIP 78170 (Project). The terms of the Agreement supplement the terms set forth by Contract RFP #08172 between Sourcewell and PRC. The City of Tracy (City) is an established customer and is authorized to make purchases using Sourcewell, pursuant to Tracy Municipal Code (TMC), Section 2.20.220.

The direct purchase of the restroom building from PRC in the amount of \$363,496 will save time and money.

BACKGROUND AND LEGISLATIVE HISTORY

Sourcewell is a State of Minnesota local government agency and service cooperative that offers cooperative procurement solutions to education and government agencies nationally through competitively bid and awarded contracts. The City is an established customer with Sourcewell and is authorized to make purchases using Sourcewell cooperative purchasing agreements, pursuant to TMC, Section 2.20.220.

In 2018, the City Council approved the Project which consists of an expansion of the existing Gretchen Talley Park. The City is proposing to add to the existing park several features, such as new lawn, landscaping, a decomposed granite path, lighted tennis and pickleball courts, a new basketball court, a park restroom, large and small dog park areas, new accessible on-street parking, as well as a possible nature play and outdoor fitness area amongst other improvements.

ANALYSIS

During the design process it was determined that the preferred premanufactured restroom needed for the Project has a current lead time of 12-14 months from date of purchase to installation. Additionally, staff has determined that the construction of a project of this scope and scale would take approximately 8-10 months to complete. Staff plans to advertise the Project for public bidding in the coming months.

To help avoid a delay during construction and open the Project to the public as soon as possible, the direct purchase of the restroom building is recommended to be done in advance of

the competitive bidding process for all the other park improvements. This strategy will allow for the restroom to be manufactured and shipped to the site for installation in better alignment with the general contractor's construction schedule and avoid any unnecessary delays due to the current extended manufacturing time. Purchasing the restroom directly from the manufacturer will also eliminate any additional processing or mark-up fees compared to working through a contractor to purchase the building. The cost savings on potential contractor mark-ups is estimated to be in excess of \$50,000.

Sourcewell offers cooperative procurement solutions, and this streamlined process ensures efficiency while still obtaining the best value for its purchases. PRC is a Sourcewell awarded contract company, and Staff is recommending the purchase of the premanufactured restroom/storage building from this vendor.

Below is the recommended restroom building:

Description	Vendor	Cost	Public Bidding
Restroom/Storage Building Ref #11064-2/06/2024-5	Public Restroom Company	\$363,496	Sourcewell #081721-PRM

FISCAL IMPACT

Gretchen Talley Park, CIP 78170, is an approved Capital Improvement Project with a total budget of \$5,600,000. There are sufficient funds available in the project for the purchase of the restroom/storage building, with funding as follows:

<u>Funding Source</u>	Budget	Expenses	Balance
361 - Master Plan Park Impact Fees	\$ 1,501,122	\$ 114,837	\$ 1,386,285
378 - CORE Park Impact Fees	\$ 4,098,878	\$ 489,427	\$ 3,609,451
Totals	\$ 5,600,000	\$ 604,264	\$ 4,995,736

STRATEGIC PLAN

This agenda item supports the City of Tracy's Quality of Life Strategic Priority.

COORDINATION

Once a construction contract is awarded to the lowest responsive/responsible bidder for the Project, staff will coordinate the delivery and installation of the pre-purchased restroom building with the contractor.

CEQA DETERMINATION

Environmental review was previously completed for this project, including the final Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, in accordance with California Environmental Quality Act, was approved and adopted on January 16, 2024, per Resolution 2024-024. Under CEQA guidelines Section 15378 the proposed actions herein are part of the whole project previously subject to CEQA review, and no further review is required at this time.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a Resolution authorizing the execution of a Purchase Agreement with Public Restroom Company for the purchase of a premanufactured restroom building utilizing the Sourcewell Cooperative Program in the amount of \$363,496 pursuant to Tracy Municipal Code Section 2.20.220 for CIP 78170, Gretchen Talley Park – Phase III.

Prepared by: Richard Joaquin, Assistant Director of Parks, Recreation and Community Services

Reviewed by: Brian MacDonald, Director of Parks, Recreation and Community Services
Sara Castro, Director of Finance
Andrew Shen, Interim City Attorney
Arturo Sanchez, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

- A – Sourcewell Contract 081721-PRM
- B – Public Restroom Company (PRC) Quote
- C – Purchase Agreement



Solicitation Number: RFP 081721

CONTRACT

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Public Restroom Company, 2587 Business Parkway, Minden, NV 89423 (Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Restroom and Shower Facility Solutions from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires October 15, 2025, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.
- C. **SURVIVAL OF TERMS.** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All other rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above.

Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be

returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. SALES TAX. Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;

- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Change Request Form will become an amendment to this Contract and will be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell

contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. **ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM.** Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be negotiated directly between the Participating Entity and the Supplier. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. **SPECIALIZED SERVICE REQUIREMENTS.** In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. **TERMINATION OF ORDERS.** Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. **GOVERNING LAW AND VENUE.** The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. **PRIMARY ACCOUNT REPRESENTATIVE.** Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

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

B. BUSINESS REVIEWS. Supplier must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcewell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

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

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

by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. **AUDIT.** Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. **ASSIGNMENT.** Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. **WAIVER.** Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

E. **CONTRACT COMPLETE.** This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:

- a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.
- b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.

2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers,

resellers, marketing representatives, and agents (collectively “Permitted Sublicensees”) in advertising and promotional materials for the purpose of marketing the Parties’ relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. Use; Quality Control.

- a. Neither party may alter the other party’s trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.
- b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party’s trademarks only in good faith and in a dignified manner consistent with such party’s use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. As applicable, Supplier agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Supplier in violation of applicable patent or copyright laws.

5. **Termination.** Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party’s name or logo (excepting Sourcewell’s pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell’s written directions.

B. **PUBLICITY.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. **MARKETING.** Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

D. **ENDORSEMENT.** The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for Products-Completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms

no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance.* During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Network Security and Privacy Liability Insurance.* During the term of this Contract, Supplier will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Supplier's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

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

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is

primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. **WAIVER OF SUBROGATION.** Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. **UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION.** The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. **LAWS AND REGULATIONS.** All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. **LICENSES.** Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcewell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcewell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier’s Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names

of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation

and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier not use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by an Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

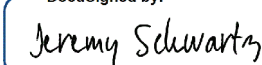
T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

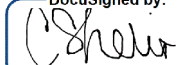
22. CANCELLATION

Sourcwell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcwell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

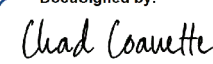
Sourcwell

Public Restroom Company

DocuSigned by:

By: C0FD2A139D06489...
Jeremy Schwartz
Title: Chief Procurement Officer
Date: 10/13/2021 | 1:42 PM CDT

DocuSigned by:

By: A88A1E334B6E4D3...
Katie Sherin
Title: Chief Operating Officer
Date: 10/14/2021 | 11:03 AM PDT

Approved:

DocuSigned by:

By: 7E42B8F817A64CC...
Chad Coauette
Title: Executive Director/CEO
Date: 10/14/2021 | 1:03 PM CDT

RFP 081721 - Restroom and Shower Facility Solutions

Vendor Details

Company Name: Public Restroom Company
2587 Business Parkway
Address: Minden, NV 89423
Contact: Katie Sherin
Email: katie@publicrestroomcompany.com
Phone: 888-888-2060 120
Fax: 888-888-1448
HST#:

Submission Details

Created On: Wednesday July 21, 2021 19:23:31
Submitted On: Tuesday August 17, 2021 15:50:48
Submitted By: Kristyn Young
Email: kristyn@publicrestroomcompany.com
Transaction #: c147a115-3f11-4f3c-9c67-11633b6d6822
Submitter's IP Address: 47.44.252.218

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *	
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	Public Restroom Company	*
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	N/A	*
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	N/A	*
4	Proposer Physical Address:	2587 Business Parkway Minden, NV 89423	*
5	Proposer website address (or addresses):	www.publicrestroomcompany.com	*
6	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	N/A - Public Restroom Company submitting this proposal	*
7	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Katie Sherin, Chief Operating Officer, 2587 Business Parkway, Minden, NV 89423, katie@publicrestroomcompany.com, 888-888-2060 ext 120	*
8	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Chad Kaufman, President, 2587 Business Parkway, Minden, NV 89423, chad@publicrestroomcompany.com, 888-888-2060 ext 109	

Table 2: Company Information and Financial Strength

Line Item	Question	Response *	

9	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	Public Restroom Company's founder, Chuck Kaufman, was a public restroom industry front-runner and pioneered the process of off-site constructed park and recreation prefabricated restrooms, concessions, meeting rooms, offices, scorekeeper booths, and waterless restrooms (vaults) for urban and rural recreation sites. His vision was to deliver high-quality prefabricated buildings, specializing in restrooms, to communities that had minimal operating and capital budgets, but still wanted to have a good looking, easy to maintain building. This led him to create standardized floor plans with flexible exterior and roof finishes that could blend into local architecture and natural landscapes. Today PRC remains a family-owned and managed company by a brother and sister team, Charles "Chad" E. Kaufman IV and Catherine "Katie" Kaufman-Sherin. After many years working under their late father and company founder, they took control of the business in 2019 and continue the PRC legacy today. Chuck was always looking to develop innovative ways to build better restrooms and he did exactly that. Over the years, Chuck and the PRC team introduced new design ideas aimed to help reduce vandalism, continually improved the quality of components installed in each building until they were the best in the market, and developed a proprietary concrete additive that makes our buildings' concrete floors and walls water resistant, non-staining, and odor-free. These are only a few of his progressive changes to the standard public restroom building that make our buildings truly stand out from the rest. PRC's mission is to deliver turnkey buildings to our customer that require little maintenance, hold-up to vandalism, and having the final cost of the building below typical site-built construction. This strategy, along with high-quality and attention to detail, delivers a product unmatched in the industry today. Critical to PRC's business model is continuing investment in research and development to find new solutions. These include vandal-resistance technologies, maintenance-reduction and efficiency through technology, increasing public safety, and longevity with a 50-year useful life. When commercially available restroom components do not stand up to the abuse of our market, PRC invents and fabricates components that will (i.e. PRC Doors). Our first company value is "Quality," and we stay true to this through our craftsmanship, selection of high-quality components, and quality control through the entire manufacturing process. This gives us the ability to offer and stand behind the leading warranty in the industry of 20-years structural and 5-years parts/fixtures. Public Restroom Company's mission statement is: to lead our industry as the premier designer, builder, and expert on restrooms and related buildings for parks and public spaces. We achieve this goal by fostering a culture of innovation and attention to detail that make our buildings safer and more reliable for the communities we serve. Our vision is to improve communities by providing the safest, most innovative, and highest quality prefabricated buildings for parks and public spaces. Our company values are as follows: 1) Quality - We take pride in our effort to provide the highest quality in our products, workmanship, and design. 2) Innovation - We focus on innovation day-to-day in adapting new ideas to create the best solutions for our customers. 3) Partnership - We build strong, long-term relationships with employees, vendors, design architects, and customers to provide the best in class products. 4) Teamwork - We strive to develop respectful collaboration across all employees together to accomplish our common goals. 5) Integrity - We act ethically in all aspects of our business by "doing the right thing" for our employees and our customers. (See Mission, Vision, Values attached in uploaded documents)
10	What are your company's expectations in the event of an award?	In the event of an award, we look forward to providing both optimal service and delivering the highest quality, turnkey product to those businesses, cities, and municipalities that use Sourcewell primarily for procurement. We also would promote Sourcewell in a mutually beneficial manner, as we expect that this award will only bolster our reputation as one of the leader's in the prefabricated restroom category and give us access to new customers. So if we are awarded the contract, one expectation for ourselves is to promote Sourcewell by including Sourcewell's logo in our future scheduled advertising efforts (digital, print, etc.) including regional and national tradeshow. We also would dedicate a page on our website specifically to Sourcewell, so the purchasing process is clearly explained to customers and they can understand that our company and products have been vetted and selected by an outside governmental agency.
11	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Since 2003, PRC has done \$197.5M in sales of prefabricated buildings and 78% of that total has been in the last ten years alone (\$155.7M). In 2021, PRC has YTD Sales of \$17.8M, which happens to be \$1.19M ahead of FY2020 annual sales of \$16.6M. Please see additional attachments for supporting documents for this question. We have included the following documents: 2020 Financial Report, PRC's Dun & Bradstreet report, a letter from our bonding company, and a letter of support from our bank.
12	What is your US market share for the solutions that you are proposing?	To date, we have installed over 1,000 buildings under the Public Restroom Company brand since 2002. Public Restroom Company leads the US market for custom prefabricated restroom and park buildings. We currently have buildings in 31 states to date and add more markets each year. It is hard to determine exact market share, as it is unknown how many exact public restrooms are being sold each year and installed, but we would estimate that PRC owns at least ~15% of the current market size or more.
13	What is your Canadian market share for the solutions that you are proposing?	At this time 0%. We have never sold or installed a building to a Canadian customer due to regulations around trucking/shipment size requirements. We are continually looking to figure out a solution for this so we can sell to Canada in the near future, as we've had multiple Canadian online inquiries in the past years demonstrating interest for our brand.
14	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No.

15	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	Public Restroom Company (PRC) is a manufacturer of prefabricated restrooms and related park buildings. Our company is best described as a design-build-installation firm. (a) We are NOT a distributor/dealer/reseller. (b) PRC employs are own in-house design staff, national sales force, and project management team that will serve as the main contacts for all Sourcewell's customers. We also have our fleet field vehicles and specially-trained installation staff to control the quality of end service during the delivery and installation process. If local union labor is required for installation under a Community Workforce Agreement (CWA), we will still send field staff to help oversee the process and also assist in advertising to local labor unions for the project installation.
16	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	Licenses for modular construction are specific to the applicable states and their own requirements. Some states have plan-approval and inspection requirements, while others require local CBO's to certify the construction at a local level. Public Restroom Company (PRC) partners with a national third-party engineering firm, Radco, who under licenses from each State holding a modular program of plan review and inspection, provides each state modular building agency engineering certification of compliance with all applicable codes relate to the building.
17	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	None.

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *
18	Describe any relevant industry awards or recognition that your company has received in the past five years	2021 Cintas America's Best Restroom Contest - Selected as a Top 10 Finalist for our Craycraft Restroom in Mission Viejo, CA. Winner to be announced after August 20th. In 2020, we received an Honorable Mention from Modular Building Institute's Awards of Distinction in the "Permanent Modular Assembly" category for our project, CSU Army Depot Park. This particular building was over 3,200 sq. ft that included restrooms, showers, storage, and a concession. This building was designed, managed, and sold by PRC and built in our third-party manufacturing facility, Blazer Industries, and was comprised of 8 modules—one of our largest projects to date. As a company, we were nominated and selected as a finalist for Northern Nevada's Best Places to Work Award for a medium-sized business and will find out if we won on August 27th.
19	What percentage of your sales are to the governmental sector in the past three years	In the last three years, 94% of our sales are to the government sector.
20	What percentage of your sales are to the education sector in the past three years	In the last three years, less than 1% of our sales are to the education sector.
21	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	Public Restroom Company currently holds a purchasing contract with the National BuyBoard Purchasing Cooperative. Total Sales Volume since 2014 is \$14,707,291.
22	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	None at this time, we are only pursuing the Sourcewell Contract for Restroom & Shower facilities.

Table 4: References/Testimonials

Line Item 23. Supply reference information from three customers who are eligible to be Sourcewell participating entities.

Entity Name *	Contact Name *	Phone Number *
City of Murrieta, CA	Lea Kolek	951-304-7275
City of Los Angeles, CA	Jimmy Newsom	818-756-9294
City of Richardson, TX	Bobby Kinser	972-744-4470
City of Jacksonville, FL	Daryl Joseph	904-630-3515
Williston Parks & Recreation District, ND	Darin Krueger	701-774-9773

Table 5: Top Five Government or Education Customers

Line Item 24. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
City of Los Angeles	Government	California - CA	Designed and sold (13) prefabricated buildings that included restrooms, meeting rooms, office space, splash pad equipment room, and storage. At this time (12) have been installed with (1) new contract in 2021 for future install (\$416,370).	\$451,092 \$141,313 \$140,883 \$154,969 \$134,663 \$134,663 \$121,822 \$255,191 \$244,421 \$172,417 \$259,584 \$416,690 \$416,370	\$3,044,078	*
Clark County	Government	Nevada - NV	Designed and sold (10) prefabricated buildings, including restrooms, storage and office. At this time, 9 have been installed with (1) new contract in 2021 for future install (\$194,848).	\$200,802 \$148,364 \$148,364 \$168,296 \$148,364 \$194,848 \$295,450 \$279,517 \$291,146 \$412,260	\$2,287,411	*
City of Sacramento	Government	California - CA	Designed and sold (7) prefabricated buildings, including restrooms, storage and office. At this time, 5 have been installed with (2) new contracts in 2021 for future install (Total \$412,914).	\$112,585 \$144,970 \$141,406 \$157,877 \$229,752 \$492,702 \$255,037	\$1,534,329	*
Valley-Wide Recreation & Park District / San Jacinto, CA	Government	California - CA	Designed and sold (6) prefabricated buildings, including restrooms, storage and office. At this time, (3) have been installed with (3) new contracts in 2021 for future install (Total \$867,538).	\$374,977 \$203,425 \$227,031 \$265,530 \$402,335 \$297,218	\$1,770,516	*
City of Garland	Government	Texas - TX	Designed and sold (6) prefabricated buildings, including restrooms, concession buildings, and storage. At this time, (1) building has been installed with (5) new contracts in 2021 for future install (Total \$2,907,788).	\$493,100 \$161,472 \$585,188 \$934,367 \$323,168 \$733,661	\$3,230,956	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcewell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *	
25	Sales force.	Public Restroom Company has four (4) full-time direct sales people with designated geographical territories and behind this sales team is a five (5) person support staff for administrative services and project management. We look to expand our sales depth with outside rep agencies with the future launch of our semi-custom or baseMOD product lines which are currently in development.	*
26	Dealer network or other distribution methods.	Any outside sales rep agencies will be paid a finders fee (%) for any new projects and/or new customers brought to PRC.	*
27	Service force.	Public Restroom Company has three (3) dedicated installation and warranty field teams. Each are comprised of at least (2) people with company vehicles, specialty tools, and extensive knowledge in plumbing and general construction. These teams are strategically located at the following locations: our headquarters in Minden, NV, Southern California, and in Central Texas. These professional OSHA-certified, specially-trained, staff members will travel across the nation to install and service any warranties for our customers.	*
28	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	The ordering process is handled 100% by Public Restroom Company, at this time we do not have any outside distributors or dealers due to the custom nature of our product and it gives us the ability to control the quality and level of service to customers. After we received an initial inquiry from a customer, the Salesperson assigned to that state/territory will follow-up with a call and email to the potential customer to answer any questions. If the customer chooses to move forward, PRC will provide design renderings based upon initial discussions and a factory quote with added costs of any upgrades and modifications from the base model price. If accepted, PRC will then provide our proposal contract to be signed by the customer and this will include all terms & conditions, as well as outline all steps of the building process to the final point of delivery. After the contract is signed, Customer and PRC Salesperson and/or Project Manager will finalize all color selections and finishes and then these drawings will be sent to engineering for state approval to move forward.	*
29	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	Public Restroom Company prides itself in having excellent customer service. We take care of our clients by responding to any questions or issues within 24 hours. Our clients are assisted by phone/video to help troubleshoot. If the issue requires on-site assistance, we will send our field representatives to the job site to troubleshoot the problem and repair/replace as needed. In the next few months, we will be publishing "How To" videos privately on our PRC YouTube Channel so maintenance tips (ex. winterizing the building) and troubleshooting any restroom fixtures can easily be shared with the customer as requested.	*
30	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	Public Restroom Company currently provides prefabricated restrooms, showers, and other park buildings to customers nationwide. We are more than willing to provide our full line of products and installation within the United States and look forward to doing so.	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	We are willing to look into delivering products to Canada, but at this time haven't sold or delivered any buildings to date.	*
32	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	Kentucky is the only state that we will not be serving due to labor codes that require Kentucky plumbers and electricians in our factory during production, which does not work with our current business model due to our NV location.	*
33	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	All sectors will be serviced by Public Restroom Company (PRC) with the exception of Kentucky, as explained above.	*
34	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	Our installation and transportation covenants would be affected by awards to Alaska and Hawaii, but to date, we have not accepted an order for work in either of these two states. However, our concept for a project can be accomplished if a client requests it, but we would more than likely have to ship the building via ocean freight and have our trained installation staff complete the installation process.	*

Table 7: Marketing Plan

Line Item	Question	Response *
35	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	If awarded, Public Restroom Company will promote Sourcewell through a variety of methods. a. PRC typically attends ~20+ trade shows annually and would proudly promote the Sourcewell procurement option at our booths, through inclusion of a custom co-branded handout inset into our catalog of products and via word of mouth b. Addition of Sourcewell Page under "About Us" / "Procurement" Section on our website with clear directions and link to Sourcewell website c. Email blasts via MailChimp to our extensive client contact database, this would also happen initially if awarded the contract and quarterly as a reminder d. Facebook posts to announce award e. Co-branded marketing materials for Sales Team to send out to customers with catalogs (see example of BuyBoard)
36	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	In May 2020, we added to our marketing team a Director of Marketing & Planning and under this person is (2) additional support roles with the goal of becoming more strategic and improving our overall marketing efforts. In December 2020, we hired a third-party digital marketing and website firm, Delegator, to help us improve the SEO of our new website that was launched in the Fall 2020 and also reinstate paid search advertisements through Google Ads, Bing Ads, and most recently LinkedIn Ads. Our paid search ads only started in April 2021 and since that time, we've had over 40K impressions with a current 10.5% click-thru rate, which is far beyond the typical average of 2% CTR for most paid search advertisements. We've also implemented a service called, Call Rail, that tracks which calls are coming from our paid advertisements and from this we've seen a total of 65 calls in about 4 months total. We also utilize a website, Lead Forensics, that monitors traffic to our website and collects data on each visitor. From this, we are able to determine where visitors are coming from geographically speaking, most common search terms, and which companies/industries specifically these visitors are associated with. Since last August, we've seen 2,847 unique visits to our site with 85% of those visitors coming to our site organically (without any paid advertising) from either Google or Bing which shows we have a strong brand presence. To reach out to the remaining 15%, we have enhanced our digital strategy to have pay-per-click ads on Google, Bing, and LinkedIn as well as several digital placements in national Parks & Recreation related outlets (i.e. Recreation Management, Parks & Rec Business) in addition to regional outlets (i.e. California Parks & Recreation Society (CPRS), Florida Recreation & Park Association (FRPA)). Our reasoning for focusing on Parks & Recreation publications comes from our digital data that tells us 46% of all site visits are either part of Government agencies or Recreation & Facilities Services, which is also in line with our customer data. We feel the most productive ways to reach our current audience and grow is through the following activities: - Writing articles and sponsored content in industry trade magazines (see examples in attachments) - Creation of new blog content for website to improve SEO - Web advertisements (rotating GIF images) on national/regional Parks & Rec websites - Paid Search Advertisements on Google, Bing, and LinkedIn - Posts on PRC Facebook page for all new installations & company updates - Print Advertisements in national & regional Park & Rec magazines - Email Blast via MailChimp prior to trade shows and regionally with featured projects - Web Advertisements on weekly E-Newsletters with TX ASLA (Texas America Society of Landscape Architects) and CPRS Above is our current marketing efforts, in addition to trade shows, but we plan on expanding even further this next year with the following activities: - Lunch & Learn Seminars -OR- Virtual Coffee Dates with our Sales Team - Webinars posted to our website We also have plans to expand beyond just Parks & Recreation industry publications and place advertisements with new publications that are focused on City/Urban Planning and Architecture, such as Next City. We plan on coordinating this placement with new product launches, such as our "smart restroom" tracking package.
37	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	From our perspective, we would love to see Sourcewell clearly display Public Restroom Company as a prefabricated restroom, shower, and related park buildings vendor when a prospective customer is searching the Sourcewell website. In our sales process, Sourcewell will be mentioned on every initial project call/inquiry as a purchase method recommendation.
38	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	While the sales process often starts with our website, we do not currently offer online ordering due to the client/site-specificity of our products. When a customer visits our website and fills out a project questionnaire, their contact information and project data is automatically input into our Salesforce CRM and distributed to the appropriate PRC regional salesperson for follow-up. The actual process of ordering a building is finalized over the phone confirming details with our sales staff, since they act more like consultants guiding the client through the process. We feel this is a more effective sales process, as online ordering could result in mistakes and overlooked building details necessary for a successful build and installation. The only online ordering available is currently through BuyBoard and it is just an initial PO for a certain building model. Once that PO is received by our team, a follow-up phone call always takes place prior to finalizing the order to ensure no items are overlooked to ensure the highest level of customer satisfaction.

Table 8: Value-Added Attributes

Line Item	Question	Response *
39	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	We do not charge for any applicable training services. At the time of building installation, our field installation crew meets with the owner, maintenance staff, and other individuals to perform a final walkthrough of the operating parameters and troubleshooting that may be helpful in our client's operation of the building. A building manual with all manufacturer cut sheets for each item of equipment is included in the utility chase for the owner team to easily refer to when and if issues are present.
40	Describe any technological advances that your proposed products or services offer.	Public Restroom Company is continually making technological advances to our product and our current focus is incorporating "smart technology" into our future builds and retrofitting past PRC buildings and buildings from other restroom manufacturers. We are planning to launch at the end of 2021 a "smart restroom" package that will involve sensors to track number of people using a facility, monitoring of plumbing, and tracking any consumables within the restroom. These sensors will provide real time data to an online dashboard so the customer can efficiently manage one or multiple locations and have the ability to develop metrics for restrooms as it relates to peak usage. Our current developer and partner has designed and employed systems at large scale airports around the country and has proven success in the data monitoring industry. A second technology advancement that we are still working on is a "sanitation" package, where there is automatic disinfecting system built into the building that deploys when no one is inside. This is sanitizing mist, but we've had issues with the spray nozzle dripping if the wrong type of water is used.
41	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	Public Restroom Company offers the following "green" initiatives to reduce overall energy consumption and eliminate excess waste: a. LED light fixtures throughout entire building (exterior, interior, and utility chase to reduce energy consumption, operating costs, and building's carbon footprint) b. Dyson Airblade Hand Dryers (Eliminates paper products needed for hand drying & energy efficient product) c. Photocells to control all Exterior Lights (Reduces cost of manually turning on lights daily, automatically operates based on ambient light). d. Stiebel Eltron DHC-E Tankless Water Heaters (Reduces energy costs by not heating water in a tank continuously) e. Solar Lighting Package (Reduces ongoing energy costs & carbon footprint of building) f. Restroom Partition Doors (Made from recycled material) g. Stainless steel vent screens (Eliminated the need for mechanical fans due to natural/passive air flow at gable ends of building.)
42	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	None at this time.
43	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	None at this time, but Public Restroom Company (PRC) is 50% owned by a woman, Catherine Sherin.
44	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	PRC is a design, build, and installation firm of prefabricated restrooms and other park buildings for over 40 years. The founder of PRC was a public restroom industry front-runner and was always looking to develop innovative ways to improve quality and vandal resistance, while at the same time building the best looking restroom that was easy to clean and maintain. At PRC, we pride ourselves on value and building trust with our customers through delivering the highest quality, aesthetically pleasing building for a fair price. It is our years of experience in this industry that allows us to see our customer's problems and fix them before they are an issue and guide them through the entire process. Our extensive design library offers Sourcewell's participating entities a variety of ideas and options, giving them the ability to see actual examples and customize their building just how they envision it instead of having to settle for a basic building with limited finishes and options. Our modular construction approach allows customers to expand beyond just a restroom building by adding-on items like storage, showers, concessions, office space, etc. This can ultimately provide cost savings to the customer by only having to construct one building instead of multiple buildings. What really sets us apart from similar businesses is our turnkey process. We don't stop with just design and manufacturing, we then deliver the building to the site ready-to-go and install it with our team of experts which eliminates the need for hiring outside contractors and skilled labor. We strive to make our customers happy from the beginning to end, which means delivering and installing the building to our high standards and eliminating that additional cost of having someone else install it. By handling the installation process, we can be confident in the integrity of the building being installed instead of relying on an outside contractor installing a restroom for the first time and possibly making mistakes.

Table 9A: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
45	Do your warranties cover all products, parts, and labor?	Yes, with a five (5) year component/fixture and twenty (20) years structural warranty for the building. Our components and fixture warranty exceeds most in this niche industry by 4 years, most only offer a one (1) year warranty.	*
46	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	PRC's warranty only cover incidents from manufacturer defects and/or design oversight.	*
47	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Yes.	*
48	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	None.	*
49	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	Yes, we handle these claims with our field warranty teams.	*
50	What are your proposed exchange and return programs and policies?	Full replacement with return.	*
51	Describe any service contract options for the items included in your proposal.	None.	*

Table 9B: Performance Standards or Guarantees

Describe in detail your performance standards or guarantees, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your performance materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
52	Describe any performance standards or guarantees that apply to your services	In regards to Service Standards, we make sure that we respond to any online inquiry or call within a 24-48 hour window if received during normal business hours. Inquiries from the weekend would be addressed the following Monday. If the assigned salesperson is out of the office, we will have another sales rep or company representative respond to the customer before that time window expires. For initial design services, we typically are able to turnaround a customer's design request in 2 weeks or less, unless we are experiencing a high volume of new business and we would notify the customer of any delays should that situation arise. The initial design request encompasses 3D renderings and floor plans drawings for the customer with any finishes, colors, or special fixtures/components that have been specified.	*
53	Describe any service standards or guarantees that apply to your services (policies, metrics, KPIs, etc.)	Policy: Respond to new customer within 24-48 hours of initial inquiry Policy: Deliver 3D renderings and initial floor plan drawings within 2 weeks of initial request. Policy: Projects are turn-key by one responsible party, design-fabrication-installation.	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
54	Describe your payment terms and accepted payment methods?	Payment terms are Net 30. PRC's accepted form of payment is either: check or ACH wire transfers.	*
55	Describe any leasing or financing options available for use by educational or governmental entities.	None at this time.	*
56	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	Our standard transaction documents will start with our catalog of buildings so the customer can determine which building and add-ons best suits their project size and needs. Once they know which building they would like to move forward with, our Sales Rep will walk them through our document "PRC Summary Spec Sheet" which the PRC Sales Rep will fill-out based upon the customer's selections. Once we have that document in hand, we can provide a final price for customizations and upgrades and this will be listed in the "Proposal" document. The "Proposal" documents is our standard contract between PRC and each customer, this document will include pricing information and each step of the process explained in detail, in addition to our Terms & Conditions, Warranty Offered, and instructions/requirements for the General Contractor to perform site preparation. All blank template documents will be attached to this bid.	*
57	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Not at this time.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *	
58	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Our pricing structure is based on each model number and our discount offered to Sourcewell participating entities is 5% off MSRP (base price). The pricing sheet attached to our catalog shows base price for each model listed within it. Please see the attached PRC Product catalog, PDF of floor plans, and corresponding price sheet with the discounted price listed in the far right column.	*
59	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	Sourcewell participating entities will receive 5% of MSRP (base price).	*
60	Describe any quantity or volume discounts or rebate programs that you offer.	We will offer the following rebate to Sourcewell participating entities for any order placed within the four (4) year contract period: Orders \$500,000 – \$999,9999 a 1% rebate Orders between \$1M - \$1.5M a 2% rebate Orders over \$1.5M+ a 3% rebate	*
61	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	PRC will pass along the true cost of any outside "sourced" services or products needed to complete the installation and add this to the final price of the delivered building. This number varies based upon the crane and freight transportation companies utilized, but PRC has developed a list of preferred vendors that off the most competitive pricing with high quality service.	*
62	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	The base prices listed do not include the installation expenses related to the crane, freight, and any other applicable taxes.	*
63	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	Our delivery and installation program is custom for each project dependent on location and final size of delivered building modules. All freight and crane installation costs will be determined upon the completion of the building and will vary due to factors such as distance to the final installation location from the factory, in addition to special circumstances. For example, if the building is larger than a our standard building, it may require pilot cars during transport which can increase the cost of delivery to site. Typically, we keep that in mind with our models but customizations and larger modular builds can incur this expense and it should be noted.	*
64	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	We cannot provide this information at this time, as we have not completed a project in Alaska, Hawaii, Canada, or any offshore location.	*
65	Describe any unique distribution and/or delivery methods or options offered in your proposal.	None.	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
66	b. the same as the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	

Table 13: Audit and Administrative Fee

Line Item	Question	Response *
67	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	PRC uses internal pricing cost worksheets which are audited after each project is installed. Our accounting department audits each project based on method of purchase which is verified both by contact and our CRM Salesforce. The quarterly reports to Sourcewell will be generated through the Salesforce CRM.
68	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	As stated in the Sourcewell pre-bid webinar, it is estimated that this award could be around \$20M annually for restrooms and showers. If this contract is awarded to 2-3 vendors, we feel that we could capitalize on at least 15% of this estimate for annual sales, which would equate to \$3M in sales or around ~12 buildings sold dependent on average building price. So selling at least 12 buildings via Sourcewell would be a benchmark of success for our first year, so we would aim to sell (3) buildings per quarter or more. After that, we would expect sales to hopefully grow by about 5% each year would equate to an additional \$1M each year. So by Year 2, we would aim for \$4M in sales minimum and so forth.
69	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	Our proposed administrative fee to Sourcewell is 2% of the final contract amount.

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *
70	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	Public Restroom Company is a design, build, and installation firm for prefabricated restrooms and related park buildings. While PRC started as a restroom company, we have evolved into much more and focus on a larger offering of modular buildings. Other park related buildings include but are not limited to: Showers, Storage, Offices, Multi-Purpose Rooms, Laundry, Concessions, Trash Enclosures, Ticket Booths, Transit Stations, Scorekeeper Booths, Locker Rooms and Lifeguard Stations. Since PRC utilizes a modular construction process, the customer can design a building that meets all their needs by combining different floor plans. For example, a shower building is commonly combined together with a restroom floor plan to meet both needs. While our catalog displays the base floor plan and pricing, the final buildings we deliver to our customers are commonly modified and upgraded with different exterior finishes, roof styles and materials, and added extras such as a covered entry or alcove with a drinking fountain and bottle filler. All of our options can be viewed on our website www.publicrestroomcompany.com under "Options."
71	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	For our restroom product line, we have five (5) different subcategories (series) based upon size, listed starting with smallest to largest floor plans: Waterless Vault Series, Playground Series, Sports Park Series, Stadium Series, and the Family Series. Our Waterless Vault series are restrooms that are self-contained and not hooked up to plumbing. Vaults are restrooms you would find in more remote, undeveloped locations where access to utilities is not possible. The rest of the restroom series listed above are all plumbed restrooms that are hooked up to utilities. For our Specialty Buildings category, these are more custom designed floor plans and we have a large variety of buildings that fall under this category, such as: Kiosks, Ticket Booths, Trash Enclosures, Transit Stations, Tennis/Golf Pro Shops, Laundry Rooms, Fish Cleaning Stations, Offices, and Scorekeeper Booths. In addition to buildings, we are planning to launch at the end of 2021 a "smart restroom" package that will involve sensors to track number of people using a facility, monitoring of plumbing, and tracking any consumables within the restroom. These sensors will provide real time data to an online dashboard so the customer can efficiently manage one or multiple locations and have the ability to develop metrics for restrooms as it relates to peak usage.

Table 14B: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments
72	Flush, waterless (vault), or compostable toilets and restrooms	☒ Yes ☐ No	Yes, we do offer three (3) models and they can be seen on our website: V-010, V-020, and V-220 (listed by size). We do not include our Waterless Toilets (Vaults) in our primary catalog as this has become a very small portion of our business and is something we do not promote as much, because our strength lies in creating plumbed restrooms that feature custom exteriors and expanded with add-ons such as: showers, concessions, storage, etc.
73	Showers and changing rooms	☒ Yes ☐ No	Yes, we offer prefabricated shower buildings that include changing rooms in the standard floor plans. We offer flexibility in the layout and allow our customers to choose multiple shower stalls to accommodate increased usage or individual, locking units as shown in our standard floor plans. Typically, if a shower is requested, it is often paired with a restroom building as well. In addition to interior showers (more traditional placement), we have also built several buildings with exterior showers located in beach settings and warmer climates. We also have incorporated outside washing stations for pets in park locations.
74	Combination restroom, shower, changing room, and ancillary or accessory use structures or facilities	☒ Yes ☐ No	We can build both restrooms and showers as standalone buildings, but more commonly they are combined together as a restroom/shower combination building. A common addition we have seen with our shower buildings is locker rooms and changing rooms, which we can do on a small or large scale. One of our larger, more recent projects located in Grass Valley, CA at Memorial Park Pool included: Restrooms (6), Showers (12), Locker Area for both Men and Women, Office, Lobby and Multi-Purpose Room (see attached PDF for drawings and floor plan).
75	Equipment, products, accessories, and supplies related to the solutions in lines 72 - 74 above.	☒ Yes ☐ No	PRC offers all necessary equipment and fixtures needed to outfit a restroom and shower building. Please check our website for full details our offering under "Options" as it is lengthy. We are not in the business off selling restroom supplies such as: toilet paper, hand soap, paper towels, or hand sanitizer. We do outfit all our building with fixtures for these supplies, but do not sell these supplies separately. We will sell replacement fixtures when needed, but typically do not have many replacement orders due to the vandal resistant nature of our penal grade, stainless steel products.
76	Related services - design-build services, site assessment, site preparation, customization, delivery, assembly, installation, maintenance or repair, and warranty programs.	☒ Yes ☐ No	Everything list in the "Related Services" question is exactly what PRC does, with the exception of site preparation. We will provide the approved site plans and drawings to the customer, but they will be responsible for hiring a local, outside contractor to complete the site prep prior to delivery of the building. After initial contact with the customer, our first step is the design-build services. Once we finalize design plans, we get state approved drawings and once those are in hand, we build the building in one of our manufacturing facilities. We feel customization is one of PRC's strongest selling points and differentiating factors in comparison to others in this niche, prefab restroom industry. We give the customer the ability to choose the appropriate level of vandal resistant construction and fire compliancy, exterior/interior/roof finishes, color choices, and any building modifications/additions (i.e. drinking fountains, covered entry, trellis, moving utility access door, gates vs doors, etc.). Once the building is completed, we get it ready to ship in the factory by shrink wrapping the building prior to transportation. Once the building has arrived by truck at the site, the crane and our specialized field installation teams will complete the finishing installation touches and the building will be hooked up to plumbing and ready to go in just a few days. Our field teams also handle any maintenance/repair/warranty issues upon request.

Table 15: Industry Specific Questions

Line Item	Question	Response *
77	Describe the installation process for your products and identify how installation is managed in the order process, if applicable.	Upon receiving approval from the state in which the building is located (this will vary by state), we can then put the building on the factory schedule and the assigned project manager for the project will then be able to discuss with the customer a feasible date for completion and the customer's expected date for installation. Prior to that the dates are mostly estimates until the building is in actual production and state approved plans are received. Once PRC has state approved plans, we will provide these plans to the customer so they can begin the site preparation for the building well in advance of delivery. In the event the building is completed ahead of the client's requested date, it will be shrink wrapped and stored at our facility until the customer is ready for delivery. Upon completion at the factory, the cost for installation and delivery will be added to the final contract price which includes freight and the crane operator. Once the building is ready to be delivered, the PRC field installation team will arrive to the site a day (or two if needed) before delivery to prep the groundwork and plumbing for final connections to the building. Typically on Day 2 or 3, the building arrives to the site by truck and the building will be lifted off the truck with a crane and guided into place with our PRC field installation team. Once the building is set, the field installation team will complete connections to the plumbing underneath and complete any other finishing touches prior to handing over the keys to the building. The installation process of a single or two-module building is typically completed within 3 days, but larger scale buildings with multiple modules can take up to a week for installation. Once the building is set and installed, it is ready for use.
78	Describe applicable vandalism resistance or vandalism abatement measures or attributes incorporated in the design or manufacture of your products.	To start with, we offer the customer a choice of three (3) different levels of internal framing construction that is dependent on the building's need for fire resistance and safety: LVR (Low Vandal Resistant), MVR (Medium Vandal Resistant), and HVR (High Vandal Resistant). Steel or Wood is the difference is in internal framing material choice with steel having the highest fire safety rating and clearly the most vandal resistant option. HVR is constructed of steel internal framing, but MVR has two options of Wood or Steel for the client to choose from. For all Interior Fixtures, Stainless Steel is the premier choice when it comes to vandal resistance, because it is thicker and heavier, and stainless steel is PRC's standard fixtures that are included with each restroom. Public Restroom Company's stainless steel fixtures are prison (penal) grade, 316 type, 14 gauge (thickness) which is superior to most all other competitor's products and weighs 46% more than the equivalent stock door. Some additional benefits of stainless steel are: it does not fade, highly durable, easy to clean, and proven to be extremely hygienic, and will not dent or rust. For locations that are concerned with vandalism, PRC also offers soap dispenser and Fastaire Wall-Thru Hand Dryer with all the components housed within the locked, utility room versus exposed in the restroom itself. For our standards in multi-occupant restrooms, we do CMU Block Partitions with solid color reinforced composition doors as these are the most resilient to vandalism in comparison to other setups. We feel another competitive advantage we have is our Doors, as we custom fabricate 14 gauge prison-grade stainless steel doors with built-in ribs to help prevent denting. We also add vertical ribs at 6" on center, welded to the face of the door to further resist impact. We make our own doors instead of purchase traditional, mass-produced metal doors because we know this item is commonly high-maintenance for park managers due to dents, rust, and graffiti if not overbuilt and in making our own, we are able to ensure quality control. Since doors are the main access point for break-ins, over the years we have upgraded our standard hinges, door handles, and locking systems to be among the best. We utilize a continuous hinge for the entire length of the door, our doors handle covers the seam where the lock is so you cannot pry it open, and our Automatic Locking Systems are concealed in the door frame (jam) so they cannot be tampered with and are out of sight. As an upgrade, we can also add steel kick plates to the doors to prevent someone from damaging the door while attempting to kick it. For the exterior of the building, if the customer chooses to go with a CMU Block exterior wall which is very common, an anti-graffiti coating can be applied over the paint or block which helps in the removal of graffiti from the walls.

Table 16: Exceptions to Terms, Conditions, or Specifications Form

Line Item 79. NOTICE: To identify any exception, or to request any modification, to the Sourcewell template Contract terms, conditions, or specifications, a Proposer must submit the exception or requested modification on the **Exceptions to Terms, Conditions, or Specifications Form** immediately below. The contract section, the specific text addressed by the exception or requested modification, and the proposed modification must be identified in detail. Proposer's exceptions and proposed modifications are subject to review and approval of Sourcewell and will not automatically be included in the contract.

Contract Section	Term, Condition, or Specification	Exception or Proposed Modification

Documents

Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.
3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.
4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."

.93;2658Ä/8<479:4Ä1.*Ä+.\$#)&+Ä .(/Ä\$!\$.Ä)-#\$Ä"/&# , %0%)(

- [Pricing](#) - Pricing_Catalog and Price List_Sourcwell 2021.pdf - Monday August 16, 2021 19:34:45
- [Financial Strength and Stability](#) - PRC Financial Supporting Docs_2021.pdf - Monday August 16, 2021 18:28:19
- [Marketing Plan/Samples](#) - PRC Marketing Attachment 2021.pdf - Tuesday August 17, 2021 15:47:49
- [WMBE/MBE/SBE or Related Certificates](#) - Certificates.pdf - Monday August 16, 2021 18:31:58
- [Warranty Information](#) - Warranty.pdf - Monday August 16, 2021 18:27:43
- [Standard Transaction Document Samples](#) - Proposal_Sourcwell Blank Template.pdf - Monday August 16, 2021 18:29:36
- [Upload Additional Document](#) - 2021_Additional Documentation and Gallery.pdf - Tuesday August 17, 2021 12:38:43

Addenda, Terms and Conditions

PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
 1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
 2. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or
 3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☒ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Katie Sherin, Chief Operating Officer (COO), Public Restroom Company

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

☐ Yes ☒ No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_1_Restroom_and_Shower_Facilities_RFP_081721 Thu August 5 2021 02:29 PM	☒	2

Price Proposal: Gretchen Talley Park - Tracy, CA
Date: January 6, 2025
Reference: 11064-10/16/2024-6
Sourcewell: Contract # 081721-PRM

Our Offer to Sell:

1. Restroom Building delivered to site @ \$ 350,059

Public Restroom Company (PRC) herein bids to *furnish (building only per plans and specifications, delivered to site with all costs except installation including applicable taxes excluding retention.* (Retention is not allowed as this is materials or a product fully assembled before shipment to the site and therefore not subject to retention.)

2. Installation: Turnkey Installation of the Building above @ \$ 32,568 with retention allowed.

Public Restroom Company also includes in this two-part quotation our turnkey installation package for this building. Our national factory authorized installation team will:

- a. Arrive onsite to confirm and verify the Owner/General Contractor provided scope of work in preparation for installation including access to the site.
- b. Verify the building pad size, building corners, finished slab elevation, utility depth and location, meter size and distance from building, and compaction compliance.
- c. Excavate the utility trenches for placement of our prefabricated underground piping tree for the buildings plumbing and electrical, set the kit in place, provide the water test for inspection before backfilling, and then place the site adjacent coarse sand you provide to us alongside the building pad and screed it level for final building placement. We will need onsite water availability for wetting the sand bed before building placement to consolidate the pad.
- d. Set the building on the site pad.
- e. Connect the utility piping stub ups to the building piping stub down building points of connection for water, sewer, and electrical conduit to the building internal electrical panel.

3. Owner/General Contractor Final Tie In of Utilities and other site work:

- a. The Owner/Contractor is responsible for making all final plumbing connections at the 6' POC locations.
- b. The Owner/Contractor is responsible for pulling wire and completing all final tie-ins to the electrical panel from the 6' POC location.
- c. The Owner/Contractor is responsible for preparing the pad/foundation. PRC will trench through provided pad/foundation to run utilities to 6' POC locations.

4. Total Cost of Building and Installation @ \$ 382,627

5. Minus Engineered Drawings @ \$ (19,131)

6. Remaining Total Cost of Building & Installation @ \$ 363,496

OWNER/GENERAL CONTRACTOR SCOPE OF WORK WITH/WITHOUT FOOTINGS:**Scope of Work Background:**

Owner/General Contractor shall survey the site, establish survey for the building pad and prefabricated building slab elevation and front corners, excavate for building footings (if required), locate footing sleeves for electrical, waste, and water, pour the footings (if required), furnish sand base adjacent to subgrade pad, and provide location for utility POC's nominally 6' outside the foundation.

Preparation of Building Pad:

Owner/General Contractor is responsible for providing the building subgrade pad or when required footings to frost depth per Public Restroom Company design specifications. PRC will provide detailed drawings for the subgrade building pad, utilities POC's, and if required the footings, attached to this scope of work.

Subgrade Pad/Foundation Requirements:

1. Owner/General Contractor shall survey the building site and provide a finished slab elevation for the prefabricated building. The building pad size we require is larger than the final actual building footprint. Provide building front corner stakes with 10' offsets.
2. Excavate the existing site to the depth of the required footings to local code if required.
3. Furnish coarse concrete sand adjacent to subgrade pad so PRC can cut the utility trenches, install underground utilities, and screed sand.

Owner/General Contractor verification of site access to allow Building Delivery:

1. You certify to PRC that suitable delivery access to the proposed building site is available. Suitable access is defined as 14' minimum width, 16' minimum height, and sufficient turning radius for a crane and 70' tractor-trailer.
2. Our cost is based upon the crane we provide being able to get within 35' from the building center and for the delivery truck to be no more than 35' from the crane center picking point.
3. If the path to the building site traverses curbs, underground utilities, landscaping, sidewalks, or other obstacles that could be damaged, it is the Owner/General Contractor's responsibility for repair and all costs, if damage occurs.
4. If trench plating is required, it shall be the cost responsibility of the Owner/General Contractor.
5. If unseen obstacles are present when site installation begins, it is the Owner/General Contractor responsibility to properly mark them and verbally notify PRC before installation.
6. If weather becomes an issue for safety or site installation delays due to weather, Owner/General Contractor or PRC with General Contractor's confirmation may call-off set. If building set is stopped, relocation of the building modules to an onsite or offsite location may incur additional costs to Owner/General Contractor.

Installation Notice and Site Availability:

PRC will provide sufficient notice of delivery of the prefabricated building. The Owner/General Contractor shall make the site available during the delivery period. During the delivery period, on an

improved site, Owner should stop site watering several days before delivery to minimize the impact on the soils for the heavy equipment needed for installation.

Caution: *If site is not ready for our field crew to perform their installation and if no notice of delay in readiness from Owner/General Contractor is received, PRC will provide a change order for re-mobilization on a daily basis until the site is ready for us. Ready means that the site pad is completed, the corner required survey stakes are in place, the slab elevation stakes are in place, the location of the front of the building is confirmed on site, and access to the site is available from an improved roadway. Owner/General Contractor shall sign the change order before we will continue delivery.*

Public Restroom Company will “turn-key” set the buildings including the hook up of utilities inside the building (only) when they are available. PRC will use its own factory trained staff for the installation.

Utility Connections:

1. PRC to complete all internal building plumbing connections and connections from the electrical panel to building’s fixtures. The Owner/ Contractor is responsible for making the **final plumbing connections** at the 6’ POC locations.
2. The Owner/Contractor is responsible for pulling the wire and completing the final tie-in to the electrical panel from the 6’ POC location.
3. The Owner/Contractor is responsible for commissioning the building once final utility connections are made. This includes flushing & testing all water service lines before final startup.

Special Conditions, Permits, and Inspection Fees:

Follow any published specifications governing local building procedures for applicable building permit fees, health department fees, all inspection fees, site concrete testing fees, and compaction tests, if required by Owner. PRC is responsible for all required State inspections and final State insignia certification of the building, if applicable.

Jurisdiction for Off-site Work:

Jurisdiction, for permitting and inspection of this building shall be either the State agency who manages prefabricated building compliance in the state or the local CBO (when the State does not provide certification.) If the responsibility for building inspection is the local CBO, we will provide a certified plan set, calculations, and a third-party engineer inspection report for any and all closed work the local official cannot see.

PUBLIC RESTROOM COMPANY SCOPE OF WORK:

Our In Plant/Off-Site Construction Scheduling System:

PRC has several off-site manufacturing centers in the United States, strategically located, with the proper equipment and trained staff to fabricate our custom buildings to our high-quality fit and finish standards. PRC manages quality control in our off-site production facility to comply with the approved drawings and provides an inspection certification and photos as required. When proprietary materials,

which we have designed and fabricated, are part of the project, PRC supplies the manufacturing centers with these proprietary PRC components. We then schedule the in-plant construction process to coordinate with your delivery date through our Operations Division field staff. We guaranty on time at cost delivery weather permitting.

Special Payment and Progress Billing Terms:

Invoicing begins on the 30th of the month following an order and/or the acceptance of the proposal/contract. The first progress billing invoice will be issued for the commencement of design and engineering of architectural plans. This will be 10% of the contracted amount. Once construction begins invoicing will commence monthly based on plant percentage of completion, supported by photographs.

In the event of project stoppage, additional fees may be assessed for re-mobilization, storage, crane costs, etc. ***Our discounted project costs are based upon timely payments. Delays in payment could change delivery schedules and project costs.***

Delivery and Installation:**Site Inspection:**

PRC staff, upon site arrival, will verify the required dimensions of the building pad and the corner locations/elevation. We will also verify the delivery path from an accessible road or street and install the underground utilities to the point of connection nominally 6' from the exterior of the building.

Installation:

PRC will install the building turn-key, except for any exclusion (listed under "Exclusions," herein.)

Installation of Utilities under the Prefabricated Building:

We fabricate off-site an underground utilities (water, and DWV piping and fittings) preassembled plumbing and electrical tree. Our site staff will set the underground tree into code depth excavated trenches and our staff will install the coarse concrete sand to bed the piping per our submitted drawing.

We provide all the buildings under-slab piping including the driven electrical ground rod. The Owner/General Contractor brings utility services to within 6' of the pad and are responsible for final connections at that point.

Connection of Utilities Post Building Placement:

After placement of the building on the pad by PRC, our field staff will tie in the water and sewer connection "inside" the building only and terminate at a point of connection (POC) outside the building clearly marked for each utility service. The Owner/General Contractor is responsible for final utility point of service connections at the nominal 6' from building locations.

Electrical:

PRC provides the electrical conduit to the POC 6' from the building. The Owner/General Contractor pulls the wire and ties it off on the electrical panel.

Plumbing:

PRC provides the POC up to 6' from the building footprint and the Owner/General Contractor connects the water to our stub out location.

Sewer:

Some sites depending on the local jurisdiction will require an outside house trap which Owner/General Contractor shall install if needed. PRC will provide you with a sewer point of connection including a clean out to which Owner/General Contractor will terminate the site sewer service.

Testing of Water, Sewer, and Electrical in Plant and Final Site Utility Connection:

Before the building leaves the manufacturing center, PRC certifies a pressure water piping test, DWV, and the electrical connections for compliance with code. While the building is fully tested for leaks at the plant before shipment, road vibration may loosen some plumbing slip fittings and require tightening once the building services (water) is completed. Owner/General Contractor is responsible for minor fitting tightening to handle small slip fitting leaks caused by transportation.

Time of Completion:

PRC estimates a 240 calendar day schedule to complete our scope of work from receipt of written notice to proceed together with signed approved architectural submittals; including final construction documents and structural calculations from all authorities required to approve them.

Exclusions/Exceptions:

1. **Access issues for delivery of the building by a clear unobstructed path of travel from an improved roadway to the final installation pad or foundation may cause site delays and extra cost at each site. This exclusion covers sites whose access is limited by trees, inaccessible roadways, overhead power lines at location where crane will lift building, grade changes disallowing our delivery trailers with only 4" of clearance to grade, berms, or uneven site grades, or when the path of travel is over improvements such as sidewalks, all of which are not within the scope of work by PRC. On some sites without on-site storage availability for buildings that cannot be set, relocation to a proximal crane yard and later relocated to the site for installation, will incur additional fees at rates that vary depending on local rates. PRC will provide written costs for this additional work by change order.**
2. **If weather on site causes site delivery issues, the delivery may have to be diverted to an off-site location and the additional costs will be a change order to the bid. Our staff works with the Owner/General Contractor in advance to make sure sound decisions for delivery are made to avoid this issue. But sometimes Owner/General Contractor take risks for weather, but this risk is clearly at the Owner/General Contractor risk, not PRC.**
3. **Sidewalks outside the building footprint.**
4. **Trench plates or matting needed for protection of site soils, sidewalks, hardscaping, or site utilities shall be the responsibility of the Owner/General Contractor. Any site soils damage or other site improvements if damaged during installation shall be the responsibility of the Owner/General Contractor.**

5. Not responsible for removing any soil, sand, or other debris as a result of trenching or installation.
6. Survey, location of building corners, finish floor elevation, excavation, and construction of subgrade building pad and footings (if required) per PRC plans.
7. Soil conditions not suitable for bearing a minimum of 1500 PSF with compaction to 90% maximum dry density shall require Owner/General Contractor correction before building placement. If no soils testing report is available before bid, Owner/General Contractor must verify site supporting soils at a minimum of 1500 PSF because that is the least we can place our structures on or Owner/General Contractor or engineer of record must design a foundation system to meet the imposed loads of site placement.
8. Improper water pressure, an undersized meter, or improper water volume flow to the building may necessitate a change order for installation of a building internal diaphragm tank to provide the minimum flow rate and static pressure of up to 60 PSI and a minimum of 40 PSI to properly flush the fixtures. Building water service chlorination, post installation, shall be by Owner/General Contractor.
9. Our bid included crane costs are based on a maximum 35' radius from the center pin of the crane (10' back from the rear of the crane) to the building center point of the furthest building module roof. If additional distance requires a larger crane, additional costs will be assessed by change order to the Owner/General Contractor.
10. Bonds, building permits, a site survey, special inspection fees, minor trash removal (nominally one pickup truck of shipping materials), final utility connections to the on-site water, sewer and electrical are by the Owner/General Contractor. Since the building is fully inspected and tested in plant, minor plumbing leaks (if water is not available when building site work installation is completed) is by the Owner/ General Contractor.
11. Site Traffic Control, if applicable, shall be by Owner/ General Contractor, not PRC.
12. Any equipment installation, site work or special inspections other than described within this proposal, shall be by Owner/General Contractor.
13. Backflow certification if applicable by Owner/ General Contractor.
14. Any Fire Suppression Systems by others, not by PRC.
15. Any future transformers, related shut offs, and disconnects for electrical is by others, not by PRC.

Insurance and Prevailing Wage Certification:

PRC shall comply with the required insurance requirements, wage reports, and safety requirements for the project, including OSHA regulations.

Special Insurance to protect the Building before acceptance:

As PRC requires payment for each month of off-site construction, and since the building is not on owner property where their insurance will cover the building, we maintain a special policy that insures the property even when paid for off-site until the building is finally accepted by the owner. This special policy protects the Owner's custom ordered materials to be used in the fabrication of the building during this period. PRC provides this Stock Throughput Policy to cover the building materials from supplier to manufacturer, while it is being built off-site, while in transit to the job site, during and after it

is installed on-site until final acceptance. This special policy has a \$1,000,000 coverage limit. This exceeds the cost of any single building we have offered for sale herein.

Errors and Omissions Insurance:

Our firm employs licensed architects, engineers, and drafting staff to provide design of our buildings. Since these buildings are required to meet accessibility standards and building codes on site, and since we are the designer, we carry Errors and Omissions Insurance (E & O) to protect our clients from any errors. The policy covers a limit of up to \$2,000,000 per occurrence and is more clearly explained in the insurance certificates we provide after receipt of a purchase order.

WARRANTY:

All work performed by PUBLIC RESTROOM COMPANY (called "Company") shall be warranted to the Owner to be of good quality, free of faults and defects in material, workmanship, and title for 5 years from last date of installation if building is installed by Company or 1 year if building is installed by Owner or Owner's agent without on-site supervision by Company. Company warranty on building shell including exterior walls, concrete 8" slab/foundation, and roof system is warranted for 20 years structurally. The Company will repair or replace at their sole option any defects in work upon proper notice to the below stated address below.

Owner/General Contractor selected parts and materials that are not PRC approved will not be covered under PRC's 5 year component warranty. These selections will be covered only by any available manufacturer warranty.

Our Company extended warranties shall be Company only and shall have no effect on any required Performance, Payment, or Warranty Bonds where Surety shall assume no liability to the Company, the Owner, or any third parties should the Company fail for any reason to deliver acceptable maintenance warranties beyond the one year period. The warranty extension is solely between the owner and PRC and not the general contractor, bonding company, or architect/engineer of record.

This warranty applies only if all work performed by Company has been fully paid for, including change orders if applicable. Company has no responsibility for any neglect, abuse, or improper handling of building product.

The warranties expressed herein are exclusive, and are in lieu of all other warranties expressed or implied, including those of merchantability and fitness.

There are no warranties which extend beyond those described on the face of this Warranty. The foregoing shall constitute the full liability of the Company and be the sole remedy to the Owner.

Term of Offer to Sell and Owner/General Contractor Acceptance:

This offer is valid for acceptance within 90 days or when a part of a public bid for the applicable duration imposed within the Owner's bid documents. Acceptance is by approving our post bid preliminary notice

to begin drawings subject to final Owner/General Contractor approval of our submittals and receipt of a contract or a purchase order/contract.

Special Notice of Possible Project Cost Increases as a Result of Late Payments:

In the event of delayed or late payment, PRC shall have the right to remedies including late charges, overall project total cost increases, and other damages as allowed by applicable law. The contract price quoted herein is a discounted price based upon our receipt of progress payments as invoiced on the agreed billing schedule of PRC. In the event of non-payment, PRC will provide a 5 day written notice to cure and if payment is still not received, the discounted price for the payment due may increase, to an undetermined amount, to cover work stoppage, remobilization, cancellation of materials and subsequent restocking charges, resale of the contracted building to another party, storage fees, additional crane fees, travel and per diem costs for field crews, and any other cost applicable to the project, as allowed by law. Interest if applicable to non-payment will be assessed at the maximum amount allowed by law or 18% whichever is greater.

Termination:

Upon Termination for any reason, Owner/General Contractor shall be liable for the cost of all work performed up to the date of termination. Additionally, Owner/General Contractor shall pay for off-site demolition and disposal of the partially or fully fabricated building as well as any non-returnable materials which were custom-ordered to complete fabrication in PRC's factory location. Any returned materials are subject to return and restocking fees at the Owner/General Contractor expense.

Venue for Contract Jurisdiction:

Public Restroom Company requires all contracts accepted by our firm to hold that the venue for legal jurisdiction for this contract offer and acceptance shall be Douglas County, Nevada. In the event of your default, PRC shall be entitled to the full amount due including reasonable attorney fees, costs, storage, expenses of physical recovery, and statutory interest, as allowed by law.

No modifications to this offer shall be authorized unless confirmed in writing by the President of Public Restroom Company.

Offered by: Public Restroom Company by



Charles E. Kaufman IV, President

This provides conditional acceptance of this preliminary purchase order for this building subject to acceptance of the submittals, furnished by Public Restroom Company. Once you accept the preliminary submittals, this shall become a final purchase agreement or at your discretion the final purchase order or a contract may be substituted with this attached.

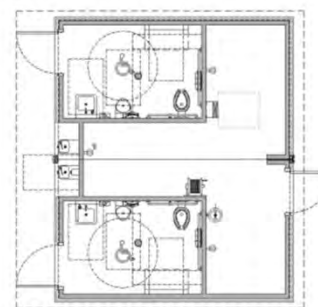
Accepted by:

Authorized Signature

Date Signed

Printed Name

Legal Entity Name and Address



FLOOR PLAN

SCALE: NOT TO SCALE

RESTROOM BUILDING TRACY, CALIFORNIA GRETCHEN TALLEY PARK

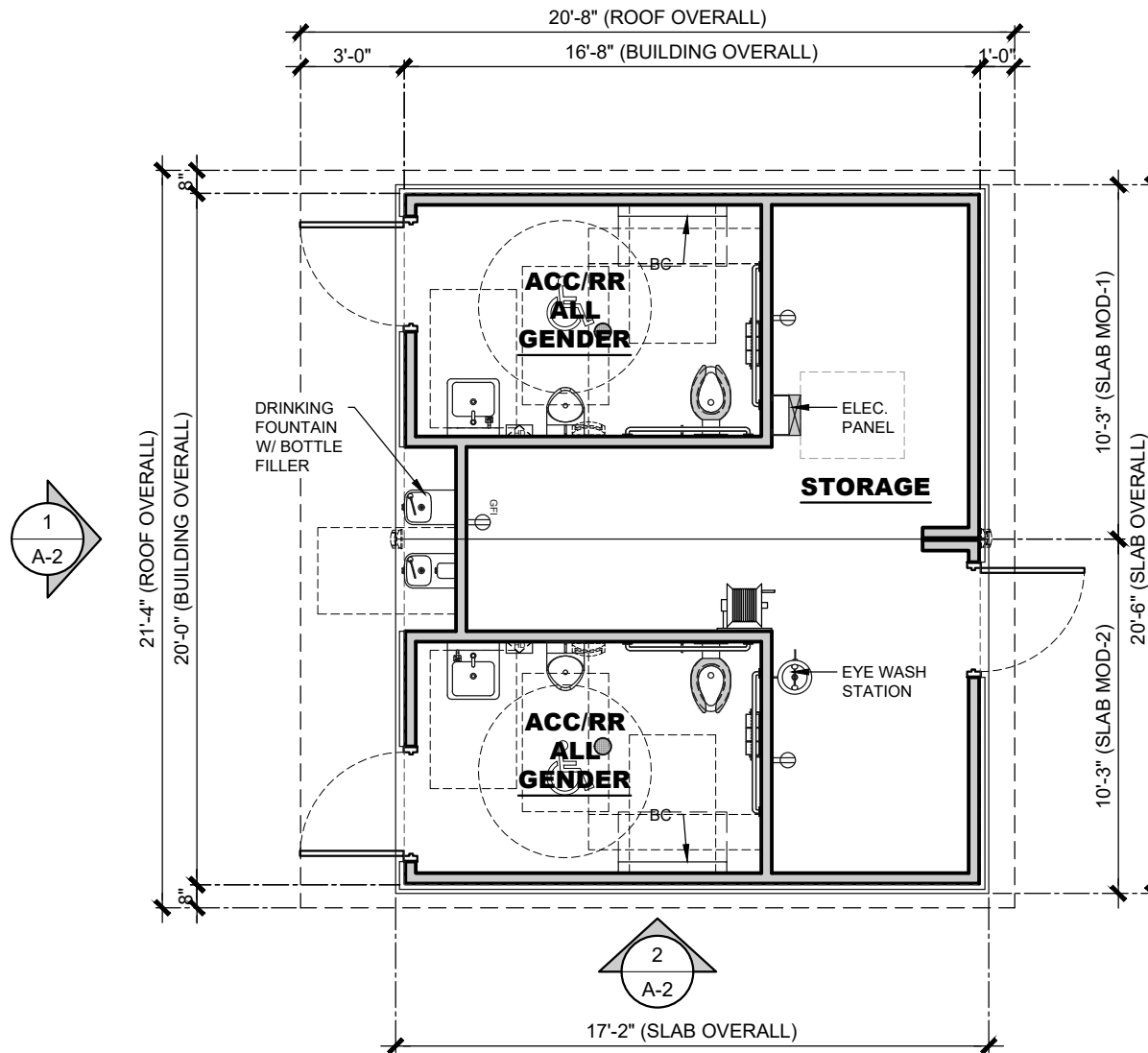
ARTIST IMPRESSION: 3D RENDERING ONLY FOR REPRESENTATION. COLORS AND MATERIALS ARE SUBJECT TO CHANGE

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www.PublicRestroomCompany.com

2587 BUSINESS PARKWAY
MINDEN NEVADA 89423
P: 888-888-2060 F: 888-888-1448



FLOOR PLAN

SCALE: 3/16"=1'0"



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BUILDING TYPE:

RESTROOM BUILDING

PROJECT:

GRETCHEN TALLEY PARK
TRACY, CA

REVISION #

6REVISION DATE: **10/16/2024**

DRAWN BY: EOR

PROJECT #:

11064START DATE: **8/26/2021**

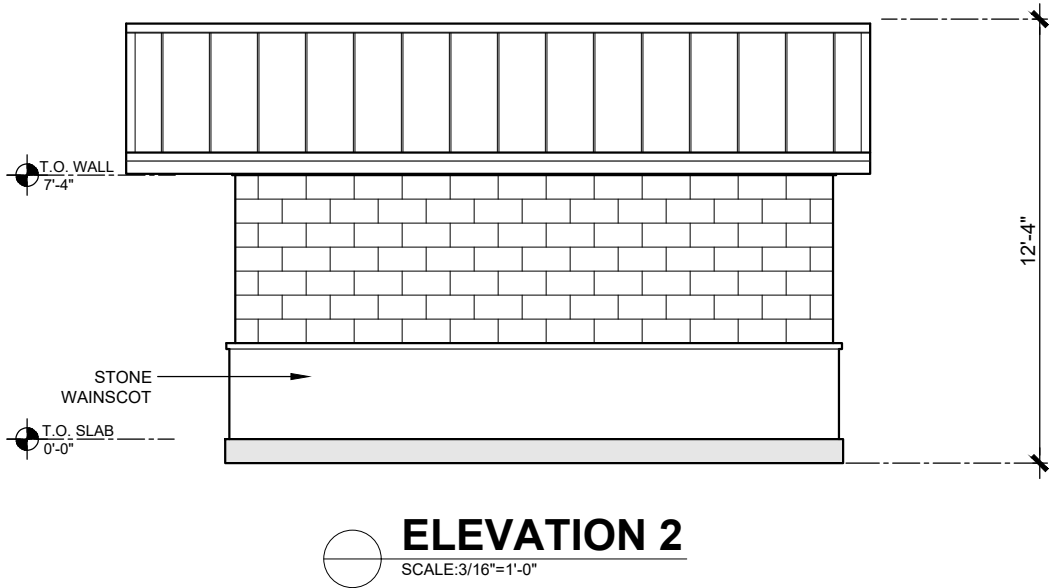
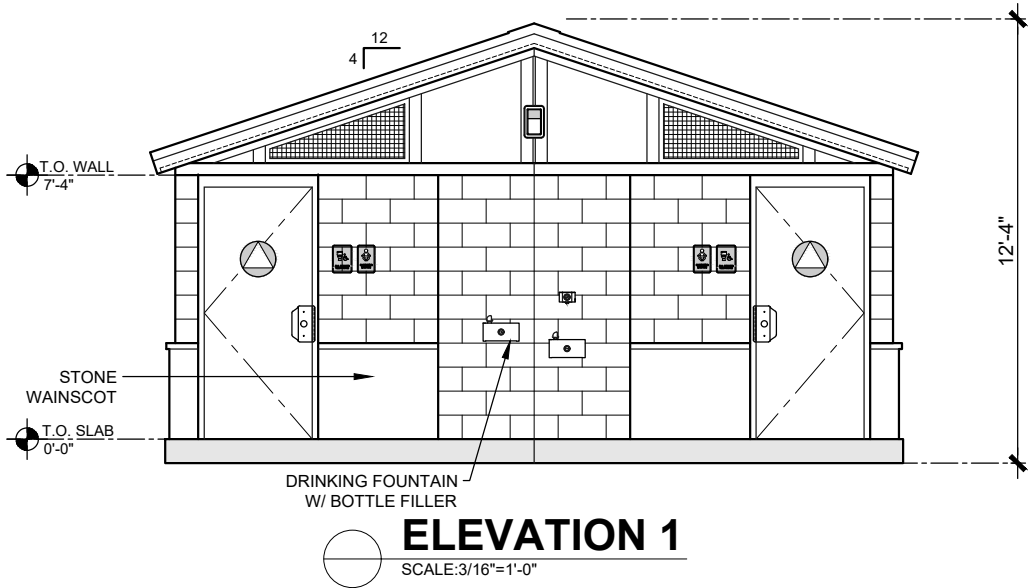
DRAWN BY: EOR

SHEET#

A-1

MAX. PERSON / HOUR:

180 S



 PUBLIC RESTROOM COMPANY Building Better Places To Go.™	COPYRIGHT 2024, PUBLIC RESTROOM COMPANY. THIS MATERIAL IS THE EXCLUSIVE PROPERTY OF PUBLIC RESTROOM COMPANY AND SHALL NOT BE REPRODUCED, USED, OR DISCLOSED TO OTHERS EXCEPT AS AUTHORIZED BY THE WRITTEN PERMISSION OF PUBLIC RESTROOM COMPANY.	BUILDING TYPE: RESTROOM BUILDING	PROJECT: GRETCHEN TALLEY PARK TRACY, CA	REVISION # 6	REVISION DATE: 10/16/2024	SHEET# A-2
				PROJECT #: 11064	START DATE: 8/26/2021	MAX. PERSON / HOUR: 180 S

**CITY OF TRACY
PURCHASE AGREEMENT FOR BUILDING WITH PUBLIC RESTROOM COMPANY**

This Purchase Agreement for Building, ("**Agreement**") is entered into between the City of Tracy, a municipal corporation ("**City**"), and Public Restroom Company, Minden, Nevada (Supplier). City and Supplier are sometimes referred to individually as "**Party**" and collectively as "**Parties**."

Recitals

- A. City desires to retain Supplier to provide a restroom and storage building, and related accessories and supplies.
- B. Pursuant to Tracy Municipal Code 2.20.220, the city is utilizing a Sourcewell cooperative purchasing agreement to purchase the building.
- C. Sourcewell and the Supplier entered into an agreement for the purchase of Building referred to as contract with Solicitation No.11064-2/06/2024-5 ("**Contract**").
- D. After negotiations between the City and the Supplier, the parties have reached an agreement for purchase of such Building in accordance with the terms set for in this agreement.
- E. This Agreement is being executed pursuant to Resolution No. _____, which was adopted by the City Council for the City of Tracy on February 18, 2025.

Now therefore, the parties mutually agree as follows:

1. **CONTRACT APPLICABILITY.** The Contract is fully incorporated herein by reference, except as expressly modified herein, and the Parties agree to abide by the terms set forth therein. All capitalized terms used herein but not defined shall have the meaning attributed to them in the Contract.
 - 1.1. **BUILDING.** The City agrees to purchase, and the Supplier agrees to sell, the building as more specifically outlined and described in the Contract. The building shall comply with all the standards and specifications outlined in Contract.
 - 1.2 **NO SUBSTITUTIONS; AUTHORIZED REPRESENTATIVE.** There shall be no substitution for the building, without the prior written authorization of the City. All Services shall be performed by or under the direct supervision of, the Supplier's Authorized Representative: Steve Spensky, Director of Sales Administration. Supplier shall not replace its Authorized Representative without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel may result in the termination of this Agreement.
2. **DELIVERY DATES.** The building must be shipped and must arrive and be installed at the destination of within 13 months of date of this contract.

- 2.1 Any failure by the Supplier to meet the Delivery Timeline will constitute a material default of this Purchase Agreement and the City may cancel any Building not delivered in a timely manner without liability. The Supplier must notify the City immediately if the Supplier reasonably believes the Supplier will not be able to meet the Delivery Timeline for any reason and provide the City with a schedule that the Supplier reasonably believes it will be able to meet. It is within the City's discretion whether it will accept the revised timeline.
3. **PURCHASE PRICE.** City shall pay Supplier on a fixed fee basis, at the fee amounts outlined in the Contract, attached, and incorporated by reference.
- 3.1 **NOT TO EXCEED AMOUNT.** Supplier's total contract amount, under this Agreement shall not exceed \$363,496.00.
4. **CANCELLATION AND TERMINATION.** The City reserves the right to terminate or cancel any portion of this Agreement at any time prior to the delivery, with or without cause, by giving Supplier written notice. There shall be no period of grace after giving the notice of cancellation or termination. Cancellation or termination shall become effective immediately upon the giving of notice by personal delivery or mail.
5. **BREACH.** In the event of a breach of the Agreement by Supplier, City may terminate the Agreement immediately without notice, may reduce payment to the Supplier in the amount necessary to offset City's resulting damages, may procure substitute Building at Supplier's expense, and/or may pursue any other available recourse against Supplier. Supplier may not terminate this Agreement except for cause.
6. **DELIVERY RISK OF LOSS.** All orders will be Free on Board (FOB) destination. Risk of loss or damage to the building must remain with the Supplier until the Building has been delivered to and accepted by the City. All Building will be received by the City subject to its right of inspection, rejection, and revocation of acceptance under the Uniform Commercial Code. The City will be allowed a reasonable period of time to inspect the building and to notify Supplier of any nonconformance with the terms and conditions of the specifications. The City may reject any Building that do not conform to the terms and conditions outlined in the Contract. Any Building rejected may be returned to the Supplier at the Supplier's risk and expense.
7. **INDEMNIFICATION.** Supplier shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Supplier's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.
- 7.1 **DEFINITION.** For the purposes of this section, "City" means the City, its officials, officers, agents, employees, and volunteers; "Supplier" means the Supplier, its employees, and agents; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

7.2 PROVISION SURVIVAL. The provisions of this Section 7 survive the completion of the services or the termination of this Agreement and are not limited by the provisions of Section 7 relating to insurance.

8. INSURANCE. Supplier shall, throughout the duration of this Agreement, maintain insurance to cover, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein, which may be achieved with an equivalent umbrella policy.

8.1 COMMERCIAL GENERAL LIABILITY. Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

8.2 AUTOMOBILE LIABILITY. (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

8.3 WORKERS' COMPENSATION. coverage shall be maintained as required by the State of California.

8.4 ENDORSEMENTS. Supplier shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:

8.4.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

8.4.2 For any claims related to this Agreement, Supplier's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Supplier's insurance and shall not contribute with it.

8.5 NOTICE OF CANCELLATION. Supplier shall notify the City if the policy is canceled before the expiration date. For this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Supplier shall immediately obtain a replacement policy.

8.6 INSURANCE CERTIFICATE. Supplier shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

8.7 SUBSTITUTE CERTIFICATES. Supplier shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.

8.8 SUPPLIER'S OBLIGATION. Maintenance of insurance by the Supplier as specified in this Agreement shall in no way be interpreted as relieving the Supplier of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Supplier may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

9. PACKING AND SHIPPING. Deliveries must be made as specified, without charge, for boxing, crating, or storage unless otherwise specified. Building must be suitably packed to secure the lowest transportation costs and, in accordance with the requirements of common carriers, in a manner to assure against damage from weather or transportation.

10. TAXES. The Supplier must separately state on all invoices any taxes imposed by the local, state, or federal state government applicable to furnishing the building; however, where a tax exemption is available, the tax must be subtracted from the total price and identified. Unless otherwise outlined in the Agreement, the Purchase Price will be considered to include state and city sales or use tax.

11. WARRANTY. The Supplier warrants that the building will conform to applicable specifications, drawings, descriptions, and samples, and will be merchantable, of good workmanship in material, and free from defect. Unless manufactured according to detailed design furnished by the City, the Supplier assumes design responsibility and warrants the building to be free from design defect and suitable for the purposes intended by the City, and that such Building if installed by the Supplier shall conform to applicable specifications.

11.1 The Supplier's warranties, together with its service guarantees, must run to the City and its customers or users of the equipment and must not be deemed exclusive. The City's inspection, approval, acceptance, use of, and payment for all or any part of the equipment must in no way affect its warranty rights whether a breach of warranty had become evident in time.

12. DUTY TO DEFEND. Supplier agrees, (1) at its cost and expense, to promptly defend the City and the City's employees, officers, managers, agents, and council members (collectively the **Parties to be Defended**) from and against any and all claims, allegations, lawsuits or other legal proceedings which arise out of, or are related to, or are in any manner connected with: (i) the Building provided pursuant this Agreement; (ii) allegations that the Building is defective in manufacture or design; (iii) any patent or other intellectual property right related to the Building and or (2) any breach of this Agreement by Supplier.

12.1 This duty to defend shall apply whether or not such claims, allegations, lawsuits, or proceedings have merit or are meritless, or which involve claims or allegations that any of the Parties to be Defended were actively, passively, or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss, damage or injury. Supplier agrees to provide this defense immediately upon written notice from the City, and with well-qualified, adequately insured, and experienced legal counsel acceptable to the City.

13. REBATES, KICKBACKS, OR OTHER UNLAWFUL CONSIDERATIONS. Supplier warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful

consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work performed, or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

14. **NOTICES.** All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party at the addresses listed below. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

Assistant Director – Parks, Recreation
And Community Services
333 Civic Center Plaza
Tracy, CA 95376

To Supplier:

Public Restroom Company
Attn: Steve Spensky
2587 Business Parkway
Minden, NV 89423

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

15. **MISCELLANEOUS**

- 15.1 **STANDARD OF CARE.** Unless otherwise specified in this Agreement, the standard of care applicable to Supplier's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.
- 15.2 **AMENDMENTS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.
- 15.3 **WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 15.4 **ASSIGNMENT AND DELEGATION.** Supplier may not assign, transfer, or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be consent to any subsequent assignment.
- 15.5 **JURISDICTION AND VENUE.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

- 15.6 **COMPLIANCE WITH THE LAW.** Supplier shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 15.6.1 **HAZARDOUS MATERIAL.** Supplier is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of performing their services.
- 15.6.2 **NON-DISCRIMINATION.** Supplier represents and warrants that it is an equal opportunity employer, and it shall not discriminate against any third-party Supplier, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, or age. Supplier shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).
- 15.7 **BUSINESS ENTITY STATUS.** Supplier is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Supplier. By entering into this Agreement, Supplier represents that it is not a suspended corporation. If Supplier is a suspended corporation at the time, it enters this Agreement, City may take steps to have this Agreement declared voidable.
- 15.8 **SUCCESSORS AND ASSIGNS.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.
- 15.9 **CONSTRUCTION OF AGREEMENT.** Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.
- 15.10 **SEVERABILITY.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 15.11 **CONTROLLING PROVISIONS.** In the case of any conflict between the terms of this Agreement and the Exhibit A hereto, Contract and Supplier's proposal (if any), the Agreement shall control.
- 15.12 **ENTIRE AGREEMENT.** This Agreement, the Contract and attached Exhibit A comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations, or agreements. All exhibits attached hereto are incorporated by reference herein.
16. **SIGNATURES.** The individuals executing this Agreement on behalf of Supplier represent and warrant that they have the right, power, legal capacity, and authority to enter and execute this Agreement on behalf of Supplier.

[SIGNATURES ON FOLLOWING PAGE]

The Parties agree to the full performance of the terms set forth here.

City of Tracy:

By: Dan Arriola

Title: Mayor

Date: _____

Attest:

Adrianne Richardson, City Clerk

Approved as to form:

By: Andrew Shen, Interim City Attorney

Supplier:

Public Restroom Company

2587 Business Parkway

Minden, NV 89423

By: Charles E. Kaufman IV

Title: President

Date: 1/7/25

Federal Employer Tax ID No. 48-1289691

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

**AUTHORIZING THE PURCHASE OF PREMANUFACTURED RESTROOM
BUILDING IN THE AMOUNT OF \$363,496 THROUGH PUBLIC RESTROOM
COMPANY UTILIZING SOURCEWELL COOPERATIVE PURCHASING
AGREEMENTS FOR CIP 78170, GRETCHEN TALLEY PARK – PHASE III**

WHEREAS, Sourcewell is a State of Minnesota local government agency and service cooperative that offers cooperative procurement solutions to education and government agencies nationally through competitively bid and awarded contracts; and

WHEREAS, the City of Tracy is an established customer with Sourcewell; and

WHEREAS, the City of Tracy is authorized to make purchases using the Sourcewell cooperative purchasing agreements pursuant to Tracy Municipal Code, section 2.20.220; and

WHEREAS, Public Restroom Company (PRC) is a Sourcewell awarded contract company, and staff is recommending the purchase of a premanufactured restroom/storage building from this vendor; and

WHEREAS, in 2018, the City Council approved the Gretchen Talley Park, Phase III, CIP 78170 (Project), which consists of an expansion of the existing park and the design incorporates a new restroom building; and

WHEREAS, the premanufactured restroom has a current lead time of 12-14 months, while the construction of a project of this scope of scale would take approximately 8-10 months; and

WHEREAS, to help avoid a delay during construction and open the project to the public as soon as possible, the direct purchase of the restroom building is recommended to be done in advance of the competitive bidding process for all other park improvements; and

WHEREAS, environmental review was previously completed for this project, including the final Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, in accordance with California Environmental Quality Act, was approved and adopted on January 16, 2024, by the City Council per Resolution 2024-024, and under CEQA guidelines Section 15378 the proposed actions herein are part of the whole project previously subject to CEQA review, and no further environmental review is required at this time; and

WHEREAS, the table below shows the vendor, their purchasing agreement number through Sourcewell, and the anticipated cost:

Description	Vendor	Cost	Public Bidding
Restroom/Storage Building Ref #11064-2/06/2024-5	Public Restroom Company	\$363,496	Sourcewell #081721-PRM

NOW, THEREFORE, be it resolved as follows:

RESOLVED: That the above recitals are true and correct; and be it,

FURTHER RESOLVED: That City Council of the City of Tracy hereby authorizes the purchase of a premanufactured restroom/storage building in the amount of \$363,496 through the execution of requisite Sourcewell cooperative agreements, after review and approval of such agreements by the City Attorney’s office, and to take any and all actions that may be necessary or advisable, in the City Manager’s discretion, to consummate the purchase of such equipment and to effectuate the purposes of this Resolution; and be it,

FURTHER RESOLVED: That this resolution takes effect immediately upon its adoption.

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on February 18, 2025, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTENTION: COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST:_____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of the
City of Tracy, California

Agenda Item 1.F

RECOMMENDATION

Staff recommends that the City Council adopt a resolution:

- 1) Approving the General Services Agreement with Pacific Star Chemical for the supply and delivery of swimming pool chemicals for an initial term of two-years with compensation not to exceed \$42,000 per fiscal year.**
- 2) Authorizing an administrative extension up to an additional five (5) years contingent upon satisfactory performance and budget availability.**

EXECUTIVE SUMMARY

This agenda item seeks adoption of a resolution approving a General Services Agreement (GSA) with Pacific Star Chemical, DBA NorthStar Chemical (Contractor) to provide swimming pool chemical supply and delivery from March 1, 2025, to February 28, 2027, for a not to exceed (NTE) amount of \$42,000 per fiscal year. Contractor is the only responsive bid which met the bid requirements pursuant to the Notice Inviting Bids (NIB) issued on October 1, 2024.

BACKGROUND AND LEGISLATIVE HISTORY

The Joe Wilson Swimming Pool, a vital recreational facility in the City of Tracy, requires regular maintenance to ensure safe and hygienic conditions. This maintenance includes chemical treatment of the pool water utilizing sodium hypochlorite and hydrochloric acid. The City of Tracy has been procuring these chemicals to maintain the Joe Wilson Swimming Pool since its opening. Regular and reliable supply of these chemicals is crucial for the continuous operation of the pool and the safety of its users.

The operation of public swimming pools in Tracy, including use of chemical disinfectants, is governed by various local and state regulations:

- 1. California Code of Regulations, Title 22, Division 4, Chapter 20:** This regulation sets the standards for public swimming pools in California, including water quality requirements.
- 2. Tracy Municipal Code, Chapter 4.12 - Public Swimming Pools:** This local ordinance outlines the requirements for operating public swimming pools within the City limits, including adherence to state regulations on water quality.

Contractor has been the primary supplier of sodium hypochlorite and hydrochloric acid for the Joe Wilson Swimming Pool since 2016, with no formal contracts.

ANALYSIS

Pursuant to the Tracy Municipal Code (TMC), Section 2.20.180, the City issued a Notice Inviting Bids for Contractor to provide swimming pool chemical supply and delivery on October 1, 2024. On October 28, 2024, two (2) responsive bid packages were received summarized as follows:

Vendor's Name	Chemical Items	Annual Estimated Usage	Initial Term Price per gallon	Extended Term Price per gallon
NorthStar Chemical	Sodium Hypochlorite 12.5%	8500	\$3.65	\$3.65
	Hydrochloric Acid 15%	1400	\$4.88	\$4.88
Thatcher Company of California	Sodium Hypochlorite 12.5%	8500	\$3.49	\$3.49
	Hydrochloric Acid 15%	No Bid		

Pacific Star Chemical, DBA NorthStar Chemical, was the only responsive bid that met the bid requirements. The NIB required that both chemicals be included in response.

The initial term of the Agreement will be from March 1, 2025, through February 28, 2027. At the end of the initial contract term, if the City determines that the Contractor has satisfactorily performed all requirements in this Agreement, and upon recommendation from the Public Works Director to the City Manager, an administrative approval may extend this Agreement for up to an additional five (5) years in any combination, not to exceed a total agreement length of seven (7) years.

FISCAL IMPACT

The cost of goods provided by the Contractor is accounted for in the adopted FY24-25 annual budget, Public Works.

STRATEGIC PLAN

This agenda item is consistent with the City's Quality of Life Strategy and meets the goals to ensure physical infrastructure and systems necessary for the health and safety of the Tracy community and staff.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution:

- 1) Approving the General Services Agreement with Pacific Star Chemical for the supply and delivery of swimming pool chemicals for an initial term of two-years with compensation not to exceed \$42,000 per fiscal year.
- 2) Authorizing an administrative extension up to an additional five (5) years contingent upon satisfactory performance and budget availability.

Prepared by: Jim Thompson, Superintendent, Operations

Reviewed by: Gordon MacKay, Interim Public Works Director
David Murphy, Assistant Director of Operations
Sara Castro, Director of Finance
Andrew Shen, Interim City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

A - GSA Northstar Chemical as a dba of Pacific Star Chemical, LLC.

City of Tracy – General Services Agreement with Northstar Chemical as a dba of Pacific Star Chemical, LLC.

CITY OF TRACY GENERAL SERVICES AGREEMENT

This General Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and Northstar Chemical as a dba of Pacific Star Chemical, LLC, a California Limited Liability Company (**Contractor**). City and Contractor are referred to individually as “Party” and collectively as “Parties.”

Recitals

A. City desires to retain Contractor to provide swimming pool chemicals and delivery services; and

B. On September 30, 2024, the City issued a Notice Inviting Bids (NIB) for the Swimming Pool Chemicals and Delivery 2025-2026 (**Project**). On October 28, 2024, the City received two (2) bids. After reviewing the bids, the City has determined that Contractor possesses the skills, experience and certification required to provide the services in pursuant of TMC 2.20.180.

C. After negotiations between the City and Contractor, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

D. This Agreement is being executed pursuant to Resolution No. 2025-____ approved by Tracy City Council on _____, 2025.

Now therefore, the Parties mutually agree as follows:

1. **Scope of Work.** Contractor shall perform the services described in Exhibit “A” attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Contractor’s Authorized Representative: Grant Fong. Contractor shall not replace its Authorized Representative, nor shall Contractor use or replace any subcontractors or subconsultants, without City’s prior written consent. A failure to obtain the City’s prior written consent for any change or replacement in personnel or subcontractor may result in the termination of this Agreement.

2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Any services for which times for performance are not specified in this Agreement shall be started and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Contractor. Contractor shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1 Term. The term of this Agreement shall begin on March 1, 2025, and end on February 28, 2027, unless terminated in accordance with Section 6. This Agreement may be extended for an additional five years by the City Manager following a written determination that Contractor has satisfactorily met all the requirements of this Agreement.

3. **Compensation.** City shall pay Contractor on a time and expense basis, at the billing rates set forth in Exhibit “B,” attached and incorporated by reference for services performed under this Agreement.

3.1 Not to Exceed Amount. Contractor’s total compensation under this Agreement shall not exceed \$42,000 (forty-two thousand) Dollars per fiscal year. Contractor’s billing rates shall cover all costs

and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

3.2 Invoices. Contractor shall submit monthly invoices to the City that describe the services performed, including times, dates, and names of persons performing the services.

3.2.1. Contractor's failure to submit invoices in accordance with these requirements may result in the City rejecting said invoices and thereby delaying payment to Contractor.

3.3 Payment. Within 30 days after the City's receipt of invoice, City shall make payment to the Contractor based upon the services described on the invoice and approved by the City.

4. Indemnification. Contractor shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Contractor's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Contractor" means the Contractor, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

The provisions of this section survive completion of the services or the termination of this Agreement, and are not limited by the provisions of Section 5 relating to insurance.

5. Insurance. Contractor shall, throughout the duration of this Agreement, maintain insurance to cover Contractor, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

5.1 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

5.2 Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

5.3 Workers' Compensation coverage shall be maintained as required by the State of California.

5.4 Professional Liability "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Contractor in an amount not less than \$1,000,000 per claim.

5.5 Endorsements. Contractor shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:

5.5.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

5.5.2 For any claims related to this Agreement, Contractor's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

5.6 Notice of Cancellation. Contractor shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Contractor shall immediately obtain a replacement policy.

5.7 Authorized Insurers. All insurance companies providing coverage to Contractor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

5.8 Insurance Certificate. Contractor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

5.9 Substitute Certificates. Contractor shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.

5.10 Contractor's Obligation. Maintenance of insurance by the Contractor as specified in this Agreement shall in no way be interpreted as relieving the Contractor of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Contractor may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

6. Termination. The City may terminate this Agreement by giving ten days' written notice to Contractor. Upon termination, Contractor shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Contractor for this Agreement. The City shall pay Contractor for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

7. Dispute Resolution. If any dispute arises between the City and Contractor that cannot be settled after engaging in good faith negotiations, City and Contractor agree to resolve the dispute in accordance with the following:

7.1 Each Party shall designate a senior management or executive level representative to negotiate the dispute;

7.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

7.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiations between legal counsel. If the aforementioned process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

7.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.

7.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

7.6 The dispute resolution process is a material condition to this Agreement and must be exhausted prior to either Party initiating legal action. This dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 et seq.

8 Labor Code Compliance. Contractor is aware of the requirements of Chapter 1 of Part 7 of Division 2 of the California Labor Code and applicable regulations which require the payment of prevailing wage rates (§1771, §1774, and §1775); employment of apprentices (§1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. The services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, Contractor agrees to fully comply with such Prevailing Wage Laws.

8.1 Rates. These prevailing wage rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to perform the services described herein. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. Contractor assumes all responsibility for such payments and shall defend, indemnify and

hold the City harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker, or any other third party.

8.2 Registration with DIR. Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform the services consistent with Labor Code section 1725.5.

8.3 Monitoring. This Agreement will be subject to compliance monitoring and enforcement by the DIR, under Labor Code section 1771.4.

9. Ownership of Work. All original documents prepared by Contractor for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Contractor's services, or upon demand from the City. No such documents shall be revealed or made available by Contractor to any third party without the City's prior written consent.

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11. Conflicts of Interest. Contractor (including its employees, agents, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Contractor maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Contractor's conflicting interest.

12. Rebates, Kickbacks, or Other Unlawful Consideration. Contractor warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

City of Tracy – General Services Agreement with Northstar Chemical as a dba of Pacific Star Chemical, LLC.

13. Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

City of Tracy
Attn: David Murphy, Operations Assistant Director
333 Civic Center Plaza
Tracy, CA 95376

To Contractor:

Northstar Chemical
DBA Pacific Star Chemical, LLC.
Attn: Grant Fong
872 Codoni Ave
Modesto, CA 95357

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

14. Miscellaneous.

14.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Contractor's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

14.2 Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

14.3 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

14.4 Assignment and Delegation. Contractor may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

14.5 Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

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14.6.1 Hazardous Materials. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of performing their services.

14.6.2 Non-discrimination. Contractor represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Contractor shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

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14.12 Controlling Provisions. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Contractor's proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Contractor's proposal (if any), the Exhibits shall control.

14.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.

15. Signatures. The individuals executing this Agreement on behalf of Contractor represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Contractor.

[SIGNATURES ON FOLLOWING PAGE]

City of Tracy – General Services Agreement with Northstar Chemical as a dba of Pacific Star Chemical, LLC.

The Parties agree to the full performance of the terms set forth here.

City of Tracy

By: Dan Arriola
Title: Mayor
Date: _____

Attest:

Adrianne Richardson, City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

Contractor

DocuSigned by:


By: Matt Wenger
Title: Executive Vice President
Date: 1/8/2025 | 2:26 AM PST

Federal Employer Tax ID No. 93-1209247

Exhibits:

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)

EXHIBIT A
TECHNICAL SPECIFICATIONS
FOR
SWIMMING POOL CHEMICALS AND DELIVERY 2024 - 2026
FOR
CITY OF TRACY, A MUNICIPAL CORPORATION,
SAN JOAQUIN COUNTY, CALIFORNIA

1. SCOPE OF WORK:

Contractor shall supply and deliver swimming pool chemicals to one or more facilities within the City of Tracy.

The City makes no representation and provides no guarantee as to the minimum, average or maximum volume of purchases made under this contract.

2. DELIVERY REQUIREMENTS:

- A. Products shall be delivered as ordered by a Public Works Department Superintendent or designee.
- B. The City reserves the right to add or delete delivery locations as required by its operations. Contractor shall not charge a zone price differential for delivery.
- C. All deliveries shall be Free On Board (F.O.B.) destination to delivery locations as required. No delivery charges shall be made.
- D. All deliveries shall be made within 24 hours after order has been placed. Orders shall be placed by authorized e-mail or phone call with follow-up e-mail.
- E. Delivery of unapproved substitutions WILL NOT be permitted.

3. INTERRUPTIONS IN SERVICE

Contractor shall notify the City at least three (3) days in advance of any foreseeable potential interruptions in service (e.g. – work stoppages, facility/equipment maintenance, etc.) so that all location(s) may be refilled, if necessary, prior to the anticipated down time.

4. DELIVERY LOCATION:

By submitting a bid, Contractor agrees, if awarded contract, to furnish products at the following location:

City of Tracy – General Services Agreement with Northstar Chemical as a dba of Pacific Star Chemical, LLC.

Address

Joe Wilson Swimming Pool
900 W. Lowell Ave
Tracy, California 95376

Swimming pool chemicals delivery is not limited to these locations. The City may require periodic swimming pool chemicals delivery at other locations that are to be determined as necessary.

5. QUANTITIES:

In order to assist Contractors in evaluating this bid, the City's annual estimated chemicals usage are indicated below. There shall be no guarantee as to actual quantities required during the period of the Agreement.

Item	Annual Estimated Usage
SODIUM HYPOCHLORITE 12.5%	8500 gallons
HYDROCHLORIC ACID 15%	1400 gallons

6. QUALITY:

Products bid shall be performance branded products and of high quality.

All Contractors shall provide, in writing with their bid, a written guarantee that the swimming pool chemicals they provide shall be of the highest quality and shall meet the intent of the specifications. Failure to include this written guarantee with the bid may result in the bid being rejected as incomplete.

City of Tracy – General Services Agreement with Northstar Chemical as a dba of Pacific Star Chemical, LLC.

EXHIBIT B - Compensation

Compensation is based upon the amount of chemical delivered. The pricing is as follows:

- Sodium Hypochlorite - 12.5%
 - Price per gallon delivered: \$3.65
- Hydrochloric acid - 15%
 - Price per gallon delivered: \$4.88

All pool chemicals are subjected to a Mill tax and the rate is set by the State of California.

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

-
- 1) APPROVING THE GENERAL SERVICES AGREEMENT WITH PACIFIC STAR CHEMICAL FOR THE SUPPLY AND DELIVERY OF SWIMMING POOL CHEMICALS FOR AN INITIAL TERM OF TWO-YEARS WITH COMPENSATION NOT TO EXCEED \$42,000 PER FISCAL YEAR.**
 - 2) AUTHORIZING AN ADMINISTRATIVE EXTENSION UP TO AN ADDITIONAL FIVE (5) YEARS CONTINGENT UPON SATISFACTORY PERFORMANCE AND BUDGET AVAILABILITY.**

WHEREAS, the City of Tracy requires regular maintenance of the pool water to ensure safe and hygienic conditions for its patrons at the Joe Wilson Swimming Pool; and

WHEREAS, to comply with the California Code of Regulations, Title 22, Division 4, Chapter 20 and Tracy Municipal Code, Chapter 4.12, the City must use sodium hypochlorite and hydrochloric acid for proper chemical treatment of the pool water; and

WHEREAS, the City has procured these two chemicals for pool water maintenance since its opening and with Pacific Star Chemical without a formal contract; and

WHEREAS, on October 1, 2024, staff followed established procedures, in accordance with Tracy Municipal Code, Section 2.20.180, and issued a Notice Inviting Bids for these chemical supplies and delivery; and

WHEREAS, prior to the deadline, the City received two (2) bid proposals, one of which was from Pacific Star Chemical, dba NorthStar Chemical (Contractor); and

WHEREAS, Contractor is the only responsive and responsible bidder and has the expertise and experience required to provide the necessary and desired supplies and services; and

WHEREAS, staff is requesting that the City Council authorize the execution of the General Services Agreement with Contractor, in the form attached as Exhibit 1, for an initial term of two years and a total annual amount of \$42,000 per fiscal year to provide the supplies and delivery required to comply with these mandates; and

WHEREAS, staff is also requesting the City Council to grant authority for administrative extensions by City Manager for an additional five (5) years upon satisfactory performance by the Contractor and budget availability; now, therefore, be it

RESOLVED: That the above recitals are true and correct; and be it

FURTHER RESOLVED: That the City Council of the City of Tracy, hereby approves the General Services Agreement with Pacific Star Chemical, dba NorthStar Chemical, attached as Exhibit 1, for an initial term of two years, with an annual total of \$42,000 per fiscal year; and be it

FURTHER RESOLVED: That the City Council authorizes an administrative extension up to five (5) additional years upon satisfactory performance and budget availability.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 18th day of February, 2025, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST: _____
NECY LÓPEZ
Acting City Clerk and Clerk of the Council of the
City of Tracy, California

Exhibit 1 - GSA Northstar Chemical as a dba of Pacific Star Chemical, LLC.

City of Tracy – General Services Agreement with Northstar Chemical as a dba of Pacific Star Chemical, LLC.

CITY OF TRACY GENERAL SERVICES AGREEMENT

This General Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and Northstar Chemical as a dba of Pacific Star Chemical, LLC, a California Limited Liability Company (**Contractor**). City and Contractor are referred to individually as “Party” and collectively as “Parties.”

Recitals

A. City desires to retain Contractor to provide swimming pool chemicals and delivery services; and

B. On September 30, 2024, the City issued a Notice Inviting Bids (NIB) for the Swimming Pool Chemicals and Delivery 2025-2026 (**Project**). On October 28, 2024, the City received two (2) bids. After reviewing the bids, the City has determined that Contractor possesses the skills, experience and certification required to provide the services in pursuant of TMC 2.20.180.

C. After negotiations between the City and Contractor, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

D. This Agreement is being executed pursuant to Resolution No. 2025-____ approved by Tracy City Council on _____, 2025.

Now therefore, the Parties mutually agree as follows:

1. **Scope of Work.** Contractor shall perform the services described in Exhibit “A” attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Contractor’s Authorized Representative: Grant Fong. Contractor shall not replace its Authorized Representative, nor shall Contractor use or replace any subcontractors or subconsultants, without City’s prior written consent. A failure to obtain the City’s prior written consent for any change or replacement in personnel or subcontractor may result in the termination of this Agreement.

2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Any services for which times for performance are not specified in this Agreement shall be started and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Contractor. Contractor shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1 Term. The term of this Agreement shall begin on March 1, 2025, and end on February 28, 2027, unless terminated in accordance with Section 6. This Agreement may be extended for an additional five years by the City Manager following a written determination that Contractor has satisfactorily met all the requirements of this Agreement.

3. **Compensation.** City shall pay Contractor on a time and expense basis, at the billing rates set forth in Exhibit “B,” attached and incorporated by reference for services performed under this Agreement.

3.1 Not to Exceed Amount. Contractor’s total compensation under this Agreement shall not exceed \$42,000 (forty-two thousand) Dollars per fiscal year. Contractor’s billing rates shall cover all costs

and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

3.2 Invoices. Contractor shall submit monthly invoices to the City that describe the services performed, including times, dates, and names of persons performing the services.

3.2.1. Contractor's failure to submit invoices in accordance with these requirements may result in the City rejecting said invoices and thereby delaying payment to Contractor.

3.3 Payment. Within 30 days after the City's receipt of invoice, City shall make payment to the Contractor based upon the services described on the invoice and approved by the City.

4. Indemnification. Contractor shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Contractor's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Contractor" means the Contractor, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

The provisions of this section survive completion of the services or the termination of this Agreement, and are not limited by the provisions of Section 5 relating to insurance.

5. Insurance. Contractor shall, throughout the duration of this Agreement, maintain insurance to cover Contractor, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

5.1 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

5.2 Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

5.3 Workers' Compensation coverage shall be maintained as required by the State of California.

5.4 Professional Liability "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Contractor in an amount not less than \$1,000,000 per claim.

5.5 Endorsements. Contractor shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions:

5.5.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

5.5.2 For any claims related to this Agreement, Contractor's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

5.6 Notice of Cancellation. Contractor shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Contractor shall immediately obtain a replacement policy.

5.7 Authorized Insurers. All insurance companies providing coverage to Contractor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

5.8 Insurance Certificate. Contractor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

5.9 Substitute Certificates. Contractor shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.

5.10 Contractor's Obligation. Maintenance of insurance by the Contractor as specified in this Agreement shall in no way be interpreted as relieving the Contractor of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Contractor may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

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14.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.

15. Signatures. The individuals executing this Agreement on behalf of Contractor represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Contractor.

[SIGNATURES ON FOLLOWING PAGE]

City of Tracy – General Services Agreement with Northstar Chemical as a dba of Pacific Star Chemical, LLC.

The Parties agree to the full performance of the terms set forth here.

City of Tracy

By: Dan Arriola
Title: Mayor
Date: _____

Attest:

Adrianne Richardson, City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

Contractor

DocuSigned by:


By: Matt Wenger
Title: Executive Vice President
Date: 1/8/2025 | 2:26 AM PST

Federal Employer Tax ID No. 93-1209247

Exhibits:

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)

EXHIBIT A
TECHNICAL SPECIFICATIONS
FOR
SWIMMING POOL CHEMICALS AND DELIVERY 2024 - 2026
FOR
CITY OF TRACY, A MUNICIPAL CORPORATION,
SAN JOAQUIN COUNTY, CALIFORNIA

1. SCOPE OF WORK:

Contractor shall supply and deliver swimming pool chemicals to one or more facilities within the City of Tracy.

The City makes no representation and provides no guarantee as to the minimum, average or maximum volume of purchases made under this contract.

2. DELIVERY REQUIREMENTS:

- A. Products shall be delivered as ordered by a Public Works Department Superintendent or designee.
- B. The City reserves the right to add or delete delivery locations as required by its operations. Contractor shall not charge a zone price differential for delivery.
- C. All deliveries shall be Free On Board (F.O.B.) destination to delivery locations as required. No delivery charges shall be made.
- D. All deliveries shall be made within 24 hours after order has been placed. Orders shall be placed by authorized e-mail or phone call with follow-up e-mail.
- E. Delivery of unapproved substitutions WILL NOT be permitted.

3. INTERRUPTIONS IN SERVICE

Contractor shall notify the City at least three (3) days in advance of any foreseeable potential interruptions in service (e.g. – work stoppages, facility/equipment maintenance, etc.) so that all location(s) may be refilled, if necessary, prior to the anticipated down time.

4. DELIVERY LOCATION:

By submitting a bid, Contractor agrees, if awarded contract, to furnish products at the following location:

City of Tracy – General Services Agreement with Northstar Chemical as a dba of Pacific Star Chemical, LLC.

Address

Joe Wilson Swimming Pool
900 W. Lowell Ave
Tracy, California 95376

Swimming pool chemicals delivery is not limited to these locations. The City may require periodic swimming pool chemicals delivery at other locations that are to be determined as necessary.

5. QUANTITIES:

In order to assist Contractors in evaluating this bid, the City's annual estimated chemicals usage are indicated below. There shall be no guarantee as to actual quantities required during the period of the Agreement.

Item	Annual Estimated Usage
SODIUM HYPOCHLORITE 12.5%	8500 gallons
HYDROCHLORIC ACID 15%	1400 gallons

6. QUALITY:

Products bid shall be performance branded products and of high quality.

All Contractors shall provide, in writing with their bid, a written guarantee that the swimming pool chemicals they provide shall be of the highest quality and shall meet the intent of the specifications. Failure to include this written guarantee with the bid may result in the bid being rejected as incomplete.

EXHIBIT B - Compensation

Compensation is based upon the amount of chemical delivered. The pricing is as follows:

- Sodium Hypochlorite - 12.5%
 - Price per gallon delivered: \$3.65
- Hydrochloric acid - 15%
 - Price per gallon delivered: \$4.88

All pool chemicals are subjected to a Mill tax and the rate is set by the State of California.

Agenda Item 1.G

RECOMMENDATION

Staff recommends that the City Council adopt the following, each by separate resolution:

(A) approving an On-Call List, for five years, of six qualified consultants for Entitlements and Land Development Plan Checking Engineering Services; and

(B) approving (1) the execution of three separate Master Professional Services Agreements, each with an initial term of three years and a not-to-exceed fiscal year amount of \$600,000, with each of the listed qualified consultants: SNG & Associates, Inc., HALEY & ALDRICH, Inc., and NV5, Inc., and (2) an administrative extension for up to two years based on satisfactory performance for each Master Professional Services Agreement, if needed.

EXECUTIVE SUMMARY

This agenda item seeks approval of an On-Call List for five years of qualified consultants to provide Entitlements and Land Development Plan Checking Engineering Services and concurrently seeks approval of the execution of three separate Master Professional Services Agreements (MPSAs) with SNG & Associates, Inc., HALEY & ALDRICH, Inc., and, NV5, Inc., selected from this On-Call List, each to provide these services for an initial term of three years and a total not to exceed amount of \$600,000 per fiscal year. Staff is also requesting an administrative extension for each MPSA for up to two additional years, based on performance, if needed.

Pursuant to public bidding requirements in Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130 for professional services, staff recently published a Request for Proposals (RFP) for On-Call Entitlements and Land Development Plan Checking Engineering Services. On December 17, 2024, staff received and reviewed all six (6) proposals received and determined that all six (6) consultants demonstrated they were qualified and responsible proposers and met the City's needs for competence and professional qualifications necessary for the satisfactory performance of the anticipated scopes of work. Staff is recommending that these six (6) consultants be deemed qualified to remain on the On-Call List. Simultaneously, staff is recommending the authorization to execute separate MPSAs with three (3) of the six (6) qualified consultants, from the On-Call List.

BACKGROUND AND LEGISLATIVE HISTORY

On-Call Lists entail the practice of prequalifying consultants to be available at specific times for specific expertise areas so that the City may utilize them on an as-needed basis according to the terms outlined in separate MPSAs between the City of Tracy and qualified consultants.

Whenever staff shortages, peaking workloads, or project complexity mandates external assistance, consultants have been called upon to perform various tasks needed to complete work. Having the selected firms on the On-Call List for the necessary work will ensure that the various services can be obtained in a timely manner.

On November 20, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted a Request for Proposal (RFP) to solicit experienced and qualified consultants to provide On-Call Entitlements and Land Development Plan Checking Engineering Services. The requested services include but are not limited to, Entitlements Packages Plan Checking which includes, conditional use permit, development application, general plan amendment, lot line mergers and adjustments, rezoning and variances, tentative maps and parcel maps, right-of-way and easement vacations, and other developer applications collectively referred to as "Entitlement." Entitlement Submittal Package Review includes but is not limited to the following, preliminary title report, owner statements, zoning and density requirements, existing condition depicting existing right-of-way (ROW) and any easements located on the project site, site plan review per subdivision map act, Title 12 of the Tracy Municipal Code, the City's adopted Master Plans, adopted specific plans, etc., searching through the City's database, records, and files to determine if an Entitlement is required to reimburse another developer, right-of-way dedications, street cross-section, preliminary grading, and utility plan, preliminary Stormwater Control Plan and report, preliminary parking plan, preliminary striping plan, preliminary street line exhibits for City maintenance project frontage streets. Land Development Plan Checking Services include existing conditions and demolition plans, on-site grading plans, erosion control plans, on-site and off-site civil improvement plans, on-site and off-site landscape and irrigation plans, signing and striping plans, streetlight plans, Stormwater Control Plan report, Stormwater Pollution Prevention Plan report, Hydrology and Hydraulic calculations report, construction cost estimates for bonding purposes, Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions. On December 17, 2024, the City received six (6) proposals. The City's internal Selection Committee, David Brothie, Senior Civil Engineer; Habibullah Habib, Associate Civil Engineer; and Al Gali, Associate Engineer, carefully evaluated all six (6) proposals received based on the criteria described in the RFP. In making this determination, the committee considered the following factors:

- The experience and past performance of the firm, its agents, and employees in completing projects of various types, sizes, and complexity.
- The firm's ability to provide timely and accurate documentation and traffic engineering assistance.
- The flexibility of the proposal based on past performance, cost schedules, and methodologies used by the firm to complete projects.
- The firm's understanding of the work to be completed based upon the clarity of the proposal and responsiveness to the Request for Proposal.

The committee has reviewed and determined that all of the consultant firms possess the skills, experience, competence, professional qualifications, and certifications required to provide the services requested by the City and should remain on the On-Call List for five (5) years.

ANALYSIS

The City of Tracy Engineering Division consists of the following units: CIP, Land Development, and Traffic Engineering, which collectively oversee a variety of projects. Proposed Land Development projects require at least one of the following Entitlements and Land Development Plan Checking Engineering Services outlined in the RFP. The proposed On-Call List and MPSAs will allow staff to increase their current workload capacity to keep up with the demand for delivering projects in a timely fashion.

The Selection Committee has completed an extensive review of all six (6) proposals received and is recommending that all six (6) On-Call consultants remain on the On-Call List (List). The table below lists the On-Call consultants and the services they will be providing.

Consultant	Service Provided
GDR Engineering, Inc.	Entitlements and Land Development Plan Checking Engineering Services
Ghirardelli Associates, Inc.	Entitlements and Land Development Plan Checking Engineering Services
HALEY & ALDRICH, INC.	Entitlements and Land Development Plan Checking Engineering Services
NV5, Inc.	Entitlements and Land Development Plan Checking Engineering Services
Precision Civil Engineering, Inc.	Entitlements and Land Development Plan Checking Engineering Services
SNG & Associates Inc.	Entitlements and Land Development Plan Checking Engineering Services

This On-Call List of selected consultants creates efficiency and does not bind the City or its budgets to a particular scope of work until it is required as City needs arise. Having previously undertaken the public contracting procedures for each consultant on the List, as project needs arise, the City may more readily move into contracting with one of the consultants on the List and then return to the City Council for approval of a project-specific MPSA.

The proposed MPSAs would enable Engineering Staff to utilize these consultants on an On-Call basis on various projects for a three (3) fiscal year term expiring June 30, 2028, with an option to administratively extend for two (2) consecutive one (1) year terms based on performance, if needed. Each MPSA would be subject to a not-to-exceed amount of \$600,000 per fiscal year.

As noted above, having an On-Call List of qualified consultants will enable staff to better manage staff shortages, peaking workloads, and complex projects. Supplemental Entitlements and Land Development Plan Checking engineering services for Land Development projects are currently pending. In addition to approving the On-Call List, staff recommends the City Council authorize the execution of the separate MPSAs with three (3) of the qualified consultants from the list: SNG & Associates Inc., HALEY & ALDRICH, INC., and NV5, Inc.

The proposed MPSAs specify that the City may allocate work to each firm selected based upon the City's budget from Developer's Fee, Cost Recovery Agreements, Capital Project funding, the required services needed at the time, and the competitiveness and quality of each proposal to satisfy the City's needs most efficiently and economically for the specified services.

FISCAL IMPACT

The cost of the work performed by SNG & Associates Inc., HALEY & ALDRICH, INC., and NV5, Inc. will be cost recoverable in part through the developer's fee, Capital Improvement Project budgets, and certain grant-funded project budgets. Funding for the MPSA with SNG & Associates Inc., HALEY & ALDRICH, INC., and NV5, Inc. exists on an annual basis within the department's annual adopted budget, and the amount expended between all consultants may not exceed the annual budget appropriation. Each contract includes the ability to terminate if there is insufficient budget availability.

CEQA DETERMINATION

The approvals requested in this item are “planning and feasibility services” and, therefore, are not considered a “project” as defined by Section 21065 of the Public Resources Code. Any projects for which such services are performed will be reviewed as required under the California Environmental Quality Act (CEQA) before future discretionary actions that may have potentially significant environmental impacts are taken, such as development project approvals or project construction.

STRATEGIC PLAN

This agenda item supports the City of Tracy’s Quality of Life Strategic Priority, which is to provide an outstanding quality of life by enhancing the City’s amenities, business mix and services, and cultivating connections to promote positive change and progress in our community.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt the following, each by separate resolution:

(A) approve an On-Call List, for five years, of six qualified consultants for Entitlements and Land Development Plan Checking Engineering Services; and

(B) approve (1) the execution of three separate Master Professional Services Agreements, each with an initial term of three years and a not-to-exceed fiscal year amount of \$600,000, with each of the listed qualified consultants: SNG & Associates, Inc, HALEY & ALDRICH, Inc., and NV5, Inc., and (2) an administrative extension for up to two years based on satisfactory performance for each Master Professional Services Agreement, if needed.

Prepared by: Habibullah Habib, PE, Associate Civil Engineer

Reviewed by: Sharat Bandugula, PE, Acting Assistant City Engineer
Sara Castro, Finance Director
Andrew Shen, Interim City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A – Master Professional Service Agreement with SNG & Associates, Inc.
Attachment B – Master Professional Service Agreement with HALEY & ALDRICH, Inc.
Attachment C – Master Professional Service Agreement with NV5, Inc.

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT WITH**

SNG & Associates, Inc., for Entitlements and Land Development Plan Checking Engineering Services included but are not limited to Entitlements Packages Plan Checking which includes, conditional use permit, development Application general plan amendment, lot line mergers and adjustments, rezoning and variances, tentative maps and parcel maps., right-of-way and easement vacations, other developer applications collectively referred to as "Entitlement. Entitlement Submittal Package Review includes but are not limited to the following, preliminary title report, owner statements, zoning and density requirements, existing condition depicting Existing ROW and any easements located on the project site, site plan review per subdivision map act, Title 12 of the Tracy Municipal Code, The City adopted Master Plans, adopted specific plans, etc., and search through the CITY's database, records, and files to determine if an Entitlement is required to reimburse another developer, right of way dedications, street cross-section, preliminary grading, and utility plan, preliminary Stormwater Control Plan and report, preliminary parking plan, preliminary striping plan, preliminary street plan line exhibit for City maintenance project frontage streets. Land Development Plan Checking Services include existing conditions and demolition plans, on-site grading plans, erosion control plans, on-site and off-site civil improvement plans, on-site and off-site landscape and irrigation plans, signing and striping plans, streetlight plans, Stormwater Control Plan reports, Stormwater Pollution Prevention Plan report, Hydrology and Hydraulic calculations report, construction cost estimates for bonding purposes, Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions.

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and SNG & Associates, Inc., a California Corporation ("Consultant"). City and Consultant are referred to individually as "Party" and collectively as "Parties."

Recitals

- A.** City desires to retain Consultant for future Entitlements and Land Development Plan Checking Engineering Services for Capital Improvement Projects (CIP), Land Development, and Traffic Engineering Projects as further described herein and in Exhibit A.

On November 20, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted an RFP to solicit experienced and qualified consultants to provide On-Call Traffic Engineering Services for Engineering projects. This on-call list of Consultants creates an efficient process for future project proposal requests and does not bind the City or its budgets to a particular scope of work until it is required as City needs arise. Having previously undertaken the public contracting procedures for each Consultant on the list, as the project needs arise, the City may more readily move into contracting with one of the Consultants on the list and then return to the City Council for approval of a project-specific professional services agreement.

On December 17, 2024, the City received six (6) proposals including SNG & Associates, Inc., Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer, and best fits the City's needs for competence and professional qualifications necessary for the satisfactory performance of the Services.

- A.** After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

B. This Agreement was approved on _____ pursuant to Tracy Municipal Code Section 2.20.140 (3), [and City Council Resolution No. _____].

NOW THEREFORE, for good and valuable consideration the sufficiency of which the Parties hereby acknowledge, the Parties mutually agree as follows:

1. **Scope of Services.** Consultant shall perform professional services, tasks, and scope of work further described in Exhibit A hereto (“Services”) for the City’s benefit on an as-needed basis pursuant to individual approved Task Orders for services within the in accordance with the terms and conditions of this Agreement. The Services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: Nanda K. Gottiparthi, P.E., President. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit A, nor shall Consultant use or replace any subcontractor or subconsultant, without City’s prior written consent. A failure to obtain the City’s prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

1.1 **Task Order Forms.** The Services within the Scope of Work will be comprised of Task Order Forms (in the form provided in Exhibit C hereto), approved, executed and delivered by the Director of SNG & Associates, Inc., (“Director”) from time-to-time during the Term of this Agreement, on an as-needed basis. The Consultant cannot start performing any Work until the Director has executed a Task Order for such work. The City has no obligation to issue any Task Orders under this Master Agreement. The City may issue any number of Task Orders provided that the sum of the maximum compensation of all approved Task Orders cannot exceed the Total Not-to-Exceed amount stated in Section 3.1.

1.2 **Non-Exclusive Agreement.** The City reserves the right to contract with other consultants providing the same Services or similar scope of services described above during the term of this Agreement. The City further reserves the right to assign work, at its sole discretion, to consultants other than Consultant based on City’s budget, experience, and skills of consultants based on the City’s specific needs.

2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated by the City to the Consultant. Consultant shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1 **Term.** The term of this Agreement shall commence on February 18, 2025, and expire and terminate automatically on February 17, 2028 or earlier by termination pursuant to Section 6 of this Agreement (“Term”). Subject to the Not-To-Exceed Amount defined in Section 3.1, the Term of this Agreement may be extended with express written amendment incorporating this Agreement signed by both Parties and one of the following City approvals: (a) City Council approval or (b) City Manager approval. An administrative extension of this Agreement by City Manager shall be limited to an additional term of two (2) years (s) and require written determination by the City Manager that Consultant has satisfactorily met all the requirements of this Agreement.

3. Compensation. City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit B attached and incorporated by reference for services performed under this Agreement.

3.1 Annual Total Not to Exceed Amount. Consultant's total compensation for all Task Orders and Services under this Agreement shall not exceed \$600,000.00 (six hundred thousand Dollars) per City fiscal year ("Total Not-to-Exceed Amount"). Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Total Not-to-Exceed Amount. Consultant acknowledges City has no obligation to compensate or reimburse Consultant for any fees or costs incurred in excess of the Total Not-to-Exceed Amount. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement.

3.1.2 For each Task Order issued under this Agreement, Consultant's Services shall not exceed the maximum compensation stated in that Task Order.

3.2 Invoices. No less than Ninety (90) days after performing Services, Consultant shall submit monthly written invoice(s) to the City that include copies of approved Task Orders, the Services performed, and identify times, dates, and names of persons performing the services.

3.2.1 If Consultant is providing services in response to a development application, separate invoice(s) must be issued for each application and each invoice shall contain the City's designated development application number.

3.2.2 Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

3.2.3 Consultant shall submit invoices no later than 90 days after completion of a Task Order or portion of the Services. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Services.

3.3 Payment. Within 30 days after the City's receipt of invoice(s), City shall make payment to the Consultant based upon the services described on the invoice(s) and approved by the City.

3.4 City Budget Limitations. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will automatically terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the City Council. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. The payment of any compensation under this Agreement shall be subject to the City of Tracy appropriation of funds for the Services. This Agreement shall terminate in the event that such funds are not appropriated.

4. Indemnification. Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence, or willful misconduct of the City. In this section, "City" means the City, its officials, officers, agents, employees, and volunteers;

“Consultant” means the Consultant, its employees, agents and subcontractors; “Claims” includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and “Arising out of” includes “pertaining to” and “relating to”. The Consultant’s indemnification obligation applies to the maximum extent allowed by law and includes defending the City as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City’s written request, the Consultant, at its own expense, shall defend any suit or action that is subject to this indemnification obligation. The provisions of this section survive completion of the services or the termination of this Agreement and are not limited by the provisions of Section 5 relating to insurance.

5. Insurance. Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

5.1 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) “per occurrence” coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

5.2 Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for “any auto”) “claims made” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

5.3 Workers’ Compensation coverage shall be maintained as required by the State of California.

5.4 Professional Liability “claims made” coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.

5.5 Endorsements. Consultant shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions.

5.5.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”

5.5.2 For any claims related to this Agreement, Consultant’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.

5.6 Notice of Cancellation. Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.

5.7 Authorized Insurers. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

5.8 Insurance Certificate. Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

5.9 Substitute Certificates. Consultant shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.

5.10 Consultant's Obligation. Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

6. Termination.

6.1 The Parties may terminate this Agreement for any reason, including, but not limited to, convenience, by giving ten (10) days' written notice to the other Party. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

6.2 This Agreement shall automatically terminate immediately without notice to Consultant upon any of the following occurrences: (a) material breach of this Agreement by Consultant; (b) lack of City funds appropriated. In the event of termination by material breach of Consultant, if the City replaces any incomplete or defective Services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.

6.3 Upon termination, Consultant shall return the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant in connection with the Services performed under this Agreement.

7. Ownership of Work. All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

8. Independent Contractor Status. Consultant is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Consultant is free to work for other entities while under contract with the City. Consultant, and its agents or employees, are not entitled to City benefits.

9. Conflicts of Interest. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest. The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant represents and warrants that the representations made by the Consultant concerning unfair competitive advantage and conflicts of interest in connection with its submissions in response to the City's procurement for this Agreement

were true and accurate both when made and as of the date of this Agreement. Consultant represents and warrants that it has not and shall not offer or deliver any City officer, public official, or employee any gifts or donations in violation Federal, State and/or local law.

10. Rebates, Kickbacks, or Other Unlawful Consideration. Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

11. Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

Jonathan R. Mitchell, P.E.
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant: SNG & Associates, Inc.

Nanda K. Gottiparthi, P.E.,
President
5776 Stoneridge Mall Road, Suite 365
Pleasanton, California, 94588

With a copy to:
City Attorney
333 Civic Center Plaza
Tracy, CA 95376

12. Miscellaneous.

12.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

12.2 Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

12.3 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

12.4 Assignment and Delegation. Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

12.5 Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

12.6 Compliance with the Law. Consultant shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

12.6.1 Prevailing Wage Laws. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on “public works” and “maintenance” projects. If the services being performed under this Agreement are part of a “public works” or “maintenance” project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

12.6.2 Non-discrimination. Consultant represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Consultant shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

12.7 Business Entity Status. Consultant is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Consultant. By entering into this Agreement, Consultant represents that it is not a suspended corporation. If Consultant is a suspended corporation at the time it enters into this Agreement, City may take steps to have this Agreement declared voidable.

12.8 Business License. Before the City signs this Agreement, Consultant shall obtain a City of Tracy Business License. Consultant shall maintain an active City of Tracy Business License during the term of this Agreement.

12.9 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

12.10 Construction of Agreement. Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.

12.11 Severability. If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

12.12 Controlling Provisions. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Consultant’s proposal (if any), the Agreement shall control. In

the case of any conflict between the Exhibits hereto and the Consultant's proposal (if any), the Exhibits shall control.

12.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.

13. Signatures. The individuals executing this Agreement on behalf of Consultant represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Consultant.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the City and Consultant agree to the full performance of the foregoing terms as of the last signature date.

City of Tracy

By: Dan Arriola

Title: Mayor

Date: _____

Attest:

Adrianne Richardson, City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

Consultant

SNG & Associates, Inc.

By: Nanda K. Gottiparthi, P.E.

Title: President

Date: January 16, 2025

Federal Employer Tax ID No. 94-3359203

By: Sangeeta Gottiparthi,

Title: Treasurer

Date: January 16, 2025

Exhibits:

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)
- C Task Order Form

EXHIBIT A

Scope of Services

Consultant shall offer a complete range of Entitlements and Land Development Plan Checking Engineering Services to support the City's needs including professional Registered Traffic Engineers, Registered Professional Engineers, field crews, and office technicians. The Consultant shall ensure the tasks outlined herein are performed by the consultant's responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives. Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product.

Entitlements and Land Development Plan Checking Engineering Services include but are not necessarily limited to, those items noted below.

CONSULTANT may be asked to provide support to CITY for various Land Development projects and various Onsite and Offsite Improvement Plans for compliance with the City of Tracy standards, guidelines, Master Plans, and Specific Plans. CONSULTANT will not model the water, sewer, or traffic impacts of each Entitlement. The CITY has retained other consultants to perform said modeling. Plan Checks have a published typical plan check period of about thirty (30) calendar days per each submittal cycle. Developers typically resubmit their improvement plans and CONSULTANT will be expected to plan check the resubmittal. The CITY's goal is to complete the plan check process in about three (3) submittal cycles. These timeframes are stated goals, but each Project will proceed at its own pace. The CITY's goal is to first produce a constructible set of improvements that is in keeping with all the Standards listed below.

Consultant may be asked to provide support the City's needs including professional Registered Civil Engineers, Registered Traffic Engineer, field crews, and office technicians. If the consultant feels that additional tasks are warranted, they must be identified in the consultant's proposal.

The Consultant shall ensure the tasks outlined herein are performed by the consultant's own responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives.

Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product. The specific methodology by which the work will be accomplished shall be presented in the proposal. The Consultant is expected to expand on this scope in their proposal by incorporating specific areas of expertise and any other tasks required for a specific project and/or proposal requested.

Entitlement and Land Development Plan Checking Engineering Services include but are not necessarily limited to, those items noted below. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

1. Entitlements Packages Plan Checking:

A. Evaluate and provide written redlines and/or comments for the following items:

1. Conditional use Permit.
 2. Development Application.
 3. General Plan Amendment.
 4. Lot Line Mergers and Adjustments.
 5. Rezoning and Variances.
 6. Tentative maps and Parcel Maps.
 7. Right-of-way and easement vacations.
 8. other developer applications collectively referred to as “Entitlement”.
- B.** Entitlement Submittal Package Review (Review tasks include but are not limited to the following):
1. Preliminary Title report.
 2. Owner Statements.
 3. Zoning and Density requirements.
 4. Existing condition depicting Existing ROW and any easements located on project site.
 5. Site Plan Review per Subdivision Map Act, Title 12 of the Tracy Municipal Code. The city adopted Master Plans, adopted Specific Plans etc., and search through the CITY’s database, records, and files to determine if an Entitlement is required to reimburse another developer.
 6. Right of way dedications.
 7. Street Cross Section.
 8. Preliminary Grading and Utility Plan.
 9. Preliminary Stormwater Control Plan and Report.
 10. Preliminary Parking Plan.
 11. Preliminary Striping Plan.
 12. Preliminary Street Plan Line Exhibits for City Maintained project frontage streets.
- C.** CONSULTANT may be asked to coordinate with CITY staff, CITY consultants, and the Applicants to study the Entitlement impacts and make recommendations for mitigation of those impacts.
- D.** CONSULTANT may be asked to use the CITY’s template to complete a Cost Recovery Agreement and obtain the applicant’s signature, monetary deposit, and provide administrative assistance as needed to produce the CITY purchase orders and notices to proceed to allow systems modeling to proceed.
- E.** From the list of mitigations recommended, CONSULTANT may be asked to write and develop Conditions of Approval (COA) to outline the requirements of the Entitlement.
- F.** CONSULTANT may be asked to provide CITY staff support in writing staff reports, resolutions, and agreements as requested.
- G.** CONSULTANT may be asked to attend and participate in meetings with the developers, City Council meetings, Planning Commission meetings, Public Hearings, public outreaches, and other meetings as requested.
- H.** CONSULTANT may be asked to provide technical staff support to the

Development Services Department.

2. Land Development Plan Checking Services:

1. Existing Conditions and Demolition Plans.
 2. On-site grading plans.
 3. Erosion Control Plans.
 4. Onsite and Off-site civil improvement plans.
 5. Onsite and Off-site landscape and irrigation plans.
 6. Signing and Striping plans.
 7. Streetlight Plans.
 8. Stormwater Control Plan report.
 9. Stormwater Pollution Prevention Plan report.
 10. Hydrology and Hydraulic Calculations report.
 11. Construction Cost Estimates for Bonding purposes.
 12. Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions and supporting documents.
- A. CONSULTANT will be expected to calculate plan check fees and communicate said fees to the Developer, confirm payment with CITY staff, and shall recognize that invoices are reimbursed in part or in whole by these fees.
- B. CONSULTANT shall diligently use good-faith efforts to guide the Developer's Engineer to adhere to CITY Standards. If a particular Standard cannot be met despite numerous attempts to redesign the Project or that the redesign creates other numerous conflicts with the Standard or results in a significantly undesirable design, then CONSULTANT will be expected to guide the Developer's Engineering in submitting a "Request for Minor Deviation Letter" and work with CITY staff to process the request.
- C. Provide CITY staff support in writing staff reports, resolutions, and Subdivision Improvement Agreements, Off-Site Improvement Agreements, and/or Deferred Improvement Agreements as requested by the CITY.
- D. Attend and participate in meetings with the Developers, Developer's Engineers, City Council meetings, Planning Commission meetings, Public Hearings, public outreaches, and other meetings as requested.
- E. Provide technical staff support to the Development Services Department as requested.

3. CONSULTANT shall plan check the above items against the following documents:

1. Subdivision Map Act.
2. Title 12 of the Tracy Municipal Code.
3. CITY's adopted Master Plans.
4. CITY's adopted Specific Plans.
5. CITY's adopted environmental document; and Publicly approved site plan layouts, conditions of approvals, all collectively referred to as "Standards".
6. Document any submittal deficiencies and advise the CITY as necessary.

7. Identify any additional reference materials required for a thorough plan check, such as related off-site improvement plans, maintenance issues, approved conceptual plan, studies, or memoranda.
8. Review Project with respect to the relationship between the on-site and off-site improvements in order to achieve an understanding of the overall Project concept.
9. Conduct detailed review of the plans based on the CITY's plan check protocol. Review conditions of approval and plan submittal documents for conformance with these conditions. Compare construction documents against approved conceptual plans and existing approved conditions and notify CITY of any potential discrepancies found within the construction documents or existing approved conditions.
10. Prepare memorandum documenting plan check findings and redlines to be discussed with CONSULTANT and CITY staff. Once review comments are discussed and modified as required, CONSULTANT may be requested to formalize all comments into an official review summary for transmittal to the plan originator.
11. Provide accurate invoicing on a monthly basis using the appropriate City tracking methods.

Additional requirements are as follows:

All work shall be performed under the direction of a Registered Professional Civil Engineer and or Registered Traffic Engineer in the State of California. The Registered Professional Civil Engineer/Traffic Engineer shall maintain professional licenses required by the laws of the State of California at all times while under contract with the City of Tracy.

Personnel:

Nanda Gottiparthi, P.E., President (Principal-in-Charge)

David Caneer, P.E., QSD. , Project Manager

Mojgan Osooli, P.E., QSD, Senior Engineer

Doug Rodgers , Senior Engineer

Ritu Shrestha , Assistant Engineer

Lyle Campbell, LSA , Landscape Architect

Christopher Thnay, P.E., AICP, Principal Traffic Engineer

Joy Bhattacharya, P.E., PTOE, Vice President ITS

Michael O'Connor, P.E., QSD (Project Manager

Dave Enke, PLS, Surveying and Subdivision Map Review (sub)

EXHIBIT B

Compensation



STANDARD HOURLY RATES

<u>Position</u>	<u>Hourly Rate for 2025</u>
Principal Engineer	268.00
Senior Project Manager	237.00
Project Manager	226.00
Senior Engineer	210.00
Construction Manager	237.00
Associate Engineer II	184.00
Associate Engineer I	174.00
Assistant Engineer	163.00
Senior Engineering Inspector	184.00
Engineering Inspector	174.00
Engineering Technician/CAD Drafting	153.00
Licensed Land Surveyor	268.00
Licensed landscape Architect	205.00
Clerical/ Admin Support	110.00

Note: Rates valid through December 31, 2025. Rates will be adjusted annually every January 1st.
 Mileage to be billed at \$0.65 per mile.

EXHIBIT C - Task Order Form

(See Attached)

[Use this Form or Create New Based on Same Substance---

TASK ORDER FORM

Project:	_____
Consultant:	_____ _____
Project Task Order Number:	[X of X]
Description of Task and Services:	_____ _____ _____
Maximum Compensation for Task:	\$_____.00
Task Completion Time:	The Consultant must complete the services and deliverable for this task in On or before: [DATE]
Year-to-Date Total Authorized Task Order Compensation:	\$_____.00
Remaining Total Not to Exceed Amount upon completion of this Task:	\$_____.00

APPROVED BY CITY REPRESENTATIVE

[Insert Name and Position]

Date

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT WITH**

HALEY & ALDRICH, INC., for Entitlements and Land Development Plan Checking Engineering Services included but are not limited to Entitlements Packages Plan Checking which includes, conditional use permit, development Application general plan amendment, lot line mergers and adjustments, rezoning and variances, tentative maps and parcel maps., right-of-way and easement vacations, other developer applications collectively referred to as "Entitlement. Entitlement Submittal Package Review includes but are not limited to the following, preliminary title report, owner statements, zoning and density requirements, existing condition depicting Existing ROW and any easements located on the project site, site plan review per subdivision map act, Title 12 of the Tracy Municipal Code, The City adopted Master Plans, adopted specific plans, etc., and search through the CITY's database, records, and files to determine if an Entitlement is required to reimburse another developer, right of way dedications, street cross-section, preliminary grading, and utility plan, preliminary Stormwater Control Plan and report, preliminary parking plan, preliminary striping plan, preliminary street plan line exhibit for City maintenance project frontage streets. Land Development Plan Checking Services include existing conditions and demolition plans, on-site grading plans, erosion control plans, on-site and off-site civil improvement plans, on-site and off-site landscape and irrigation plans, signing and striping plans, streetlight plans, Stormwater Control Plan reports, Stormwater Pollution Prevention Plan report, Hydrology and Hydraulic calculations report, construction cost estimates for bonding purposes, Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions.

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and HALEY & ALDRICH, INC., a Delaware Corporation ("Consultant"). City and Consultant are referred to individually as "Party" and collectively as "Parties."

Recitals

- A.** City desires to retain Consultant for future Entitlements and Land Development Plan Checking Engineering Services for Capital Improvement Projects (CIP), Land Development, and Traffic Engineering Projects as further described herein and in Exhibit A.

On November 20, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted an RFP to solicit experienced and qualified consultants to provide On-Call Traffic Engineering Services for Engineering projects. This on-call list of Consultants creates an efficient process for future project proposal requests and does not bind the City or its budgets to a particular scope of work until it is required as City needs arise. Having previously undertaken the public contracting procedures for each Consultant on the list, as the project needs arise, the City may more readily move into contracting with one of the Consultants on the list and then return to the City Council for approval of a project-specific professional services agreement.

On December 17, 2024, the City received six (6) proposals including HALEY & ALDRICH, INC., Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer, and best fits the City's needs for competence and professional qualifications necessary for the satisfactory performance of the Services.

- A.** After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

B. This Agreement was approved on _____ pursuant to Tracy Municipal Code Section 2.20.140 (3), [and City Council Resolution No. _____].

NOW THEREFORE, for good and valuable consideration the sufficiency of which the Parties hereby acknowledge, the Parties mutually agree as follows:

1. Scope of Services. Consultant shall perform professional services, tasks, and scope of work further described in Exhibit A hereto (“Services”) for the City’s benefit on an as-needed basis pursuant to individual approved Task Orders for services within the in accordance with the terms and conditions of this Agreement. The Services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: Scott Alman, PE, Principal. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit A, nor shall Consultant use or replace any subcontractor or subconsultant, without City’s prior written consent. A failure to obtain the City’s prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

1.1 Task Order Forms. The Services within the Scope of Work will be comprised of Task Order Forms (in the form provided in Exhibit C hereto), approved, executed and delivered by the Director of HALEY & ALDRICH, INC., (“Director”) from time-to-time during the Term of this Agreement, on an as-needed basis. The Consultant cannot start performing any Work until the Director has executed a Task Order for such work. The City has no obligation to issue any Task Orders under this Master Agreement. The City may issue any number of Task Orders provided that the sum of the maximum compensation of all approved Task Orders cannot exceed the Total Not-to-Exceed amount stated in Section 3.1.

1.2 Non-Exclusive Agreement. The City reserves the right to contract with other consultants providing the same Services or similar scope of services described above during the term of this Agreement. The City further reserves the right to assign work, at its sole discretion, to consultants other than Consultant based on City’s budget, experience, and skills of consultants based on the City’s specific needs.

2. Time of Performance. Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated by the City to the Consultant. Consultant shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1 Term. The term of this Agreement shall commence on February 18, 2025, and expire and terminate automatically on February 17, 2028 or earlier by termination pursuant to Section 6 of this Agreement (“Term”). Subject to the Not-To-Exceed Amount defined in Section 3.1, the Term of this Agreement may be extended with express written amendment incorporating this Agreement signed by both Parties and one of the following City approvals: (a) City Council approval or (b) City Manager approval. An administrative extension of this Agreement by City Manager shall be limited to an

additional term of two (2) years (s) and require written determination by the City Manager that Consultant has satisfactorily met all the requirements of this Agreement.

3. Compensation. City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit B attached and incorporated by reference for services performed under this Agreement.

3.1 Annual Total Not to Exceed Amount. Consultant's total compensation for all Task Orders and Services under this Agreement shall not exceed \$600,000.00 (six hundred thousand Dollars) per City fiscal year ("Total Not-to-Exceed Amount"). Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Total Not-to-Exceed Amount. Consultant acknowledges City has no obligation to compensate or reimburse Consultant for any fees or costs incurred in excess of the Total Not-to-Exceed Amount. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement.

3.1.2 For each Task Order issued under this Agreement, Consultant's Services shall not exceed the maximum compensation stated in that Task Order.

3.2 Invoices. No less than Ninety (90) days after performing Services, Consultant shall submit monthly written invoice(s) to the City that include copies of approved Task Orders, the Services performed, and identify times, dates, and names of persons performing the services.

3.2.1 If Consultant is providing services in response to a development application, separate invoice(s) must be issued for each application and each invoice shall contain the City's designated development application number.

3.2.2 Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

3.2.3 Consultant shall submit invoices no later than 90 days after completion of a Task Order or portion of the Services. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Services.

3.3 Payment. Within 30 days after the City's receipt of invoice(s), City shall make payment to the Consultant based upon the services described on the invoice(s) and approved by the City.

3.4 City Budget Limitations. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will automatically terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the City Council. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. The payment of any compensation under this Agreement shall be subject to the City of Tracy appropriation of funds for the Services. This Agreement shall terminate in the event that such funds are not appropriated.

4. Indemnification. Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this

Agreement, except to the extent caused by the sole, active negligence, or willful misconduct of the City. In this section, “City” means the City, its officials, officers, agents, employees, and volunteers; “Consultant” means the Consultant, its employees, agents and subcontractors; “Claims” includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and “Arising out of” includes “pertaining to” and “relating to”. The Consultant’s indemnification obligation applies to the maximum extent allowed by law and includes defending the City as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City’s written request, the Consultant, at its own expense, shall defend any suit or action that is subject to this indemnification obligation. The provisions of this section survive completion of the services or the termination of this Agreement and are not limited by the provisions of Section 5 relating to insurance.

5. Insurance. Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

5.1 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) “per occurrence” coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

5.2 Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for “any auto”) “claims made” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

5.3 Workers’ Compensation coverage shall be maintained as required by the State of California.

5.4 Professional Liability “claims made” coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.

5.5 Endorsements. Consultant shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions.

5.5.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”

5.5.2 For any claims related to this Agreement, Consultant’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.

5.6 Notice of Cancellation. Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.

5.7 Authorized Insurers. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

5.8 Insurance Certificate. Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

5.9 Substitute Certificates. Consultant shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.

5.10 Consultant's Obligation. Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

6. Termination.

6.1 The Parties may terminate this Agreement for any reason, including, but not limited to, convenience, by giving ten (10) days' written notice to the other Party. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

6.2 This Agreement shall automatically terminate immediately without notice to Consultant upon any of the following occurrences: (a) material breach of this Agreement by Consultant; (b) lack of City funds appropriated. In the event of termination by material breach of Consultant, if the City replaces any incomplete or defective Services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.

6.3 Upon termination, Consultant shall return the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant in connection with the Services performed under this Agreement.

7. Ownership of Work. All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

8. Independent Contractor Status. Consultant is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Consultant is free to work for other entities while under contract with the City. Consultant, and its agents or employees, are not entitled to City benefits.

9. Conflicts of Interest. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest. The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant represents and warrants that the representations made by the Consultant concerning unfair competitive advantage and conflicts of interest in connection with its submissions in response to the City's procurement for this Agreement

were true and accurate both when made and as of the date of this Agreement. Consultant represents and warrants that it has not and shall not offer or deliver any City officer, public official, or employee any gifts or donations in violation Federal, State and/or local law.

10. Rebates, Kickbacks, or Other Unlawful Consideration. Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

11. Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

Jonathan R. Mitchell, P.E.
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant: HALEY & ALDRICH, INC.

Scott Alman, PE
Principal
785 Ygnacio Valley Road
Walnut Creek, CA 94596

With a copy to:
City Attorney
333 Civic Center Plaza
Tracy, CA 95376

12. Miscellaneous.

12.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

12.2 Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

12.3 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

12.4 Assignment and Delegation. Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

12.5 Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

12.6 Compliance with the Law. Consultant shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

12.6.1 Prevailing Wage Laws. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on “public works” and “maintenance” projects. If the services being performed under this Agreement are part of a “public works” or “maintenance” project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

12.6.2 Non-discrimination. Consultant represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Consultant shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

12.7 Business Entity Status. Consultant is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Consultant. By entering into this Agreement, Consultant represents that it is not a suspended corporation. If Consultant is a suspended corporation at the time it enters into this Agreement, City may take steps to have this Agreement declared voidable.

12.8 Business License. Before the City signs this Agreement, Consultant shall obtain a City of Tracy Business License. Consultant shall maintain an active City of Tracy Business License during the term of this Agreement.

12.9 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

12.10 Construction of Agreement. Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.

12.11 Severability. If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

12.12 Controlling Provisions. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Consultant’s proposal (if any), the Agreement shall control. In

the case of any conflict between the Exhibits hereto and the Consultant's proposal (if any), the Exhibits shall control.

12.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.

13. Signatures. The individuals executing this Agreement on behalf of Consultant represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Consultant.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the City and Consultant agree to the full performance of the foregoing terms as of the last signature date.

City of Tracy

By: Dan Arriola

Title: Mayor

Date: _____

Attest:

Adrianne Richardson, City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

Consultant

HALEY & ALDRICH, INC.



By: Scott Alman, PE.

Title: Principal

Date: 01-16-2025

Federal Employer Tax ID No. 04-2295689



By: Phil Gregory, PE, GE

Title: Senior Principal

Date: 01-16-2025

Exhibits:

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)
- C Task Order Form

EXHIBIT A

Scope of Services

Consultant shall offer a complete range of Entitlements and Land Development Plan Checking Engineering Services to support the City's needs including professional Registered Traffic Engineers, Registered Professional Engineers, field crews, and office technicians. The Consultant shall ensure the tasks outlined herein are performed by the consultant's responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives. Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product.

Entitlements and Land Development Plan Checking Engineering Services include but are not necessarily limited to, those items noted below.

CONSULTANT may be asked to provide support to CITY for various Land Development projects and various Onsite and Offsite Improvement Plans for compliance with the City of Tracy standards, guidelines, Master Plans, and Specific Plans. CONSULTANT will not model the water, sewer, or traffic impacts of each Entitlement. The CITY has retained other consultants to perform said modeling. Plan Checks have a published typical plan check period of about thirty (30) calendar days per each submittal cycle. Developers typically resubmit their improvement plans and CONSULTANT will be expected to plan check the resubmittal. The CITY's goal is to complete the plan check process in about three (3) submittal cycles. These timeframes are stated goals, but each Project will proceed at its own pace. The CITY's goal is to first produce a constructible set of improvements that is in keeping with all the Standards listed below.

Consultant may be asked to provide support the City's needs including professional Registered Civil Engineers, Registered Traffic Engineer, field crews, and office technicians. If the consultant feels that additional tasks are warranted, they must be identified in the consultant's proposal. The Consultant shall ensure the tasks outlined herein are performed by the consultant's own responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives.

Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product. The specific methodology by which the work will be accomplished shall be presented in the proposal. The Consultant is expected to expand on this scope in their proposal by incorporating specific areas of expertise and any other tasks required for a specific project and/or proposal requested.

Entitlement and Land Development Plan Checking Engineering Services include but are not necessarily limited to, those items noted below. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

1. Entitlements Packages Plan Checking:

A. Evaluate and provide written redlines and/or comments for the following items:

1. Conditional use Permit.
 2. Development Application.
 3. General Plan Amendment.
 4. Lot Line Mergers and Adjustments.
 5. Rezoning and Variances.
 6. Tentative maps and Parcel Maps.
 7. Right-of-way and easement vacations.
 8. other developer applications collectively referred to as “Entitlement”.
- B. Entitlement Submittal Package Review** (Review tasks include but are not limited to the following):
1. Preliminary Title report.
 2. Owner Statements.
 3. Zoning and Density requirements.
 4. Existing condition depicting Existing ROW and any easements located on project site.
 5. Site Plan Review per Subdivision Map Act, Title 12 of the Tracy Municipal Code. The city adopted Master Plans, adopted Specific Plans etc., and search through the CITY’s database, records, and files to determine if an Entitlement is required to reimburse another developer.
 6. Right of way dedications.
 7. Street Cross Section.
 8. Preliminary Grading and Utility Plan.
 9. Preliminary Stormwater Control Plan and Report.
 10. Preliminary Parking Plan.
 11. Preliminary Striping Plan.
 12. Preliminary Street Plan Line Exhibits for City Maintained project frontage streets.
- C. CONSULTANT** may be asked to coordinate with CITY staff, CITY consultants, and the Applicants to study the Entitlement impacts and make recommendations for mitigation of those impacts.
- D. CONSULTANT** may be asked to use the CITY’s template to complete a Cost Recovery Agreement and obtain the applicant’s signature, monetary deposit, and provide administrative assistance as needed to produce the CITY purchase orders and notices to proceed to allow systems modeling to proceed.
- E.** From the list of mitigations recommended, **CONSULTANT** may be asked to write and develop Conditions of Approval (COA) to outline the requirements of the Entitlement.
- F. CONSULTANT** may be asked to provide CITY staff support in writing staff reports, resolutions, and agreements as requested.
- G. CONSULTANT** may be asked to attend and participate in meetings with the developers, City Council meetings, Planning Commission meetings, Public Hearings, public outreaches, and other meetings as requested.
- H. CONSULTANT** may be asked to provide technical staff support to the

Development Services Department.

2. Land Development Plan Checking Services:

1. Existing Conditions and Demolition Plans.
 2. On-site grading plans.
 3. Erosion Control Plans.
 4. Onsite and Off-site civil improvement plans.
 5. Onsite and Off-site landscape and irrigation plans.
 6. Signing and Striping plans.
 7. Streetlight Plans.
 8. Stormwater Control Plan report.
 9. Stormwater Pollution Prevention Plan report.
 10. Hydrology and Hydraulic Calculations report.
 11. Construction Cost Estimates for Bonding purposes.
 12. Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions and supporting documents.
- A. CONSULTANT will be expected to calculate plan check fees and communicate said fees to the Developer, confirm payment with CITY staff, and shall recognize that invoices are reimbursed in part or in whole by these fees.
- B. CONSULTANT shall diligently use good-faith efforts to guide the Developer's Engineer to adhere to CITY Standards. If a particular Standard cannot be met despite numerous attempts to redesign the Project or that the redesign creates other numerous conflicts with the Standard or results in a significantly undesirable design, then CONSULTANT will be expected to guide the Developer's Engineering in submitting a "Request for Minor Deviation Letter" and work with CITY staff to process the request.
- C. Provide CITY staff support in writing staff reports, resolutions, and Subdivision Improvement Agreements, Off-Site Improvement Agreements, and/or Deferred Improvement Agreements as requested by the CITY.
- D. Attend and participate in meetings with the Developers, Developer's Engineers, City Council meetings, Planning Commission meetings, Public Hearings, public outreaches, and other meetings as requested.
- E. Provide technical staff support to the Development Services Department as requested.

3. CONSULTANT shall plan check the above items against the following documents:

1. Subdivision Map Act.
2. Title 12 of the Tracy Municipal Code.
3. CITY's adopted Master Plans.
4. CITY's adopted Specific Plans.
5. CITY's adopted environmental document; and Publicly approved site plan layouts, conditions of approvals, all collectively referred to as "Standards".
6. Document any submittal deficiencies and advise the CITY as necessary.

7. Identify any additional reference materials required for a thorough plan check, such as related off-site improvement plans, maintenance issues, approved conceptual plan, studies, or memoranda.
8. Review Project with respect to the relationship between the on-site and off-site improvements in order to achieve an understanding of the overall Project concept.
9. Conduct detailed review of the plans based on the CITY's plan check protocol. Review conditions of approval and plan submittal documents for conformance with these conditions. Compare construction documents against approved conceptual plans and existing approved conditions and notify CITY of any potential discrepancies found within the construction documents or existing approved conditions.
10. Prepare memorandum documenting plan check findings and redlines to be discussed with CONSULTANT and CITY staff. Once review comments are discussed and modified as required, CONSULTANT may be requested to formalize all comments into an official review summary for transmittal to the plan originator.
11. Provide accurate invoicing on a monthly basis using the appropriate City tracking methods.

Additional requirements are as follows:

All work shall be performed under the direction of a Registered Professional Civil Engineer and or Registered Traffic Engineer in the State of California. The Registered Professional Civil Engineer/Traffic Engineer shall maintain professional licenses required by the laws of the State of California at all times while under contract with the City of Tracy.

Personnel:

Scott Alman, PE, QSDCONTRACT MANAGER, DEVELOPMENT PROJECT MANAGER

Bruce Zaeni, PE, DEVELOPMENT PROJECT MANAGER

Lynne Filson, PE, TE, LS, MAP CHECK & TRAFFIC ENGINEERING

Dave Burger, PQ, EG GEOTECHNICAL REVIEW

Nancy Gardiner, CPESC, QSD/QSP, QISP, ToR STORMWATER MANAGEMENT REVIEW

Ronaldo Longoria, PE PROJECT MANAGER & PLAN REVIEW

Julissa Rico-Ruiz TRAFFIC ENGINEERING

Kara Malig PLAN REVIEW

EXHIBIT B

Compensation



Standard Fee Schedule
2025 RS2

FEES FOR SERVICES

Fees for services will be based on the time worked on the project by staff personnel plus reimbursable expenses. The fee will be computed as follows.

1. Labor related fees will be computed based on personnel billing rates in effect at the time the services are performed. Personnel billing rates are subject to revision on, or about, 1 January and 1 July of each year. The hourly rates are fully inclusive of fringe benefits, burden, and fee. Current rates are provided in the table below.

<i>Classification</i>	<i>Hourly Rate</i>
<i>Project Support</i>	<i>\$122</i>
<i>Technician</i>	<i>\$125</i>
<i>Project Technician</i>	<i>\$135</i>
<i>Senior Technician</i>	<i>\$145</i>
<i>Project Controls</i>	<i>\$147</i>
<i>Staff Professional 1</i>	<i>\$158</i>
<i>Staff Professional 2</i>	<i>\$177</i>
<i>Project Professional</i>	<i>\$197</i>
<i>Technical Specialist</i>	<i>\$205</i>
<i>Project Manager / Senior Technical Specialist</i>	<i>\$225</i>
<i>Senior Project Manager / Technical Expert</i>	<i>\$265</i>
<i>Program Manager / Senior Technical Expert</i>	<i>\$339</i>
<i>Principal</i>	<i>\$360</i>
<i>Senior Principal</i>	<i>\$395</i>

2. Pre-trial conferences, depositions, and expert testimony will be billed at one and one-half (1.5) times the rates quoted above.
3. Second and Third Shift, Weekend, and Holiday hours will be billed at \$40/hour premium. Second and Third Shifts are those starting between 4 PM and 4 AM.
4. Field visits will be billed at 4-hour minimum; night shifts will be billed at 8-hour minimum. Cancellation of scheduled night shift within 24 hours will be charged the full 8 hours.
5. Direct non-salary expenses will be billed at our cost plus fifteen (15) percent, except for employee vehicle use which will be billed at IRS allowed mileage rates.
6. General project-related expenses such as mobile phone expenses (including mobile app fees); in-house reproduction; printing costs for reports, drawings, and other project records; mail and overnight document delivery; and long-term electronic and paper document storage will be billed as a general communication fee at a rate of four (4) percent of the labor charges.
7. Subcontractors will be billed at our cost plus fifteen (15) percent.
8. Equipment and laboratory testing will be billed at rates listed in the attached Equipment and Laboratory Rate Schedules, as applicable.



Equipment Rate Schedule
2025 RS2
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EQUIPMENT RATE SCHEDULE

AJR MONITORING f,QUJPMENT	Daily	Weekly	Monthly
Dmgeq'flae Sampli11g Kit {rubes nor imdride d}	\$10	\$40	\$120
Dt1St' Monitor	\$100	\$400	\$1,200
four-6as Meter	\$43	\$1.72	\$516
Plrntoio11izm:ion Detector -:W_6 or 11.7 eV	\$70	\$280	S-840
HEW TESTING	Daily	Weekly	Monthly
Double Ririg l11filtrrometer	\$150	---	-
Held Supplies	\$28	\$112	\$MB
6ue./p.h Pe,:meamete,	\$150	---	-
Inclirilomere, Readillgs	\$150	---	-
Sarild Co11e field Density {it	\$75	\$225	S-725
pH Mere,	\$15	\$60	\$180
Pile Lotld Testi11g (per rest)	\$,il,500	---	-
Plate load Tester (per day)	\$50	-	-
Pit Box Test (per day)	\$400	---	-
Sfrig Tesr Kit (pet day)	\$350	---	-
Wood Pile lo11d Testing ,(per test)	\$150	---	-
SAMPLING EQUIPMENT	Daily	Weekly	Monthly
Groundwater Stlmpfng Bundle with Bladder Pump	\$315	S-1,000	\$3,000
Groundwater Stlmpfng lJund/e M*th Peristaltii: P'!J:mp	\$150	\$750	\$1,100
Groundwater Sampling Bundle iwrh aw11djos Pump	\$350	S-1,100	\$3,100
Rotohamme, D.rm	\$100	\$400	-
SoilSampfng o.r Tant Pull 5quipment Burild/e	\$150	\$350	\$1,050
Soil Vapor Sampri11g Bu11d/e	\$400	S-1,400	\$1,600
Tumidity Meter	\$20	\$80	\$240
1'51 Meter iwtll flow Cell	\$100	\$400	\$1,200
WATER l'fVet METERS AND INTER'ACEPROBES	Daily	Weekly	Monthly
Btlwlogger	\$10	\$40	\$120
l ewellogger	\$25	\$100	\$300
011/Wmer Inte-rface Probe	\$50	\$200	\$600
Water level Indirator	\$20	\$80	\$240
GEOTECH/11/CA! INSTIWMENMT!0/11	Daily	Weekly	Monthly
Qme PenE't rometer	\$15	\$60	\$18"0
Grol:k Mo11r1m:s - E:lfl:tm11rr::Data!ogge r	-	\$1.20	\$360
Dyllamic;Colle Peneuomerer	\$150	---	-
Ele,rtrollic&adcmt Box	\$25	\$100	5300
6eo ton u:::-1 Single Cl'mmeJtagger	--	\$80	\$240
6eoJ.-:011 - CR 800 Vibrating Wire Data./C'lgger with Morle_m,	-	\$100	\$300
GeoJ.;01.1GK401 VflJmli11g Wire 1/leadour Box	\$50	\$1.00	\$300
lIH'Jace indinometer Rental	--	---	\$1,250
Mor/em	--	---	\$250
lllacJear DBJsity Gauge	\$100	\$300	\$900



EQUIPMENT RATE SCHEDULE (continued)

GEOTECHNICAL INSTRUMENTATION (continued)	Daily	Weekly	Monthly
Power System - &ne, y	\$5	\$20	\$60
Power System - Solar,	\$15	\$60	\$180
Seismograph - Manual	\$75	\$225	\$725
Seismograph - Remote Units	\$100	\$275	\$825
Tiltmeter		\$150	\$450
Vibrion amplitude Monitoring Starfish	\$125	\$325	\$925
VDI/ Web Service			\$200
UAS DATA ACQUISITION & PROCESSING	Daily	Weekly	Monthly
UAS Digital Image Equipment		\$200	\$800
UAS Digital Image w/ Ground Control Yoke {UAS+ GNSS}		\$300	\$1,200
UAS flyspec: tml Equipment		\$300	\$1,200
UAS flyspec: tml w/ Ground Control Package {UAS w/FS + GNSS}		\$400	\$1,600
LIDAR SCANNING & PROCESSING	Daily	Weekly	Monthly
LIDAR Scanning Equipment (Terrestrial & Aerial)	\$400	\$1,600	
LIDAR flight: iment w/ Ground Control Pilotage {UAS+ GNSS}	\$500	\$2,000	
MISCELLANEOUS	Daily	Weekly	Monthly
Omron - Digital	\$10		
Decontamination Kit (each)			
Field Truck (including fuel)	\$95	\$380	\$1,140
Generator	\$50	\$100	\$600
GeoTech Sample Jars 15 oz. (per box)	\$10		
GPS Unit	\$150	\$600	\$1,800
Harness with Restraint Lanyard	\$40	\$160	\$480
Motorized CP2.00d Load (paffi)		\$35	\$140
Perforated Protective Equipment - Level C (per person)	\$45		
R/11 Catalyst - 26 ft Sampling Vessel	\$600		
Research Nets	\$60		
Sampling Tubing (roll)	\$20		
Saximeter ti	\$35	\$140	\$420
Sound Level Meter		\$200	\$600
Tool Trimmer	\$300		



Laboratory Rate Schedule
2025 RS2
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LABORATORY LIL:ATIE SOIEDUIJE

SOil C1A551HCA TION AND INDEX TESTS	U11itPrice
Atterbtg Limits -1 Point	\$125
Atterbtg Limits - 3 Point	\$180
Gmili Size - Hydrometer and Sie11eAm1lysis	\$300
Groi11Size - 200 Wash	\$100
Grai11 Size-Sie11eAraalysis (Standard Sample)	\$125
Gmili Size - Sie11e A1<1alysis (Bulk Sample)	\$150
Gmili Size - Hydrometer	\$175
Water Content	\$25
Organic Content	\$75
Specific Gravity	\$115
Visual Classification	\$15
SOil MO/S:WRE-DEIN'SFTY TESTS	U11it Price
Bulk Density	\$100
California Bearing Ratio (CBR)	\$650
Plasticity - 1 Point	\$12.50
Plasticity - 4 Point	\$250
Plasticity - 4 Point (Cohesive Soil)	\$300
SOil CONSOLIDATION AND STRENGTH TESTS	U11it Price
Consolidation - Coefficient of Stress (CRS)	\$650
Consolidation - Immediate	\$500
Unconfined Compression	\$100
Direct Simple Shear (DSS)	\$300
Cyclic Simple Shear (COSS)	\$650
Triaxial Compression - Isotropic Consolidation	\$500
Triaxial Compression - Ko/anisotropic Consolidation	\$800
Triaxial Compression - Unconsolidated	\$300
SURCHARGE RATES	U11it Price
Atterbtg Limits Dry Prep	\$15
Arterberg Limits O.A. Classification	\$4.00
Sample Preparation	\$120
Triaxial High Pressure (over 100 psi)	\$1.00
Tube Omit (per unit)	\$25
Tube Extension	\$100

Additonal H&A laboratory analyses, prefill, and, where available, upm rer.ue-;it_

EXHIBIT C - Task Order Form

(See Attached)

[Use this Form or Create New Based on Same Substance---

TASK ORDER FORM

Project:	_____
Consultant:	_____ _____
Project Task Order Number:	[X of X]
Description of Task and Services:	_____ _____ _____
Maximum Compensation for Task:	\$_____ .00
Task Completion Time:	The Consultant must complete the services and deliverable for this task in On or before: [DATE]
Year-to-Date Total Authorized Task Order Compensation:	\$_____ .00
Remaining Total Not to Exceed Amount upon completion of this Task:	\$_____ .00

APPROVED BY CITY REPRESENTATIVE

[Insert Name and Position]

Date

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT WITH**

NV5, Inc. for Entitlements and Land Development Plan Checking Engineering Services included but are not limited to Entitlements Packages Plan Checking which includes, conditional use permit, development Application general plan amendment, lot line mergers and adjustments, rezoning and variances, tentative maps and parcel maps., right-of-way and easement vacations, other developer applications collectively referred to as "Entitlement. Entitlement Submittal Package Review includes but are not limited to the following, preliminary title report, owner statements, zoning and density requirements, existing condition depicting Existing ROW and any easements located on the project site, site plan review per subdivision map act, Title 12 of the Tracy Municipal Code, The City adopted Master Plans, adopted specific plans, etc., and search through the CITY's database, records, and files to determine if an Entitlement is required to reimburse another developer, right of way dedications, street cross-section, preliminary grading, and utility plan, preliminary Stormwater Control Plan and report, preliminary parking plan, preliminary striping plan, preliminary street plan line exhibit for City maintenance project frontage streets. Land Development Plan Checking Services include existing conditions and demolition plans, on-site grading plans, erosion control plans, on-site and off-site civil improvement plans, on-site and off-site landscape and irrigation plans, signing and striping plans, streetlight plans, Stormwater Control Plan reports, Stormwater Pollution Prevention Plan report, Hydrology and Hydraulic calculations report, construction cost estimates for bonding purposes, Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions.

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and NV5, Inc., a California Corporation ("Consultant"). City and Consultant are referred to individually as "Party" and collectively as "Parties."

Recitals

- A.** City desires to retain Consultant for future Entitlements and Land Development Plan Checking Engineering Services for Capital Improvement Projects (CIP), Land Development, and Traffic Engineering Projects as further described herein and in Exhibit A.

On November 20, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted an RFP to solicit experienced and qualified consultants to provide On-Call Traffic Engineering Services for Engineering projects. This on-call list of Consultants creates an efficient process for future project proposal requests and does not bind the City or its budgets to a particular scope of work until it is required as City needs arise. Having previously undertaken the public contracting procedures for each Consultant on the list, as the project needs arise, the City may more readily move into contracting with one of the Consultants on the list and then return to the City Council for approval of a project-specific professional services agreement.

On December 17, 2024, the City received six (6) proposals including NV5, Inc., Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer, and best fits the City's needs for competence and professional qualifications necessary for the satisfactory performance of the Services.

- A.** After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

B. This Agreement was approved on _____ pursuant to Tracy Municipal Code Section 2.20.140 (3), [and City Council Resolution No. _____].

NOW THEREFORE, for good and valuable consideration the sufficiency of which the Parties hereby acknowledge, the Parties mutually agree as follows:

1. **Scope of Services.** Consultant shall perform professional services, tasks, and scope of work further described in Exhibit A hereto (“Services”) for the City’s benefit on an as-needed basis pursuant to individual approved Task Orders for services within the in accordance with the terms and conditions of this Agreement. The Services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: Jeffrey M. Cooper, PE, Chief Operating Officer. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit A, nor shall Consultant use or replace any subcontractor or subconsultant, without City’s prior written consent. A failure to obtain the City’s prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

1.1 **Task Order Forms.** The Services within the Scope of Work will be comprised of Task Order Forms (in the form provided in Exhibit C hereto), approved, executed and delivered by the Director of NV5, Inc., (“Director”) from time-to-time during the Term of this Agreement, on an as-needed basis. The Consultant cannot start performing any Work until the Director has executed a Task Order for such work. The City has no obligation to issue any Task Orders under this Master Agreement. The City may issue any number of Task Orders provided that the sum of the maximum compensation of all approved Task Orders cannot exceed the Total Not-to-Exceed amount stated in Section 3.1.

1.2 **Non-Exclusive Agreement.** The City reserves the right to contract with other consultants providing the same Services or similar scope of services described above during the term of this Agreement. The City further reserves the right to assign work, at its sole discretion, to consultants other than Consultant based on City’s budget, experience, and skills of consultants based on the City’s specific needs.

2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated by the City to the Consultant. Consultant shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1 **Term.** The term of this Agreement shall commence on February 18, 2025, and expire and terminate automatically on February 17, 2028 or earlier by termination pursuant to Section 6 of this Agreement (“Term”). Subject to the Not-To-Exceed Amount defined in Section 3.1, the Term of this Agreement may be extended with express written amendment incorporating this Agreement signed by both Parties and one of the following City approvals: (a) City Council approval or (b) City Manager approval. An administrative extension of this Agreement by City Manager shall be limited to an additional term of two (2) years (s) and require written determination by the City Manager that Consultant has satisfactorily met all the requirements of this Agreement.

3. Compensation. City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit B attached and incorporated by reference for services performed under this Agreement.

3.1 Annual Total Not to Exceed Amount. Consultant's total compensation for all Task Orders and Services under this Agreement shall not exceed \$600,000.00 (six hundred thousand Dollars) per City fiscal year ("Total Not-to-Exceed Amount"). Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Total Not-to-Exceed Amount. Consultant acknowledges City has no obligation to compensate or reimburse Consultant for any fees or costs incurred in excess of the Total Not-to-Exceed Amount. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement.

3.1.2 For each Task Order issued under this Agreement, Consultant's Services shall not exceed the maximum compensation stated in that Task Order.

3.2 Invoices. No less than Ninety (90) days after performing Services, Consultant shall submit monthly written invoice(s) to the City that include copies of approved Task Orders, the Services performed, and identify times, dates, and names of persons performing the services.

3.2.1 If Consultant is providing services in response to a development application, separate invoice(s) must be issued for each application and each invoice shall contain the City's designated development application number.

3.2.2 Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

3.2.3 Consultant shall submit invoices no later than 90 days after completion of a Task Order or portion of the Services. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Services.

3.3 Payment. Within 30 days after the City's receipt of invoice(s), City shall make payment to the Consultant based upon the services described on the invoice(s) and approved by the City.

3.4 City Budget Limitations. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will automatically terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the City Council. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. The payment of any compensation under this Agreement shall be subject to the City of Tracy appropriation of funds for the Services. This Agreement shall terminate in the event that such funds are not appropriated.

4. Indemnification. Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence, or willful misconduct of the City. In this section, "City" means the City, its officials, officers, agents, employees, and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes

claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to". The Consultant's indemnification obligation applies to the maximum extent allowed by law and includes defending the City as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, shall defend any suit or action that is subject to this indemnification obligation. The provisions of this section survive completion of the services or the termination of this Agreement and are not limited by the provisions of Section 5 relating to insurance.

5. Insurance. Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

5.1 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

5.2 Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

5.3 Workers' Compensation coverage shall be maintained as required by the State of California.

5.4 Professional Liability "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.

5.5 Endorsements. Consultant shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions.

5.5.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

5.5.2 For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

5.6 Notice of Cancellation. Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.

5.7 Authorized Insurers. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

5.8 Insurance Certificate. Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

5.9 Substitute Certificates. Consultant shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.

5.10 Consultant's Obligation. Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

6. Termination.

6.1 The Parties may terminate this Agreement for any reason, including, but not limited to, convenience, by giving ten (10) days' written notice to the other Party. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

6.2 This Agreement shall automatically terminate immediately without notice to Consultant upon any of the following occurrences: (a) material breach of this Agreement by Consultant; (b) lack of City funds appropriated. In the event of termination by material breach of Consultant, if the City replaces any incomplete or defective Services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.

6.3 Upon termination, Consultant shall return the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant in connection with the Services performed under this Agreement.

7. Ownership of Work. All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

8. Independent Contractor Status. Consultant is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Consultant is free to work for other entities while under contract with the City. Consultant, and its agents or employees, are not entitled to City benefits.

9. Conflicts of Interest. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest. The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant represents and warrants that the representations made by the Consultant concerning unfair competitive advantage and conflicts of interest in connection with its submissions in response to the City's procurement for this Agreement were true and accurate both when made and as of the date of this Agreement. Consultant represents and warrants that it has not and shall not offer or deliver any City officer, public official, or employee any gifts or donations in violation Federal, State and/or local law.

10. Rebates, Kickbacks, or Other Unlawful Consideration. Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

11. Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

Jonathan R. Mitchell, P.E.
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant: NV5, Inc.

Jeffrey M. Cooper, PE
Chief Operating Officer
2525 Natamos Park Dr., Suite 350
Sacramento, CA 95833

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

12. Miscellaneous.

12.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

12.2 Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

12.3 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

12.4 Assignment and Delegation. Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

12.5 Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit,

claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

12.6 Compliance with the Law. Consultant shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

12.6.1 Prevailing Wage Laws. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

12.6.2 Non-discrimination. Consultant represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Consultant shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

12.7 Business Entity Status. Consultant is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Consultant. By entering into this Agreement, Consultant represents that it is not a suspended corporation. If Consultant is a suspended corporation at the time it enters into this Agreement, City may take steps to have this Agreement declared voidable.

12.8 Business License. Before the City signs this Agreement, Consultant shall obtain a City of Tracy Business License. Consultant shall maintain an active City of Tracy Business License during the term of this Agreement.

12.9 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

12.10 Construction of Agreement. Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.

12.11 Severability. If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

12.12 Controlling Provisions. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Consultant's proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Consultant's proposal (if any), the Exhibits shall control.

12.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.

13. Signatures. The individuals executing this Agreement on behalf of Consultant represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Consultant.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the City and Consultant agree to the full performance of the foregoing terms as of the last signature date.

City of Tracy

By: Dan Arriola

Title: Mayor

Date: _____

Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

Consultant

NV5, Inc.

By: Jeffrey M. Cooper, PE

Title: Chief Operating Officer

Date: 01/16/2025

Federal Employer Tax ID No. 94-2706173

By: Edward H. Codispoti

Title: Chief Financial Officer

Date: _____

Exhibits:

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)
- C Task Order Form

EXHIBIT A

Scope of Services

Consultant shall offer a complete range of Entitlements and Land Development Plan Checking Engineering Services to support the City's needs including professional Registered Traffic Engineers, Registered Professional Engineers, field crews, and office technicians. The Consultant shall ensure the tasks outlined herein are performed by the consultant's responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives. Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product.

Entitlements and Land Development Plan Checking Engineering Services include but are not necessarily limited to, those items noted below.

CONSULTANT may be asked to provide support to CITY for various Land Development projects and various Onsite and Offsite Improvement Plans for compliance with the City of Tracy standards, guidelines, Master Plans, and Specific Plans. CONSULTANT will not model the water, sewer, or traffic impacts of each Entitlement. The CITY has retained other consultants to perform said modeling. Plan Checks have a published typical plan check period of about thirty (30) calendar days per each submittal cycle. Developers typically resubmit their improvement plans and CONSULTANT will be expected to plan check the resubmittal. The CITY's goal is to complete the plan check process in about three (3) submittal cycles. These timeframes are stated goals, but each Project will proceed at its own pace. The CITY's goal is to first produce a constructible set of improvements that is in keeping with all the Standards listed below.

Consultant may be asked to provide support the City's needs including professional Registered Civil Engineers, Registered Traffic Engineer, field crews, and office technicians. If the consultant feels that additional tasks are warranted, they must be identified in the consultant's proposal.

The Consultant shall ensure the tasks outlined herein are performed by the consultant's own responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives.

Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product. The specific methodology by which the work will be accomplished shall be presented in the proposal. The Consultant is expected to expand on this scope in their proposal by incorporating specific areas of expertise and any other tasks required for a specific project and/or proposal requested.

Entitlement and Land Development Plan Checking Engineering Services include but are not necessarily limited to, those items noted below. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

1. Entitlements Packages Plan Checking:

A. Evaluate and provide written redlines and/or comments for the following items:

1. Conditional use Permit.
2. Development Application.
3. General Plan Amendment.
4. Lot Line Mergers and Adjustments.
5. Rezoning and Variances.
6. Tentative maps and Parcel Maps.
7. Right-of-way and easement vacations.
8. other developer applications collectively referred to as "Entitlement".

B. Entitlement Submittal Package Review (Review tasks include but are not limited to the following):

1. Preliminary Title report.
2. Owner Statements.
3. Zoning and Density requirements.
4. Existing condition depicting Existing ROW and any easements located on project site.
5. Site Plan Review per Subdivision Map Act, Title 12 of the Tracy Municipal Code. The city adopted Master Plans, adopted Specific Plans etc., and search through the CITY's database, records, and files to determine if an Entitlement is required to reimburse another developer.
6. Right of way dedications.
7. Street Cross Section.
8. Preliminary Grading and Utility Plan.
9. Preliminary Stormwater Control Plan and Report.
10. Preliminary Parking Plan.
11. Preliminary Striping Plan.
12. Preliminary Street Plan Line Exhibits for City Maintained project frontage streets.

- C. CONSULTANT** may be asked to coordinate with CITY staff, CITY consultants, and the Applicants to study the Entitlement impacts and make recommendations for mitigation of those impacts.
- D. CONSULTANT** may be asked to use the CITY's template to complete a Cost Recovery Agreement and obtain the applicant's signature, monetary deposit, and provide administrative assistance as needed to produce the CITY purchase orders and notices to proceed to allow systems modeling to proceed.
- E. From the list of mitigations recommended, CONSULTANT** may be asked to write and develop Conditions of Approval (COA) to outline the requirements of the Entitlement.
- F. CONSULTANT** may be asked to provide CITY staff support in writing staff reports, resolutions, and agreements as requested.
- G. CONSULTANT** may be asked to attend and participate in meetings with the developers, City Council meetings, Planning Commission meetings, Public Hearings, public outreaches, and other meetings as requested.
- H. CONSULTANT** may be asked to provide technical staff support to the

Development Services Department.

2. Land Development Plan Checking Services:

1. Existing Conditions and Demolition Plans.
 2. On-site grading plans.
 3. Erosion Control Plans.
 4. Onsite and Off-site civil improvement plans.
 5. Onsite and Off-site landscape and irrigation plans.
 6. Signing and Striping plans.
 7. Streetlight Plans.
 8. Stormwater Control Plan report.
 9. Stormwater Pollution Prevention Plan report.
 10. Hydrology and Hydraulic Calculations report.
 11. Construction Cost Estimates for Bonding purposes.
 12. Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions and supporting documents.
- A. CONSULTANT will be expected to calculate plan check fees and communicate said fees to the Developer, confirm payment with CITY staff, and shall recognize that invoices are reimbursed in part or in whole by these fees.
- B. CONSULTANT shall diligently use good-faith efforts to guide the Developer's Engineer to adhere to CITY Standards. If a particular Standard cannot be met despite numerous attempts to redesign the Project or that the redesign creates other numerous conflicts with the Standard or results in a significantly undesirable design, then CONSULTANT will be expected to guide the Developer's Engineering in submitting a "Request for Minor Deviation Letter" and work with CITY staff to process the request.
- C. Provide CITY staff support in writing staff reports, resolutions, and Subdivision Improvement Agreements, Off-Site Improvement Agreements, and/or Deferred Improvement Agreements as requested by the CITY.
- D. Attend and participate in meetings with the Developers, Developer's Engineers, City Council meetings, Planning Commission meetings, Public Hearings, public outreaches, and other meetings as requested.
- E. Provide technical staff support to the Development Services Department as requested.

3. CONSULTANT shall plan check the above items against the following documents:

1. Subdivision Map Act.
2. Title 12 of the Tracy Municipal Code.
3. CITY's adopted Master Plans.
4. CITY's adopted Specific Plans.
5. CITY's adopted environmental document; and Publicly approved site plan layouts, conditions of approvals, all collectively referred to as "Standards".
6. Document any submittal deficiencies and advise the CITY as necessary.

7. Identify any additional reference materials required for a thorough plan check, such as related off-site improvement plans, maintenance issues, approved conceptual plan, studies, or memoranda.
8. Review Project with respect to the relationship between the on-site and off-site improvements in order to achieve an understanding of the overall Project concept.
9. Conduct detailed review of the plans based on the CITY's plan check protocol. Review conditions of approval and plan submittal documents for conformance with these conditions. Compare construction documents against approved conceptual plans and existing approved conditions and notify CITY of any potential discrepancies found within the construction documents or existing approved conditions.
10. Prepare memorandum documenting plan check findings and redlines to be discussed with CONSULTANT and CITY staff. Once review comments are discussed and modified as required, CONSULTANT may be requested to formalize all comments into an official review summary for transmittal to the plan originator.
11. Provide accurate invoicing on a monthly basis using the appropriate City tracking methods.

Additional requirements are as follows:

All work shall be performed under the direction of a Registered Professional Civil Engineer and or Registered Traffic Engineer in the State of California. The Registered Professional Civil Engineer/Traffic Engineer shall maintain professional licenses required by the laws of the State of California at all times while under contract with the City of Tracy.

Personnel:

Jeffrey M. Cooper, PE, Chief Operating Officer (Principal-in-Charge)

Tamara O'Neal, PE, Project Manager

Padma Asam, PE, QSD/P, ENV SP, LEED AP Plan Reviewer (Entitlement/General Civil)

Michael Rocco Plan Reviewer (Entitlement/General Civil)

Sarah Seitz (Entitlement/General Civil)

Andrea Thomas, PE (Entitlement/General Civil)

Jenny Van Truong, PE (Entitlement/General Civil)

Jay Fahrion, PLS (Survey, Maps, Row, Plats & Legals)

Scott Moors, PG, CEG, CHG (Geotechnical)

James Miller, PE (Traffic/Street Lighting)

Gerald Tom, PE, TE (Traffic/Street Lighting)

Calvin Harra (Planning/Zoning)

Tam Dan L. Vo (Planning/Zoning)

Mike Smyth, RLA, ASLA (Landscape/Irrigation)

Jennifer Peterson, PE, CFM, QSD/P, CPESC, LEED AP (Stormwater/Hydrology & Hydraulics)

Thomas Grace, EIT (Stormwater/Hydrology & Hydraulics)

Matthew Moore, PE, ENV SP, QSD/P, TOR (Stormwater/Hydrology & Hydraulics)

Kaly Morris (Permit Technician)

Kira Bowen (Permit Technician)

Kenneth Hicks, QSP (Inspector)

David Caniglia, LEED GA (Inspector)

EXHIBIT B

Compensation

Fee Schedule

Effective through December 31, 2025. After this time, NV5 will receive a 3% rate increase for each consecutive year beginning January 1, 2026.

NV5

PLAN REVIEW FEES	HOURLY RATE *
Project Manager	\$210
Senior Engineer/Planner/Surveyor	\$190
Associate Engineer/Planner/Surveyor	\$175
Assistant Engineer/Planner/Surveyor	\$140
Senior Designer	\$155
Plan Intake Coordinator/Permit Technician	\$85
Expedite Plan Review	Additional 25% of the fees above
INSPECTION FEES	HOURLY RATE *
Senior Inspector	\$155 (2 hour minimum charge)
Inspector	\$135 (2 hour minimum charge)
REIMBURSABLE FEES	COST
Job site Mileage (Non-City Vehicle)	per IRS standard

* Regular rates. Work in excess of 8 hours and work on Saturdays will be billed at 1.5 times the regular rate. Work in excess of 12 hours and work on Sundays and Holidays will be billed at 2 times the regular rate.

EXHIBIT C - Task Order Form

(See Attached)

[Use this Form or Create New Based on Same Substance---

TASK ORDER FORM

Project:	_____
Consultant:	_____ _____
Project Task Order Number:	[X of X]
Description of Task and Services:	_____ _____ _____
Maximum Compensation for Task:	\$ _____ .00
Task Completion Time:	The Consultant must complete the services and deliverable for this task in On or before: [DATE]
Year-to-Date Total Authorized Task Order Compensation:	\$ _____ .00
Remaining Total Not to Exceed Amount upon completion of this Task:	\$ _____ .00

APPROVED BY CITY REPRESENTATIVE

[Insert Name and Position]

Date

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2025-_____

APPROVING AN ON-CALL LIST, FOR FIVE YEARS, OF SIX QUALIFIED CONSULTANTS FOR ENTITLEMENTS AND LAND DEVELOPMENT PLAN CHECKING ENGINEERING SERVICES.

WHEREAS, the City has a variety of Capital Improvement Projects (CIP), Land Development projects, and Transportation and Traffic projects requiring specialized professional Entitlements and Land Development Plan Checking Engineering Services; and

WHEREAS, the City requires the support of professional, technical, and related services from outside firms to perform these Entitlements and Land Development Plan Checking Engineering Services tasks; and

WHEREAS, on November 20, 2024, staff, following established procedures in accordance with Tracy Municipal Code, Section 2.20.140, posted on the City's website a Request for Proposals (RFP) to solicit experienced and qualified consultants to provide On-Call Entitlements and Land Development Plan Checking Engineering Services for various engineering projects; and

WHEREAS, on November 20, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted a Request for Proposal (RFP) to solicit experienced and qualified consultants to provide On-Call Entitlements and Land Development Plan Checking Engineering Services. The requested services include but are not limited to Entitlements Packages Plan Checking which includes, conditional use permit, development application, general plan amendment, lot line mergers and adjustments, rezoning and variances, tentative maps and parcel maps, right-of-way (ROW) and easement vacations, and other developer applications collectively referred to as "Entitlement." Entitlement Submittal Package Review includes but is not limited to the following, preliminary title report, owner statements, zoning and density requirements, existing condition depicting existing ROW and any easements located on the project site, site plan review per subdivision map act, Title 12 of the Tracy Municipal Code, the City's adopted Master Plans, adopted specific plans, etc., searching through the City's database, records, and files to determine if an Entitlement is required to reimburse another developer, right-of-way dedications, street cross-section, preliminary grading, and utility plan, preliminary Stormwater Control Plan and report, preliminary parking plan, preliminary striping plan, preliminary street line exhibits for City maintenance project frontage streets. Land Development Plan Checking Services include existing conditions and demolition plans, on-site grading plans, erosion control plans, on-site and off-site civil improvement plans, on-site and off-site landscape and irrigation plans, signing and striping plans, streetlight plans, Stormwater Control Plan reports, Stormwater Pollution Prevention Plan report, Hydrology and Hydraulic calculations report, construction cost estimates for bonding purposes, Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions; and

WHEREAS, on December 17, 2024, the City received six (6) proposals to provide the required services, as shown in the table below:

Consultant	Service Provided
GDR Engineering, Inc.	Entitlements and Land Development Plan Checking Engineering Services
Ghirardelli Associates, Inc.	Entitlements and Land Development Plan Checking Engineering Services
HALEY & ALDRICH, INC.	Entitlements and Land Development Plan Checking Engineering Services
NV5, Inc.	Entitlements and Land Development Plan Checking Engineering Services
Precision Civil Engineering, Inc.	Entitlements and Land Development Plan Checking Engineering Services
SNG & Associates Inc.	Entitlements and Land Development Plan Checking Engineering Services

and;

WHEREAS, the City's internal Selection Committee carefully evaluated all six (6) proposals received based on the criteria described in the RFP and determined that all six (6) possess the skills, experience, competence, professional qualifications, and certifications required to provide the services requested by the City and should remain on the On-Call List; and

WHEREAS, the City will utilize such services on an On-Call basis, and the City will execute Master Professional Services Agreements with each consultant and issue Task Orders for the scope of work needed, through future City Council action, as may be needed to comply with the Tracy Municipal Code; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby approves an On-Call Master Professional Services List for five (5) years, for Entitlements and Land Development Plan Checking Engineering Services; and be it

FURTHER RESOLVED: That the City Council directs staff to return for future approvals of any specific agreement with any specific firm listed on the foregoing On-Call List, to the extent may be needed for either budgetary or contract authority under the Tracy Municipal Code; and be it

FURTHER RESOLVED: The approval requested in this item is "planning and feasibility services" and, therefore, is not considered a "project" as defined by Section 21065 of the Public Resources Code. Any projects for which such services are performed will be reviewed as required under the California Environmental Quality Act (CEQA) before future discretionary actions are taken.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 18th day of February 2025 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST: _____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of the
City of Tracy, California

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2025-_____

APPROVING (1) THE EXECUTION OF A MASTER PROFESSIONAL SERVICES AGREEMENT, WITH AN INITIAL TERM OF THREE YEARS AND A NOT-TO-EXCEED FISCAL YEAR AMOUNT OF \$600,000, WITH SNG & ASSOCIATES, INC., AND (2) AN ADMINISTRATIVE EXTENSION, UP TO TWO YEARS, BASED ON SATISFACTORY PERFORMANCE, IF NEEDED.

WHEREAS, the City has a variety of Capital Improvement Projects (CIP), Land Development projects, and Transportation and Traffic projects requiring specialized professional Entitlements and Land Development Plan Checking Engineering Services; and

WHEREAS, the City requires the support of professional, technical, and related services from outside consultants to perform these Entitlements and Land Development Plan Checking Engineering Services tasks; and

WHEREAS, per Tracy Municipal Code, Section 2.20.140, a Request for Proposals for On-Call Entitlements and Land Development Plan Checking Engineering Services (Services) was posted on the City's website on November 20, 2024; and

WHEREAS, on November 20, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted a Request for Proposal (RFP) to solicit experienced and qualified consultants to provide On-Call Entitlements and Land Development Plan Checking Engineering Services. The requested services include but are not limited to, Entitlements Packages Plan Checking which includes, conditional use permit, development application, general plan amendment, lot line mergers and adjustments, rezoning and variances, tentative maps and parcel maps, right-of-way (ROW) and easement vacations, and other developer applications collectively referred to as "Entitlement". Entitlement Submittal Package Review includes but is not limited to the following, preliminary title report, owner statements, zoning and density requirements, existing condition depicting existing ROW and any easements located on the project site, site plan review per subdivision map act, Title 12 of the Tracy Municipal Code, the City's adopted Master Plans, adopted specific plans, etc., searching through the City's database, records, and files to determine if an Entitlement is required to reimburse another developer, right-of-way dedications, street cross-section, preliminary grading, and utility plan, preliminary Stormwater Control Plan and report, preliminary parking plan, preliminary striping plan, preliminary street line exhibits for City maintenance project frontage streets. Land Development Plan Checking Services include existing conditions and demolition plans, on-site grading plans, erosion control plans, on-site and off-site civil improvement plans, on-site and off-site landscape and irrigation plans, signing and striping plans, streetlight plans, Stormwater Control Plan report, Stormwater Pollution Prevention Plan report, Hydrology and Hydraulic calculations report, construction cost estimates for bonding purposes, Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions; and

WHEREAS, on December 17, 2024, the City received six (6) proposals to provide the required Services, and after extensive review by the City's internal Selection Committee, the City selected all six (6) qualified consultants to provide these Services; and

WHEREAS, the On-Call List of selected consultants creates efficiency and does not bind the City or its budgets to a particular scope of work until it is required as City needs arise; and

WHEREAS, concurrently with this agenda item, by separate resolution, staff is recommending that the City Council approve the On-Call List of qualified consultants to provide Entitlements and Land Development Plan Checking Engineering Services; and

WHEREAS, to provide supplemental Entitlements and Land Development Plan Checking Engineering Services for Land Development projects that are currently pending, staff recommends that the City Council award a Master Professional Services Agreement (MPSA) with an initial term of three (3) years and a not-to-exceed fiscal year amount of \$600,000 with SNG & Associates, Inc., which is on the On-Call List; and

WHEREAS, the City will issue Task Orders specifying the scope of work needed, and the consultant will invoice the City based on the scope of work for each Task Order; and

WHEREAS, the cost of the work performed by SNG & Associates, Inc., will be cost recoverable in part, through the developer's fee, Capital Improvement Project budgets, and funding for MPSA will be through the department's annually adopted budget. The contract includes the ability to terminate if there is insufficient budget availability; and

WHEREAS, the MPSA is for services equivalent to "planning and feasibility services" and, therefore, is not considered a "project" as defined by Section 21065 of the Public Resources Code; any projects for which such services are performed will be reviewed as required under the California Environmental Quality Act (CEQA) before future discretionary actions are taken; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby approves a Master Professional Service Agreement, substantially in the form set forth in Exhibit 1, for Entitlements and Land Development Plan Checking Engineering Services, with an initial term of three (3) years and a not-to-exceed fiscal year amount of \$600,000 with SNG & Associates, Inc.; and be it

FURTHER RESOLVED: That the City Council authorizes the City Manager to extend, administratively, the Master Professional Services Agreement for up to two additional years, based on performance, if needed; and be it

FURTHER RESOLVED: That the City Council finds that the MPSA is for services equivalent to "planning and feasibility services" and, therefore, is not considered a "project" as defined by Section 21065 of the Public Resources Code and that any projects for which such services are performed will be reviewed as required under CEQA before future discretionary actions are taken.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 18th day of February 2025 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST: _____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of the
City of Tracy, California

EXHIBITS

Exhibit 1 - Master Professional Service Agreement with SNG & Associates, Inc.

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT WITH**

SNG & Associates, Inc., for Entitlements and Land Development Plan Checking Engineering Services included but are not limited to Entitlements Packages Plan Checking which includes, conditional use permit, development Application general plan amendment, lot line mergers and adjustments, rezoning and variances, tentative maps and parcel maps., right-of-way and easement vacations, other developer applications collectively referred to as "Entitlement. Entitlement Submittal Package Review includes but are not limited to the following, preliminary title report, owner statements, zoning and density requirements, existing condition depicting Existing ROW and any easements located on the project site, site plan review per subdivision map act, Title 12 of the Tracy Municipal Code, The City adopted Master Plans, adopted specific plans, etc., and search through the CITY's database, records, and files to determine if an Entitlement is required to reimburse another developer, right of way dedications, street cross-section, preliminary grading, and utility plan, preliminary Stormwater Control Plan and report, preliminary parking plan, preliminary striping plan, preliminary street plan line exhibit for City maintenance project frontage streets. Land Development Plan Checking Services include existing conditions and demolition plans, on-site grading plans, erosion control plans, on-site and off-site civil improvement plans, on-site and off-site landscape and irrigation plans, signing and striping plans, streetlight plans, Stormwater Control Plan reports, Stormwater Pollution Prevention Plan report, Hydrology and Hydraulic calculations report, construction cost estimates for bonding purposes, Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions.

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and SNG & Associates, Inc., a California Corporation ("Consultant"). City and Consultant are referred to individually as "Party" and collectively as "Parties."

Recitals

- A.** City desires to retain Consultant for future Entitlements and Land Development Plan Checking Engineering Services for Capital Improvement Projects (CIP), Land Development, and Traffic Engineering Projects as further described herein and in Exhibit A.

On November 20, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted an RFP to solicit experienced and qualified consultants to provide On-Call Traffic Engineering Services for Engineering projects. This on-call list of Consultants creates an efficient process for future project proposal requests and does not bind the City or its budgets to a particular scope of work until it is required as City needs arise. Having previously undertaken the public contracting procedures for each Consultant on the list, as the project needs arise, the City may more readily move into contracting with one of the Consultants on the list and then return to the City Council for approval of a project-specific professional services agreement.

On December 17, 2024, the City received six (6) proposals including SNG & Associates, Inc., Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer, and best fits the City's needs for competence and professional qualifications necessary for the satisfactory performance of the Services.

- A.** After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

B. This Agreement was approved on _____ pursuant to Tracy Municipal Code Section 2.20.140 (3), [and City Council Resolution No. _____].

NOW THEREFORE, for good and valuable consideration the sufficiency of which the Parties hereby acknowledge, the Parties mutually agree as follows:

1. **Scope of Services.** Consultant shall perform professional services, tasks, and scope of work further described in Exhibit A hereto (“Services”) for the City’s benefit on an as-needed basis pursuant to individual approved Task Orders for services within the in accordance with the terms and conditions of this Agreement. The Services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: Nanda K. Gottiparthi, P.E., President. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit A, nor shall Consultant use or replace any subcontractor or subconsultant, without City’s prior written consent. A failure to obtain the City’s prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

1.1 **Task Order Forms.** The Services within the Scope of Work will be comprised of Task Order Forms (in the form provided in Exhibit C hereto), approved, executed and delivered by the Director of SNG & Associates, Inc., (“Director”) from time-to-time during the Term of this Agreement, on an as-needed basis. The Consultant cannot start performing any Work until the Director has executed a Task Order for such work. The City has no obligation to issue any Task Orders under this Master Agreement. The City may issue any number of Task Orders provided that the sum of the maximum compensation of all approved Task Orders cannot exceed the Total Not-to-Exceed amount stated in Section 3.1.

1.2 **Non-Exclusive Agreement.** The City reserves the right to contract with other consultants providing the same Services or similar scope of services described above during the term of this Agreement. The City further reserves the right to assign work, at its sole discretion, to consultants other than Consultant based on City’s budget, experience, and skills of consultants based on the City’s specific needs.

2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated by the City to the Consultant. Consultant shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1 **Term.** The term of this Agreement shall commence on February 18, 2025, and expire and terminate automatically on February 17, 2028 or earlier by termination pursuant to Section 6 of this Agreement (“Term”). Subject to the Not-To-Exceed Amount defined in Section 3.1, the Term of this Agreement may be extended with express written amendment incorporating this Agreement signed by both Parties and one of the following City approvals: (a) City Council approval or (b) City Manager approval. An administrative extension of this Agreement by City Manager shall be limited to an additional term of two (2) years (s) and require written determination by the City Manager that Consultant has satisfactorily met all the requirements of this Agreement.

3. Compensation. City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit B attached and incorporated by reference for services performed under this Agreement.

3.1 Annual Total Not to Exceed Amount. Consultant's total compensation for all Task Orders and Services under this Agreement shall not exceed \$600,000.00 (six hundred thousand Dollars) per City fiscal year ("Total Not-to-Exceed Amount"). Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Total Not-to-Exceed Amount. Consultant acknowledges City has no obligation to compensate or reimburse Consultant for any fees or costs incurred in excess of the Total Not-to-Exceed Amount. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement.

3.1.2 For each Task Order issued under this Agreement, Consultant's Services shall not exceed the maximum compensation stated in that Task Order.

3.2 Invoices. No less than Ninety (90) days after performing Services, Consultant shall submit monthly written invoice(s) to the City that include copies of approved Task Orders, the Services performed, and identify times, dates, and names of persons performing the services.

3.2.1 If Consultant is providing services in response to a development application, separate invoice(s) must be issued for each application and each invoice shall contain the City's designated development application number.

3.2.2 Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

3.2.3 Consultant shall submit invoices no later than 90 days after completion of a Task Order or portion of the Services. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Services.

3.3 Payment. Within 30 days after the City's receipt of invoice(s), City shall make payment to the Consultant based upon the services described on the invoice(s) and approved by the City.

3.4 City Budget Limitations. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will automatically terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the City Council. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. The payment of any compensation under this Agreement shall be subject to the City of Tracy appropriation of funds for the Services. This Agreement shall terminate in the event that such funds are not appropriated.

4. Indemnification. Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence, or willful misconduct of the City. In this section, "City" means the City, its officials, officers, agents, employees, and volunteers;

“Consultant” means the Consultant, its employees, agents and subcontractors; “Claims” includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and “Arising out of” includes “pertaining to” and “relating to”. The Consultant’s indemnification obligation applies to the maximum extent allowed by law and includes defending the City as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City’s written request, the Consultant, at its own expense, shall defend any suit or action that is subject to this indemnification obligation. The provisions of this section survive completion of the services or the termination of this Agreement and are not limited by the provisions of Section 5 relating to insurance.

5. Insurance. Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

5.1 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) “per occurrence” coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

5.2 Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for “any auto”) “claims made” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

5.3 Workers’ Compensation coverage shall be maintained as required by the State of California.

5.4 Professional Liability “claims made” coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.

5.5 Endorsements. Consultant shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions.

5.5.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”

5.5.2 For any claims related to this Agreement, Consultant’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.

5.6 Notice of Cancellation. Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.

5.7 Authorized Insurers. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

5.8 Insurance Certificate. Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

5.9 Substitute Certificates. Consultant shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.

5.10 Consultant's Obligation. Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

6. Termination.

6.1 The Parties may terminate this Agreement for any reason, including, but not limited to, convenience, by giving ten (10) days' written notice to the other Party. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

6.2 This Agreement shall automatically terminate immediately without notice to Consultant upon any of the following occurrences: (a) material breach of this Agreement by Consultant; (b) lack of City funds appropriated. In the event of termination by material breach of Consultant, if the City replaces any incomplete or defective Services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.

6.3 Upon termination, Consultant shall return the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant in connection with the Services performed under this Agreement.

7. Ownership of Work. All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

8. Independent Contractor Status. Consultant is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Consultant is free to work for other entities while under contract with the City. Consultant, and its agents or employees, are not entitled to City benefits.

9. Conflicts of Interest. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest. The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant represents and warrants that the representations made by the Consultant concerning unfair competitive advantage and conflicts of interest in connection with its submissions in response to the City's procurement for this Agreement

were true and accurate both when made and as of the date of this Agreement. Consultant represents and warrants that it has not and shall not offer or deliver any City officer, public official, or employee any gifts or donations in violation Federal, State and/or local law.

10. Rebates, Kickbacks, or Other Unlawful Consideration. Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

11. Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

Jonathan R. Mitchell, P.E.
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant: SNG & Associates, Inc.

Nanda K. Gottiparthi, P.E.,
President
5776 Stoneridge Mall Road, Suite 365
Pleasanton, California, 94588

With a copy to:
City Attorney
333 Civic Center Plaza
Tracy, CA 95376

12. Miscellaneous.

12.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

12.2 Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

12.3 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

12.4 Assignment and Delegation. Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

12.5 Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

12.6 Compliance with the Law. Consultant shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

12.6.1 Prevailing Wage Laws. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on “public works” and “maintenance” projects. If the services being performed under this Agreement are part of a “public works” or “maintenance” project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

12.6.2 Non-discrimination. Consultant represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Consultant shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

12.7 Business Entity Status. Consultant is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Consultant. By entering into this Agreement, Consultant represents that it is not a suspended corporation. If Consultant is a suspended corporation at the time it enters into this Agreement, City may take steps to have this Agreement declared voidable.

12.8 Business License. Before the City signs this Agreement, Consultant shall obtain a City of Tracy Business License. Consultant shall maintain an active City of Tracy Business License during the term of this Agreement.

12.9 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

12.10 Construction of Agreement. Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.

12.11 Severability. If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

12.12 Controlling Provisions. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Consultant’s proposal (if any), the Agreement shall control. In

the case of any conflict between the Exhibits hereto and the Consultant's proposal (if any), the Exhibits shall control.

12.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.

13. Signatures. The individuals executing this Agreement on behalf of Consultant represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Consultant.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the City and Consultant agree to the full performance of the foregoing terms as of the last signature date.

City of Tracy

By: Dan Arriola

Title: Mayor

Date: _____

Attest:

Adrianne Richardson, City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

Consultant

SNG & Associates, Inc.

By: Nanda K. Gottiparthi, P.E.

Title: President

Date: January 16, 2025

Federal Employer Tax ID No. 94-3359203

By: Sangeeta Gottiparthi,

Title: Treasurer

Date: January 16, 2025

Exhibits:

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)
- C Task Order Form

EXHIBIT A

Scope of Services

Consultant shall offer a complete range of Entitlements and Land Development Plan Checking Engineering Services to support the City's needs including professional Registered Traffic Engineers, Registered Professional Engineers, field crews, and office technicians. The Consultant shall ensure the tasks outlined herein are performed by the consultant's responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives. Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product.

Entitlements and Land Development Plan Checking Engineering Services include but are not necessarily limited to, those items noted below.

CONSULTANT may be asked to provide support to CITY for various Land Development projects and various Onsite and Offsite Improvement Plans for compliance with the City of Tracy standards, guidelines, Master Plans, and Specific Plans. CONSULTANT will not model the water, sewer, or traffic impacts of each Entitlement. The CITY has retained other consultants to perform said modeling. Plan Checks have a published typical plan check period of about thirty (30) calendar days per each submittal cycle. Developers typically resubmit their improvement plans and CONSULTANT will be expected to plan check the resubmittal. The CITY's goal is to complete the plan check process in about three (3) submittal cycles. These timeframes are stated goals, but each Project will proceed at its own pace. The CITY's goal is to first produce a constructible set of improvements that is in keeping with all the Standards listed below.

Consultant may be asked to provide support the City's needs including professional Registered Civil Engineers, Registered Traffic Engineer, field crews, and office technicians. If the consultant feels that additional tasks are warranted, they must be identified in the consultant's proposal.

The Consultant shall ensure the tasks outlined herein are performed by the consultant's own responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives.

Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product. The specific methodology by which the work will be accomplished shall be presented in the proposal. The Consultant is expected to expand on this scope in their proposal by incorporating specific areas of expertise and any other tasks required for a specific project and/or proposal requested.

Entitlement and Land Development Plan Checking Engineering Services include but are not necessarily limited to, those items noted below. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

1. Entitlements Packages Plan Checking:

A. Evaluate and provide written redlines and/or comments for the following items:

1. Conditional use Permit.
 2. Development Application.
 3. General Plan Amendment.
 4. Lot Line Mergers and Adjustments.
 5. Rezoning and Variances.
 6. Tentative maps and Parcel Maps.
 7. Right-of-way and easement vacations.
 8. other developer applications collectively referred to as “Entitlement”.
- B.** Entitlement Submittal Package Review (Review tasks include but are not limited to the following):
1. Preliminary Title report.
 2. Owner Statements.
 3. Zoning and Density requirements.
 4. Existing condition depicting Existing ROW and any easements located on project site.
 5. Site Plan Review per Subdivision Map Act, Title 12 of the Tracy Municipal Code. The city adopted Master Plans, adopted Specific Plans etc., and search through the CITY’s database, records, and files to determine if an Entitlement is required to reimburse another developer.
 6. Right of way dedications.
 7. Street Cross Section.
 8. Preliminary Grading and Utility Plan.
 9. Preliminary Stormwater Control Plan and Report.
 10. Preliminary Parking Plan.
 11. Preliminary Striping Plan.
 12. Preliminary Street Plan Line Exhibits for City Maintained project frontage streets.
- C.** CONSULTANT may be asked to coordinate with CITY staff, CITY consultants, and the Applicants to study the Entitlement impacts and make recommendations for mitigation of those impacts.
- D.** CONSULTANT may be asked to use the CITY’s template to complete a Cost Recovery Agreement and obtain the applicant’s signature, monetary deposit, and provide administrative assistance as needed to produce the CITY purchase orders and notices to proceed to allow systems modeling to proceed.
- E.** From the list of mitigations recommended, CONSULTANT may be asked to write and develop Conditions of Approval (COA) to outline the requirements of the Entitlement.
- F.** CONSULTANT may be asked to provide CITY staff support in writing staff reports, resolutions, and agreements as requested.
- G.** CONSULTANT may be asked to attend and participate in meetings with the developers, City Council meetings, Planning Commission meetings, Public Hearings, public outreaches, and other meetings as requested.
- H.** CONSULTANT may be asked to provide technical staff support to the

Development Services Department.

2. Land Development Plan Checking Services:

1. Existing Conditions and Demolition Plans.
 2. On-site grading plans.
 3. Erosion Control Plans.
 4. Onsite and Off-site civil improvement plans.
 5. Onsite and Off-site landscape and irrigation plans.
 6. Signing and Striping plans.
 7. Streetlight Plans.
 8. Stormwater Control Plan report.
 9. Stormwater Pollution Prevention Plan report.
 10. Hydrology and Hydraulic Calculations report.
 11. Construction Cost Estimates for Bonding purposes.
 12. Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions and supporting documents.
- A. CONSULTANT will be expected to calculate plan check fees and communicate said fees to the Developer, confirm payment with CITY staff, and shall recognize that invoices are reimbursed in part or in whole by these fees.
- B. CONSULTANT shall diligently use good-faith efforts to guide the Developer's Engineer to adhere to CITY Standards. If a particular Standard cannot be met despite numerous attempts to redesign the Project or that the redesign creates other numerous conflicts with the Standard or results in a significantly undesirable design, then CONSULTANT will be expected to guide the Developer's Engineering in submitting a "Request for Minor Deviation Letter" and work with CITY staff to process the request.
- C. Provide CITY staff support in writing staff reports, resolutions, and Subdivision Improvement Agreements, Off-Site Improvement Agreements, and/or Deferred Improvement Agreements as requested by the CITY.
- D. Attend and participate in meetings with the Developers, Developer's Engineers, City Council meetings, Planning Commission meetings, Public Hearings, public outreaches, and other meetings as requested.
- E. Provide technical staff support to the Development Services Department as requested.

3. CONSULTANT shall plan check the above items against the following documents:

1. Subdivision Map Act.
2. Title 12 of the Tracy Municipal Code.
3. CITY's adopted Master Plans.
4. CITY's adopted Specific Plans.
5. CITY's adopted environmental document; and Publicly approved site plan layouts, conditions of approvals, all collectively referred to as "Standards".
6. Document any submittal deficiencies and advise the CITY as necessary.

7. Identify any additional reference materials required for a thorough plan check, such as related off-site improvement plans, maintenance issues, approved conceptual plan, studies, or memoranda.
8. Review Project with respect to the relationship between the on-site and off-site improvements in order to achieve an understanding of the overall Project concept.
9. Conduct detailed review of the plans based on the CITY's plan check protocol. Review conditions of approval and plan submittal documents for conformance with these conditions. Compare construction documents against approved conceptual plans and existing approved conditions and notify CITY of any potential discrepancies found within the construction documents or existing approved conditions.
10. Prepare memorandum documenting plan check findings and redlines to be discussed with CONSULTANT and CITY staff. Once review comments are discussed and modified as required, CONSULTANT may be requested to formalize all comments into an official review summary for transmittal to the plan originator.
11. Provide accurate invoicing on a monthly basis using the appropriate City tracking methods.

Additional requirements are as follows:

All work shall be performed under the direction of a Registered Professional Civil Engineer and or Registered Traffic Engineer in the State of California. The Registered Professional Civil Engineer/Traffic Engineer shall maintain professional licenses required by the laws of the State of California at all times while under contract with the City of Tracy.

Personnel:

Nanda Gottiparthi, P.E., President (Principal-in-Charge)

David Caneer, P.E., QSD. , Project Manager

Mojgan Osooli, P.E., QSD, Senior Engineer

Doug Rodgers , Senior Engineer

Ritu Shrestha , Assistant Engineer

Lyle Campbell, LSA , Landscape Architect

Christopher Thnay, P.E., AICP, Principal Traffic Engineer

Joy Bhattacharya, P.E., PTOE, Vice President ITS

Michael O'Connor, P.E., QSD (Project Manager

Dave Enke, PLS, Surveying and Subdivision Map Review (sub)

EXHIBIT B

Compensation



STANDARD HOURLY RATES

<u>Position</u>	<u>Hourly Rate for 2025</u>
Principal Engineer	268.00
Senior Project Manager	237.00
Project Manager	226.00
Senior Engineer	210.00
Construction Manager	237.00
Associate Engineer II	184.00
Associate Engineer I	174.00
Assistant Engineer	163.00
Senior Engineering Inspector	184.00
Engineering Inspector	174.00
Engineering Technician/CAD Drafting	153.00
Licensed Land Surveyor	268.00
Licensed landscape Architect	205.00
Clerical/ Admin Support	110.00

Note: Rates valid through December 31, 2025. Rates will be adjusted annually every January 1st.
Mileage to be billed at \$0.65 per mile.

EXHIBIT C - Task Order Form

(See Attached)

[Use this Form or Create New Based on Same Substance---

TASK ORDER FORM

Project:	_____
Consultant:	_____ _____
Project Task Order Number:	[X of X]
Description of Task and Services:	_____ _____ _____
Maximum Compensation for Task:	\$_____.00
Task Completion Time:	The Consultant must complete the services and deliverable for this task in On or before: [DATE]
Year-to-Date Total Authorized Task Order Compensation:	\$_____.00
Remaining Total Not to Exceed Amount upon completion of this Task:	\$_____.00

APPROVED BY CITY REPRESENTATIVE

[Insert Name and Position]

Date

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2025-_____

APPROVING (1) THE EXECUTION OF A MASTER PROFESSIONAL SERVICES AGREEMENT, WITH AN INITIAL TERM OF THREE YEARS AND A NOT-TO-EXCEED FISCAL YEAR AMOUNT OF \$600,000, WITH HALEY & ALDRICH, INC., AND (2) AN ADMINISTRATIVE EXTENSION, UP TO TWO YEARS, BASED ON SATISFACTORY PERFORMANCE, IF NEEDED.

WHEREAS, the City has a variety of Capital Improvement Projects (CIP), Land Development projects, and Transportation and Traffic projects requiring specialized professional Entitlements and Land Development Plan Checking Engineering Services; and

WHEREAS, the City requires the support of professional, technical, and related services from outside consultants to perform these Entitlements and Land Development Plan Checking Engineering Services tasks; and

WHEREAS, per Tracy Municipal Code, Section 2.20.140, a Request for Proposals for On-Call Entitlements and Land Development Plan Checking Engineering Services (Services) was posted on the City's website on November 20, 2024; and

WHEREAS, on November 20, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted a Request for Proposal (RFP) to solicit experienced and qualified consultants to provide On-Call Entitlements and Land Development Plan Checking Engineering Services. The requested services include but are not limited to, Entitlements Packages Plan Checking which includes, conditional use permit, development application, general plan amendment, lot line mergers and adjustments, rezoning and variances, tentative maps and parcel maps, right-of-way (ROW) and easement vacations, and other developer applications collectively referred to as "Entitlement". Entitlement Submittal Package Review includes but is not limited to the following, preliminary title report, owner statements, zoning and density requirements, existing condition depicting existing ROW and any easements located on the project site, site plan review per subdivision map act, Title 12 of the Tracy Municipal Code, the City's adopted Master Plans, adopted specific plans, etc., searching through the City's database, records, and files to determine if an Entitlement is required to reimburse another developer, right-of-way dedications, street cross-section, preliminary grading, and utility plan, preliminary Stormwater Control Plan and report, preliminary parking plan, preliminary striping plan, preliminary street line exhibits for City maintenance project frontage streets. Land Development Plan Checking Services include existing conditions and demolition plans, on-site grading plans, erosion control plans, on-site and off-site civil improvement plans, on-site and off-site landscape and irrigation plans, signing and striping plans, streetlight plans, Stormwater Control Plan report, Stormwater Pollution Prevention Plan report, Hydrology and Hydraulic calculations report, construction cost estimates for bonding purposes, Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions; and

WHEREAS, on December 17, 2024, the City received six (6) proposals to provide the required Services, and after extensive review by the City's internal Selection Committee, the City selected all six (6) qualified consultants to provide these Services; and

WHEREAS, the On-Call List of selected consultants creates efficiency and does not bind the City or its budgets to a particular scope of work until it is required as City needs arise; and

WHEREAS, concurrently with this agenda item, by separate Resolution, staff is recommending that the City Council approve the On-Call List of qualified consultants to provide Entitlements and Land Development Plan Checking Engineering Services; and

WHEREAS, to provide supplemental Entitlements and Land Development Plan Checking Engineering Services for Land Development projects that are currently pending, staff recommends that the City Council award a Master Professional Services Agreement (MPSA) with an initial term of three years and a not-to-exceed fiscal year amount of \$600,000 with HALEY & ALDRICH, INC., which is on the On-Call List; and

WHEREAS, the City will issue Task Orders specifying the scope of work needed, and the consultant will invoice the City based on the scope of work for each Task Order; and

WHEREAS, the cost of the work performed by HALEY & ALDRICH, INC., will be cost recoverable in part, through the developer's fee, Capital Improvement Project budgets, and funding for MPSA will be through the department's annually adopted budget. The contract includes the ability to terminate if there is insufficient budget availability; and

WHEREAS, the MPSA is for services equivalent to "planning and feasibility services" and, therefore, is not considered a "project" as defined by Section 21065 of the Public Resources Code; any projects for which such services are performed will be reviewed as required under the California Environmental Quality Act (CEQA) before future discretionary actions are taken; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby approves a Master Professional Service Agreement substantially in the form set forth in Exhibit 1, for Entitlements and Land Development Plan Checking Engineering Services, with an initial term of three (3) years and a not-to-exceed fiscal year amount of \$600,000 with HALEY & ALDRICH, INC.; and be it

FURTHER RESOLVED: That the City Council authorizes the City Manager to extend, administratively, the Master Professional Services Agreement for up to two additional years, based on performance, if needed; and be it

FURTHER RESOLVED: That the City Council finds that the MPSA is for services equivalent to "planning and feasibility services" and, therefore, is not considered a "project" as defined by Section 21065 of the Public Resources Code and that any projects for which such services are performed will be reviewed as required under CEQA before future discretionary actions are taken.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 18th day of February 2025 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST: _____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of the
City of Tracy, California

EXHIBITS

Exhibit 1 - Master Professional Service Agreement with HALEY & ALDRICH, INC.

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT WITH**

HALEY & ALDRICH, INC., for Entitlements and Land Development Plan Checking Engineering Services included but are not limited to Entitlements Packages Plan Checking which includes, conditional use permit, development Application general plan amendment, lot line mergers and adjustments, rezoning and variances, tentative maps and parcel maps., right-of-way and easement vacations, other developer applications collectively referred to as "Entitlement. Entitlement Submittal Package Review includes but are not limited to the following, preliminary title report, owner statements, zoning and density requirements, existing condition depicting Existing ROW and any easements located on the project site, site plan review per subdivision map act, Title 12 of the Tracy Municipal Code, The City adopted Master Plans, adopted specific plans, etc., and search through the CITY's database, records, and files to determine if an Entitlement is required to reimburse another developer, right of way dedications, street cross-section, preliminary grading, and utility plan, preliminary Stormwater Control Plan and report, preliminary parking plan, preliminary striping plan, preliminary street plan line exhibit for City maintenance project frontage streets. Land Development Plan Checking Services include existing conditions and demolition plans, on-site grading plans, erosion control plans, on-site and off-site civil improvement plans, on-site and off-site landscape and irrigation plans, signing and striping plans, streetlight plans, Stormwater Control Plan reports, Stormwater Pollution Prevention Plan report, Hydrology and Hydraulic calculations report, construction cost estimates for bonding purposes, Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions.

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and HALEY & ALDRICH, INC., a Delaware Corporation ("Consultant"). City and Consultant are referred to individually as "Party" and collectively as "Parties."

Recitals

- A.** City desires to retain Consultant for future Entitlements and Land Development Plan Checking Engineering Services for Capital Improvement Projects (CIP), Land Development, and Traffic Engineering Projects as further described herein and in Exhibit A.

On November 20, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted an RFP to solicit experienced and qualified consultants to provide On-Call Traffic Engineering Services for Engineering projects. This on-call list of Consultants creates an efficient process for future project proposal requests and does not bind the City or its budgets to a particular scope of work until it is required as City needs arise. Having previously undertaken the public contracting procedures for each Consultant on the list, as the project needs arise, the City may more readily move into contracting with one of the Consultants on the list and then return to the City Council for approval of a project-specific professional services agreement.

On December 17, 2024, the City received six (6) proposals including HALEY & ALDRICH, INC., Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer, and best fits the City's needs for competence and professional qualifications necessary for the satisfactory performance of the Services.

- A.** After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

B. This Agreement was approved on _____ pursuant to Tracy Municipal Code Section 2.20.140 (3), [and City Council Resolution No. _____].

NOW THEREFORE, for good and valuable consideration the sufficiency of which the Parties hereby acknowledge, the Parties mutually agree as follows:

1. Scope of Services. Consultant shall perform professional services, tasks, and scope of work further described in Exhibit A hereto (“Services”) for the City’s benefit on an as-needed basis pursuant to individual approved Task Orders for services within the in accordance with the terms and conditions of this Agreement. The Services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: Scott Alman, PE, Principal. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit A, nor shall Consultant use or replace any subcontractor or subconsultant, without City’s prior written consent. A failure to obtain the City’s prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

1.1 Task Order Forms. The Services within the Scope of Work will be comprised of Task Order Forms (in the form provided in Exhibit C hereto), approved, executed and delivered by the Director of HALEY & ALDRICH, INC., (“Director”) from time-to-time during the Term of this Agreement, on an as-needed basis. The Consultant cannot start performing any Work until the Director has executed a Task Order for such work. The City has no obligation to issue any Task Orders under this Master Agreement. The City may issue any number of Task Orders provided that the sum of the maximum compensation of all approved Task Orders cannot exceed the Total Not-to-Exceed amount stated in Section 3.1.

1.2 Non-Exclusive Agreement. The City reserves the right to contract with other consultants providing the same Services or similar scope of services described above during the term of this Agreement. The City further reserves the right to assign work, at its sole discretion, to consultants other than Consultant based on City’s budget, experience, and skills of consultants based on the City’s specific needs.

2. Time of Performance. Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated by the City to the Consultant. Consultant shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1 Term. The term of this Agreement shall commence on February 18, 2025, and expire and terminate automatically on February 17, 2028 or earlier by termination pursuant to Section 6 of this Agreement (“Term”). Subject to the Not-To-Exceed Amount defined in Section 3.1, the Term of this Agreement may be extended with express written amendment incorporating this Agreement signed by both Parties and one of the following City approvals: (a) City Council approval or (b) City Manager approval. An administrative extension of this Agreement by City Manager shall be limited to an

additional term of two (2) years (s) and require written determination by the City Manager that Consultant has satisfactorily met all the requirements of this Agreement.

3. Compensation. City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit B attached and incorporated by reference for services performed under this Agreement.

3.1 Annual Total Not to Exceed Amount. Consultant's total compensation for all Task Orders and Services under this Agreement shall not exceed \$600,000.00 (six hundred thousand Dollars) per City fiscal year ("Total Not-to-Exceed Amount"). Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Total Not-to-Exceed Amount. Consultant acknowledges City has no obligation to compensate or reimburse Consultant for any fees or costs incurred in excess of the Total Not-to-Exceed Amount. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement.

3.1.2 For each Task Order issued under this Agreement, Consultant's Services shall not exceed the maximum compensation stated in that Task Order.

3.2 Invoices. No less than Ninety (90) days after performing Services, Consultant shall submit monthly written invoice(s) to the City that include copies of approved Task Orders, the Services performed, and identify times, dates, and names of persons performing the services.

3.2.1 If Consultant is providing services in response to a development application, separate invoice(s) must be issued for each application and each invoice shall contain the City's designated development application number.

3.2.2 Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

3.2.3 Consultant shall submit invoices no later than 90 days after completion of a Task Order or portion of the Services. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Services.

3.3 Payment. Within 30 days after the City's receipt of invoice(s), City shall make payment to the Consultant based upon the services described on the invoice(s) and approved by the City.

3.4 City Budget Limitations. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will automatically terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the City Council. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. The payment of any compensation under this Agreement shall be subject to the City of Tracy appropriation of funds for the Services. This Agreement shall terminate in the event that such funds are not appropriated.

4. Indemnification. Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this

Agreement, except to the extent caused by the sole, active negligence, or willful misconduct of the City. In this section, “City” means the City, its officials, officers, agents, employees, and volunteers; “Consultant” means the Consultant, its employees, agents and subcontractors; “Claims” includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and “Arising out of” includes “pertaining to” and “relating to”. The Consultant’s indemnification obligation applies to the maximum extent allowed by law and includes defending the City as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City’s written request, the Consultant, at its own expense, shall defend any suit or action that is subject to this indemnification obligation. The provisions of this section survive completion of the services or the termination of this Agreement and are not limited by the provisions of Section 5 relating to insurance.

5. Insurance. Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

5.1 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) “per occurrence” coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

5.2 Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for “any auto”) “claims made” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

5.3 Workers’ Compensation coverage shall be maintained as required by the State of California.

5.4 Professional Liability “claims made” coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.

5.5 Endorsements. Consultant shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions.

5.5.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional “insured.”

5.5.2 For any claims related to this Agreement, Consultant’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.

5.6 Notice of Cancellation. Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.

5.7 Authorized Insurers. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

5.8 Insurance Certificate. Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

5.9 Substitute Certificates. Consultant shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.

5.10 Consultant's Obligation. Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

6. Termination.

6.1 The Parties may terminate this Agreement for any reason, including, but not limited to, convenience, by giving ten (10) days' written notice to the other Party. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

6.2 This Agreement shall automatically terminate immediately without notice to Consultant upon any of the following occurrences: (a) material breach of this Agreement by Consultant; (b) lack of City funds appropriated. In the event of termination by material breach of Consultant, if the City replaces any incomplete or defective Services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.

6.3 Upon termination, Consultant shall return the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant in connection with the Services performed under this Agreement.

7. Ownership of Work. All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

8. Independent Contractor Status. Consultant is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Consultant is free to work for other entities while under contract with the City. Consultant, and its agents or employees, are not entitled to City benefits.

9. Conflicts of Interest. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest. The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant represents and warrants that the representations made by the Consultant concerning unfair competitive advantage and conflicts of interest in connection with its submissions in response to the City's procurement for this Agreement

were true and accurate both when made and as of the date of this Agreement. Consultant represents and warrants that it has not and shall not offer or deliver any City officer, public official, or employee any gifts or donations in violation Federal, State and/or local law.

10. Rebates, Kickbacks, or Other Unlawful Consideration. Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

11. Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

Jonathan R. Mitchell, P.E.
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant: HALEY & ALDRICH, INC.

Scott Alman, PE
Principal
785 Ygnacio Valley Road
Walnut Creek, CA 94596

With a copy to:
City Attorney
333 Civic Center Plaza
Tracy, CA 95376

12. Miscellaneous.

12.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

12.2 Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

12.3 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

12.4 Assignment and Delegation. Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

12.5 Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

12.6 Compliance with the Law. Consultant shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

12.6.1 Prevailing Wage Laws. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on “public works” and “maintenance” projects. If the services being performed under this Agreement are part of a “public works” or “maintenance” project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

12.6.2 Non-discrimination. Consultant represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Consultant shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

12.7 Business Entity Status. Consultant is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Consultant. By entering into this Agreement, Consultant represents that it is not a suspended corporation. If Consultant is a suspended corporation at the time it enters into this Agreement, City may take steps to have this Agreement declared voidable.

12.8 Business License. Before the City signs this Agreement, Consultant shall obtain a City of Tracy Business License. Consultant shall maintain an active City of Tracy Business License during the term of this Agreement.

12.9 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

12.10 Construction of Agreement. Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.

12.11 Severability. If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

12.12 Controlling Provisions. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Consultant’s proposal (if any), the Agreement shall control. In

the case of any conflict between the Exhibits hereto and the Consultant's proposal (if any), the Exhibits shall control.

12.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.

13. Signatures. The individuals executing this Agreement on behalf of Consultant represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Consultant.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the City and Consultant agree to the full performance of the foregoing terms as of the last signature date.

City of Tracy

By: Dan Arriola

Title: Mayor

Date: _____

Attest:

Adrianne Richardson, City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

Consultant

HALEY & ALDRICH, INC.



By: Scott Alman, PE.

Title: Principal

Date: 01-16-2025

Federal Employer Tax ID No. 04-2295689



By: Phil Gregory, PE, GE

Title: Senior Principal

Date: 01-16-2025

Exhibits:

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)
- C Task Order Form

EXHIBIT A

Scope of Services

Consultant shall offer a complete range of Entitlements and Land Development Plan Checking Engineering Services to support the City's needs including professional Registered Traffic Engineers, Registered Professional Engineers, field crews, and office technicians. The Consultant shall ensure the tasks outlined herein are performed by the consultant's responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives. Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product.

Entitlements and Land Development Plan Checking Engineering Services include but are not necessarily limited to, those items noted below.

CONSULTANT may be asked to provide support to CITY for various Land Development projects and various Onsite and Offsite Improvement Plans for compliance with the City of Tracy standards, guidelines, Master Plans, and Specific Plans. CONSULTANT will not model the water, sewer, or traffic impacts of each Entitlement. The CITY has retained other consultants to perform said modeling. Plan Checks have a published typical plan check period of about thirty (30) calendar days per each submittal cycle. Developers typically resubmit their improvement plans and CONSULTANT will be expected to plan check the resubmittal. The CITY's goal is to complete the plan check process in about three (3) submittal cycles. These timeframes are stated goals, but each Project will proceed at its own pace. The CITY's goal is to first produce a constructible set of improvements that is in keeping with all the Standards listed below.

Consultant may be asked to provide support the City's needs including professional Registered Civil Engineers, Registered Traffic Engineer, field crews, and office technicians. If the consultant feels that additional tasks are warranted, they must be identified in the consultant's proposal. The Consultant shall ensure the tasks outlined herein are performed by the consultant's own responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives.

Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product. The specific methodology by which the work will be accomplished shall be presented in the proposal. The Consultant is expected to expand on this scope in their proposal by incorporating specific areas of expertise and any other tasks required for a specific project and/or proposal requested.

Entitlement and Land Development Plan Checking Engineering Services include but are not necessarily limited to, those items noted below. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

1. Entitlements Packages Plan Checking:

A. Evaluate and provide written redlines and/or comments for the following items:

1. Conditional use Permit.
 2. Development Application.
 3. General Plan Amendment.
 4. Lot Line Mergers and Adjustments.
 5. Rezoning and Variances.
 6. Tentative maps and Parcel Maps.
 7. Right-of-way and easement vacations.
 8. other developer applications collectively referred to as “Entitlement”.
- B. Entitlement Submittal Package Review** (Review tasks include but are not limited to the following):
1. Preliminary Title report.
 2. Owner Statements.
 3. Zoning and Density requirements.
 4. Existing condition depicting Existing ROW and any easements located on project site.
 5. Site Plan Review per Subdivision Map Act, Title 12 of the Tracy Municipal Code. The city adopted Master Plans, adopted Specific Plans etc., and search through the CITY’s database, records, and files to determine if an Entitlement is required to reimburse another developer.
 6. Right of way dedications.
 7. Street Cross Section.
 8. Preliminary Grading and Utility Plan.
 9. Preliminary Stormwater Control Plan and Report.
 10. Preliminary Parking Plan.
 11. Preliminary Striping Plan.
 12. Preliminary Street Plan Line Exhibits for City Maintained project frontage streets.
- C. CONSULTANT** may be asked to coordinate with CITY staff, CITY consultants, and the Applicants to study the Entitlement impacts and make recommendations for mitigation of those impacts.
- D. CONSULTANT** may be asked to use the CITY’s template to complete a Cost Recovery Agreement and obtain the applicant’s signature, monetary deposit, and provide administrative assistance as needed to produce the CITY purchase orders and notices to proceed to allow systems modeling to proceed.
- E.** From the list of mitigations recommended, **CONSULTANT** may be asked to write and develop Conditions of Approval (COA) to outline the requirements of the Entitlement.
- F. CONSULTANT** may be asked to provide CITY staff support in writing staff reports, resolutions, and agreements as requested.
- G. CONSULTANT** may be asked to attend and participate in meetings with the developers, City Council meetings, Planning Commission meetings, Public Hearings, public outreaches, and other meetings as requested.
- H. CONSULTANT** may be asked to provide technical staff support to the

Development Services Department.

2. Land Development Plan Checking Services:

1. Existing Conditions and Demolition Plans.
 2. On-site grading plans.
 3. Erosion Control Plans.
 4. Onsite and Off-site civil improvement plans.
 5. Onsite and Off-site landscape and irrigation plans.
 6. Signing and Striping plans.
 7. Streetlight Plans.
 8. Stormwater Control Plan report.
 9. Stormwater Pollution Prevention Plan report.
 10. Hydrology and Hydraulic Calculations report.
 11. Construction Cost Estimates for Bonding purposes.
 12. Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions and supporting documents.
- A. CONSULTANT will be expected to calculate plan check fees and communicate said fees to the Developer, confirm payment with CITY staff, and shall recognize that invoices are reimbursed in part or in whole by these fees.
- B. CONSULTANT shall diligently use good-faith efforts to guide the Developer's Engineer to adhere to CITY Standards. If a particular Standard cannot be met despite numerous attempts to redesign the Project or that the redesign creates other numerous conflicts with the Standard or results in a significantly undesirable design, then CONSULTANT will be expected to guide the Developer's Engineering in submitting a "Request for Minor Deviation Letter" and work with CITY staff to process the request.
- C. Provide CITY staff support in writing staff reports, resolutions, and Subdivision Improvement Agreements, Off-Site Improvement Agreements, and/or Deferred Improvement Agreements as requested by the CITY.
- D. Attend and participate in meetings with the Developers, Developer's Engineers, City Council meetings, Planning Commission meetings, Public Hearings, public outreaches, and other meetings as requested.
- E. Provide technical staff support to the Development Services Department as requested.

3. CONSULTANT shall plan check the above items against the following documents:

1. Subdivision Map Act.
2. Title 12 of the Tracy Municipal Code.
3. CITY's adopted Master Plans.
4. CITY's adopted Specific Plans.
5. CITY's adopted environmental document; and Publicly approved site plan layouts, conditions of approvals, all collectively referred to as "Standards".
6. Document any submittal deficiencies and advise the CITY as necessary.

7. Identify any additional reference materials required for a thorough plan check, such as related off-site improvement plans, maintenance issues, approved conceptual plan, studies, or memoranda.
8. Review Project with respect to the relationship between the on-site and off-site improvements in order to achieve an understanding of the overall Project concept.
9. Conduct detailed review of the plans based on the CITY's plan check protocol. Review conditions of approval and plan submittal documents for conformance with these conditions. Compare construction documents against approved conceptual plans and existing approved conditions and notify CITY of any potential discrepancies found within the construction documents or existing approved conditions.
10. Prepare memorandum documenting plan check findings and redlines to be discussed with CONSULTANT and CITY staff. Once review comments are discussed and modified as required, CONSULTANT may be requested to formalize all comments into an official review summary for transmittal to the plan originator.
11. Provide accurate invoicing on a monthly basis using the appropriate City tracking methods.

Additional requirements are as follows:

All work shall be performed under the direction of a Registered Professional Civil Engineer and or Registered Traffic Engineer in the State of California. The Registered Professional Civil Engineer/Traffic Engineer shall maintain professional licenses required by the laws of the State of California at all times while under contract with the City of Tracy.

Personnel:

Scott Alman, PE, QSDCONTRACT MANAGER, DEVELOPMENT PROJECT MANAGER

Bruce Zaeni, PE, DEVELOPMENT PROJECT MANAGER

Lynne Filson, PE, TE, LS, MAP CHECK & TRAFFIC ENGINEERING

Dave Burger, PQ, EG GEOTECHNICAL REVIEW

Nancy Gardiner, CPESC, QSD/QSP, QISP, ToR STORMWATER MANAGEMENT REVIEW

Ronaldo Longoria, PE PROJECT MANAGER & PLAN REVIEW

Julissa Rico-Ruiz TRAFFIC ENGINEERING

Kara Malig PLAN REVIEW

EXHIBIT B

Compensation



Standard Fee Schedule
2025 RS2

FEES FOR SERVICES

Fees for services will be based on the time worked on the project by staff personnel plus reimbursable expenses. The fee will be computed as follows.

1. Labor related fees will be computed based on personnel billing rates in effect at the time the services are performed. Personnel billing rates are subject to revision on, or about, 1 January and 1 July of each year. The hourly rates are fully inclusive of fringe benefits, burden, and fee. Current rates are provided in the table below.

<i>Classification</i>	<i>Hourly Rate</i>
<i>Project Support</i>	<i>\$122</i>
<i>Technician</i>	<i>\$125</i>
<i>Project Technician</i>	<i>\$135</i>
<i>Senior Technician</i>	<i>\$145</i>
<i>Project Controls</i>	<i>\$147</i>
<i>Staff Professional 1</i>	<i>\$158</i>
<i>Staff Professional 2</i>	<i>\$177</i>
<i>Project Professional</i>	<i>\$197</i>
<i>Technical Specialist</i>	<i>\$205</i>
<i>Project Manager / Senior Technical Specialist</i>	<i>\$225</i>
<i>Senior Project Manager / Technical Expert</i>	<i>\$265</i>
<i>Program Manager / Senior Technical Expert</i>	<i>\$339</i>
<i>Principal</i>	<i>\$360</i>
<i>Senior Principal</i>	<i>\$395</i>

2. Pre-trial conferences, depositions, and expert testimony will be billed at one and one-half (1.5) times the rates quoted above.
3. Second and Third Shift, Weekend, and Holiday hours will be billed at \$40/hour premium. Second and Third Shifts are those starting between 4 PM and 4 AM.
4. Field visits will be billed at 4-hour minimum; night shifts will be billed at 8-hour minimum. Cancellation of scheduled night shift within 24 hours will be charged the full 8 hours.
5. Direct non-salary expenses will be billed at our cost plus fifteen (15) percent, except for employee vehicle use which will be billed at IRS allowed mileage rates.
6. General project-related expenses such as mobile phone expenses (including mobile app fees); in-house reproduction; printing costs for reports, drawings, and other project records; mail and overnight document delivery; and long-term electronic and paper document storage will be billed as a general communication fee at a rate of four (4) percent of the labor charges.
7. Subcontractors will be billed at our cost plus fifteen (15) percent.
8. Equipment and laboratory testing will be billed at rates listed in the attached Equipment and Laboratory Rate Schedules, as applicable.



Equipment Rate Schedule
2025 RS2
fql:!!Elaf2

EQUIPMENT RATE SCHEDULE

AJR MONITORING f,QUJPMENT	Daily	Weekly	Monthly
Dmgeq'flae Sampli11g Kit {rubes nor imdrive d}	\$10	\$40	\$120
Dt1St' Monitor	\$100	\$400	\$1,200
four-6as Meter	\$43	\$1.72	\$516
Plrntoio11izm:ion Detector -:W_6 or 11.7 eV	\$70	\$280	S-840
HEW TESTING	Daily	Weekly	Monthly
Double Ririg l11filtrrometer	\$150	---	-
Held Supplies	\$28	\$112	\$MB
6ue./p.h Pe,:meamete,	\$150	---	-
Inclirilomere, Readillgs	\$150	---	-
Sarild Co11e field Density {it	\$75	\$225	S-725
pH Mere,	\$15	\$60	\$180
Pile Lotld Testi11g (per rest)	\$,il,500	---	-
Plate load Tester (per day)	\$50	-	-
Pit Box Test (per day)	\$400	---	-
Sfrig Tesr Kit (pet day)	\$350	---	-
Wood Pile lo11d Testing ,(per test)	\$150	---	-
SAMPLING EQUIPMENT	Daily	Weekly	Monthly
Groundwater Stlmpfng Bundle with Bladder Pump	\$315	S-1,000	\$3,000
Groundwater Stlmpfng lJund/e M*th Peristaltii: P'!J:mp	\$150	\$750	\$1,100
Groundwater Sampling Bundle iwrh aw11djos Pump	\$350	S-1,100	\$3,100
Rotohamme, D.rm	\$100	\$400	-
SoilSampfng o.r Tant Pull 5quipment Burild/e	\$150	\$350	\$1,050
Soil Vapor Sampri11g Bu11d/e	\$400	S-1,400	\$1,600
Tumidity Meter	\$20	\$80	\$240
1'51 Meter iwtll flow Cell	\$100	\$400	\$1,200
WATER l'fVet METERS AND INTER'ACEPROBES	Daily	Weekly	Monthly
Btlwlogger	\$10	\$40	\$120
l ewellogger	\$25	\$100	\$300
011/Wmer Inte-rface Probe	\$50	\$200	\$600
Water level Indirator	\$20	\$80	\$240
GEOTECH/11/CA! INSTIWMENMT!0/11	Daily	Weekly	Monthly
Qme PenE't rometer	\$15	\$60	\$18"0
Grol:k Mo11r1m:s - E:lfl:tm11rr::Data!ogge r	-	\$1.20	\$360
Dyllamic;Colle Peneuomerer	\$150	---	-
Ele,rtrollic&adcmt Box	\$25	\$100	5300
6eo ton u:::-1 Single Cl'mmeJtagger	--	\$80	\$240
6eoJ.-:011 - CR 800 Vibrating Wire Data./C'lgger with Morle_m,	-	\$100	\$300
GeoJ.;01.1GK401 VflJmli11g Wire 1/leadour Box	\$50	\$1.00	\$300
lIH'Jace indinometer Rental	--	---	\$1,250
Mor/em	--	---	\$250
lllacJear DBJsity Gauge	\$100	\$300	\$900



EQUIPMENT RATE SCHEDULE (continued)

GEOTECHNICAL INSTRUMENTATION (continued)	Daily	Weekly	Monthly
Power System - &ne, y	\$5	\$20	\$60
Power System - Solar,	\$15	\$60	\$180
Seismograph - Manual	\$75	\$225	\$725
Seismograph - Remote Units	\$100	\$275	\$825
Tiltmeter		\$150	\$450
Vibrion amplitude Monitoring Starfish	\$125	\$325	\$925
VDI/ Web Service			\$200
UAS DATA ACQUISITION & PROCESSING	Daily	Weekly	Monthly
UAS Digital Image Equipment		\$200	\$800
UAS Digital Image w/ Ground Control Yoke {UAS+ GNSS}		\$300	\$1,200
UAS flyspec: tml Equipment		\$300	\$1,200
UAS flyspec: tml w/ Ground Control Package {UAS w/FS + GNSS}		\$400	\$1,600
LiDAR SCANNING & PROCESSING	Daily	Weekly	Monthly
LiDAR Scanning Equipment (Terrestrial & Aerial)	\$400	\$1,600	
LiDAR flight: iment w/ Ground Control Pilotage {UAS+ GNSS}	\$500	\$2,000	
MISCELLANEOUS	Daily	Weekly	Monthly
Motor - Digil	\$10		
Decontamination Kit (each)			
Field Truck (including fuel)	\$95	\$380	\$1,140
Generator	\$50	\$100	\$600
GeoTech Sample Jars 15 oz. (per box)	\$10		
GPS Unit	\$150	\$600	\$1,800
Harness with Restraint Lanyard	\$40	\$160	\$480
Motorized CP2.00d Load (paffi)		\$35	\$140
Perforated Protective Equipment - Level C (per person)	\$45		
R/11 Catalyst - 26 ft Sampling Vessel	\$600		
Research Nets	\$60		
Sampling Tubing (roll)	\$20		
Saximeter ti	\$35	\$140	\$420
Sound Level Meter		\$200	\$600
Tool Trimmer	\$300		



Laboratory Rate Schedule
2025 RS2
Pa. elofl

LABORATORY LIL:ATIE SOIEDUIJE

SOil C1A551HCA TION AND INDEX TESTS	U11itPrice
Atterbtg Limits -1 Point	\$125
Atterbtg Limits - 3 Point	\$180
Gmili Size - Hydrometer and Sie11eAm1lysis	\$300
Groi11Size - 200 Wash	\$100
Grai11 Size-Sie11eAraalysis (Standard Sample)	\$125
Gmili Size - Sie11e A1<1alysis (Bulk Sample)	\$150
Gmili Size - Hydrometer	\$175
Water Content	\$25
Organic Content	\$75
Specific Gravity	\$115
Visual Classification	\$15
SOil MO/S:WRE-DEIN'SFTY TESTS	U11it Price
Bulk Density	\$100
California Bearing Ratio (CBR)	\$650
Plasticity - 1 Point	\$120
Plasticity - 4 Point	\$250
Plasticity - 4 Point (Cohesive Soil)	\$300
SOil CONSOLIDATION AND STRENGTH TESTS	U11it Price
Consolidation - Coefficient of Stress (CRS)	\$650
Consolidation - Immediate	\$500
Unconfined Compression	\$100
Direct Simple Shear (DSS)	\$300
Cyclic Simple Shear (COSS)	\$650
Triaxial Compression - Isotropic Consolidation	\$500
Triaxial Compression - Ko/anisotropic Consolidation	\$800
Triaxial Compression - Unconsolidated	\$300
SURCHARGE RATES	U11it Price
Atterbtg Limits Dry Prep	\$15
Arterberg Limits O.A. Classification	\$40
Sample Preparation	\$120
Triaxial High Pressure (over 100 psi)	\$1.00
Tube Omit (per unit)	\$25
Tube Extension	\$100

Additional H&A laboratory analyses, pricing, and, where available, upm rates are available.

EXHIBIT C - Task Order Form

(See Attached)

[Use this Form or Create New Based on Same Substance---

TASK ORDER FORM

Project:	_____
Consultant:	_____ _____
Project Task Order Number:	[X of X]
Description of Task and Services:	_____ _____ _____
Maximum Compensation for Task:	\$_____ .00
Task Completion Time:	The Consultant must complete the services and deliverable for this task in On or before: [DATE]
Year-to-Date Total Authorized Task Order Compensation:	\$_____ .00
Remaining Total Not to Exceed Amount upon completion of this Task:	\$_____ .00

APPROVED BY CITY REPRESENTATIVE

[Insert Name and Position]

Date

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2025-_____

APPROVING (1) THE EXECUTION OF A MASTER PROFESSIONAL SERVICES AGREEMENT, WITH AN INITIAL TERM OF THREE YEARS AND A NOT-TO-EXCEED FISCAL YEAR AMOUNT OF \$600,000, WITH NV5, Inc., AND (2) AN ADMINISTRATIVE EXTENSION, UP TO TWO YEARS, BASED ON SATISFACTORY PERFORMANCE, IF NEEDED.

WHEREAS, the City has a variety of Capital Improvement Projects (CIP), Land Development projects, and Transportation and Traffic projects requiring specialized professional Entitlements and Land Development Plan Checking Engineering Services; and

WHEREAS, the City requires the support of professional, technical, and related services from outside consultants to perform these Entitlements and Land Development Plan Checking Engineering Services tasks; and

WHEREAS, per Tracy Municipal Code, Section 2.20.140, a Request for Proposals for On-Call Entitlements and Land Development Plan Checking Engineering Services (Services) was posted on the City's website on November 20, 2024; and

WHEREAS, on November 20, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted a Request for Proposal (RFP) to solicit experienced and qualified consultants to provide On-Call Entitlements and Land Development Plan Checking Engineering Services. The requested services include but are not limited to, Entitlements Packages Plan Checking which includes, conditional use permit, development application, general plan amendment, lot line mergers and adjustments, rezoning and variances, tentative maps and parcel maps, right-of-way (ROW) and easement vacations, and other developer applications collectively referred to as "Entitlement." Entitlement Submittal Package Review includes but is not limited to the following, preliminary title report, owner statements, zoning and density requirements, existing condition depicting existing ROW and any easements located on the project site, site plan review per subdivision map act, Title 12 of the Tracy Municipal Code, the City's adopted Master Plans, adopted specific plans, etc., searching through the City's database, records, and files to determine if an Entitlement is required to reimburse another developer, right-of-way dedications, street cross-section, preliminary grading, and utility plan, preliminary Stormwater Control Plan and report, preliminary parking plan, preliminary striping plan, preliminary street line exhibits for City maintenance project frontage streets. Land Development Plan Checking Services include existing conditions and demolition plans, on-site grading plans, erosion control plans, on-site and off-site civil improvement plans, on-site and off-site landscape and irrigation plans, signing and striping plans, streetlight plans, Stormwater Control Plan report, Stormwater Pollution Prevention Plan report, Hydrology and Hydraulic calculations report, construction cost estimates for bonding purposes, Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions; and

WHEREAS, on December 17, 2024, the City received six (6) proposals to provide the required Services, and after extensive review by the City's internal Selection Committee, the City selected all six (6) qualified consultants to provide these Services; and

WHEREAS, the On-Call List of selected consultants creates efficiency and does not bind the City or its budgets to a particular scope of work until it is required as City needs arise; and

WHEREAS, concurrently with this agenda item, by separate Resolution, staff is recommending that the City Council approve the On-Call List of qualified consultants to provide Entitlements and Land Development Plan Checking Engineering Services; and

WHEREAS, to provide supplemental Entitlements and Land Development Plan Checking Engineering Services for Land Development projects that are currently pending, staff recommends that the City Council award a Master Professional Services Agreement (MPSA) with an initial term of three years and a not-to-exceed fiscal year amount of \$600,000 with NV5, Inc., which is on the On-Call List; and

WHEREAS, the City will issue Task Orders specifying the scope of work needed, and the consultant will invoice the City based on the scope of work for each Task Order; and

WHEREAS, the cost of the work performed by NV5, Inc., will be cost recoverable in part, through the developer's fee, Capital Improvement Project budgets, and funding for MPSA will be through the department's annually adopted budget. The contract includes the ability to terminate if there is insufficient budget availability; and

WHEREAS, the MPSA is for services equivalent to "planning and feasibility services" and, therefore, is not considered a "project" as defined by Section 21065 of the Public Resources Code; any projects for which such services are performed will be reviewed as required under the California Environmental Quality Act (CEQA) before future discretionary actions are taken; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby approves a Master Professional Service Agreement, substantially in the form set forth in Exhibit 1, for Entitlements and Land Development Plan Checking Engineering Services, with an initial term of three (3) years and a not-to-exceed fiscal year amount of \$600,000 with NV5, Inc., and be it

FURTHER RESOLVED: That the City Council authorizes the City Manager to extend, administratively, the Master Professional Services Agreement for up to two additional years, based on performance, if needed; and be it

FURTHER RESOLVED: That the City Council finds that the MPSA is for services equivalent to "planning and feasibility services" and, therefore, is not considered a "project" as defined by Section 21065 of the Public Resources Code and that any projects for which such services are performed will be reviewed as required under CEQA before future discretionary actions are taken.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 18th day of February 2025 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST: _____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of the
City of Tracy, California

EXHIBITS

Exhibit 1 - Master Professional Service Agreement with NV5, Inc.

**CITY OF TRACY
MASTER PROFESSIONAL SERVICES AGREEMENT WITH**

NV5, Inc. for Entitlements and Land Development Plan Checking Engineering Services included but are not limited to Entitlements Packages Plan Checking which includes, conditional use permit, development Application general plan amendment, lot line mergers and adjustments, rezoning and variances, tentative maps and parcel maps., right-of-way and easement vacations, other developer applications collectively referred to as "Entitlement. Entitlement Submittal Package Review includes but are not limited to the following, preliminary title report, owner statements, zoning and density requirements, existing condition depicting Existing ROW and any easements located on the project site, site plan review per subdivision map act, Title 12 of the Tracy Municipal Code, The City adopted Master Plans, adopted specific plans, etc., and search through the CITY's database, records, and files to determine if an Entitlement is required to reimburse another developer, right of way dedications, street cross-section, preliminary grading, and utility plan, preliminary Stormwater Control Plan and report, preliminary parking plan, preliminary striping plan, preliminary street plan line exhibit for City maintenance project frontage streets. Land Development Plan Checking Services include existing conditions and demolition plans, on-site grading plans, erosion control plans, on-site and off-site civil improvement plans, on-site and off-site landscape and irrigation plans, signing and striping plans, streetlight plans, Stormwater Control Plan reports, Stormwater Pollution Prevention Plan report, Hydrology and Hydraulic calculations report, construction cost estimates for bonding purposes, Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions.

This Master Professional Services Agreement ("Agreement") is entered into between the City of Tracy, a municipal corporation ("City"), and NV5, Inc., a California Corporation ("Consultant"). City and Consultant are referred to individually as "Party" and collectively as "Parties."

Recitals

- A.** City desires to retain Consultant for future Entitlements and Land Development Plan Checking Engineering Services for Capital Improvement Projects (CIP), Land Development, and Traffic Engineering Projects as further described herein and in Exhibit A.

On November 20, 2024, staff followed established procedures in accordance with Tracy Municipal Code, Section 2.20.140, and conducted an RFP to solicit experienced and qualified consultants to provide On-Call Traffic Engineering Services for Engineering projects. This on-call list of Consultants creates an efficient process for future project proposal requests and does not bind the City or its budgets to a particular scope of work until it is required as City needs arise. Having previously undertaken the public contracting procedures for each Consultant on the list, as the project needs arise, the City may more readily move into contracting with one of the Consultants on the list and then return to the City Council for approval of a project-specific professional services agreement.

On December 17, 2024, the City received six (6) proposals including NV5, Inc., Pursuant to Tracy Municipal Code Sections 2.20.140(a)(2) and 2.20.130, the City has determined that Consultant demonstrated that it was the best qualified and most responsible proposer, and best fits the City's needs for competence and professional qualifications necessary for the satisfactory performance of the Services.

- A.** After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.

B. This Agreement was approved on _____ pursuant to Tracy Municipal Code Section 2.20.140 (3), [and City Council Resolution No. _____].

NOW THEREFORE, for good and valuable consideration the sufficiency of which the Parties hereby acknowledge, the Parties mutually agree as follows:

1. **Scope of Services.** Consultant shall perform professional services, tasks, and scope of work further described in Exhibit A hereto (“Services”) for the City’s benefit on an as-needed basis pursuant to individual approved Task Orders for services within the in accordance with the terms and conditions of this Agreement. The Services shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative: Jeffrey M. Cooper, PE, Chief Operating Officer. Consultant shall not replace its Authorized Representative, nor shall Consultant replace any of the personnel listed in Exhibit A, nor shall Consultant use or replace any subcontractor or subconsultant, without City’s prior written consent. A failure to obtain the City’s prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.

1.1 **Task Order Forms.** The Services within the Scope of Work will be comprised of Task Order Forms (in the form provided in Exhibit C hereto), approved, executed and delivered by the Director of NV5, Inc., (“Director”) from time-to-time during the Term of this Agreement, on an as-needed basis. The Consultant cannot start performing any Work until the Director has executed a Task Order for such work. The City has no obligation to issue any Task Orders under this Master Agreement. The City may issue any number of Task Orders provided that the sum of the maximum compensation of all approved Task Orders cannot exceed the Total Not-to-Exceed amount stated in Section 3.1.

1.2 **Non-Exclusive Agreement.** The City reserves the right to contract with other consultants providing the same Services or similar scope of services described above during the term of this Agreement. The City further reserves the right to assign work, at its sole discretion, to consultants other than Consultant based on City’s budget, experience, and skills of consultants based on the City’s specific needs.

2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance and shall complete all required services no later than the dates set forth in each individual Task Order. Any services for which times for performance are not specified in each individual Task Order shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated by the City to the Consultant. Consultant shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.

2.1 **Term.** The term of this Agreement shall commence on February 18, 2025, and expire and terminate automatically on February 17, 2028 or earlier by termination pursuant to Section 6 of this Agreement (“Term”). Subject to the Not-To-Exceed Amount defined in Section 3.1, the Term of this Agreement may be extended with express written amendment incorporating this Agreement signed by both Parties and one of the following City approvals: (a) City Council approval or (b) City Manager approval. An administrative extension of this Agreement by City Manager shall be limited to an additional term of two (2) years (s) and require written determination by the City Manager that Consultant has satisfactorily met all the requirements of this Agreement.

3. Compensation. City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit B attached and incorporated by reference for services performed under this Agreement.

3.1 Annual Total Not to Exceed Amount. Consultant's total compensation for all Task Orders and Services under this Agreement shall not exceed \$600,000.00 (six hundred thousand Dollars) per City fiscal year ("Total Not-to-Exceed Amount"). Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the Total Not-to-Exceed Amount. Consultant acknowledges City has no obligation to compensate or reimburse Consultant for any fees or costs incurred in excess of the Total Not-to-Exceed Amount. Unless specifically stated otherwise or agreed to in writing and approved by City Council, the fees proposed by Consultant, as set forth in Exhibit B hereto, shall remain unchanged for the entire term of this Agreement and any extensions of this Agreement.

3.1.2 For each Task Order issued under this Agreement, Consultant's Services shall not exceed the maximum compensation stated in that Task Order.

3.2 Invoices. No less than Ninety (90) days after performing Services, Consultant shall submit monthly written invoice(s) to the City that include copies of approved Task Orders, the Services performed, and identify times, dates, and names of persons performing the services.

3.2.1 If Consultant is providing services in response to a development application, separate invoice(s) must be issued for each application and each invoice shall contain the City's designated development application number.

3.2.2 Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

3.2.3 Consultant shall submit invoices no later than 90 days after completion of a Task Order or portion of the Services. City has no obligation to pay invoices delivered greater than 90 days after the date of performance of the Services.

3.3 Payment. Within 30 days after the City's receipt of invoice(s), City shall make payment to the Consultant based upon the services described on the invoice(s) and approved by the City.

3.4 City Budget Limitations. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will automatically terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the City Council. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. The payment of any compensation under this Agreement shall be subject to the City of Tracy appropriation of funds for the Services. This Agreement shall terminate in the event that such funds are not appropriated.

4. Indemnification. Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence, or willful misconduct of the City. In this section, "City" means the City, its officials, officers, agents, employees, and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes

claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to". The Consultant's indemnification obligation applies to the maximum extent allowed by law and includes defending the City as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, shall defend any suit or action that is subject to this indemnification obligation. The provisions of this section survive completion of the services or the termination of this Agreement and are not limited by the provisions of Section 5 relating to insurance.

5. Insurance. Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

5.1 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

5.2 Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

5.3 Workers' Compensation coverage shall be maintained as required by the State of California.

5.4 Professional Liability "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.

5.5 Endorsements. Consultant shall obtain endorsements to the automobile and commercial general liability insurance policies with the following provisions.

5.5.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

5.5.2 For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

5.6 Notice of Cancellation. Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.

5.7 Authorized Insurers. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

5.8 Insurance Certificate. Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

5.9 Substitute Certificates. Consultant shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.

5.10 Consultant's Obligation. Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

6. Termination.

6.1 The Parties may terminate this Agreement for any reason, including, but not limited to, convenience, by giving ten (10) days' written notice to the other Party. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

6.2 This Agreement shall automatically terminate immediately without notice to Consultant upon any of the following occurrences: (a) material breach of this Agreement by Consultant; (b) lack of City funds appropriated. In the event of termination by material breach of Consultant, if the City replaces any incomplete or defective Services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.

6.3 Upon termination, Consultant shall return the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant in connection with the Services performed under this Agreement.

7. Ownership of Work. All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

8. Independent Contractor Status. Consultant is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Consultant is free to work for other entities while under contract with the City. Consultant, and its agents or employees, are not entitled to City benefits.

9. Conflicts of Interest. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest. The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant represents and warrants that the representations made by the Consultant concerning unfair competitive advantage and conflicts of interest in connection with its submissions in response to the City's procurement for this Agreement were true and accurate both when made and as of the date of this Agreement. Consultant represents and warrants that it has not and shall not offer or deliver any City officer, public official, or employee any gifts or donations in violation Federal, State and/or local law.

10. Rebates, Kickbacks, or Other Unlawful Consideration. Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

11. Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party to the addresses listed below. Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated below, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated below.

To City:

Jonathan R. Mitchell, P.E.
City Engineer
333 Civic Center Plaza
Tracy, CA 95376

To Consultant: NV5, Inc.

Jeffrey M. Cooper, PE
Chief Operating Officer
2525 Natamos Park Dr., Suite 350
Sacramento, CA 95833

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

12. Miscellaneous.

12.1 Standard of Care. Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

12.2 Amendments. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

12.3 Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

12.4 Assignment and Delegation. Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

12.5 Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit,

claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

12.6 Compliance with the Law. Consultant shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

12.6.1 Prevailing Wage Laws. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

12.6.2 Non-discrimination. Consultant represents and warrants that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Consultant shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

12.7 Business Entity Status. Consultant is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Consultant. By entering into this Agreement, Consultant represents that it is not a suspended corporation. If Consultant is a suspended corporation at the time it enters into this Agreement, City may take steps to have this Agreement declared voidable.

12.8 Business License. Before the City signs this Agreement, Consultant shall obtain a City of Tracy Business License. Consultant shall maintain an active City of Tracy Business License during the term of this Agreement.

12.9 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

12.10 Construction of Agreement. Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.

12.11 Severability. If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

12.12 Controlling Provisions. In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Consultant's proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Consultant's proposal (if any), the Exhibits shall control.

12.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.

13. Signatures. The individuals executing this Agreement on behalf of Consultant represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Consultant.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the City and Consultant agree to the full performance of the foregoing terms as of the last signature date.

City of Tracy

By: Dan Arriola

Title: Mayor

Date: _____

Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

Consultant

NV5, Inc.

By: Jeffrey M. Cooper, PE

Title: Chief Operating Officer

Date: 01/16/2025

Federal Employer Tax ID No. 94-2706173

By: Edward H. Codispoti

Title: Chief Financial Officer

Date: _____

Exhibits:

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
- B Compensation (See Agreement section 3.)
- C Task Order Form

EXHIBIT A

Scope of Services

Consultant shall offer a complete range of Entitlements and Land Development Plan Checking Engineering Services to support the City's needs including professional Registered Traffic Engineers, Registered Professional Engineers, field crews, and office technicians. The Consultant shall ensure the tasks outlined herein are performed by the consultant's responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives. Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product.

Entitlements and Land Development Plan Checking Engineering Services include but are not necessarily limited to, those items noted below.

CONSULTANT may be asked to provide support to CITY for various Land Development projects and various Onsite and Offsite Improvement Plans for compliance with the City of Tracy standards, guidelines, Master Plans, and Specific Plans. CONSULTANT will not model the water, sewer, or traffic impacts of each Entitlement. The CITY has retained other consultants to perform said modeling. Plan Checks have a published typical plan check period of about thirty (30) calendar days per each submittal cycle. Developers typically resubmit their improvement plans and CONSULTANT will be expected to plan check the resubmittal. The CITY's goal is to complete the plan check process in about three (3) submittal cycles. These timeframes are stated goals, but each Project will proceed at its own pace. The CITY's goal is to first produce a constructible set of improvements that is in keeping with all the Standards listed below.

Consultant may be asked to provide support the City's needs including professional Registered Civil Engineers, Registered Traffic Engineer, field crews, and office technicians. If the consultant feels that additional tasks are warranted, they must be identified in the consultant's proposal.

The Consultant shall ensure the tasks outlined herein are performed by the consultant's own responsible representative or designated alternate. The requirements described in these sections are neither limited nor comprehensive in nature but are the minimum necessary to meet the City's objectives.

Detailed work procedures are not included in the Scope of Work. The Consultant shall exercise independent, professional judgment and innovation in the performance of any services or tasks listed herein to achieve the most effective and efficient design and product. The specific methodology by which the work will be accomplished shall be presented in the proposal. The Consultant is expected to expand on this scope in their proposal by incorporating specific areas of expertise and any other tasks required for a specific project and/or proposal requested.

Entitlement and Land Development Plan Checking Engineering Services include but are not necessarily limited to, those items noted below. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

1. Entitlements Packages Plan Checking:

A. Evaluate and provide written redlines and/or comments for the following items:

1. Conditional use Permit.
2. Development Application.
3. General Plan Amendment.
4. Lot Line Mergers and Adjustments.
5. Rezoning and Variances.
6. Tentative maps and Parcel Maps.
7. Right-of-way and easement vacations.
8. other developer applications collectively referred to as "Entitlement".

B. Entitlement Submittal Package Review (Review tasks include but are not limited to the following):

1. Preliminary Title report.
2. Owner Statements.
3. Zoning and Density requirements.
4. Existing condition depicting Existing ROW and any easements located on project site.
5. Site Plan Review per Subdivision Map Act, Title 12 of the Tracy Municipal Code. The city adopted Master Plans, adopted Specific Plans etc., and search through the CITY's database, records, and files to determine if an Entitlement is required to reimburse another developer.
6. Right of way dedications.
7. Street Cross Section.
8. Preliminary Grading and Utility Plan.
9. Preliminary Stormwater Control Plan and Report.
10. Preliminary Parking Plan.
11. Preliminary Striping Plan.
12. Preliminary Street Plan Line Exhibits for City Maintained project frontage streets.

- C. CONSULTANT may be asked to coordinate with CITY staff, CITY consultants, and the Applicants to study the Entitlement impacts and make recommendations for mitigation of those impacts.**
- D. CONSULTANT may be asked to use the CITY's template to complete a Cost Recovery Agreement and obtain the applicant's signature, monetary deposit, and provide administrative assistance as needed to produce the CITY purchase orders and notices to proceed to allow systems modeling to proceed.**
- E. From the list of mitigations recommended, CONSULTANT may be asked to write and develop Conditions of Approval (COA) to outline the requirements of the Entitlement.**
- F. CONSULTANT may be asked to provide CITY staff support in writing staff reports, resolutions, and agreements as requested.**
- G. CONSULTANT may be asked to attend and participate in meetings with the developers, City Council meetings, Planning Commission meetings, Public Hearings, public outreaches, and other meetings as requested.**
- H. CONSULTANT may be asked to provide technical staff support to the**

Development Services Department.

2. Land Development Plan Checking Services:

1. Existing Conditions and Demolition Plans.
 2. On-site grading plans.
 3. Erosion Control Plans.
 4. Onsite and Off-site civil improvement plans.
 5. Onsite and Off-site landscape and irrigation plans.
 6. Signing and Striping plans.
 7. Streetlight Plans.
 8. Stormwater Control Plan report.
 9. Stormwater Pollution Prevention Plan report.
 10. Hydrology and Hydraulic Calculations report.
 11. Construction Cost Estimates for Bonding purposes.
 12. Final Maps, Parcel Maps, Condo Plans, & Plat and Legal Descriptions and supporting documents.
- A. CONSULTANT will be expected to calculate plan check fees and communicate said fees to the Developer, confirm payment with CITY staff, and shall recognize that invoices are reimbursed in part or in whole by these fees.
- B. CONSULTANT shall diligently use good-faith efforts to guide the Developer's Engineer to adhere to CITY Standards. If a particular Standard cannot be met despite numerous attempts to redesign the Project or that the redesign creates other numerous conflicts with the Standard or results in a significantly undesirable design, then CONSULTANT will be expected to guide the Developer's Engineering in submitting a "Request for Minor Deviation Letter" and work with CITY staff to process the request.
- C. Provide CITY staff support in writing staff reports, resolutions, and Subdivision Improvement Agreements, Off-Site Improvement Agreements, and/or Deferred Improvement Agreements as requested by the CITY.
- D. Attend and participate in meetings with the Developers, Developer's Engineers, City Council meetings, Planning Commission meetings, Public Hearings, public outreaches, and other meetings as requested.
- E. Provide technical staff support to the Development Services Department as requested.

3. CONSULTANT shall plan check the above items against the following documents:

1. Subdivision Map Act.
2. Title 12 of the Tracy Municipal Code.
3. CITY's adopted Master Plans.
4. CITY's adopted Specific Plans.
5. CITY's adopted environmental document; and Publicly approved site plan layouts, conditions of approvals, all collectively referred to as "Standards".
6. Document any submittal deficiencies and advise the CITY as necessary.

7. Identify any additional reference materials required for a thorough plan check, such as related off-site improvement plans, maintenance issues, approved conceptual plan, studies, or memoranda.
8. Review Project with respect to the relationship between the on-site and off-site improvements in order to achieve an understanding of the overall Project concept.
9. Conduct detailed review of the plans based on the CITY's plan check protocol. Review conditions of approval and plan submittal documents for conformance with these conditions. Compare construction documents against approved conceptual plans and existing approved conditions and notify CITY of any potential discrepancies found within the construction documents or existing approved conditions.
10. Prepare memorandum documenting plan check findings and redlines to be discussed with CONSULTANT and CITY staff. Once review comments are discussed and modified as required, CONSULTANT may be requested to formalize all comments into an official review summary for transmittal to the plan originator.
11. Provide accurate invoicing on a monthly basis using the appropriate City tracking methods.

Additional requirements are as follows:

All work shall be performed under the direction of a Registered Professional Civil Engineer and or Registered Traffic Engineer in the State of California. The Registered Professional Civil Engineer/Traffic Engineer shall maintain professional licenses required by the laws of the State of California at all times while under contract with the City of Tracy.

Personnel:

Jeffrey M. Cooper, PE, Chief Operating Officer (Principal-in-Charge)

Tamara O'Neal, PE, Project Manager

Padma Asam, PE, QSD/P, ENV SP, LEED AP Plan Reviewer (Entitlement/General Civil)

Michael Rocco Plan Reviewer (Entitlement/General Civil)

Sarah Seitz (Entitlement/General Civil)

Andrea Thomas, PE (Entitlement/General Civil)

Jenny Van Truong, PE (Entitlement/General Civil)

Jay Fahrion, PLS (Survey, Maps, Row, Plats & Legals)

Scott Moors, PG, CEG, CHG (Geotechnical)

James Miller, PE (Traffic/Street Lighting)

Gerald Tom, PE, TE (Traffic/Street Lighting)

Calvin Harra (Planning/Zoning)

Tam Dan L. Vo (Planning/Zoning)

Mike Smyth, RLA, ASLA (Landscape/Irrigation)

Jennifer Peterson, PE, CFM, QSD/P, CPESC, LEED AP (Stormwater/Hydrology & Hydraulics)

Thomas Grace, EIT (Stormwater/Hydrology & Hydraulics)

Matthew Moore, PE, ENV SP, QSD/P, TOR (Stormwater/Hydrology & Hydraulics)

Kaly Morris (Permit Technician)

Kira Bowen (Permit Technician)

Kenneth Hicks, QSP (Inspector)

David Caniglia, LEED GA (Inspector)

EXHIBIT B

Compensation

Fee Schedule

Effective through December 31, 2025. After this time, NV5 will receive a 3% rate increase for each consecutive year beginning January 1, 2026.

NV5

PLAN REVIEW FEES	HOURLY RATE *
Project Manager	\$210
Senior Engineer/Planner/Surveyor	\$190
Associate Engineer/Planner/Surveyor	\$175
Assistant Engineer/Planner/Surveyor	\$140
Senior Designer	\$155
Plan Intake Coordinator/Permit Technician	\$85
Expedite Plan Review	Additional 25% of the fees above
INSPECTION FEES	HOURLY RATE *
Senior Inspector	\$155 (2 hour minimum charge)
Inspector	\$135 (2 hour minimum charge)
REIMBURSABLE FEES	COST
Job site Mileage (Non-City Vehicle)	per IRS standard

* Regular rates. Work in excess of 8 hours and work on Saturdays will be billed at 1.5 times the regular rate. Work in excess of 12 hours and work on Sundays and Holidays will be billed at 2 times the regular rate.

EXHIBIT C - Task Order Form

(See Attached)

[Use this Form or Create New Based on Same Substance---

TASK ORDER FORM

Project:	_____
Consultant:	_____ _____
Project Task Order Number:	[X of X]
Description of Task and Services:	_____ _____ _____
Maximum Compensation for Task:	\$ _____ .00
Task Completion Time:	The Consultant must complete the services and deliverable for this task in On or before: [DATE]
Year-to-Date Total Authorized Task Order Compensation:	\$ _____ .00
Remaining Total Not to Exceed Amount upon completion of this Task:	\$ _____ .00

APPROVED BY CITY REPRESENTATIVE

[Insert Name and Position]

Date

Agenda Item 1.H

RECOMMENDATION

Staff recommends that the City Council adopt a Resolution (1) accepting public improvements required pursuant to the Subdivision Improvement Agreement for Tract 3788 Tracy Hills Village 1A as complete and assume responsibility for the future maintenance and repairs, (2) authorizing the City Engineer to release the Developer furnished bonds in accordance with the Subdivision Improvement Agreements, and (3) authorizing the City Clerk to file Notices of Completion for Tract 3788 Tracy Hills Village 1A as amended, and Tract 3788 Tracy Hills Village 1A (for Parkway Landscaping) with the San Joaquin County Recorder's Office.

EXECUTIVE SUMMARY

Lennar Homes of California, Inc., a California Corporation (Developer), has completed public improvements for Tracy Hills Village 1A Tract 3788, containing 63 single-family residential lots, in accordance with the Subdivision Improvement Agreements, project plans, and specifications. Staff recommends City Council accept the improvements as completed, authorize City Clerk to file Notices of Completion, and authorize the City Engineer to release the Subdivider's bonds.

BACKGROUND AND LEGISLATIVE HISTORY

On April 5, 2016, by Resolution No. 2016-062, City Council certified the Tracy Hills Specific Plan Final Subsequent Environmental Impact Report (Final SEIR) and adopted findings of fact, a statement of overriding considerations, and a mitigation monitoring program for the Tracy Hills Specific Plan Project (Application Numbers GPA 10-0001, SPA 13-0001, ZA 13-0001, DA 13-0001, TSM 13-0005, and TSM 16-0001).

On April 5, 2016, by Resolution No. 2016-066, City Council approved a Small-Lot Vesting Tentative Map for Tracy Hills Phase 1A, Application No. TSM 13-0005, subject to Conditions of Approval, and found it to be in compliance with the Final SEIR.

On March 20, 2018, by Resolution No. 2018-047, City Council approved the Final Subdivision Map and Subdivision Improvement Agreement for Tract 3788 Tracy Hills Village 1A with Tracy Phase 1, LLC, a Delaware limited liability company (Subdivider), a subdivision consisting of 63 single-family residential lots. This subdivision is generally located west of Corral Hollow Road and south of Tracy Hills Drive as shown in Attachment "A". The Agreement required Subdivider to perform the Scope of Work defined in the following plan sets:

"Improvement Plans Village 1A – Tract 3788 – Tracy Hills Phase 1A", consisting of 16 sheets, prepared by Ruggeri-Jensen-Azar.

"Joint Trench Composite, Integral Communities, LLC, Tracy Hills-Village 1A-Tract 3788", consisting of 6 sheets, prepared by Giacalone Design Services, Inc.

"Public Street Lighting, Integral Communities, LLC Tracy Hills-Village 1A-Tract 3788", consisting of 4 sheets, prepared by Giacalone Design Services, Inc.

“Cathodic Protection, Tracy Hills Village 1A Improvement Plans, Domestic Water Cathodic Protection” consisting of 5 sheets, prepared by JDH Corrosion Consultants.

On March 5, 2019, by Resolution No. 2019-032, City Council approved the Subdivision Improvement Agreement for Parkway Landscaping Tract 3788 Tracy Hills Village 1A, requiring Developer to perform the Scope of Work defined in the following plan sets:

“Tracy Hills Landscape Improvement Plans – Neighborhood 1A – Tract 3788 Phase 1A”, consisting of 25 sheets, prepared by FORMA.

Structural details, consisting of 2 sheets, prepared by Harris and Sloan.

Electrical Plans, consisting of 2 sheets, prepared by Candela Engineering.

On May 21, 2019, by Resolution No. 2019-087, City Council approved the First Amendment to the Subdivision Improvement Agreement for Tract 3788 Tracy Hills Village 1A, in which Subdivider assigned its obligations under the Subdivision Improvement Agreement to Developer. New bonds were issued to the City by Developer in amounts required by the Subdivision Improvement Agreement and bonds previously issued to the City by Subdivider were released.

The above-mentioned Subdivision Improvement Agreement for Tract 3788 Tracy Hills Village 1A, First Amendment to the Subdivision Improvement Agreement for Tract 3788 Tracy Hills Village 1A, and Subdivision Improvement Agreement for Parkway Landscaping Tract 3788 Tracy Hills Village 1A are referred to, collectively, as “the Agreements”.

ANALYSIS

Developer has completed all the work required to be done in accordance with the Agreements and has requested acceptance of the public improvements. The City Engineer has inspected the completed work and confirmed that the improvements conform to the Agreements and City plans and specifications. The estimated cost of the public improvements is as follows:

Cost Breakdown

Roadway Improvements	\$ 648,564
Water	\$ 230,896
Storm Drainage	\$ 295,878
Sanitary Sewer	\$ 273,535
Landscaping	\$ 154,506
Total	\$ 1,603,379
 Dedicated Land Value	 \$ 289,000

Bonds were provided by Subdivider as required by the Agreements in amounts as follows:

1. Subdivision Improvement Agreement for Tract 3788 Tracy Hills Village 1A (as amended)

<u>Bond Type</u>	<u>Amount</u>
Faithful Performance	\$ 1,419,264
Labor and Material	\$ 1,419,264
Warranty	\$ 141,926
Monumentation	\$ 15,875

2. Subdivision Improvement Agreement for Parkway Landscaping Tract 3788 Tracy Hills Village 1A

<u>Bond Type</u>	<u>Amount</u>
Faithful Performance	\$ 154,506
Labor and Material	\$ 154,506
Warranty	\$ 15,451

Faithful Performance bonds may be released upon acceptance of improvements by the City. Labor and Material bonds may be released six months after the recordation of the Notice of Completion as the statute of limitations period expires in accordance with Tracy Municipal Code and Civil Code §9356. Warranty bond may be released one year after City acceptance of improvements and warranty work is completed.

Monumentation bond may be released upon City receipt of a letter from the project surveyor stating full payment has been received for the installation of monumentation, per Government Code Section 66496. City is now in receipt of said letter.

A total of 3.94 acres has been dedicated as public right-of-way on the Final Map for Tracy Hills Village 1A Tract 3788 and accepted by the City Clerk subject to satisfactory completion of improvements thereon. The land value is estimated at \$394,000. Filing of Notices of Completion by the City Clerk will memorialize satisfactory completion of improvements per Tracy Municipal Code 12.36.110.

Subdivider has completed all work required to be done in accordance with the Agreements and has requested acceptance of the public improvements. The City Engineer has inspected the completed work and confirmed that the improvements conform to the Agreements and City specifications and plans. Notice of Completion should now be filed by the City Clerk, to be recorded at San Joaquin County Recorder's Office. The project carries a one-year Warranty bond for all public improvements.

FISCAL IMPACT

All improvements were completed by the Subdivider in accordance with the Agreements and there is no fiscal impact associated with this action.

COORDINATION

Project construction activities were coordinated with the City of Tracy Operations and Utilities Divisions.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DETERMINATION

This project is in compliance with the Final SEIR certified by City Council and no additional study is required.

STRATEGIC PLAN

This agenda item is consistent with the Council approved Economic Development Strategy to ensure physical infrastructure necessary for development.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council, by resolution, (1) accept public improvements required pursuant to the Subdivision Improvement Agreement for Tract 3788 Tracy Hills Village 1A as complete and assume responsibility for the future maintenance and repairs, (2) authorize the City Engineer to release the Developer furnished bonds in accordance with the Subdivision Improvement Agreements, and (3) authorize the City Clerk to file Notices of Completion for Tract 3788 Tracy Hills Village 1A as amended, and Tract 3788 Tracy Hills Village 1A (for Parkway Landscaping) with the San Joaquin County Recorder's Office.

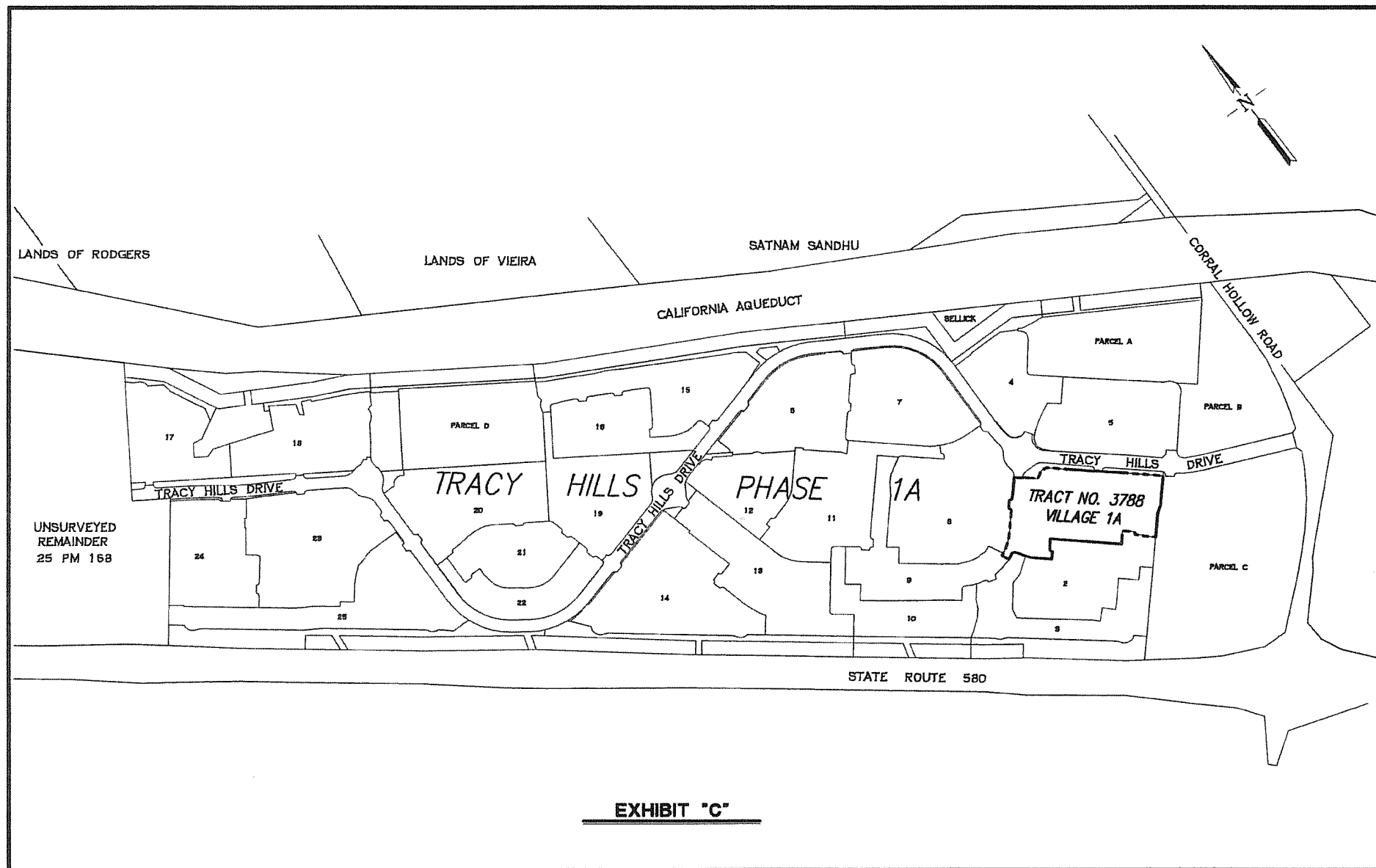
Prepared by: Miguel Hernandez, Construction Manager

Reviewed by: Sara Castro, Finance Director
Kamalpreet Gill, Deputy City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A – Vicinity Map



CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2025-_____

(1) ACCEPTING PUBLIC IMPROVEMENTS REQUIRED PURSUANT TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR TRACT 3788 TRACY HILLS VILLAGE 1A AS COMPLETE AND ASSUME RESPONSIBILITY FOR THE FUTURE MAINTENANCE AND REPAIRS, (2) AUTHORIZING THE CITY ENGINEER TO RELEASE THE DEVELOPER FURNISHED BONDS IN ACCORDANCE WITH THE SUBDIVISION IMPROVEMENT AGREEMENTS, AND (3) AUTHORIZING THE CITY CLERK TO FILE NOTICES OF COMPLETION FOR TRACT 3788 TRACY HILLS VILLAGE 1A AS AMENDED, AND TRACT 3788 TRACY HILLS VILLAGE 1A (FOR PARKWAY LANDSCAPING) WITH THE SAN JOAQUIN COUNTY RECORDER'S OFFICE.

WHEREAS, on March 20, 2018, by Resolution No. 2018-047, City Council approved the Final Subdivision Map and a Subdivision Improvement Agreement for Tract 3788 Tracy Hills Village 1A with Tracy Phase 1, LLC, a Delaware limited liability company (Subdivider), a subdivision consisting of 63 single-family residential lots; and

WHEREAS, on May 21, 2019, by Resolution No. 2019-087, City Council approved the First Amendment to the Subdivision Improvement Agreement for Tract 3788 Tracy Hills Village 1A, in which Subdivider assigned its obligations under the Subdivision Improvement Agreement to Lennar Homes of California, Inc., a California Corporation (Developer); and

WHEREAS, on March 5, 2019, by Resolution No. 2019-032, City Council approved the Subdivision Improvement Agreement for Parkway Landscaping Tract 3788 Tracy Hills Village 1A with Developer for the construction of public landscaping improvements within Tracy Hills Village 1A Tract 3788; and

WHEREAS, the City Engineer has inspected the completed work and recommends acceptance of the improvements completed in accordance with the Subdivision Improvement Agreement for Tract 3788 Tracy Hills Village 1A, as amended, and the Subdivision Improvement Agreement for Parkway Landscaping Tract 3788 Tracy Hills Village 1A; and

WHEREAS, Subdivider furnished Performance, Payment, and Warranty bonds assuring completion of the work and the estimated cost of the improvements is as follows:

Roadway Improvements	\$ 648,564
Water	\$ 230,896
Storm Drainage	\$ 295,878
Sanitary Sewer	\$ 273,535
Landscaping	\$ 154,506
Total	\$ 1,603,379 ; and

WHEREAS, 3.94 acres, valued at \$394,000, was dedicated as public right-of-way on the Final Map for Tracy Hills Village 1A Tract 3788 and accepted by the City Clerk subject to satisfactory completion of improvements; and

WHEREAS, the acceptance and operation of these improvements is consistent with the adopted Final Supplemental Environmental Impact Report (SEIR) and no further review under the California Environmental Quality Act (CEQA) is necessary; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby accepts public improvements for Tract 3788 Tracy Hills Village 1A as complete, including Parkway Landscaping improvements, and assume responsibility for the future maintenance and repairs; and be it

FURTHER RESOLVED: That the City Council authorize the City Engineer to release the Developer furnished bonds in accordance with the terms of the Subdivision Improvement Agreements; and be it

FURTHER RESOLVED: That the City Council authorize the City Clerk to file Notices of Completion for Tract 3788 Tracy Hills Village 1A as amended, and Tract 3788 Tracy Hills Village 1A (for Parkway Landscaping) with the San Joaquin County Recorder's Office.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 18th day of February 2025 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST: _____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of
the City of Tracy, California

Agenda Item 1.I

RECOMMENDATION

Staff recommends that the City Council adopt a resolution (1) accepting public improvements required pursuant to the Subdivision Improvement Agreement for Tract 3943 Tracy Hills Village 1B as complete and assume responsibility for the future maintenance and repairs, (2) accepting additional public improvements for Parkway Landscaping for Tract 3943 Tracy Hills Village 1B as complete and assume responsibility for the future maintenance and repairs, (3) accepting public improvements for Tracy Hills Phase 1A Palmer Street Extension as complete and assume responsibility for the future maintenance and repairs, (4) authorizing the City Engineer to release the Developer furnished bonds in accordance with the Improvement Agreements, and (5) authorizing the City Clerk to file Notices of Completion for Tract 3943 Tracy Hills Village 1B, as amended, Tract 3943 Tracy Hills Village 1B (for Parkway Landscaping), and Tracy Hills Phase 1A Palmer Street Extension with the San Joaquin County Recorder's Office.

EXECUTIVE SUMMARY

Lennar Homes of California, Inc., a California Corporation (Developer), has completed public improvements for Tracy Hills Village 1B Tract 3943, containing 50 single-family residential lots, and Tracy Phase 1, LLC, a Delaware Limited Liability Company (Subdivider) has completed public improvements for Palmer Street Extension, all in accordance with the Improvement Agreements, project plans, and specifications. Staff recommends City Council accept the improvements as complete, authorize City Clerk to file Notices of Completion, and authorize the City Engineer to release the Developer's bonds.

BACKGROUND AND LEGISLATIVE HISTORY

On April 5, 2016, by Resolution No. 2016-062, City Council certified the Tracy Hills Specific Plan Final Subsequent Environmental Impact Report (Final SEIR) and adopted findings of fact, a statement of overriding considerations, and a mitigation monitoring program for the Tracy Hills Specific Plan Project (Application Numbers GPA 10-0001, SPA 13-0001, ZA 13-0001, DA 13-0001, TSM 13-0005, and TSM 16-0001).

On April 5, 2016, by Resolution No. 2016-066, City Council approved a Small-Lot Vesting Tentative Map for Tracy Hills Phase 1A, Application No. TSM 13-0005, subject to Conditions of Approval, and found it to be in compliance with the Final SEIR.

On June 19, 2018, by Resolution No. 2018-103, City Council approved the Final Subdivision Map and Subdivision Improvement Agreement for Tract 3943 Tracy Hills Village 1B with Subdivider, a subdivision consisting of 52 single-family residential lots. This subdivision is generally located west of Corral Hollow Road and south of Tracy Hills Drive as shown in Attachment "A". The Agreement required Subdivider to perform the Scope of Work defined in the following plan sets:

"Improvement Plans Village 1B – Tract 3943 – Tracy Hills Phase 1A", consisting of 14 sheets, prepared by Ruggeri-Jensen-Azar.

“Joint Trench Composite, Integral Communities, LLC, Tracy Hills-Village 1B-Tract 3943”, consisting of 5 sheets, prepared by Giacalone Design Services, Inc.

“Public Street Lighting, Integral Communities, LLC Tracy Hills-Village 1B-Tract 3943”, consisting of 3 sheets, prepared by Giacalone Design Services, Inc.

On April 2, 2019, by Resolution 2019-059, City Council approved the Subdivision Improvement Agreement for Parkway Landscaping for Tract 3943 Tracy Hills Village 1B, requiring Developer to perform the Scope of Work defined in the following plan set:

“Tracy Hills Landscape Improvement Plans – Neighborhood 1B – Tract 3943 Phase 1A”, consisting of 14 sheets, prepared by FORMA.

On May 21, 2019, by Resolution No. 2019-088, City Council approved the First Amendment to the Subdivision Improvement Agreement for Tract 3943 Tracy Hills Village 1B, in which Subdivider assigned its obligations under the Subdivision Improvement Agreement to Developer. New bonds were issued to the City by Developer in amounts required by the Subdivision Improvement Agreement and bonds previously issued to the City by Subdivider were released.

On July 27, 2020, pursuant to Urgency Ordinance No. 1285, City Manager approved an Offsite Improvement Agreement with Subdivider allowing construction of Palmer Street Extension, located within the boundary of Tract 3943 Tracy Hills Village 1B. This project was intended to be the first phase of a traffic mitigation plan to ease traffic congestion brought on by future phases of Tracy Hills. Additional mitigation measures were to include an extension of Criseldo Mina Avenue to connect with Palmer Street and traffic calming measures along Palmer Street. The extension of Criseldo Mina Avenue was subsequently approved under separate agreement and will be presented to City Council for acceptance at a later date. In a memo from the City traffic consultant, Kimley Horn, dated August 20, 2020, it was stated that additional traffic calming measures along Palmer Street would not be necessary.

The Palmer Street extension was created by a Parcel Map, approved by the City Engineer and recorded as Book 26, Page 167 of Parcel Maps at the San Joaquin County Recorder's Office. The Parcel Map had the net effect of reducing the number of residential lots in Village 1B by two, for a new total of 50 residential lots. Palmer Street itself was accepted in fee by the City Clerk subject to satisfactory completion of improvements thereon.

The above-mentioned Subdivision Improvement Agreement for Tract 3788 Tracy Hills Village 1A, First Amendment to the Subdivision Improvement Agreement for Tract 3943 Tracy Hills Village 1B, Subdivision Improvement Agreement for Parkway Landscaping Tract 3943 Tracy Hills Village 1B, and Offsite Improvement Agreement for Palmer Street Extension are referred to, collectively, as “the Agreements”.

ANALYSIS

Developer has completed all the work required to be done in accordance with the Agreements and has requested acceptance of the public improvements. The City Engineer has inspected the completed work and confirmed that the improvements conform to the Agreements and City

plans and specifications. The estimated cost of the public improvements, including both Village 1B and Palmer Street Extension, is as follows:

Cost Breakdown

Roadway Improvements	\$ 527,084
Water	\$ 172,425
Storm Drainage	\$ 137,277
Sanitary Sewer	\$ 159,032
Street Lighting	\$ 62,700
Landscaping	\$ 102,437
Total	\$ 1,160,955

Dedicated Land Value	\$ 289,000

Bonds were provided by Subdivider as required by the Agreements in amounts as follows:

Subdivision Improvement Agreement for Tract 3943 Tracy Hills Village 1B (as amended)

<u>Bond Type</u>	<u>Amount</u>
Faithful Performance	\$ 977,636
Labor and Material	\$ 977,636
Warranty	\$ 97,764
Monumentation	\$ 12,500

Subdivision Improvement Agreement for Village 1B Parkway Landscaping

<u>Bond Type</u>	<u>Amount</u>
Faithful Performance	\$ 96,387
Labor and Material	\$ 96,387
Warranty	\$ 9,639

Offsite Improvement Agreement for Palmer Street Extension

<u>Bond Type</u>	<u>Amount</u>
Faithful Performance	\$ 73,084
Labor and Material	\$ 73,084
Warranty	\$ 7,308

Faithful Performance bonds may be released upon acceptance of improvements by the City. Labor and Material bonds may be released six months after the recordation of the Notice of Completion as the statute of limitations period expires in accordance with Tracy Municipal Code and Civil Code §9356.

Warranty bond may be released one year after City acceptance of improvements and warranty work is completed.

Monumentation bond may be released upon City receipt of a letter from the project surveyor stating full payment has been received for the installation of monumentation, per Government Code Section 66496. City is now in receipt of said letter.

A total of 2.77 acres has been dedicated as public right-of-way on the Final Map for Tracy Hills Village 1B, Tract 3943, and accepted by the City Clerk subject to satisfactory completion of improvements thereon. An additional 0.12 acre was dedicated on Parcel Map 26 PM 167 for Palmer Street and accepted by the City Clerk subject to satisfactory completion of improvements thereon. Total land value is estimated at \$289,000. Filing of Notices of Completion by the City Clerk will memorialize satisfactory completion of improvements per Tracy Municipal Code 12.36.110.

Subdivider has completed all work required to be done in accordance with the Agreements and has requested acceptance of the public improvements. The City Engineer has inspected the completed work and confirmed that the improvements conform to the Agreements and City specifications and plans. Notices of Completion should now be filed by the City Clerk, to be recorded at San Joaquin County Recorder's Office. The projects carry a one-year warranty bond for all public improvements.

FISCAL IMPACT

All improvements were completed by the Subdivider and Developer in accordance with the Agreements and there is no fiscal impact associated with this action.

COORDINATION

Project construction activities were coordinated with the City of Tracy Operations and Utilities Divisions.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DETERMINATION

This project is in compliance with the Final SEIR certified by City Council and no additional study is required.

STRATEGIC PLAN

This agenda item is consistent with the Council approved Economic Development Strategy to ensure physical infrastructure necessary for development.

ACTION REQUESTED OF THE CITY COUNCIL

That the City Council, by resolution, (1) accept public improvements required pursuant to the Subdivision Improvement Agreement for Tract 3943 Tracy Hills Village 1B as complete and assume responsibility for the future maintenance and repairs, (2) accept additional public improvements for Parkway Landscaping for Tract 3943 Tracy Hills Village 1B as complete and assume responsibility for the future maintenance and repairs, (3) accept public improvements

for Tracy Hills Phase 1A Palmer Street Extension as complete and assume responsibility for the future maintenance and repairs, (4) authorize the City Engineer to release the Developer furnished bonds in accordance with the Improvement Agreements, and (5) authorize the City Clerk to file Notices of Completion for Tract 3943 Tracy Hills Village 1B as amended, Tract 3943 Tracy Hills Village 1B (for Parkway Landscaping), and Tracy Hills Phase 1A Palmer Street Extension with the San Joaquin County Recorder's Office.

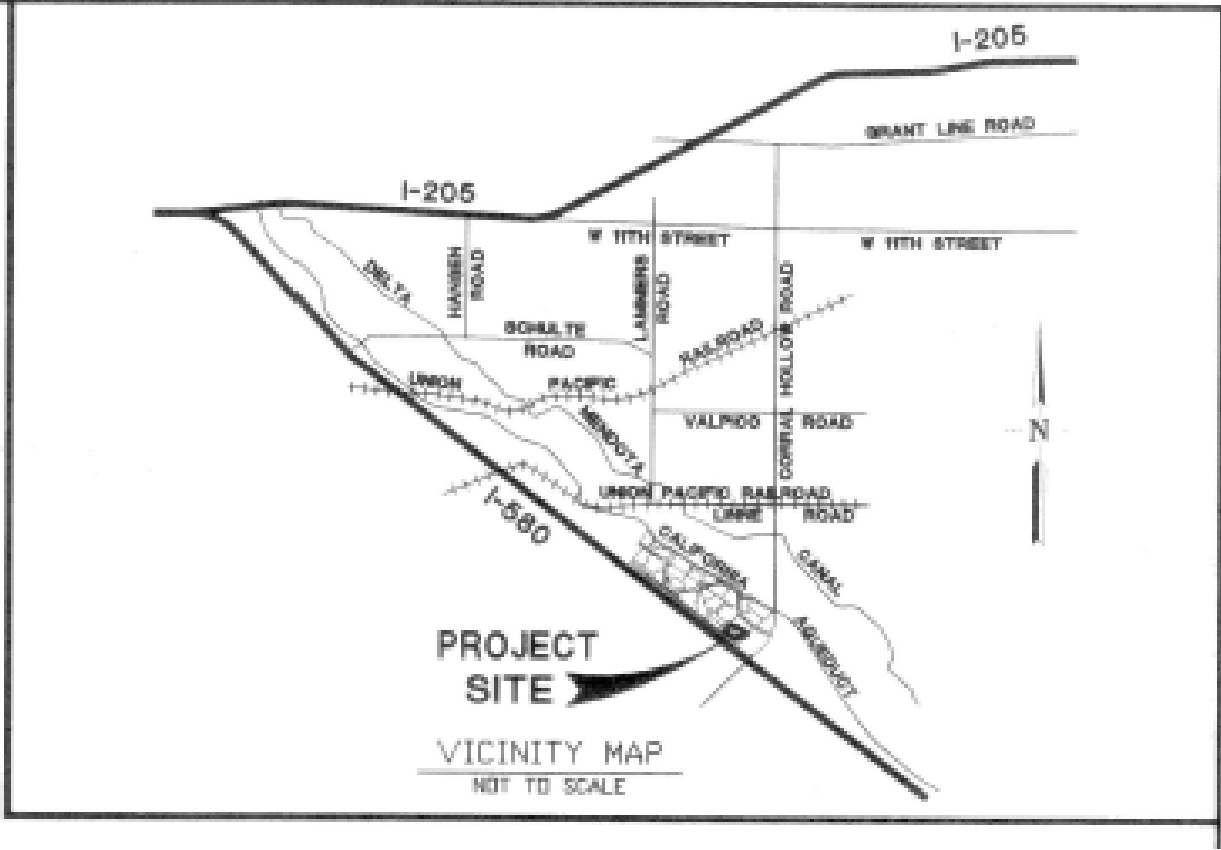
Prepared by: Miguel Hernandez, Construction Manager

Reviewed by: Sara Castro, Finance Director
Karin Schnaider, Assistant City Manager
Kamalpreet Gill, Deputy City Attorney

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A – Vicinity Map



CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2025-_____

(1) ACCEPTING PUBLIC IMPROVEMENTS REQUIRED PURSUANT TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR TRACT 3943 TRACY HILLS VILLAGE 1B AS COMPLETE AND ASSUME RESPONSIBILITY FOR THE FUTURE MAINTENANCE AND REPAIRS, (2) ACCEPTING ADDITIONAL PUBLIC IMPROVEMENTS FOR PARKWAY LANDSCAPING FOR TRACT 3943 TRACY HILLS VILLAGE 1B AS COMPLETE, AND ASSUME RESPONSIBILITY FOR FUTURE MAINTENANCE AND REPAIRS, (3) ACCEPTING PUBLIC IMPROVEMENTS FOR TRACY HILLS PHASE 1A PALMER STREET EXTENSION AS COMPLETE, AND ASSUME RESPONSIBILITY FOR FUTURE MAINTENANCE AND REPAIRS, (4) AUTHORIZING THE CITY ENGINEER TO RELEASE THE SUBDIVIDER FURNISHED BONDS IN ACCORDANCE WITH THE IMPROVEMENT AGREEMENTS, AND (5) AUTHORIZING THE CITY CLERK TO FILE NOTICES OF COMPLETION FOR TRACT 3943 TRACY HILLS VILLAGE 1B AS AMENDED, TRACT 3943 TRACY HILLS VILLAGE 1B (FOR PARKWAY LANDSCAPING), AND TRACY HILLS PHASE 1A PALMER STREET EXTENSION WITH THE SAN JOAQUIN COUNTY RECORDER'S OFFICE.

WHEREAS, on June 19, 2018, by Resolution No. 2018-047, City Council approved the Final Subdivision Map and a Subdivision Improvement Agreement for Tract 3943 Tracy Hills Village 1B with Tracy Phase 1, LLC, a Delaware limited liability company (Subdivider), a residential subdivision consisting of 52 single-family residential lots; and

WHEREAS, on May 21, 2019, by Resolution No. 2019-088, City Council approved the First Amendment to the Subdivision Improvement Agreement for Tract 3788 Tracy Hills Village 1A, in which Subdivider assigned its obligations under the Subdivision Improvement Agreement to Lennar Homes of California, Inc., a California Corporation (Developer); and

WHEREAS, on April 2, 2019, by Resolution No. 2019-059, City Council approved the Subdivision Improvement Agreement for Parkway Landscaping Tract 3943 Tracy Hills Village 1B with Developer for the construction of public landscaping improvements within Tracy Hills Village 1B Tract 3943; and

WHEREAS, the City Engineer approved a Parcel Map creating Palmer Street extension within Village 1B, recorded as 26 PM 167 in the Office of the San Joaquin County Recorder's Office; and

WHEREAS, on July 27, 2020, pursuant to Urgency Ordinance No. 1285, City Manager approved an Offsite Improvement Agreement with Subdivider allowing construction of Palmer Street Extension, a traffic mitigation measure; and

WHEREAS, the City Engineer has inspected the completed work and recommends acceptance of all the improvements completed in accordance with the Subdivision Improvement Agreements for Tract 3943 Tracy Hills Village 1B, and the Offsite Improvement Agreement for Palmer Street Extension; and

WHEREAS, Subdivider and Developer furnished performance, payment, and warranty bonds assuring completion of the work and the estimated cost of the improvements is as follows:

Roadway Improvements	\$ 527,084
Water	\$ 172,425
Storm Drainage	\$ 137,277
Sanitary Sewer	\$ 159,032
Street Lighting	\$ 62,700
Landscaping	\$ 102,437
Total	\$ 1,160,955 ;and

WHEREAS, 2.89 acres, valued at \$289,000, was dedicated as public right-of-way on the Final Map for Tracy Hills Village 1B Tract 3943 and Parcel Map 26 PM 167 and accepted by the City Clerk subject to satisfactory completion of improvements thereon; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby accepts public improvements for Tract 3943 Tracy Hills Village 1B as complete and assume responsibility for the future maintenance and repairs; and be it

FURTHER RESOLVED: That the City Council hereby accepts public improvements for Tract 3943 Tracy Hills Village 1B (for Parkway Landscaping) as complete and assume responsibility for the future maintenance and repairs; and be it

FURTHER RESOLVED: That the City Council hereby accepts public improvements for Tracy Hills Phase 1A Palmer Street Extension as complete and assume responsibility for the future maintenance and repairs; and be it

FURTHER RESOLVED: That the City Council authorizes the City Engineer to release the Subdivider and Developer furnished bonds in accordance with the terms of the Subdivision Improvement Agreements and Offsite Improvement Agreement; and be it

FURTHER RESOLVED: That the City Council authorizes the City Clerk to file Notices of Completion for Tract 3943 Tracy Hills Village 1B as amended, Tract 3943 Tracy Hills Village 1B (for Parkway Landscaping), and Tracy Hills Phase 1A Palmer Street Extension with the San Joaquin County Recorder's Office.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 18th day of February 2025 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST: _____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of
the City of Tracy, California

Agenda Item 1.J

RECOMMENDATION

Staff recommends that the City Council adopt a Resolution 1) approving permits under Tracy Municipal Code Chapter 4.40, to allow the consumption of alcoholic beverages on City streets for the following special events of community-wide interest occurring in 2025: (1) Downtown Block Parties (May 2, June 6, July 11, August 1, and September 5); (2) Brews and BBQ (October 4); (3) Girls Night Out – Witches and Broomsticks (October 24); (4) Tracy City Center Association Events (Taps on Tenth on April 5, Downtown Tracy Wine Stroll on September 20, and Car Show on September 27); (5) South Side Community Organization Event (September 13); and 2) delegating the authority to the City Manager to put required time and other restrictions on each permit.

EXECUTIVE SUMMARY

The Tracy Municipal Code allows the City Council, by resolution, to issue a permit allowing the consumption of alcohol on public streets at an organized event of community-wide interest. The Parks, Recreation, and Community Services Department is coordinating several requests for alcohol permits in conjunction with community events and is seeking Council approval.

BACKGROUND AND LEGISLATIVE HISTORY

Tracy Municipal Code Section 4.12.1190(d) states: “The Council, by resolution, may issue a permit under Chapter 4.40 allowing the consumption of intoxicating beverages on public property at an organized event of community-wide interest. The consumption of intoxicating beverages shall be restricted to the perimeters of the event as described in the permit.”

Additionally, Tracy Municipal Code Chapter 4.40 governs special event permits occurring on or within the public right-of-way.

For many years, the City of Tracy has successfully coordinated special community events that have community-wide interest with various local non-profit organizations, including the Tracy City Center Association (TCCA) and South Side Community Organization (SSCO). Many of these events have received City approval for the consumption of alcoholic beverages within the boundary of the events, with most of the approved events taking place within the Downtown Tracy Business District, also known as the downtown TCCA district boundaries.

The City and TCCA entered into a Memorandum of Understanding (MOU) on October 7, 2014, providing TCCA exclusive rights for purchase and resale of alcoholic beverages associated with any co-presented or City-sponsored event held within the downtown TCCA district boundaries, in exchange for a revenue share with the City, under Resolution 2014-166. This agreement was renewed as a Concession Agreement through appropriate City action for 2025. Therefore, for 2025 City events hosted in the downtown area, TCCA is requesting the alcohol permit.

ANALYSIS

At the present time, the Parks, Recreation, and Community Services Department is coordinating several requests for alcohol permits to allow alcoholic beverages to be served as a component of the following community events:

Taps on Tenth: TCCA has requested a permit to serve alcoholic beverages at its event on Saturday, April 5, 2025, from 4:00 p.m. to 8:00 p.m., on 10th Street from A Street to Central Avenue, Central Avenue from 10th Street to 11th Street, and on B Street from Gillett Alley to Grunauer Alley.

Downtown Block Parties: TCCA has requested a permit to serve alcoholic beverages at the City of Tracy's five (5) block party events on Fridays, May 2, June 6, July 11, August 1, and September 5, 2025, from 6:00 p.m. to 9:00 p.m. on east- and west-bound 6th Street between Central Avenue and D Street and at Front Street Plaza.

September 16th Event: SSCO has requested a permit to serve alcoholic beverages at its event on Saturday, September 13, 2025, from 11:00 a.m. to 6:00 p.m., at Lincoln Park located on Eaton Avenue between Holly Drive and East Street.

Downtown Tracy Wine Stroll: TCCA has requested a permit to serve alcoholic beverages at its event on Saturday, September 20, 2025, from 4:00 p.m. to 8:00 p.m., on Central Avenue from 11th Street to 6th Street, on 10th Street from A Street to Central Avenue, on B Street from Gillett Alley to Grunauer Alley, and on west-bound 6th Street between Central Avenue and D Street.

Car Show: TCCA has requested a permit to serve alcoholic beverages at its event on Saturday, September 27, 2025, from 8:00 a.m. to 1:00 p.m., on Central Avenue from 11th Street to 6th Street to coincide with the Farmers Market.

Brews and BBQ: TCCA has requested a permit to serve alcoholic beverages at the City of Tracy's event on Saturday, October 4, 2025, from 12:00 p.m. to 6:00 p.m. on east- and west-bound 6th Street between Central Avenue and D Street and at Front Street Plaza.

Girls' Night Out – Witches and Broomsticks: TCCA has requested a permit to serve alcoholic beverages at the City of Tracy's event on Friday, October 24, 2025, from 6:00 p.m. to 10:00 p.m. on east- and west-bound 6th Street between Central Avenue and D Street and at Front Street Plaza.

FISCAL IMPACT

ABC license fees shall be paid by the event hosts. Costs for City of Tracy events are included in each City event budget. Special Events held within the City of Tracy have the opportunity to increase vehicle and pedestrian traffic to local businesses which in turn increase sales tax revenue for the City.

CEQA REVIEW

No review under the California Environmental Quality Act and CEQA Guidelines Section 15301 as these events entail use of existing public facilities without any potential for significant environmental impacts.

STRATEGIC PLAN

This agenda item supports the Council's Quality of Life Strategic Priority to provide an outstanding quality of life by enhancing the City's amenities, business mix and services and cultivating connections to promote positive change and progress in our community, and specifically implements the following goal:

Goal 3: Provide City programming and events that bolster quality of life

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a Resolution 1) approving permits under Tracy Municipal Code Chapter 4.40, to allow the consumption of alcoholic beverages on City streets for the following special events of community-wide interest occurring in 2025: (1) Downtown Block Parties (May 2, June 6, July 11, August 1, and September 5); (2) Brews and BBQ (October 4); (3) Girls Night Out – Witches and Broomsticks (October 24); (4) Tracy City Center Association Events (Taps on Tenth on April 5, Downtown Tracy Wine Stroll on September 20, and Car Show on September 27); and (5) South Side Community Organization Event (September 13); and 2) delegating the authority to the City Manager to put required time and other restrictions on each permit.

Prepared By: Katie Akre, Recreation Program Coordinator

Reviewed By: Justin Geibig, Recreation Services Supervisor
Jolene Jauregui-Correll, Recreation Services Manager
Brian MacDonald, Director of Parks, Recreation and Community Services
Sara Castro, Director of Finance
Arturo M. Sanchez, Assistant City Manager
Andrew Shen, Interim City Attorney

Approved By: Midori Lichtwardt, City Manager

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

1) APPROVING PERMITS UNDER TRACY MUNICIPAL CODE CHAPTER 4.40, TO ALLOW THE CONSUMPTION OF ALCOHOLIC BEVERAGES ON CITY STREETS FOR THE FOLLOWING SPECIAL EVENTS OF COMMUNITY-WIDE INTEREST OCCURRING IN 2025: (1) DOWNTOWN BLOCK PARTIES (MAY 2, JUNE 6, JULY 11, AUGUST 1, AND SEPTEMBER 5); (2) BREWS AND BBQ (OCTOBER 4); (3) GIRLS NIGHT OUT – WITCHES AND BROOMSTICKS (OCTOBER 24); (4) TRACY CITY CENTER ASSOCIATION EVENTS (TAPS ON TENTH ON APRIL 5, DOWNTOWN TRACY WINE STROLL ON SEPTEMBER 20, AND CAR SHOW ON SEPTEMBER 27); AND (5) SOUTH SIDE COMMUNITY ORGANIZATION EVENT (SEPTEMBER 13); AND 2) DELEGATING AUTHORITY TO THE CITY MANAGER TO PUT REQUIRED TIME AND OTHER RESTRICTIONS ON EACH PERMIT.

WHEREAS, Tracy Municipal Code (TMC) Section 4.12.1190(d) provides that the City Council, by resolution, may issue a permit under Chapter 4.40 allowing the consumption of intoxicating beverages on public property at an organized event of community-wide interest, and the consumption of intoxicating beverages shall be restricted to the perimeters of the event as described in the permit; and

WHEREAS, the City has requested permits to conduct Downtown Block Parties on May 2, June 6, July 11, August 1, and September 5, Brews and BBQ on October 4, and Girls Night Out – Witches and Broomsticks on October 24, 2025, require approval of a permit for the consumption of alcoholic beverages in public places pursuant to TMC Section 4.12.1190(d); and

WHEREAS, Tracy City Center Association (TCCA) has requested permits to conduct a Taps on Tenth Event on April 5, Downtown Tracy Wine Stroll on September 20, and Car Show on September 27, 2025, in the City of Tracy that require approval of City Council to permit the consumption of alcoholic beverages in public places pursuant to TMC Section 4.12.1190(d); and

WHEREAS, the South Side Community Organization (SSCO) has requested a permit to conduct a September 16th Event in the City of Tracy on September 13, 2025, that requires approval of City Council to permit the consumption of alcoholic beverages in public places pursuant to TMC Section 4.12.1190(d); and

WHEREAS, the foregoing described events have community-wide interest; and

NOW, THEREFORE, BE IT

RESOLVED: That City Council approves, pursuant to TMC Section 4.12.1190(d), the issuance of permits allowing the consumption of intoxicating beverages for the event(s) on public

property known as the “Downtown Block Parties” occurring on the following dates in 2025: May 2, June 6, July 11, August 1, and September 5; and be it

FURTHER RESOLVED: That City Council approves, pursuant to TMC Section 4.12.1190(d), the issuance of permits allowing the consumption of intoxicating beverages for the event(s) on public property known as “Brews and BBQ” occurring on October 4, 2025; and be it

FURTHER RESOLVED: That City Council approves, pursuant to TMC Section 4.12.1190(d), the issuance of permits allowing the consumption of intoxicating beverages for the event(s) on public property known as “Girls Night Out – Witches and Broomsticks” occurring on October 24, 2025; and be it

FURTHER RESOLVED: That City Council approves, pursuant to TMC Section 4.12.1190(d), the issuance of permits allowing the consumption of intoxicating beverages for the event(s) on public property known as “Taps on Tenth” occurring on April 5, 2025; and be it

FURTHER RESOLVED: That City Council approves, pursuant to TMC Section 4.12.1190(d), the issuance of permits allowing the consumption of intoxicating beverages for the event(s) on public property known as “Downtown Tracy Wine Stroll” occurring on September 20, 2025; and be it

FURTHER RESOLVED: That City Council approves, pursuant to TMC Section 4.12.1190(d), the issuance of permits allowing the consumption of intoxicating beverages for the event(s) on public property known as “Car Show” occurring on September 27, 2025; and be it

FURTHER RESOLVED: That City Council approves, pursuant to TMC Section 4.12.1190(d), the issuance of permits allowing the consumption of intoxicating beverages for the event(s) on public property known as “South Side Community Organization Event” occurring on September 13, 2025; and be it

FURTHER RESOLVED: That City Council delegates the authority to the City Manager to put required time limits and other restrictions on each permit.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on February 18, 2025, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST: _____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of the
City of Tracy, California

Agenda Item 1.K

RECOMMENDATION

Staff recommends that City Council adopt a resolution approving Amendment No 1. to Professional Services Agreement with West Yost & Associates, Inc. for Program Management for CIP No. 74168 Recycled Water Expansion Project and authorizing:

- 1) the City Manager to grant extensions up to an additional two-years, if requested,**
- 2) billing rates may be increased annually in January of each year by the lesser of 3% or the annual increase in the Cost-of-Living Index – All Items, for the Sacramento Metropolitan Region; and**
- 3) new billing rates retroactive to January 1, 2025**

EXECUTIVE SUMMARY

On March 7, 2023, under Resolution 2023-042, City Council approved a Professional Services Agreement with West Yost and Associates (WYA) to provide Program Management for CIP No. 74168 Recycled Water Expansion Project. In an apparent oversight, the initial PSA did not include the annual billing rate increase, nor did it request that the City Manager be granted the authority to administratively extend the contract an additional two years, if requested. Staff seeks to remedy this oversight through an amendment to the PSA. Therefore, Amendment No. 1 (Amendment) to the WYA PSA is requesting that the contract language be amended to allow for up to a two-year extension of the initial term with the authority granted to the City Manager for said extension, new billing rates retroactive to January 1, 2025, and an increase to billing rates by the lesser of three (3%) percent or the Cost-of-Living Index annually. There is no change to the contract's not-to-exceed price.

BACKGROUND AND LEGISLATIVE HISTORY

In 2022, the City of Tracy was awarded a \$20,000,000 grant from the Department of Water Resources through the Urban and Multi-benefit Drought Relief Grant to extend the existing recycled water system to the far southern areas of the City. The project being so large and quite technical, it was determined that an experienced program manager was necessary to ensure that the completed project aligned with the objectives outlined in DWR's grant agreement, and that the project was delivered in a structured and efficient manner. Such an experienced program manager would need to possess not only a strong background in managing complex and large-scale recycled water projects, but also have expertise in grant management. West Yost and Associates fit those criteria and was selected to provide these services through the RFP process outlined in Resolution 2023-042 by City Council during the March 7, 2023, Regular Meeting.

ANALYSIS

Program management services during construction are vital to ensure that the project stays on track, the objectives outlined in the grant agreement are met, and the use of all pertinent resources are optimized. The program manager works closely with the design and construction teams to ensure that the recycled water booster pump station and pipelines are in line with the

project requirements and budget. In addition, the program manager aids the City in completion of all required grant related deliverables such as: invoices, progress reports, progress completion report, and any other required deliverables to the Department of Water Resources. WYA has been providing these services for the City on this CIP and only recently was it discovered that the initial PSA did not include the ability for the City Manager to extend the contract by up to two additional years, and that it did not include the increase in billing rates annually in January.

The PSA with WYA was originally authorized to commence on March 8, 2023 and expire on March 1, 2026 with no extension. The compensation was for the total not-to-exceed amount of \$974,402 but did not include the annual increase to the billing rates. Therefore, staff is recommending that that PSA with WYA, Inc. be amended to extend the time frame to allow for the additional two years with City Manager authority to approve the updated billing rates. This action will provide continued program management services for the City's Recycled Water System Expansion Project (CIP 74168) through completion of the project and the grant submittal completion.

FISCAL IMPACT

No change to fiscal impact. The Recycled Water System Expansion (CIP 74168) is an approved project within the Capital Improvement Plan. Sufficient funding exists to cover the cost of the agreement with West Yost & Associates.

CEQA DETERMINATION

The approvals requested in this item are for project planning work only and will not result in a physical change in the environment. Therefore, none of the actions are considered as a "project" as defined by Section 21065 of the Public Resources Code to be categorically exempt.

STRATEGIC PLAN

This agenda item is consistent with the City's Quality of Life Strategy and meets the goals to ensure physical infrastructure and systems necessary for the delivery of safe and clean water.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that City Council adopt a resolution approving Amendment No 1. to Professional Services Agreement with West Yost & Associates, Inc. for Program Management for CIP No. 74168 Recycled Water Expansion Project and authorizing:

- 1) the City Manager to grant extensions up to an additional two-years, if requested,
- 2) billing rates may be increased annually in January of each year by the lesser of 3% or the annual increase in the Cost-of-Living Index – All Items, for the Sacramento Metropolitan Region; and
- 3) new billing rates retroactive to January 1, 2025

Prepared by: Ilene Macintire, Senior Civil Engineer

Reviewed by: Stephanie Reyna-Hiestand, Assistant Director of Utilities
Gordon MacKay, Interim Director of Public Works
Sara Castro, Director of Finance
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachment:
A – Amendment No 1. PSA West Yost Associates

Amendment No. 1 To Professional Services Agreement

This Amendment No. 1 (**Amendment**) to the Professional Services Agreement entered between the City of Tracy, a municipal corporation (**City**), and West Yost & Associates, Inc a California Corporation (**Consultant**) dated March 7, 2023 (**Agreement**) is entered into as of the date of last signature below. City and Consultant are referred to individually as "**Party**" and collectively as "**Parties.**"

Recitals

- A. The Agreement was executed pursuant to the authority granted in Resolution No 2023-042, approved by the Tracy City Council on March 7, 2023.
- B. The Agreement had an initial term of three year (s).
- C. The term of the original Agreement expires on March 1, 2026.

Now therefore, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Terms of Amendment

Section 2.1 of this Agreement is hereby amended by deleting text of Section 2.1 in its entirety and substituting place thereof the following underline text:

"2.1.A. Term The term of this Agreement shall commence on March 8, 2023 and expire and terminate automatically on March 1, 2026 or earlier by termination pursuant to Section 6 of this Agreement ("Term"). Subject to the Not-To-Exceed Amount defined in Section 3.1, the Term of this Agreement may be extended with express written amendment incorporating this Agreement signed by both Parties and one of the following City approvals: (a) City Council approval or (b) City Manager approval. An administrative extension of this Agreement by City Manager shall be limited to an additional term of two year(s) and require written determination by the City Manager that Consultant has satisfactorily met all the requirements of this Agreement."

3. Compensation

Section 3.1 of this Agreement is hereby amended by deleting text of Section 3.1 in its entirety and substituting place thereof the following underline text:

3.1.A Not to Exceed. Consultant's total compensation under this Agreement shall not exceed \$974,402 Dollars. Effective January 1, 2025, Consultant's billing rates under this Agreement may be annually increased in January of each year by up to 4.5%.

Replacing Exhibit B with Exhibit B.1 – Compensation (See Agreement Section 3)

City of Tracy – Amendment No. _ to Agreement with [Consultant]

2. **Effect.** The Parties hereto ratify the Agreement and, except as expressly modified by this Amendment, all provisions of the Agreement will remain unchanged and in full force and effect.
3. **Entire Agreement.** This Amendment represents the entire agreement and understanding of the Parties and shall supersede any prior agreement—written or oral—between the Parties. This Amendment will not be valid and enforceable until executed by all of the Parties hereto. This Amendment may not be modified or altered except through a subsequent writing signed by both Parties.
4. **Severability.** If any term of this Amendment is held invalid by a court of competent jurisdiction, this Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in effect.
5. **Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter and to execute this Amendment. This Amendment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. This Amendment may be executed in one or more counterparts. All counterparts so executed shall constitute one contract, binding on all Parties, even though all Parties are not signatory to the same counterpart.

City of Tracy

Title: City Manager

Date: _____

By: Adrienne Richardson, City Clerk

By: Signed by: Elizabeth Drayer
FCC45F7E890843C...

Title: Vice President

Date: 1/17/2025 | 10:05 AM PST

Federal Tax Employer ID No. 68-0370826

Signed by: Lindsay Smith
By: 00E003B0AA234FE...

Title: Treasurer

Date: 1/17/2025 | 10:02 AM PST

By: Andrew Shen, Interim City Attorney

City of Tracy – Amendment No. to Agreement with [Consultant]

B.1 – Compensation (See Agreement Section 3)

Exhibit B.1



2025 Billing Rate Schedule

(Effective January 1, 2025, through December 31, 2025)*

POSITIONS	LABOR CHARGES (DOLLARS PER HOUR)
ENGINEERING	
Principal/Vice President	\$373
Engineer/Scientist/Geologist Manager I / II	\$352 / \$369
Principal Engineer/Scientist/Geologist I / II	\$317 / \$338
Senior Engineer/Scientist/Geologist I / II	\$286 / \$300
Associate Engineer/Scientist/Geologist I / II	\$237 / \$255
Engineer/Scientist/Geologist I / II	\$185 / \$215
Engineering Aide	\$111
Field Monitoring Services	\$138
Administrative I / II / III / IV	\$102 / \$127 / \$152 / \$168
ENGINEERING TECHNOLOGY	
Engineering Tech Manager I / II	\$366 / \$369
Principal Tech Specialist I / II	\$336 / \$348
Senior Tech Specialist I / II	\$308 / \$321
Senior GIS Analyst	\$278
GIS Analyst	\$264
Technical Specialist I / II / III / IV	\$196 / \$224 / \$251 / \$280
Technical Analyst I / II	\$141 / \$168
Technical Analyst Intern	\$113
Cross-Connection Control Specialist I / II / III / IV	\$147 / \$159 / \$179 / \$198
CAD Manager	\$222
CAD Designer I / II	\$172 / \$194
CONSTRUCTION MANAGEMENT	
Senior Construction Manager	\$355
Construction Manager I / II / III / IV	\$211 / \$226 / \$239 / \$303
Resident Inspector (Prevailing Wage Groups 4 / 3 / 2 / 1)	\$190 / \$211 / \$235 / \$244
Apprentice Inspector	\$172
CM Administrative I / II	\$91 / \$124
Field Services	\$244

- Hourly rates include charges for technology and communication, such as general and CAD computer software, telephone calls, routine in-house copies/prints, postage, miscellaneous supplies, and other incidental project expenses.
- Outside services, such as vendor reproductions, prints, and shipping; major West Yost reproduction efforts; as well as engineering supplies, etc., will be billed at the actual cost plus 15%.
- The Federal Mileage Rate will be used for mileage charges and will be based on the Federal Mileage Rate applicable to when the mileage costs were incurred. Travel other than mileage will be billed at cost.
- Subconsultants will be billed at actual cost plus 10%.
- Expert witness services, research, technical review, analysis, preparation, and meetings will be billed at 150% of standard hourly rates. Expert witness testimony and depositions will be billed at 200% of standard hourly rates.
- A finance charge of 1.5% per month (an annual rate of 18%) on the unpaid balance will be added to invoice amounts if not paid within 45 days from the date of the invoice.

* This schedule is updated annually

City of Tracy – Amendment No. to Agreement with [Consultant]



2025 Billing Rate Schedule

(Effective January 1, 2025, through December 31, 2025)*

Equipment Charges

EQUIPMENT	BILLING RATES
2" Purge Pump & Control Box	\$300 / day
Aquacalc / Pygmy or AA Flow Meter	\$28 / day
Emergency SCADA System	\$35 / day
Field Vehicles (Groundwater)	\$1.02 / mile
Gas Detector	\$80 / day
Generator	\$60 / day
Hydrant Pressure Gauge	\$10 / day
Hydrant Pressure Recorder, Impulse (Transient)	\$55 / day
Hydrant Pressure Recorder, Standard	\$40 / day
Low Flow Pump Back Pack	\$135 / day
Low Flow Pump Controller	\$200 / day
Powers Water Level Meter	\$32 / day
Precision Water Level Meter 300ft	\$30 / day
Precision Water Level Meter 500ft	\$40 / day
Precision Water Level Meter 700ft	\$45 / day
QED Sample Pro Bladder Pump	\$65 / day
Skydio 2+ Drone (2 hour minimum)	\$100 / hour
Storage Tank	\$20 / day
Sump Pump	\$24 / day
Transducer Communications Cable	\$10 / day
Transducer Components (per installation)	\$23 / day
Trimble GPS – Geo 7x	\$220 / day
Tube Length Counter	\$22 / day
Turbidity Meter	\$30 / day
Turbidity Meter (2100Q Portable)	\$35 / day
Vehicle (Construction Management)	\$10 / hour
Water Flow Probe Meter	\$20 / day
Water Quality Meter	\$50 / day
Water Quality Multimeter	\$185 / day
Well Sounder	\$30 / day

* This schedule is updated annually

Page 2 of 2

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. 2025- _____

**APPROVING AMENDMENT NO 1. TO PROFESSIONAL SERVICES
AGREEMENT WITH WEST YOST & ASSOCIATES, INC. FOR PROGRAM
MANAGEMENT FOR CIP No. 74168 RECYCLED WATER EXPANSION
PROJECT AUTHORIZING:**

- 1) THE CITY MANAGER TO GRANT EXTENSIONS UP TO AN
ADDITIONAL TWO-YEARS, IF REQUESTED,**
- 2) BILLING RATES UNDER THIS AGREEMENT MAY BE INCREASED
ANNUALLY IN JANUARY OF EACH YEAR BY THE LESSER OF 3%
OR THE ANNUAL INCREASE IN THE COST-OF-LIVING INDEX – ALL
ITEMS, FOR THE SACRAMENTO METROPOLITAN REGION; AND**
- 3) NEW BILLING RATES RETROACTIVE TO JANUARY 1, 2025**

WHEREAS, in 2022, the Department of Water Resources awarded an Urban and Multi-benefit Drought Relief Grant to the City in the amount of \$20 million for CIP 74168 Recycled Water System Expansion Project to extend the existing recycled water system to the far southern areas of the City; and

WHEREAS, the project being so large and quite technical, it was determined that an experienced program manager was necessary to ensure that the completed project aligned with the objectives outlined in DWR's grant agreement, and that the project was delivered in a structured and efficient manner. Such an experienced program manager would need to possess not only a strong background in managing complex and large-scale recycled water projects, but also have expertise in grant management; and

WHEREAS, West Yost and Associates fit those criteria and was selected to provide these services through the RFP process outlined in Resolution 2023-042 approved by City Council during the March 7, 2023, Regular Meeting; and

WHEREAS, program management services during construction are vital to ensure that the project stays on track, the objectives outlined in the grant agreement are met, and the use of all pertinent resources are optimized; and

WHEREAS, in addition, the program manager aids the City in completion of all required grant related deliverables such as: invoices, progress reports, progress completion report, and any other required deliverables to the Department of Water Resources; and

WHEREAS, WYA has been providing these services for the City on this CIP and only recently was it discovered that the initial PSA did not include the ability for the City Manager to extend the contract by up to two additional years, and that it did not include the increase in billing rates annually in January; and

WHEREAS, the initial term of the PSA was to commence on March 8, 2023 and terminate on March 1, 2026, but did not include the ability for the City Manager to authorize up to an additional two years, if requested; and

WHEREAS, the initial compensation was approved for a not-to-exceed total of \$974,402 but did not include the annual increase in January of each year by the lessor of 3% or the annual increase in the Cost-of-Living index; and

WHEREAS, the new billing rate should be retroactively set to begin January 1, 2025; and therefore, be it now

RESOLVED: That the City Council of the City of Tracy, hereby approves an Amendment No 1. to Professional Services Agreement with West Yost & Associates, Inc. for Program Management for CIP 74168 Recycled Water Expansion Project; and be it

FURTHER RESOLVED: 1) the City Manager to grant extensions up to an additional two-years, if requested, 2) billing rates under this Agreement may be increased annually in January of each year by the lesser of 3% or the annual increase in the Cost-of-Living Index – All Items, for the Sacramento Metropolitan Region; and 3) new billing rates retroactive to January 1, 2025; and be it

FURTHER RESOLVED: The approvals requested in this item are for project planning work only and will not result in a physical change in the environment. Therefore, none of the actions are considered as a “project” as defined by Section 21065 of the Public Resources Code to be categorically exempt.

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 18th day of February 2025, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST: _____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of the
City of Tracy, California

Agenda Item 1.L

RECOMMENDATION

Staff recommends that the City Council adopt a resolution (1) accepting public improvements in accordance with the Subdivision Improvement Agreement for Tract 3944, Tracy Hills Village 1C as complete, and assume responsibility for the future maintenance and repairs, (2) accepting additional public improvements for Parkway Landscaping for Tract 3944, Tracy Hills Village 1C as complete, and assume responsibility for the future maintenance and repairs, (3) authorizing the City Engineer to release the Developer furnished bonds in accordance with the Subdivision Improvement Agreement, and (4) authorizing the City Clerk to file Notices of Completion for Tract 3944 Tracy Hills Village 1C and Tract 3944 Tracy Hills Village 1C (for Parkway Landscaping) with the San Joaquin County Recorder's Office.

EXECUTIVE SUMMARY

Lennar Homes of California, Inc., a California Corporation (Developer), has completed public improvements for Tracy Hills Village 1C, Tract 3944, containing 45 single-family residential lots, in accordance with the Subdivision Improvement Agreement (Agreement), project plans, and specifications. Developer has also completed public improvements for parkway landscaping which were not included in the Agreement but were added by a mutual consent between the City and the Developer. Staff recommends City Council accept the improvements as complete, authorize City Clerk to file Notices of Completion, and authorize the City Engineer to release the Developer's bonds. Developer did not submit any bonds for the added parkway landscaping improvements, Developer has now submitted a separate one year warranty bond for these added landscaping improvements.

BACKGROUND AND LEGISLATIVE HISTORY

On April 5, 2016, by Resolution 2016-062, City Council certified the Tracy Hills Specific Plan Final Subsequent Environmental Impact Report (Final SEIR) and adopted findings of fact, a statement of overriding considerations, and a mitigation monitoring program for the Tracy Hills Specific Plan Project (Application Numbers GPA 10-0001, SPA 13-0001, ZA 13-0001, DA 13-0001, TSM 13-0005, and TSM 16-0001).

On April 5, 2016, by Resolution 2016-066, City Council approved a Small-Lot Vesting Tentative Map for Tracy Hills Phase 1A, Application No. TSM 13-0005, subject to Conditions of Approval, and found it to be in compliance with the Final SEIR.

On October 16, 2018, by Resolution 2018-212, City Council approved the Final Subdivision Map and Subdivision Improvement Agreement for Tract 3944 Tracy Hills Village 1C with Lennar Homes of California, Inc., a California Corporation (Developer), a subdivision consisting of 45 single-family residential lots. This subdivision is generally located west of Corral Hollow Road and south of Tracy Hills Drive, as shown in Attachment "A". The Agreement required Developer to perform the Scope of Work defined in the following plan sets:

"Improvement Plans Village 1C – Tract 3944 – Tracy Hills Phase 1A", consisting of 12 sheets, prepared by Ruggeri-Jensen-Azar.

“Joint Trench, Integral Communities, LLC, Tracy Hills-Village 1C-Tract 3944”, consisting of 5 sheets, prepared by Giacalone Design Services, Inc.

“Public Street Lighting, Integral Communities, LLC Tracy Hills-Village 1C-Tract 3944”, consisting of 4 sheets, prepared by Giacalone Design Services, Inc.

In March 2020, a First Amendment to the Agreement was prepared by staff and a City land development consultant. The purpose of the First Amendment was to add parkway landscaping and irrigation improvements within Village 1C to the Agreement and require additional bonds for those improvements. Unfortunately, amidst the chaos of the pandemic, the First Amendment was not scheduled for City Council approval and was not executed by the parties. Developer did not submit contract bonds that would have been required by the First Amendment. Landscaping improvement plans for Village 1C were approved and signed by the City Engineer on July 9, 2019, as follows:

“Tracy Hills Landscape Improvement Plans – Neighborhood 1C – Tract 3944 Phase 1A”, consisting of 16 sheets, prepared by FORMA.

ANALYSIS

Developer has completed all the work required to be done in accordance with the Agreement, as well as the parkway landscaping and irrigation improvements, and has requested acceptance of the public improvements. The City Engineer has inspected the completed work and confirmed that the improvements conform to the Agreement, approved landscaping and irrigation improvement plans, and City plans and specifications. The estimated cost of the public improvements is as follows:

<u>Cost Breakdown</u>		
Roadway Improvements	\$	459,759
Water	\$	126,335
Storm Drainage	\$	94,164
Sanitary Sewer	\$	108,763
Landscaping	\$	135,629
Street Lighting	\$	52,800
Total	\$	977,450
Dedicated Land Value	\$	245,000

Bonds were provided by Subdivider as required by the Agreement in amounts as follows:

<u>Bond Type</u>	<u>Amount</u>
Faithful Performance	\$ 828,212
Labor and Material	\$ 828,212
Warranty	\$ 82,821
Monumentation	\$ 12,375

An additional bond has now been submitted to the City by Developer for the one-year warranty of parkway landscaping and irrigation improvements in the amount of \$13,563.

Faithful Performance bonds may be released upon acceptance of improvements by the City. Labor and Material bonds may be released six months after the recordation of the Notice of Completion as the statute of limitations period expires in accordance with Tracy Municipal Code and Civil Code §9356.

Warranty bond may be released one year after City acceptance of improvements and warranty work is completed.

Monumentation bond may be released upon City receipt of a letter from the project surveyor stating full payment has been received for the installation of monumentation, per Government Code Section 66496. City is now in receipt of said letter.

A total of 2.45 acres has been dedicated as public right-of-way on the Final Map for Tracy Hills Village 1C, Tract 3944, and accepted by the City Clerk subject to satisfactory completion of improvements thereon. The land value is estimated at \$245,000. Filing of Notices of Completion by the City Clerk will memorialize satisfactory completion of improvements per Tracy Municipal Code 12.36.110.

Subdivider has completed all work required to be done in accordance with the Agreements and has requested acceptance of the public improvements. The City Engineer has inspected the completed work and confirmed that the improvements conform to the Agreement, approved landscaping and irrigation plans, and City standard plans and specifications, inclusive of the additional parkway landscaping improvements. Notices of Completion should now be filed by the City Clerk, to be recorded at San Joaquin County Recorder's Office. The project carries a one-year warranty bond for all public improvements.

FISCAL IMPACT

All improvements were completed by the Subdivider in accordance with the Agreement and approved plans and there is no fiscal impact associated with this action.

COORDINATION

Project construction activities were coordinated with the City of Tracy Operations and Utilities Divisions.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DETERMINATION

This project is in compliance with the Final SEIR certified by City Council and no additional study is required.

STRATEGIC PLAN

This agenda item is consistent with the Council approved Economic Development Strategy to ensure physical infrastructure necessary for development.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council, by resolution, (1) accept public improvements in accordance with the Subdivision Improvement Agreement for Tract 3944, Tracy Hills Village 1C as complete, and assume responsibility for the future maintenance and repairs, (2) accept additional public improvements for Parkway Landscaping for Tract 3944, Tracy Hills Village 1C as complete, and assume responsibility for the future maintenance and repairs, (3) authorize the City Engineer to release the Developer furnished bonds in accordance with the Subdivision Improvement Agreement, and (4) authorize the City Clerk to file Notices of Completion for Tract 3944 Tracy Hills Village 1C and Tract 3944 Tracy Hills Village 1C (for Parkway Landscaping) with the San Joaquin County Recorder's Office.

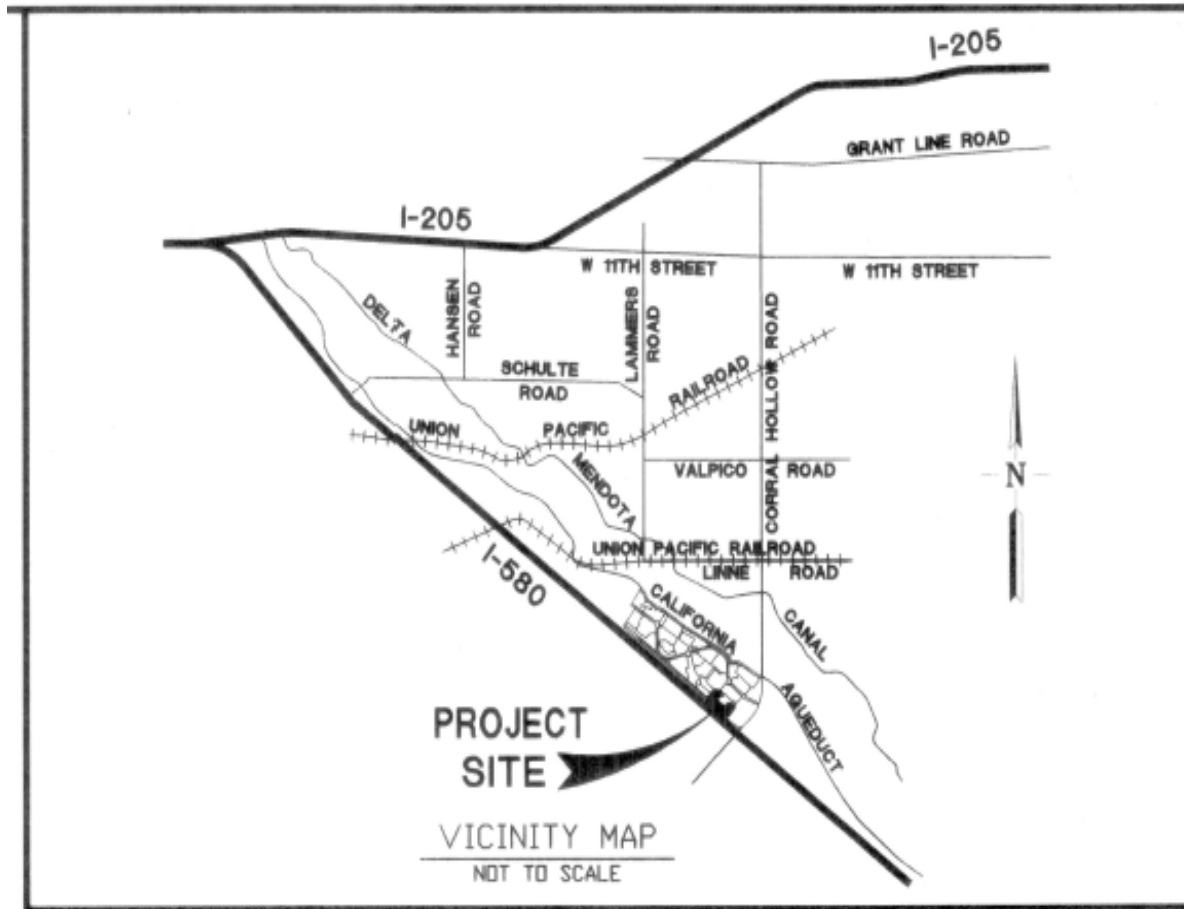
Prepared by: Miguel Hernandez, Construction Manager

Reviewed by: Sara Castro, Finance Director
Karin Schnaider Assistant City Manager
Kamalpreet Gill, Deputy City Attorney

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A – Vicinity Map



CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2025-_____

(1) ACCEPTING PUBLIC IMPROVEMENTS IN ACCORDANCE WITH THE SUBDIVISION IMPROVEMENT AGREEMENT FOR TRACT 3944, TRACY HILLS VILLAGE 1C AS COMPLETE, AND ASSUME RESPONSIBILITY FOR THE FUTURE MAINTENANCE AND REPAIRS, (2) ACCEPTING ADDITIONAL PUBLIC IMPROVEMENTS FOR PARKWAY LANDSCAPING FOR TRACT 3944, TRACY HILLS VILLAGE 1C AS COMPLETE, AND ASSUME RESPONSIBILITY FOR THE FUTURE MAINTENANCE AND REPAIRS, (3) AUTHORIZING THE CITY ENGINEER TO RELEASE THE DEVELOPER FURNISHED BONDS IN ACCORDANCE WITH THE SUBDIVISION IMPROVEMENT AGREEMENT, AND (4) AUTHORIZING THE CITY CLERK TO FILE NOTICES OF COMPLETION FOR TRACT 3944 TRACY HILLS VILLAGE 1C AND TRACT 3944 TRACY HILLS VILLAGE 1C (FOR PARKWAY LANDSCAPING) WITH THE SAN JOAQUIN COUNTY RECORDER'S OFFICE.

WHEREAS, on October 16, 2018, by Resolution 2018-212, City Council approved the Final Subdivision Map and Subdivision Improvement Agreement (Agreement) for Tract 3944 Tracy Hills Village 1C (Project), a subdivision consisting of 45 single-family residential lots, with Lennar Homes of California, Inc., a California Corporation (Developer); and

WHEREAS, the Agreement did not include construction of parkway landscaping and irrigation for the Project; and

WHEREAS, construction plans for parkway landscaping and irrigation were approved separately by the City Engineer and construction of those improvements took place without a separate agreement or surety; and

WHEREAS, Developer has now submitted a separate one-year warranty bond for parkway landscaping and irrigation installed according to the approved plans; and

WHEREAS, the City Engineer has inspected the completed work and recommends acceptance of all the improvements completed in accordance with the Subdivision Improvement Agreement for Tract 3944 Tracy Hills Village 1C and the approved plans for parkway landscaping and irrigation; and

WHEREAS, Developer has furnished performance, payment, and warranty bonds assuring completion of the work and the estimated cost of the improvements is as follows:

Cost Breakdown

Roadway Improvements	\$	459,759
Water	\$	126,335
Storm Drainage	\$	94,164
Sanitary Sewer	\$	108,763
Landscaping	\$	135,629
Street Lighting	\$	52,800
Total	\$	977,450 ;and

WHEREAS, 2.45 acres of right-of-way, valued at \$245,000, was dedicated on the Final Map for Tracy Hills Village 1C, Tract 3944 and accepted by the City Clerk subject to satisfactory completion of improvements thereon; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby accepts public improvements for Tract 3944, Tracy Hills Village 1C, as complete and assume responsibility for the future maintenance and repairs; and be it

FURTHER RESOLVED: That the City Council accept public improvements for Tract 3944, Tracy Hills Village 1C (for Parkway Landscaping) as complete, and assume responsibility for the future maintenance and repairs; and be it

FURTHER RESOLVED: That the City Council authorizes the City Engineer to release the Developer furnished bonds in accordance with the terms of the Subdivision Improvement Agreement; and be it

FURTHER RESOLVED: That the City Council authorizes the City Clerk to file Notices of Completion for Tract 3944 Tracy Hills Village 1C and Tract 3944 Tracy Hills Village 1C (for Parkway Landscaping) with the San Joaquin County Recorder's Office.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 18th day of February 2025 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST: _____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of
the City of Tracy, California

Agenda Item 1.M

RECOMMENDATION

Staff recommends that the City Council adopt a Resolution approving and authorizing the execution and the recordation of two Subdivision Improvement Agreements, and three Offsite Improvement Agreements with Lennar Homes of California, LLC for the Residential Development Project commonly known as Phase 2 of the Tracy Hills Specific Plan.

EXECUTIVE SUMMARY

This Agenda Item seeks adoption of a Resolution approving and authorizing the execution and recordation of two Subdivision Improvement Agreements and three Offsite Improvement Agreements (Collectively, Agreements) for Phase 2B of the Tracy Hills Specific Plan area development (Project). The Agreements satisfy some of the Conditions of Approval for the Project. Phase 2B is a subcomponent of the Vesting Tentative Subdivision Map (VTSM) for Tracy Hills Phase 2, Tract 4057. Approvals for Phase 2B Final Maps will be presented to City Council at a later date.

BACKGROUND AND LEGISLATIVE HISTORY

Lennar Homes of California, LLC is the subdivider (Developer) of the Project. The VTSM for Tracy Hills Phase 2, Tract 4057, was approved by the City Council on October 19, 2021, pursuant to Resolution No. 2021-154. The Developer has divided Phase 2 into two phases, as depicted in Attachment A, with Tracy Hills Phase 2A generally encompassing the eastern portion of the Project, and Tracy Hills Phase 2B generally encompassing the western portion. Phase 2A consists of seven tracts containing ten villages totaling 726 residential lots and numerous other non-residential parcels on approximately 242.2 acres. Phase 2A was approved by Council on July 2, 2024, pursuant to Resolution No. 2024-120. Phase 2B consists of seven tracts containing eight villages totaling 744 residential lots and other numerous non-residential parcels on approximately 242.0 acres.

Tracy Hills Phase 2B includes the following eight tracts: Tract 4181 - Villages 11 & 12, Tract 4182 - Village 13, Tract 4183 - Village 14, Tract 4185 - Village 15, Tract 4186 - Village 16, Tract 4187 - Village 17, and Tract 4188 - Village 18. Phase 2B also includes three neighborhood parks, several open space parcels, and a 15-acre community park. Attachment A shows the locations of the tracts in Tracy Hills Phase 2B.

On April 5, 2016, the City Council approved the Tracy Hills Specific Plan Final Subsequent Environmental Impact Report (Resolution No. 2016-062), the Tracy Hills Specific Plan (Resolution No. 2016-063), and the Development Agreement executed between the City of Tracy and the Developers of the Tracy Hills Project (Ordinance 1213), among other related actions.

On November 10, 2020, the City Council approved the First Amendment to the Development Agreement (Ordinance 1300).

On October 19, 2021, the City Council approved a General Plan Amendment, under Application No. GPA21-0001 (Resolution No. 2021-153), the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 2, under Application No. SPA21-0003 (Ordinance 1319), and the Vesting Tentative Subdivision Map for Tracy Hills Phase 2, Tract 4057 (VSTM), under Application No. TSM20-0003 (Resolution No. 2021-154).

The VTSM proposes 1,470 single-family residential lots, public park parcels, open space parcels, retention basin parcels, school parcels, Homeowners Association (HOA) recreation center parcel, and numerous other parcels. The non-residential parcels are to be owned and maintained by the HOA, Developer, or City. The Project occupies approximately 1,143 acres within the Tracy Hills Specific Plan Area, located south of the I-580 Freeway and west of Corral Hollow Road. The Developer intends to file multiple final maps to orderly build the VTSM.

Under Tracy Municipal Code (TMC) Section 12.20.020 and California Government Code Section § 66456.1, multiple final maps relating to an approved tentative subdivision map may be filed before the expiration of the tentative subdivision map if: (1) the subdivider, at the time the tentative map is filed, notifies the Community Development Director and the City Engineer in writing of the subdivider's intention to file multiple final maps on the tentative subdivision map, and is authorized to have phases by conditions of the map; or (2) after filing and before approval of the tentative subdivision map, the Community Development Director, the City Engineer and the subdivider concur in the filing of multiple final maps.

Section 12.20.090 of the TMC requires the City Council to approve final maps. That section also requires the City Council to consider approval of improvement agreements and related security and authorizes the City Manager to execute such agreements. This agenda item includes improvement agreements but does not include any final maps.

California Government Code § 66473 requires a local agency to disapprove a request for a final map for failure of the applicant to be in "substantial compliance" with requirements or conditions of approval imposed on the preceding approved tentative map. Per California Government Code § 66474.1, upon finding substantial compliance with the applicable conditions of approval and conformance of the final map with the approved tentative map, a local agency's approval of a final map becomes a ministerial act. An agency can approve a final map, even if certain public improvements have not been completed prior to such final map approval as long as the agency and the subdivider enter into binding legal agreements for completion of such improvements and posting of adequate security. The various Offsite and Subdivision Improvement Agreements in this agenda item satisfy the requirements of Government Code Section 66462. The approval of the Agreements will satisfy final map conditions and allow staff to present final maps to City Council for approval at a later date.

The following approvals had been previously approved for Phase 2:

- 1) OIA for Tracy Hills Phase 2A - Zone 5 and Zone 6 Water Tanks and Booster Pump Station Building Improvements, approved by City Council on October 4, 2022, by Resolution No. 2022-144.
- 2) OIA for Tracy Hills Zone 5 Water Line Improvements, approved by City Council on October 18, 2022, by Resolution No. 2022-153.
- 3) OIA for Lammers Road Undercrossing Improvements at Interstate 580, approved by City Council on July 5, 2023, by Resolution No. 2023-126.
- 4) OIA for Tracy Hills Phase 2 Zone 5 Water Main Improvements, approved on August 15, 2023, by Resolution No. 2023-156.

- 5) Final Maps and SIAs for Tracts 4132 through Tract 4138, approved by City Council on July 2, 2024, by Resolution No. 2024-120.
- 6) Conditional SIAs for four neighborhood parks, approved by City Council on July 2, 2024, by Resolution No. 2024-120
- 7) Conditional OIAs for various offsite improvements, approved by City Council on July 2, 2024, by Resolution No. 2024-120
- 8) Dedications of access and easements, approved by City Council on July 2, 2024, by Resolution No. 2024-121.
- 9) SIA for Tract 4181 Villages 11 & 12, approved by City Council on October 15, 2024, by Resolution No. 2024-177.

ANALYSIS

The Conditions of Approval (COAs) for the VTSM require the Developer to design and construct certain on-site public improvements connected with the approval of the Final Map pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards. As noted above, since the required improvements will not be completed prior to the recordation of the Final Map, the Developer is required to execute the SIAs to guarantee the completion of the improvements as authorized by Government Code Section 66462 and in accordance with Condition of Approval No. C.3.6.

The two SIAs corresponding to the listed Final Maps in the paragraph below are included in Attachments B-1 to B-2. The SIAs address the construction of the in-tract improvements associated with the single-family residential lots and other facilities within Tracy Hills Phase 2B that will be constructed by the Developer in connection with the Final Maps, and in accordance with the COAs. The Developer has executed the SIAs and has submitted the required security to guarantee the completion of the subject improvements. The Final Maps associated with each SIA for this approval will be brought to Council at a future date.

Improvement plans, landscape plans, specifications, and cost estimates, which describe in more detail the public street, landscape, utility, and appurtenant improvements for the Final Maps which are required to be constructed under the subject SIAs, have been prepared on behalf of the Developer and approved by the City Engineer. The plans are on file with the City Engineer under the Engineering Division tracking numbers as follows:

- 1) Tract 4182 - Village 13 - Improvement Plans, Joint Trench Composite Plans, and Street Lighting Plans, Tracking No. ENG23-0023; Landscape Plans, Tracking No. ENG23-0024.
- 2) Tract 4183 - Village 14 - Improvement Plans, Joint Trench Composite Plans, and Street Lighting Plans, Tracking No. ENG23-0025; Landscape Plans, Tracking No. ENG23-0026.

Pursuant to the COAs, the Developer is required to design and construct the public roadway improvements for Stanek Avenue generally extending from the previous approval in Phase 2A to the new public Zone 5 and Zone 6 water storage tank and booster water pump station; design and construct the public landscaping for Sierra View Drive; design and construct the public landscaping around the Phase 2 Retention Basin. Since the improvements for said roadways and required public improvements will not be completed prior to the recordation of Final Maps, the Developer is required to execute an OIA for each required public improvement, included as Attachments C-1 to C-3, to guarantee the completion of the improvements as authorized by

Government Code Section 66462 and in accordance with COA No. C.3.9. The plans for the public roadway improvements associated with Stanek Avenue listed above are on file with the City Engineer under Tracking Nos. ENG23-0018 and ENG23-0019. The landscape improvements associated with Sierra View Drive listed above are on file with the City Engineer under Tracking No. ENG23-0007. The landscape improvements associated with the Phase 2 Retention Basin listed above are on file with the City Engineer under Tracking No. ENG23-0014.

FISCAL IMPACT

Developer has paid for the cost of plan checking, engineering inspection and processing of the Final Maps and associated agreements.

PUBLIC OUTREACH / INTEREST

All public outreach for the Tracy Hills Phase 2 development (notifications, public hearings, etc.) was conducted at the Planning Commission and City Council hearings that were held in October 2021 to consider the General Plan Amendment, Specific Plan Amendment, and Vesting Tentative Subdivision Map for the overall Project. Additional public outreach, specifically for the Final Maps and associated agreements, is not required.

COORDINATION

This staff report was prepared by the Engineering Division. No coordination was required with other departments for the preparation of this report.

CEQA DETERMINATION

An Environmental Impact Report (EIR) for the Tracy Hills Specific Plan was certified by the City Council on April 5, 2016 (SCH#2013102053). An Addendum to the EIR was prepared in accordance with the provisions of California Environmental Act (CEQA) Guidelines Section 15162 and 15164 to address the General Plan Amendment, Specific Plan Amendment, and Vesting Tentative Subdivision Map for the Tracy Hills Phase 2 Project. All the in-tract and off-site improvements associated with this Agenda Item are within the scope of the development evaluated by the EIR and the Addendum to the EIR and therefore no further environmental review is required for the approval of this Resolution.

STRATEGIC PLAN

This item is consistent with the City Council's approved Economic Development Strategy to ensure the construction of physical infrastructure necessary for development.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council, by resolution, approve and authorize the execution and the recordation of two Subdivision Improvement Agreements, and three Offsite Improvement Agreements with Lennar Homes of California, LLC for the Residential Development Project commonly known as Phase 2 of the Tracy Hills Specific Plan.

Prepared by: Al Gali, Associate Engineer
David Brotchie, PE, Senior Civil Engineer

Reviewed by: Sara Castro, Finance Director
Matthew Summers, Interim Assistant City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A - Location Map and Phasing Exhibit
Attachment B-1 - SIA Tract 4182
Attachment B-2 - SIA Tract 4183
Attachment C-1 - OIA - Stanek Avenue 2B
Attachment C-2 - OIA – Sierra View (Lammers) Road 2B ROW Landscaping
Attachment C-3 - OIA – Phase 2A Retention Basin Landscaping

ATTACHEMENT A - LOCATION MAP & PHASING EXHIBIT



RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4680 CORTLANDT AVENUE, SUITE 200
SAN JOAQUIN, CA 95834
PHONE: (925) 227-9100 • FAX: (925) 227-9300

DATE: APRIL 24, 2024 JOB NO.: 201068V1N



City of Tracy – Subdivision Improvement Agreement
Tract 4182, Tracy Hills Village 13

Recording Requested By:

City of Tracy
Development Services
333 Civic Center Plaza
Tracy, CA 95376

And When Recorded Mail To:

City of Tracy
Office of the City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attn: Adrienne Richardson

(No recording fee under Government Code Section 27383)

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

City of Tracy
SUBDIVISION IMPROVEMENT AGREEMENT
Tract 4182 - Tracy Hills Village 13

This **SUBDIVISION IMPROVEMENT AGREEMENT** ("**Agreement**") is made and entered into by and between the **CITY OF TRACY** a municipal corporation ("**City**"), and **LENNAR HOMES OF CALIFORNIA, LLC**, a California limited liability company (hereinafter "**Developer**"). The effective date of this Agreement shall be the date on which City executes the Agreement ("**Effective Date**").

Recitals

A. Developer is the party responsible for the construction of the public improvements within a portion of the real property comprising the subject Final Subdivision Map for Tract 4182 - Tracy Hills Village 13, and being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (hereinafter "**Project**"). DRP SOLARIS MULTISTATE, LLC is a landbank holding fee title to the property described in Exhibit A until such time as it is conveyed to Developer and consents to the recordation of this Agreement as evidenced by its signature below.

B. October 19, 2021, the Tracy City Council ("**City Council**") adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 2 and approved various related land use entitlements, including that certain Vesting Tentative Subdivision Map for Tracy Hills Phase 2, Tract 4057, processed under Application No. TSM20-0003 and approved by Resolution No. 2021-154 ("**Tentative Map**"). The Tentative Map includes 1,470 single-family residential lots, in addition to park parcels, HOA recreation area parcel, retention basin parcels, school parcels, and numerous other parcels to be owned and maintained by a Homeowner's Association, Developer or City on approximately 1,143 acres within

the Tracy Hills Specific Plan Area, located south of the I-580 Freeway and west of Corral Hollow Road. The Tentative Map is on file with the City Clerk, and is incorporated herein by this reference.

C. The approval of the Tentative Map by the City Council was subject to specified conditions of approval attached as Exhibit 1 to Resolution No. 2021-154 and are on file with the City Engineer ("**Conditions of Approval**"). The Conditions of Approval describe, among other things, improvements that are required for approval of the Final Subdivision Map pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards.

D. In accordance with the Subdivision Map Act (California Government Code sections 66410, et seq) and the Subdivision Ordinance (Tracy Municipal Code, Title 12), Developer has submitted to the City the Final Subdivision Map for Tract 4182 - Tracy Hills Village 13 (the "**Final Subdivision Map**"), consisting of 122 single-family residential lots, and other parcels to be owned by a Homeowner's Association, all to be located on approximately 31.25 +/- acres within the boundaries of the Project. **Exhibit "B"** shows the overall Project area and the location of the Final Subdivision Map for Tract 4182 - Tracy Hills Village 13. Developer is required to execute this Agreement as a condition of the City's approval of the Final Subdivision Map.

E. In accordance with the Conditions of Approval, Developer has prepared, and the City Engineer has approved, certain improvement plans and specifications (which incorporate portions of the City's Standard Specifications), which describe the improvements that are required for approval of the Final Subdivision Map and are incorporated herein by reference. The approved plans and specifications ("**Approved Plans and Specifications**") include: (a) *Fifteen (15) sheets of improvement plans entitled "Improvement Plans-Tract 4182- Village 13 Tracy Hills Phase 2B" prepared by Ruggeri-Jensen-Azar dated June 26, 2024;* (b) *seven (7) sheets of joint trench plans entitled "Joint Trench Composite Plan Tracy Hills Phase 2B Village 13" prepared by Power Systems Design dated May 3, 2024;* (c) *six(6) sheets of street light plans entitled "City of Tracy Street Light Plan Set Tracy Hills Village 13" prepared by Power Systems Design dated February 5, 2024;* and (d) *thirty-eight (38) sheets of landscape construction drawings entitled "Village 13 Landscape Improvement Plan Tracy Hills Phase 2B-1", prepared by FORMA, dated April 10, 2024.* The improvement plans, joint trench plans and street lighting plans are on file with the City Engineer under Tracking No. ENG23-0023 and the landscape plans are on file with the City Engineer under Tracking No. ENG23-0024 (the "**Landscape Plans**"), all incorporated herein by reference.

F. Because the required improvements have not been completed, Developer is required to execute this Agreement as authorized by Government Code section 66462.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Scope of Work; Location.** Developer shall perform, or cause to be performed, the work in the manner and as described in the Approved Plans and Specifications, to the satisfaction of the City Engineer pursuant to this Agreement (the "**Work**").

The Work shall be performed, and all materials and labor shall be provided, at Developer's sole expense. No material change shall be made to the scope of Work unless authorized in writing by the City Engineer. Developer may submit a written request to the City Engineer for a change in the Work, as required by Tracy Municipal Code Section 12.36.060(f). To the extent applicable, all of the Work shall be performed by Developer in accordance with the requirements of the State prevailing wage laws. Developer shall perform all Work at the locations and grades shown on the Approved Plans and Specifications. Developer (a) has acquired any necessary easement or right-of-way or (b) has entered into a separate Agreement with the City to acquire the necessary easement or right-of-way at Developer's expense.

2. **Time of Performance.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

- 2.1 **Commencement of Work.** The Work shall begin within 60 days after the Effective Date of the Agreement. No later than fifteen (15) days prior to the commencement of such Work, Developer shall provide written notice to the City Engineer of the date on which Developer intends to commence Work. To the extent required, Developer shall not commence Work until after the notice required by this section is properly provided, and Developer shall not commence Work prior to the date specified in the written notice.

- 2.2 **Schedule of Work.** Concurrently with the written notice of commencement of Work, Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect Developer's prosecution of the Work.

- 2.3 **Completion of Work.** Developer shall complete all Work by no later than three hundred sixty-five (365) calendar days after Developer's submittal of its notice of commencement of Work pursuant to Section 2.1 above. If the Work is not completed by this date, City Engineer may grant an extension of time if (a) Developer submits a written request for extension at least ten (10) days prior to expiring date of completion, (b) the City Engineer determines that Work is progressing satisfactorily and an extension is warranted, and (c) Developer pays all processing fees for such time extension.

3. **Improvement Security.** Concurrently with the execution of this Agreement, Developer shall furnish contract security, in a form authorized by the Subdivision Map Act including Government Code Sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:

- 3.1 **Faithful Performance** security in the amount of **\$4,809,841.00** to secure faithful performance of this Agreement.
 - 3.2 **Labor and Material** security in the amount of **\$4,809,841.00** to secure payment by Developer to laborers and materialmen.
 - 3.3 **Warranty** security in the amount of **\$480,984.00** to guarantee improvements against any defective work or labor done or defective materials used in performance of Work for one year from the date on which the City Council accepts the Work as complete.
 - 3.4 **Monumentation** security in the amount of **\$37,250.00** to secure faithful performance of setting monuments pursuant to Government Code section 66496.
4. **Indemnification**. Developer shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees, except when caused by the active negligence or willful misconduct of City, until such time as all of the following have occurred: (1) the City Council accepts all of the improvements comprising the Work, (2) the City becomes responsible for the maintenance, operation and repair of all of the improvements comprising the Work, and (3) the one year warranty period set forth in Section 14, below, has expired, at which time the indemnification obligations under this Section 4 shall automatically terminate, with regard to any cause of action arising after such date. For avoidance of doubt, Developer's obligations under this Section 4 are in addition to all other Developer's obligations set forth in this Agreement, and shall not affect Developer's warranty obligations set forth in Section 14, below.
 5. **Insurance**. Concurrently with the execution of this Agreement by Developer, and before beginning any Work, Developer shall furnish evidence to the City that the following insurance requirements have been satisfied. The insurance requirements contained in this Section 5 are material terms of this Agreement. These insurance coverage requirements below may be satisfied by umbrella or excess liability policies upon City approval.
 - 5.1 **General**. Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

- 5.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) coverage shall be maintained in an amount not less than \$4,000,000 per occurrence and \$8,000,000 general aggregate for general liability, bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse, and underground property hazards.
- 5.3 **Professional Contracts**. Developer shall cause its design professionals to maintain professional liability insurance that insures against professional errors and omissions that may be made in performing services related to the Work to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Developer agrees to cause its design professionals to maintain continuous coverage through a period no less than three years after completion of the services required pursuant to this Agreement.
- 5.4 **Automobile Liability** (with coverage at least as broad as ISO form 00 01 07 97 for “any auto” including “hired autos” and “non-owned autos”) coverage shall be maintained in an amount not less than \$2,000,000 per accident for bodily injury and property damage.
- 5.4.1 If Developer has no employees, or does not own automobiles, then “hired autos” and “non-owned autos” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 5.5 **Workers’ Compensation** coverage shall be maintained as required by the State of California.
- 5.6 **Endorsements**. Developer shall obtain endorsements to the commercial general liability and automobile policies with the following provisions:
- 5.6.1 The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an Additional Insured on Developer’s Commercial General Liability policy utilizing endorsement form CG 20 10 (or its equivalent) for ongoing operations and CG 20 37 (or its equivalent) for products/completed operations.
- 5.6.2 For any claims related to this Agreement, Developer’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of Developer’s insurance and shall not contribute with it.

- 5.6.3 Developer shall require its contractors and subcontractors providing services required by this Agreement (e.g. general contractors, design professionals) to name it and the City as Additional Insureds.
- 5.7 **Notice of Cancellation.** Developer shall notify the City of any cancellation of either the commercial general liability policy or automobile insurance policy before the expiration date. For the purpose of this notice requirement, any material change in the policy before the expiration shall be considered a cancellation. Developer shall immediately obtain a replacement policy.
- 5.8 **Authorized Insurers.** All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, with an AM Best rating of at least A-VII.
- 5.9 **Insurance Certificate.** Developer shall provide evidence of compliance with the commercial general liability insurance and automobile insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City Attorney before the City executes this Agreement.
- 5.10 **Substitute Certificates.** No later than thirty (30) days before the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.
- 5.11 **Developer's Obligation.** Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any responsibility whatsoever (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary.
6. **Independent Contractor Status.** Developer is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.
7. **Default**
- 7.1 **Notice of Default.** In the event that Developer is in default of this Agreement, as defined in this section, the City Engineer shall provide written notice to Developer and Developer's surety (if any) in which the default is described.

7.2 **Events of default.** Developer shall be in default (“Default”) of this Agreement if the City Engineer determines that any one of the following conditions exist (which conditions are not intended to constitute the exclusive bases for default):

7.2.1 Developer fails to complete the work by the Trigger Date as required by the Conditions.

7.2.2 Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.

7.2.3 Developer abandons the Work site.

7.2.4 Developer fails to perform one or more requirements of this Agreement and fails to cure any such non-performance pursuant to Section 7.3 below.

7.2.5 Developer fails to replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.

7.2.6 Developer violates any legal requirement related to the Work and fails to cure such violation pursuant to Section 7.3 below.

7.3 **Cure of Default.** In the event that Developer fails, within thirty (30) calendar days after receipt of written notice from the City, to either cure the default or provide adequate written assurance to the reasonable satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in its discretion, take any or all of the following actions:

7.3.1 Demand that Developer complete performance of the Work.

7.3.2 Demand that Developer's surety (if any) complete performance of the Work.

7.3.3 Resort to any judicial remedies available to the City.

8. **Ownership of Work.** All original documents prepared by Developer for this Agreement are the property of the City and shall be given to the City at the completion of Developer's Work, or upon demand from the City. Prior to acceptance of the Work, Developer shall submit the as-built drawings in AutoCAD format Release-14 or higher.

9. **Repair of any Damage.** In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other

property owners, then Developer shall promptly take all reasonable steps to repair or replace (as necessary) such property to remedy the damage caused thereto.

10. **Inspection by the City; Inspection Fees**. To permit City to inspect the Work, Developer shall, at all times, provide to City reasonable and safe access to the Work site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

- 10.1 **Inspection Fees**. Concurrently with the execution of this Agreement by Developer, and prior to the commencement of any Work, Developer shall pay the City Inspection Fees in the amount of three and one-half percent (3.5%) of the estimated Project costs (as approved by the City Engineer).

In the event that the City requires an independent inspection, the City may retain an independent inspector to inspect the Work and prepare an inspection report for the City, and all costs associated therewith shall be borne by Developer.

11. **[Intentionally Left Blank]**

12. **Developer's Authorized Representative**. At all times during the progress of the Work, Developer shall have a competent foreperson or superintendent ("**Authorized Representative**") on site with authority to act on Developer's behalf. Developer shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work. **Exhibit "C"** attached hereto includes the initial contact information referenced in this Section 12.

13. **Acceptance of Work**. Prior to acceptance of the Work by the City Council, Developer shall be solely responsible for maintaining the quality of the Work and maintaining safety at the Work site. Developer's obligations to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.

14. **Warranty Period**. Developer shall warrant the quality of the Work, in accordance with the terms of the Approved Plans and Specifications, for a period of one year after acceptance of the Work by the City Council. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this Agreement, Developer shall be in default of this Agreement and shall without delay and without any cost to City repair, replace or reconstruct any defective improvements.

15. **[Intentionally Left Blank]**

16. **Miscellaneous.**

- 16.1 **Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or electronically mailed to the respective party as follows:

To City	To Developer:
City of Tracy 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer notice@cityoftracy.org	Lennar Homes of California, LLC 2603 Camino Ramon, Suite 525 San Ramon, CA 94583 Attn: Bridgit Koller bridgit.koller@lennar.com
With a copy to:	With a copy to:
City Attorney 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer attorney@cityoftracy.org	DRP Solaris Multistate, LLC 590 Madison Avenue, 13 th Floor New York, NY 10022 Attn: Houdin Honarvar Houdin.honarvar@dwpartners.com

Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the email address designated above, or (2) two working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

- 16.2 **Approvals by City.** Any approval or consent that is to be given by City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on City.
- 16.3 **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 16.4 **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 16.5 **Assignment and Delegation.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.

- 16.6 **Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 16.7 **Permits, Licenses, and Compliance with Law.** Developer shall, at its expense, obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, Developer shall obtain a City of Tracy Business License. Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
- 16.8 **Entire Agreement; Exhibits; Severability.** The recitals and all defined terms in this Agreement are part of this Agreement. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the improvements to be constructed pursuant to this Agreement. This Agreement supersedes all prior negotiations, representations, or agreements. The following Exhibits attached hereto are incorporated into this Agreement and made a part hereof by this reference:
- A. Description of Property (Recital A.)
 - B. Tract Location (Recital D.)
 - C. Subdivider's Authorized Representative Information (Section 12.)

If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

- 16.9 **Signatures.** The individuals executing this Agreement on behalf of Developer represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of Developer. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

[Signatures of Following Pages]

City of Tracy – Subdivision Improvement Agreement
Tract 4182, Tracy Hills Village 13

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY,

a municipal corporation

DEVELOPER:

LENNAR HOMES OF CALIFORNIA, LLC
a California limited liability company

By: Dan Arriola
Title: Mayor

Date: _____

By: 
Title: Vice President

Date: 1/13/25

Attest:

By: Adrienne Richardson
Title: City Clerk

Date: _____

Approved As To Form:

By: Andrew Shen
Title: Interim City Attorney

Date: _____

Consent to Recordation

DRP SOLARIS MULTISTATE, LLC, is the owner in fee simple of the real property described in Exhibit A and hereby consents to the recordation of this Subdivision Improvement Agreement.

DRP SOLARIS MULTISTATE, LLC
a Delaware Limited Liability Company

By: Domain Solaris Holdings, LLC
Its: Manager

By: DW General Partner, LLC, its
Manager


By: Houdin Honarvar
Its: Authorized Signatory
Date: January 14, 2025

[ATTACHED]

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

STATE OF CALIFORNIA
COUNTY OF Contra Costa

On this 13th day of January, 2025 before me, Lauren Mary Christopher,
Notary Public, personally appeared Bridgit Koller,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/~~they~~ executed the same in his/her/~~their~~ authorized capacity(ies), and that by
his/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



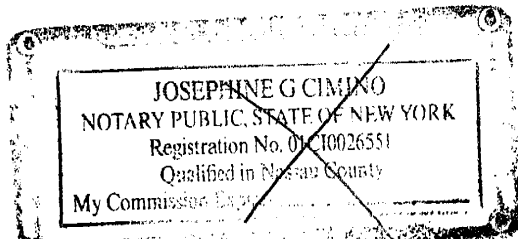
Signature: L. Christopher

(Seal)

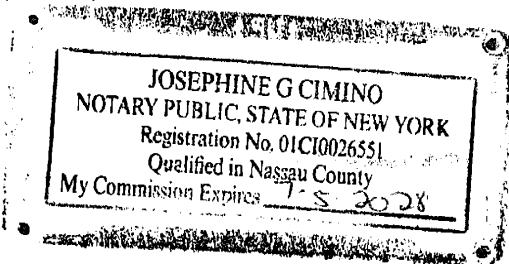
State of New York)
) ss.:

County of New York)

On the 14th day of Jan. in the year 2025 before me, the undersigned, a Notary Public
in _____ and _____ for _____ said _____ State,
personally appeared Houdin Honervar,
personally known to me or proved to me on the basis of satisfactory evidence to be the
individual(s) whose name(s) is (are) subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their capacity(ies),
and that by his/her/their signature(s) on the instrument, the individual(s), or the person
upon behalf of which the individual(s) acted, executed the instrument.



(SEAL)



Josephine G. Cimino
Notary Public

EXHIBIT "A"
(Legal Description of Property)

Real property in the City of Tracy , County of San Joaquin, State of California, described as follows:

BEING A PORTION OF NEW PARCEL B AS SAID PARCEL IS DESCRIBED IN THE GRANT DEED TO TRACY PHASE 3, LLC RECORDED AS DOCUMENT NO. 2023-097077, OFFICIAL RECORDS OF SAN JOAQUIN COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN EASTERLY CORNER OF SAID NEW PARCEL B, SAID CORNER BEING AT THE NORTHEASTERLY TERMINUS OF A COURSE DESCRIBED AS NORTH 41° 52' 32" EAST - 55.73 FEET, SAME CORNER BEING THE NORTHWESTERLY CORNER OF LOT F AS SAID LOT IS SHOWN ON TRACT 4137 (VILLAGE 9);

THENCE ALONG THE LINE COMMON TO NEW PARCEL B AND LOT F THE FOLLOWING TWO (2) COURSES:

- 1) SOUTH 41° 52' 32" WEST - 55.73 FEET;
- 2) SOUTH 17° 14' 59" EAST - 13.20 FEET;

THENCE CROSSING THROUGH SAID NEW PARCEL B THE FOLLOWING EIGHT (8) COURSES:

- 1) SOUTH 37° 15' 09" WEST - 242.89 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT FROM WHICH THE CENTER BEARS NORTH 56° 25' 04" WEST;
- 2) IN A SOUTHWESTERLY DIRECTION 73.08 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 378.50 FEET AND THROUGH A CENTRAL ANGLE OF 11° 03' 48";
- 3) SOUTH 44° 38' 43" WEST - 394.70 FEET;
- 4) SOUTH 42° 01' 44" WEST - 65.72 FEET;
- 5) SOUTH 44° 38' 43" WEST - 154.51 FEET;
- 6) SOUTH 68° 58' 55" WEST - 134.86 FEET;
- 7) NORTH 39° 15' 32" WEST - 334.72 FEET;
- 8) NORTH 52° 06' 57" WEST - 785.52 FEET TO THE WEST LINE OF SAID NEW PARCEL B;

THENCE ALONG THE WEST LINE OF SAID NEW PARCEL B THE FOLLOWING NINE (9) COURSES:

- 1) NORTH 37° 53' 03" EAST - 635.00 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;
- 2) IN A NORTHERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
- 3) NORTH 52° 06' 57" WEST - 6.00 FEET;
- 4) NORTH 37° 53' 03" EAST - 3.00 FEET;
- 5) NORTH 52° 06' 57" WEST - 12.50 FEET;
- 6) NORTH 37° 53' 03" EAST - 57.00 FEET;
- 7) SOUTH 52° 06' 57" EAST - 21.00 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;
- 8) IN AN EASTERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
- 9) NORTH 37° 53' 03" EAST - 269.05 FEET TO A POINT IN SAID WEST LINE;

THENCE CROSSING THROUGH SAID NEW PARCEL 2 THE FOLLOWING THREE (3) COURSES:

- 1) SOUTH 52° 06' 57" EAST - 79.00 FEET;
- 2) NORTH 37° 53' 03" EAST - 25.44 FEET FOR THE BEGINNING OF A CURVE TO THE RIGHT;

3) IN AN EASTERLY DIRECTION 123.69 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING RADIUS OF 80.04 FEET AND THROUGH A CENTRAL ANGLE OF 88° 32' 11" TO THE EAST LINE OF NEW PARCEL B;

THENCE ALONG THE EAST LINE OF NEW PARCEL B THE FOLLOWING TWO (2) COURSES:

1) SOUTH 52° 06' 57" EAST - 828.19 FEET FOR THE BEGINNING OF A CURVE TO THE RIGHT;

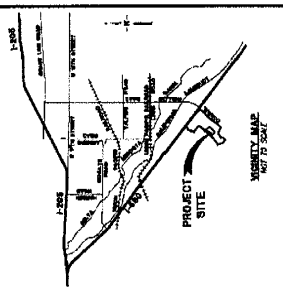
2) IN A SOUTHEASTERLY DIRECTION 271.01 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 453.50 FEET AND THROUGH A CENTRAL ANGLE OF 34° 14' 22" TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS, HYDROCARBONS AND OTHER MINERALS AS CONVEYED TO BERTHA G. BERGER, A WIDOW, VERA GRUNAUER, A SINGLE WOMAN, AND DORIS G. POWELL, A SINGLE WOMAN, BY DEED RECORDED MARCH 27, 1959 IN BOOK 2160, PAGE 308, OF OFFICIAL RECORDS, WHICH PROVIDES AS FOLLOWS: TOGETHER WITH ALL RIGHTS NECESSARY AND PROPER FOR THE PURPOSE OF DRILLING AND EXPLORING FOR SAID SUBSTANCES AND REMOVING THE SAME THEREFROM, AS TO THE PORTION OF SAID LAND DESCRIBED THEREIN.

ALSO EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS, AS TO THE PORTION OF SAID LAND DESCRIBED THEREIN.

APN: Portion of 251-060-240-000

EXHIBIT "B"
Tract Location

[illegible]

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4000 15th Avenue, Suite 200, Boulder, CO 80501
303.440.1500

EXHIBIT "C"

Subdivider's Authorized Representative Information

<u>Name of Person</u>	<u>Company Name</u>	<u>Telephone Number</u>
Sergio Perez	Lennar Homes	916.261.8709
Lisa A. Mikelonis, PE	Integral Communities	925.260.4753

City of Tracy – Subdivision Improvement Agreement
Tract 4183, Tracy Hills Village 14

Recording Requested By:

City of Tracy
Development Services
333 Civic Center Plaza
Tracy, CA 95376

And When Recorded Mail To:

City of Tracy
Office of the City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attn: Adrienne Richardson

(No recording fee under Government Code Section 27383)

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

City of Tracy
SUBDIVISION IMPROVEMENT AGREEMENT
Tract 4183 - Tracy Hills Village 14

This **SUBDIVISION IMPROVEMENT AGREEMENT** ("**Agreement**") is made and entered into by and between the **CITY OF TRACY** a municipal corporation ("**City**"), and **LENNAR HOMES OF CALIFORNIA, LLC**, a California limited liability company (hereinafter "**Developer**"). The effective date of this Agreement shall be the date on which City executes the Agreement ("**Effective Date**").

Recitals

A. Developer is the party responsible for the construction of the public improvements within a portion of the real property comprising the subject Final Subdivision Map for Tract 4183 - Tracy Hills Village 14, and being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (hereinafter "**Project**"). DRP SOLARIS MULTISTATE, LLC is a landbank holding fee title to the property described in Exhibit A until such time as it is conveyed to Developer and consents to the recordation of this Agreement as evidenced by its signature below.

B. October 19, 2021, the Tracy City Council ("**City Council**") adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 2 and approved various related land use entitlements, including that certain Vesting Tentative Subdivision Map for Tracy Hills Phase 2, Tract 4057, processed under Application No. TSM20-0003 and approved by Resolution No. 2021-154 ("**Tentative Map**"). The Tentative Map includes 1,470 single-family residential lots, in addition to park parcels, HOA recreation area parcel, retention basin parcels, school parcels, and numerous other parcels to be owned and maintained by a Homeowner's Association, Developer or City on approximately 1,143 acres within

the Tracy Hills Specific Plan Area, located south of the I-580 Freeway and west of Corral Hollow Road. The Tentative Map is on file with the City Clerk, and is incorporated herein by this reference.

C. The approval of the Tentative Map by the City Council was subject to specified conditions of approval attached as Exhibit 1 to Resolution No. 2021-154 and are on file with the City Engineer ("**Conditions of Approval**"). The Conditions of Approval describe, among other things, improvements that are required for approval of the Final Subdivision Map pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards.

D. In accordance with the Subdivision Map Act (California Government Code sections 66410, et seq) and the Subdivision Ordinance (Tracy Municipal Code, Title 12), Developer has submitted to the City the Final Subdivision Map for Tract 4183 - Tracy Hills Village 14 (the "**Final Subdivision Map**"), consisting of 89 single-family residential lots, and other parcels to be owned by a Homeowner's Association, all to be located on approximately 59.04 +/- acres within the boundaries of the Project. **Exhibit "B"** shows the overall Project area and the location of the Final Subdivision Map for Tract 4183 - Tracy Hills Village 14. Developer is required to execute this Agreement as a condition of the City's approval of the Final Subdivision Map.

E. In accordance with the Conditions of Approval, Developer has prepared, and the City Engineer has approved, certain improvement plans and specifications (which incorporate portions of the City's Standard Specifications), which describe the improvements that are required for approval of the Final Subdivision Map and are incorporated herein by reference. The approved plans and specifications ("**Approved Plans and Specifications**") include: (a) sixteen (16) sheets of improvement plans entitled "Improvement Plans-Tract 4183- Village 14 Tracy Hills Phase 2B" prepared by Ruggeri-Jensen-Azar dated June 26, 2024; (b) five (5) sheets of joint trench plans entitled "Joint Trench Composite Plan Tracy Hills Phase 2B Village 14" prepared by Power Systems Design dated June 10, 2024; (c) four (4) sheets of street light plans entitled "City of Tracy Street Light Plan Set Tracy Hills Village 14" prepared by Power Systems Design dated February 14, 2024; and (d) thirty-eight (38) sheets of landscape construction drawings entitled "Village 14 Landscape Improvement Plan Tracy Hills Phase 2B-1", prepared by FORMA, dated March 15, 2024. The improvement plans, joint trench plans and street lighting plans are on file with the City Engineer under Tracking No. ENG23-0025 and the landscape plans are on file with the City Engineer under Tracking No. ENG23-0026 (the "**Landscape Plans**"), all incorporated herein by reference.

F. Because the required improvements have not been completed, Developer is required to execute this Agreement as authorized by Government Code section 66462.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Scope of Work; Location.** Developer shall perform, or cause to be performed, the work in the manner and as described in the Approved Plans and Specifications, to the satisfaction of the City Engineer pursuant to this Agreement (the "**Work**").

The Work shall be performed, and all materials and labor shall be provided, at Developer's sole expense. No material change shall be made to the scope of Work unless authorized in writing by the City Engineer. Developer may submit a written request to the City Engineer for a change in the Work, as required by Tracy Municipal Code Section 12.36.060(f). To the extent applicable, all of the Work shall be performed by Developer in accordance with the requirements of the State prevailing wage laws. Developer shall perform all Work at the locations and grades shown on the Approved Plans and Specifications. Developer (a) has acquired any necessary easement or right-of-way or (b) has entered into a separate Agreement with the City to acquire the necessary easement or right-of-way at Developer's expense.

2. **Time of Performance.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

- 2.1 **Commencement of Work.** The Work shall begin within 60 days after the Effective Date of the Agreement. No later than fifteen (15) days prior to the commencement of such Work, Developer shall provide written notice to the City Engineer of the date on which Developer intends to commence Work. To the extent required, Developer shall not commence Work until after the notice required by this section is properly provided, and Developer shall not commence Work prior to the date specified in the written notice.

- 2.2 **Schedule of Work.** Concurrently with the written notice of commencement of Work, Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect Developer's prosecution of the Work.

- 2.3 **Completion of Work.** Developer shall complete all Work by no later than three hundred sixty-five (365) calendar days after Developer's submittal of its notice of commencement of Work pursuant to Section 2.1 above. If the Work is not completed by this date, City Engineer may grant an extension of time if (a) Developer submits a written request for extension at least ten (10) days prior to expiring date of completion, (b) the City Engineer determines that Work is progressing satisfactorily and an extension is warranted, and (c) Developer pays all processing fees for such time extension.

3. **Improvement Security.** Concurrently with the execution of this Agreement, Developer shall furnish contract security, in a form authorized by the Subdivision Map Act including Government Code Sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:

- 3.1 **Faithful Performance** security in the amount of **\$4,264,035.00** to secure faithful performance of this Agreement.
 - 3.2 **Labor and Material** security in the amount of **\$4,264,035.00** to secure payment by Developer to laborers and materialmen.
 - 3.3 **Warranty** security in the amount of **\$426,403.00** to guarantee improvements against any defective work or labor done or defective materials used in performance of Work for one year from the date on which the City Council accepts the Work as complete.
 - 3.4 **Monumentation** security in the amount of **\$31,500.00** to secure faithful performance of setting monuments pursuant to Government Code section 66496.
4. **Indemnification**. Developer shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees, except when caused by the active negligence or willful misconduct of City, until such time as all of the following have occurred: (1) the City Council accepts all of the improvements comprising the Work, (2) the City becomes responsible for the maintenance, operation and repair of all of the improvements comprising the Work, and (3) the one year warranty period set forth in Section 14, below, has expired, at which time the indemnification obligations under this Section 4 shall automatically terminate, with regard to any cause of action arising after such date. For avoidance of doubt, Developer's obligations under this Section 4 are in addition to all other Developer's obligations set forth in this Agreement, and shall not affect Developer's warranty obligations set forth in Section 14, below.
 5. **Insurance**. Concurrently with the execution of this Agreement by Developer, and before beginning any Work, Developer shall furnish evidence to the City that the following insurance requirements have been satisfied. The insurance requirements contained in this Section 5 are material terms of this Agreement. These insurance coverage requirements below may be satisfied by umbrella or excess liability policies upon City approval.
 - 5.1 **General**. Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

- 5.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) coverage shall be maintained in an amount not less than \$4,000,000 per occurrence and \$8,000,000 general aggregate for general liability, bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse, and underground property hazards.
- 5.3 **Professional Contracts**. Developer shall cause its design professionals to maintain professional liability insurance that insures against professional errors and omissions that may be made in performing services related to the Work to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Developer agrees to cause its design professionals to maintain continuous coverage through a period no less than three years after completion of the services required pursuant to this Agreement.
- 5.4 **Automobile Liability** (with coverage at least as broad as ISO form 00 01 07 97 for “any auto” including “hired autos” and “non-owned autos”) coverage shall be maintained in an amount not less than \$2,000,000 per accident for bodily injury and property damage.
- 5.4.1 If Developer has no employees, or does not own automobiles, then “hired autos” and “non-owned autos” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 5.5 **Workers’ Compensation** coverage shall be maintained as required by the State of California.
- 5.6 **Endorsements**. Developer shall obtain endorsements to the commercial general liability and automobile policies with the following provisions:
- 5.6.1 The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an Additional Insured on Developer’s Commercial General Liability policy utilizing endorsement form CG 20 10 (or its equivalent) for ongoing operations and CG 20 37 (or its equivalent) for products/completed operations.
- 5.6.2 For any claims related to this Agreement, Developer’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of Developer’s insurance and shall not contribute with it.

- 5.6.3 Developer shall require its contractors and subcontractors providing services required by this Agreement (e.g. general contractors, design professionals) to name it and the City as Additional Insureds.
- 5.7 **Notice of Cancellation.** Developer shall notify the City of any cancellation of either the commercial general liability policy or automobile insurance policy before the expiration date. For the purpose of this notice requirement, any material change in the policy before the expiration shall be considered a cancellation. Developer shall immediately obtain a replacement policy.
- 5.8 **Authorized Insurers.** All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, with an AM Best rating of at least A-VII.
- 5.9 **Insurance Certificate.** Developer shall provide evidence of compliance with the commercial general liability insurance and automobile insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City Attorney before the City executes this Agreement.
- 5.10 **Substitute Certificates.** No later than thirty (30) days before the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.
- 5.11 **Developer's Obligation.** Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any responsibility whatsoever (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary.
6. **Independent Contractor Status.** Developer is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.
7. **Default**
- 7.1 **Notice of Default.** In the event that Developer is in default of this Agreement, as defined in this section, the City Engineer shall provide written notice to Developer and Developer's surety (if any) in which the default is described.

7.2 **Events of default.** Developer shall be in default (“Default”) of this Agreement if the City Engineer determines that any one of the following conditions exist (which conditions are not intended to constitute the exclusive bases for default):

7.2.1 Developer fails to complete the work by the Trigger Date as required by the Conditions.

7.2.2 Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.

7.2.3 Developer abandons the Work site.

7.2.4 Developer fails to perform one or more requirements of this Agreement and fails to cure any such non-performance pursuant to Section 7.3 below.

7.2.5 Developer fails to replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.

7.2.6 Developer violates any legal requirement related to the Work and fails to cure such violation pursuant to Section 7.3 below.

7.3 **Cure of Default.** In the event that Developer fails, within thirty (30) calendar days after receipt of written notice from the City, to either cure the default or provide adequate written assurance to the reasonable satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in its discretion, take any or all of the following actions:

7.3.1 Demand that Developer complete performance of the Work.

7.3.2 Demand that Developer’s surety (if any) complete performance of the Work.

7.3.3 Resort to any judicial remedies available to the City.

8. **Ownership of Work.** All original documents prepared by Developer for this Agreement are the property of the City and shall be given to the City at the completion of Developer’s Work, or upon demand from the City. Prior to acceptance of the Work, Developer shall submit the as-built drawings in AutoCAD format Release-14 or higher.

9. **Repair of any Damage.** In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other

property owners, then Developer shall promptly take all reasonable steps to repair or replace (as necessary) such property to remedy the damage caused thereto.

10. **Inspection by the City; Inspection Fees.** To permit City to inspect the Work, Developer shall, at all times, provide to City reasonable and safe access to the Work site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

- 10.1 **Inspection Fees.** Concurrently with the execution of this Agreement by Developer, and prior to the commencement of any Work, Developer shall pay the City Inspection Fees in the amount of three and one-half percent (3.5%) of the estimated Project costs (as approved by the City Engineer).

In the event that the City requires an independent inspection, the City may retain an independent inspector to inspect the Work and prepare an inspection report for the City, and all costs associated therewith shall be borne by Developer.

11. **[Intentionally Left Blank]**

12. **Developer's Authorized Representative.** At all times during the progress of the Work, Developer shall have a competent foreperson or superintendent ("**Authorized Representative**") on site with authority to act on Developer's behalf. Developer shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work. **Exhibit "C"** attached hereto includes the initial contact information referenced in this **Section 12.**

13. **Acceptance of Work.** Prior to acceptance of the Work by the City Council, Developer shall be solely responsible for maintaining the quality of the Work and maintaining safety at the Work site. Developer's obligations to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.

14. **Warranty Period.** Developer shall warrant the quality of the Work, in accordance with the terms of the Approved Plans and Specifications, for a period of one year after acceptance of the Work by the City Council. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this Agreement, Developer shall be in default of this Agreement and shall without delay and without any cost to City repair, replace or reconstruct any defective improvements.

15. **[Intentionally Left Blank]**

16. **Miscellaneous.**

- 16.1 **Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or electronically mailed to the respective party as follows:

To City	To Developer:
City of Tracy 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer notice@cityoftracy.org	Lennar Homes of California, LLC 2603 Camino Ramon, Suite 525 San Ramon, CA 94583 Attn: Bridgit Koller bridgit.koller@lennar.com
With a copy to:	With a copy to:
City Attorney 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer attorney@cityoftracy.org	DRP Solaris Multistate, LLC 590 Madison Avenue, 13 th Floor New York, NY 10022 Attn: Houdin Honarvar Houdin.honarvar@dwpartners.com

Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the email address designated above, or (2) two working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

- 16.2 **Approvals by City.** Any approval or consent that is to be given by City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on City.
- 16.3 **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 16.4 **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 16.5 **Assignment and Delegation.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.

- 16.6 **Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 16.7 **Permits, Licenses, and Compliance with Law.** Developer shall, at its expense, obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, Developer shall obtain a City of Tracy Business License. Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
- 16.8 **Entire Agreement; Exhibits; Severability.** The recitals and all defined terms in this Agreement are part of this Agreement. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the improvements to be constructed pursuant to this Agreement. This Agreement supersedes all prior negotiations, representations, or agreements. The following Exhibits attached hereto are incorporated into this Agreement and made a part hereof by this reference:
- A. Description of Property (Recital A.)
 - B. Tract Location (Recital D.)
 - C. Subdivider's Authorized Representative Information (Section 12.)

If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

- 16.9 **Signatures.** The individuals executing this Agreement on behalf of Developer represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of Developer. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

[Signatures of Following Pages]

City of Tracy – Subdivision Improvement Agreement
Tract 4183, Tracy Hills Village 14

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY,
a municipal corporation

DEVELOPER:

LENNAR HOMES OF CALIFORNIA, LLC
a California limited liability company

By: Dan Arriola
Title: Mayor

Date: _____

By: 
Title: Vice President

Date: 1/13/25

Attest:

By: Adrienne Richardson
Title: City Clerk

Date: _____

Approved As To Form:

By: Andrew Shen
Title: Interim City Attorney

Date: _____

Consent to Recordation

DRP SOLARIS MULTISTATE, LLC, is the owner in fee simple of the real property described in Exhibit A and hereby consents to the recordation of this Subdivision Improvement Agreement.

DRP SOLARIS MULTISTATE, LLC
a Delaware Limited Liability Company

By: Domain Solaris Holdings, LLC
Its: Manager

By: DW General Partner, LLC, its
Manager


By: Houdin Honarvar
Its: Authorized Signatory
Date: January 14, 2025

[ATTACHED]

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

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

On this 13th day of JANUARY, 2025 before me, LAUREN MARY CHRISTOPHER,
Notary Public, personally appeared BRIDGET KOLLER,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by
~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature: L. Christopher

(Seal)

State of New York)
) ss.:

County of New York)

On the 14th day of Jan. in the year 2025 before me, the undersigned, a Notary Public
in _____ and _____ for _____ said _____ State,
personally appeared Houdin Honarvar,
personally known to me or proved to me on the basis of satisfactory evidence to be the
individual(s) whose name(s) is (are) subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their capacity(ies),
and that by his/her/their signature(s) on the instrument, the individual(s), or the person
upon behalf of which the individual(s) acted, executed the instrument.

JOSEPHINE G CIMINO
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01CI0026551
Qualified in Nassau County
My Commission Expires 7-5-2028

(SEAL)

Josephine G. Cimino
Notary Public

EXHIBIT "A"
(Legal Description of Property)

REAL PROPERTY SITUATE IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA AND BEING A PORTION OF NEW PARCEL B AS SAID PARCEL IS DESCRIBED IN THE GRANT DEED TO TRACY PHASE 3, LLC RECORDED AS DOCUMENT NO. 2023-097077, OFFICIAL RECORDS OF SAN JOAQUIN COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT AN EASTERLY CORNER OF SAID NEW PARCEL B, SAID CORNER BEING AT THE NORTHEASTERLY TERMINUS OF A COURSE DESCRIBED AS NORTH 41° 52' 32" EAST, 55.73 FEET, SAME CORNER BEING THE NORTHWESTERLY CORNER OF LOT F AS SAID LOT IS SHOWN ON TRACT 4137 (VILLAGE 9);

THENCE ALONG THE COMMON LINE BETWEEN NEW PARCEL B AND LOT F THE FOLLOWING TWO (2) COURSES:

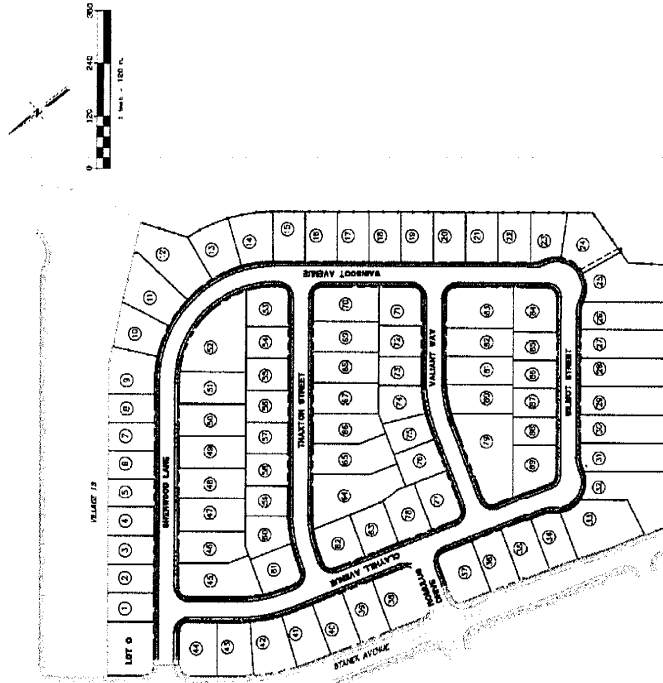
- 1) SOUTH 41° 52' 32" WEST - 55.73 FEET;
- 2) SOUTH 17° 14' 59" EAST - 13.20 FEET FOR THE POINT OF BEGINNING;

THENCE LEAVING SAID COMMON LINE AND CONTINUING ALONG THE EAST, SOUTH AND WEST LINES OF NEW PARCEL B THE FOLLOWING FORTY-SEVEN (47) COURSES:

- 1) SOUTH 17° 14' 59" EAST, 246.59 FEET;
- 2) SOUTH 45° 20' 27" WEST, 961.87 FEET;
- 3) SOUTH 28° 32' 10" WEST, 122.18 FEET;
- 4) SOUTH 43° 45' 21" WEST, 41.54 FEET;
- 5) SOUTH 31° 42' 56" WEST, 169.52 FEET;
- 6) SOUTH 26° 13' 48" WEST, 245.35 FEET;
- 7) SOUTH 23° 35' 09" WEST, 217.62 FEET;
- 8) SOUTH 45° 20' 57" WEST, 332.71 FEET;
- 9) SOUTH 74° 42' 18" WEST, 107.80 FEET;
- 10) SOUTH 39° 06' 11" WEST, 369.49 FEET;
- 11) SOUTH 38° 54' 59" WEST, 412.05 FEET;
- 12) SOUTH 45° 20' 57" WEST, 3.98 FEET;
- 13) SOUTH 59° 11' 07" WEST, 320.22 FEET;
- 14) SOUTH 52° 45' 16" WEST, 351.21 FEET;
- 15) SOUTH 24° 55' 34" WEST, 584.76 FEET;
- 16) NORTH 47° 29' 28" WEST, 54.93 FEET;
- 17) NORTH 14° 23' 23" WEST, 729.52 FEET;
- 18) NORTH 22° 25' 05" EAST, 50.07 FEET;
- 19) NORTH 85° 06' 47" EAST, 214.60 FEET;
- 20) NORTH 45° 20' 57" EAST, 485.89 FEET;
- 21) NORTH 61° 48' 50" EAST, 305.17 FEET;
- 22) NORTH 45° 21' 00" EAST, 69.92 FEET;
- 23) NORTH 45° 09' 31" EAST, 241.24 FEET;
- 24) NORTH 47° 07' 54" EAST, 115.46 FEET;
- 25) NORTH 29° 13' 05" EAST, 41.67 FEET;
- 26) NORTH 40° 06' 22" EAST, 131.53 FEET;
- 27) NORTH 52° 06' 57" WEST, 595.39 FEET;
- 28) NORTH 16° 34' 16" EAST, 37.53 FEET;
- 29) NORTH 73° 25' 44" WEST, 57.00 FEET;
- 30) NORTH 16° 34' 16" EAST, 7.74 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;
- 31) IN A NORTHERLY DIRECTION 32.37 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 92° 44' 14";
- 32) NORTH 76° 09' 59" WEST, 5.10 FEET;
- 33) NORTH 13° 50' 01" EAST, 56.00 FEET;
- 34) SOUTH 76° 09' 59" EAST, 1.68 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;

35) IN A NORTHEASTERLY DIRECTION 30.46 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 87° 15' 46";
 36) NORTH 16° 34' 16" EAST, 74.99 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;
 37) IN A NORTHERLY DIRECTION 43.92 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 982.00 FEET AND THROUGH A CENTRAL ANGLE OF 02° 33' 45" FOR THE BEGINNING OF A REVERSE CURVE;
 38) IN A NORTHERLY DIRECTION 45.53 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 1018.00 FEET AND THROUGH A CENTRAL ANGLE OF 02° 33' 45";
 39) NORTH 16° 34' 16" EAST 215.00 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;
 40) IN A NORTHERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
 41) NORTH 73° 25' 44" WEST, 16.00 FEET;
 42) NORTH 16° 34' 16" EAST, 57.00 FEET;
 43) SOUTH 73° 25' 44" EAST, 16.00 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;
 44) IN A NORTHEASTERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
 45) NORTH 16° 34' 16" EAST, 282.68 FEET FOR THE BEGINNING OF A CURVE TO THE RIGHT;
 46) IN A NORTHEASTERLY DIRECTION 200.31 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 538.50 FEET AND THROUGH A CENTRAL ANGLE OF 21° 18' 47";
 47) NORTH 37° 53' 03" EAST 307.10 FEET;
 THENCE LEAVING SAID LINE AND CROSSING THROUGH NEW PARCEL B FOR THE FOLLOWING EIGHT (8) COURSES:
 1) SOUTH 52° 06' 57" EAST, 785.52 FEET;
 2) SOUTH 39° 15' 32" EAST, 334.72 FEET;
 3) NORTH 68° 58' 55" EAST, 134.86 FEET;
 4) NORTH 44° 38' 43" EAST, 154.51 FEET;
 5) NORTH 42° 01' 44" EAST, 65.72 FEET;
 6) NORTH 44° 38' 43" EAST, 394.70 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;
 7) IN A NORTHEASTERLY DIRECTION 73.08 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 378.50 FEET AND THROUGH A CENTRAL ANGLE OF 11° 03' 48";
 8) NORTH 37° 15' 09" EAST 242.89 FEET TO THE POINT OF BEGINNING.
 CONTAINING A LAND AREA OF 2,571,728 SQUARE FEET, MORE OR LESS.
 END OF DESCRIPTION

EXHIBIT "B"
Tract Location



RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4000 W. 11TH AVE., SUITE 200
DENVER, CO 80202
303.733.1300

EXHIBIT "C"

Subdivider's Authorized Representative Information

<u>Name of Person</u>	<u>Company Name</u>	<u>Telephone Number</u>
Sergio Perez	Lennar Homes	916.261.8709
Lisa A. Mikelonis, PE	Integral Communities	925.260.4753

Recording Requested By:

City of Tracy
Development Services
333 Civic Center Plaza
Tracy, CA 95376

And When Recorded Mail To:

City of Tracy
Office of the City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attn: Adrienne Richardson

(No recording fee under Government Code Section 27383)

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

City of Tracy
OFFSITE IMPROVEMENT AGREEMENT
Stanek Avenue Tracy Hills Phase 2B

This **OFFSITE IMPROVEMENT AGREEMENT** ("**Agreement**") is made and entered into by and between the **CITY OF TRACY** a municipal corporation ("**City**"), and **LENNAR HOMES OF CALIFORNIA, LLC**, a California limited liability company (hereinafter "**Developer**"). The effective date of this Agreement shall be the date on which City executes the Agreement ("**Effective Date**").

Recitals

A. Developer is a party responsible for the construction of the public improvements within a portion of the real property comprising Tracy Hills Phase 2, such portion being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (hereinafter "**Project**"). Tracy Phase 4, LLC, a Delaware limited liability company, is the fee owner holding fee title to the property described in Exhibit A which is intended to be conveyed to Developer and consents to the recordation of this Agreement as evidenced by its signature below.

B. October 19, 2021, the Tracy City Council ("**City Council**") adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 2 and approved various related land use entitlements, including that certain Vesting Tentative Subdivision Map for Tracy Hills Phase 2, Tract 4057, processed under Application No. TSM20-0003 and approved by Resolution No. 2021-154 ("**Tentative Map**"). The Tentative Map includes 1,470 single-family residential lots, in addition to park parcels, HOA recreation area parcel, retention basin parcels, school parcels, and numerous other parcels to be owned and maintained by a Homeowner's Association, Developer or City on approximately 1,143 acres within

the Tracy Hills Specific Plan Area, located south of the I-580 Freeway and west of Corral Hollow Road. The Tentative Map is on file with the City Clerk, and is incorporated herein by this reference.

C. The approval of the Tentative Map by the City Council was subject to specified conditions of approval attached as Exhibit 1 to Resolution No. 2021-154 and are on file with the City Engineer ("**Conditions of Approval**"). The Conditions of Approval describe, among other things, improvements that are required for approval of the Final Subdivision Map pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards.

D. In accordance with the Subdivision Map Act (California Government Code sections 66410, et seq) and the Subdivision Ordinance (Tracy Municipal Code, Title 12), Developer has submitted to the City the Final Subdivision Map for Tract 4182 - Tracy Hills Village 13 (the "**Final Subdivision Map**"). Developer is required to execute this Agreement as a condition of the City's approval of the Final Subdivision Map.

E. Pursuant to the Conditions of Approval, Developer is required to construct the public roadway improvements known as the Stanek Avenue generally extending from Sierra View Drive through Village 14 as more particularly depicted in **Exhibit "B"**.

F. In accordance with the Conditions of Approval, Developer has prepared, and the City Engineer has approved, certain improvement plans and specifications (which incorporate portions of the City's Standard Specifications), which describe the improvements that are required for approval of the Final Subdivision Map and are incorporated herein by reference. The approved plans and specifications ("**Approved Plans and Specifications**") include: (a) *Fourteen (14) sheets of improvement plans entitled "Improvement Plans-Stanek Avenue Tracy Hills Phase 2B" prepared by Ruggeri-Jensen-Azar dated January 31, 2024;* (b) *five (5) sheets of joint trench plans entitled "Joint Trench Composite Plan Tracy Hills-Phase 2B Stanek Avenue" prepared by Power Systems Design January 1, 2024* (c) *four (4) sheets of street light plans entitled "City of Tracy Street Light Plan Set Tracy Hills-Stanek Avenue" prepared by Power Systems Design dated January 1, 2024;* and (d) *sixty-two (62) sheets of landscape construction drawings entitled "Phase 2B-1 Stanek Ave. HOA/Common Area Landscape Improvement Plans", prepared by FORMA, dated April 24 2024.* The improvement plans, joint trench plans and street lighting plans are on file with the City Engineer under Tracking No. ENG23-0018 and the landscape plans are on file with the City Engineer under Tracking No. ENG23-0019 (the "**Landscape Plans**"), all incorporated herein by reference.

G. Because the required improvements have not been completed, Developer is required to execute this Agreement as authorized by Government Code section 66462.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Scope of Work; Location.** Developer shall perform, or cause to be performed, the work in the manner and as described in the Approved Plans and Specifications, to the satisfaction of the City Engineer pursuant to this Agreement (the "**Work**").

The Work shall be performed, and all materials and labor shall be provided, at Developer's sole expense. No material change shall be made to the scope of Work unless authorized in writing by the City Engineer. Developer may submit a written request to the City Engineer for a change in the Work, as required by Tracy Municipal Code Section 12.36.060(f). To the extent applicable, all of the Work shall be performed by Developer in accordance with the requirements of the State prevailing wage laws. Developer shall perform all Work at the locations and grades shown on the Approved Plans and Specifications. Developer (a) has acquired any necessary easement or right-of-way or (b) has entered into a separate Agreement with the City to acquire the necessary easement or right-of-way at Developer's expense.

2. **Time of Performance.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

2.1 **Commencement of Work.** The Work shall begin within 60 days after the Effective Date of the Agreement. No later than fifteen (15) days prior to the commencement of such Work, Developer shall provide written notice to the City Engineer of the date on which Developer intends to commence Work. To the extent required, Developer shall not commence Work until after the notice required by this section is properly provided, and Developer shall not commence Work prior to the date specified in the written notice.

2.2 **Schedule of Work.** Concurrently with the written notice of commencement of Work, Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect Developer's prosecution of the Work.

2.3 **Completion of Work.** Developer shall complete all Work by no later than three hundred sixty-five (365) calendar days after Developer's submittal of its notice of commencement of Work pursuant to Section 2.1 above. If the Work is not completed by this date, City Engineer may grant an extension of time if (a) Developer submits a written request for extension at least ten (10) days prior to expiring date of completion, (b) the City Engineer determines that Work is progressing satisfactorily and an extension is warranted, and (c) Developer pays all processing fees for such time extension.

3. **Improvement Security.** Concurrently with the execution of this Agreement, Developer shall furnish contract security, in a form authorized by the Subdivision Map Act including Government Code Sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:

*City of Tracy – Offsite Improvement Agreement
For Stanek Avenue Tracy Hills Phase 2B*

- 3.1 **Faithful Performance** security in the amount of **\$2,642,387.00** to secure faithful performance of this Agreement.
 - 3.2 **Labor and Material** security in the amount of **\$2,642,387.00** to secure payment by Developer to laborers and materialmen.
 - 3.3 **Warranty** security in the amount of **\$264,239.00** to guarantee improvements against any defective work or labor done or defective materials used in performance of Work for one year from the date on which the City Council accepts the Work as complete.
 - 3.4 **Monumentation** security in the amount of **\$4,000.00** to secure faithful performance of setting monuments pursuant to Government Code section 66496.
4. **Indemnification**. Developer shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees, except when caused by the active negligence or willful misconduct of City, until such time as all of the following have occurred: (1) the City Council accepts all of the improvements comprising the Work, (2) the City becomes responsible for the maintenance, operation and repair of all of the improvements comprising the Work, and (3) the one year warranty period set forth in Section 14, below, has expired, at which time the indemnification obligations under this Section 4 shall automatically terminate, with regard to any cause of action arising after such date. For avoidance of doubt, Developer's obligations under this Section 4 are in addition to all other Developer's obligations set forth in this Agreement, and shall not affect Developer's warranty obligations set forth in Section 14, below.
5. **Insurance**. Concurrently with the execution of this Agreement by Developer, and before beginning any Work, Developer shall furnish evidence to the City that the following insurance requirements have been satisfied. The insurance requirements contained in this Section 5 are material terms of this Agreement. These insurance coverage requirements below may be satisfied by umbrella or excess liability policies upon City approval.
- 5.1 **General**. Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

- 5.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) coverage shall be maintained in an amount not less than \$4,000,000 per occurrence and \$8,000,000 general aggregate for general liability, bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse, and underground property hazards.
- 5.3 **Professional Contracts**. Developer shall cause its design professionals to maintain professional liability insurance that insures against professional errors and omissions that may be made in performing services related to the Work to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Developer agrees to cause its design professionals to maintain continuous coverage through a period no less than three years after completion of the services required pursuant to this Agreement.
- 5.4 **Automobile Liability** (with coverage at least as broad as ISO form 00 01 07 97 for "any auto" including "hired autos" and "non-owned autos") coverage shall be maintained in an amount not less than \$2,000,000 per accident for bodily injury and property damage.
- 5.4.1 If Developer has no employees, or does not own automobiles, then "hired autos" and "non-owned autos" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 5.5 **Workers' Compensation** coverage shall be maintained as required by the State of California.
- 5.6 **Endorsements**. Developer shall obtain endorsements to the commercial general liability and automobile policies with the following provisions:
- 5.6.1 The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an Additional Insured on Developer's Commercial General Liability policy utilizing endorsement form CG 20 10 (or its equivalent) for ongoing operations and CG 20 37 (or its equivalent) for products/completed operations.
- 5.6.2 For any claims related to this Agreement, Developer's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of Developer's insurance and shall not contribute with it.

- 5.6.3 Developer shall require its contractors and subcontractors providing services required by this Agreement (e.g. general contractors, design professionals) to name it and the City as Additional Insureds.
- 5.7 **Notice of Cancellation.** Developer shall notify the City of any cancellation of either the commercial general liability policy or automobile insurance policy before the expiration date. For the purpose of this notice requirement, any material change in the policy before the expiration shall be considered a cancellation. Developer shall immediately obtain a replacement policy.
- 5.8 **Authorized Insurers.** All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, with an AM Best rating of at least A-VII.
- 5.9 **Insurance Certificate.** Developer shall provide evidence of compliance with the commercial general liability insurance and automobile insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City Attorney before the City executes this Agreement.
- 5.10 **Substitute Certificates.** No later than thirty (30) days before the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.
- 5.11 **Developer's Obligation.** Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any responsibility whatsoever (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary.
6. **Independent Contractor Status.** Developer is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.
7. **Default**
- 7.1 **Notice of Default.** In the event that Developer is in default of this Agreement, as defined in this section, the City Engineer shall provide written notice to Developer and Developer's surety (if any) in which the default is described.

- 7.2 **Events of default.** Developer shall be in default ("**Default**") of this Agreement if the City Engineer determines that any one of the following conditions exist (which conditions are not intended to constitute the exclusive bases for default):
- 7.2.1 Developer fails to complete the work by the Trigger Date as required by the Conditions.
 - 7.2.2 Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.
 - 7.2.3 Developer abandons the Work site.
 - 7.2.4 Developer fails to perform one or more requirements of this Agreement and fails to cure any such non-performance pursuant to Section 7.3 below.
 - 7.2.5 Developer fails to replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.
 - 7.2.6 Developer violates any legal requirement related to the Work and fails to cure such violation pursuant to Section 7.3 below.
- 7.3 **Cure of Default.** In the event that Developer fails, within thirty (30) calendar days after receipt of written notice from the City, to either cure the default or provide adequate written assurance to the reasonable satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in its discretion, take any or all of the following actions:
- 7.3.1 Demand that Developer complete performance of the Work.
 - 7.3.2 Demand that Developer's surety (if any) complete performance of the Work.
 - 7.3.3 Resort to any judicial remedies available to the City.
8. **Ownership of Work.** All original documents prepared by Developer for this Agreement are the property of the City and shall be given to the City at the completion of Developer's Work, or upon demand from the City. Prior to acceptance of the Work, Developer shall submit the as-built drawings in AutoCAD format Release-14 or higher.
9. **Repair of any Damage.** In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other

property owners, then Developer shall promptly take all reasonable steps to repair or replace (as necessary) such property to remedy the damage caused thereto.

10. **Inspection by the City; Inspection Fees.** To permit City to inspect the Work, Developer shall, at all times, provide to City reasonable and safe access to the Work site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

- 10.1 **Inspection Fees.** Concurrently with the execution of this Agreement by Developer, and prior to the commencement of any Work, Developer shall pay the City Inspection Fees in the amount of three and one-half percent (3.5%) of the estimated Project costs (as approved by the City Engineer).

In the event that the City requires an independent inspection, the City may retain an independent inspector to inspect the Work and prepare an inspection report for the City, and all costs associated therewith shall be borne by Developer.

11. **[Intentionally Left Blank]**

12. **Developer's Authorized Representative.** At all times during the progress of the Work, Developer shall have a competent foreperson or superintendent ("**Authorized Representative**") on site with authority to act on Developer's behalf. Developer shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work. **Exhibit "C"** attached hereto includes the initial contact information referenced in this Section 12.

13. **Acceptance of Work.** Prior to acceptance of the Work by the City Council, Developer shall be solely responsible for maintaining the quality of the Work and maintaining safety at the Work site. Developer's obligations to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.

14. **Warranty Period.** Developer shall warrant the quality of the Work, in accordance with the terms of the Approved Plans and Specifications, for a period of one year after acceptance of the Work by the City Council. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this Agreement, Developer shall be in default of this Agreement and shall without delay and without any cost to City repair, replace or reconstruct any defective improvements.

15. **[Intentionally Left Blank]**

16. **Miscellaneous.**

- 16.1 **Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or electronically mailed to the respective party as follows:

To City	To Developer:
City of Tracy 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer notice@cityoftracy.org	Lennar Homes of California, LLC 2603 Camino Ramon, Suite 525 San Ramon, CA 94583 Attn: Bridgit Koller bridgit.koller@lennar.com
With a copy to:	With a copy to:
City Attorney 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer attorney@cityoftracy.org	Tracy Phase 4, LLC Attn: John Stanek/Caren Read 888 San Clemente, Suite 100 Newport Beach, CA 92660 jstanek@integralcommunities.com

Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the email address designated above, or (2) two working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

- 16.2 **Approvals by City.** Any approval or consent that is to be given by City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on City.
- 16.3 **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 16.4 **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 16.5 **Assignment and Delegation.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.

- 16.6 **Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 16.7 **Permits, Licenses, and Compliance with Law.** Developer shall, at its expense, obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, Developer shall obtain a City of Tracy Business License. Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
- 16.8 **Entire Agreement; Exhibits; Severability.** The recitals and all defined terms in this Agreement are part of this Agreement. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the improvements to be constructed pursuant to this Agreement. This Agreement supersedes all prior negotiations, representations, or agreements. The following Exhibits attached hereto are incorporated into this Agreement and made a part hereof by this reference:
- A. Description of Property (Recital A.)
 - B. Improvement Location (Recital E.)
 - C. Subdivider's Authorized Representative Information (Section 12.)
- If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 16.9 **Signatures.** The individuals executing this Agreement on behalf of Developer represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of Developer. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

[Signatures of Following Pages]

City of Tracy – Offsite Improvement Agreement
For Stanek Avenue Tracy Hills Phase 2B

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY,
a municipal corporation

DEVELOPER:

LENNAR HOMES OF CALIFORNIA, LLC
a California limited liability company

By: Dan Arriola
Title: Mayor

Date: _____

By: Bridgit Koller
Title: Vice President

Date: 1/13/25

Attest:

By: Adrienne Richardson
Title: City Clerk

Date: _____

Approved As To Form:

By: Andrew Shen
Title: Interim City Attorney

Date: _____

*City of Tracy – Offsite Improvement Agreement
For Stanek Avenue Tracy Hills Phase 2B*

Consent to Recordation

Tracy Phase 4, LLC, is the owner in fee simple of the real property described in Exhibit A and hereby consents to the recordation of this Subdivision Improvement Agreement.

TRACY PHASE 4, LLC
a Delaware limited liability company

By: 
Name: Aretina Wegener
Its: Authorized Representative

Date: January 15, 2025

[ATTACHED]

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

STATE OF CALIFORNIA
COUNTY OF Contra Costa

On this 13th day of January, 2025 before me, Lauren Mary Christopher,
Notary Public, personally appeared Bridgit Koller,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
~~he/she/they~~ executed the same in his/her/their authorized capacity(ies), and that by
~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: L. Christopher



(Seal)

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

STATE OF CALIFORNIA
COUNTY OF ORANGE

On this 15th day of January, 20 25 before me, Anne Nguyen,
Notary Public, personally appeared Aretina Wegener,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: 

(Seal)

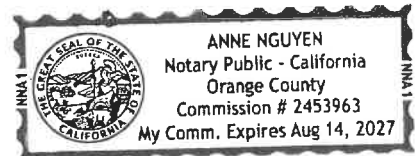


EXHIBIT "A"
(Legal Description of Property)

LEGAL DESCRIPTION

Real property in the City of Tracy, County of San Joaquin, State of California, described as follows:

Parcel 1:

New Parcel A of Certificate of Compliance for Lot Line Adjustment No. MS 23-0004 recorded November 28, 2023 as Instrument No. 2023-096708 of official records and more particularly described as follows:

Real property situate in the City of Tracy, County of San Joaquin, State of California and being all of NEW PARCEL 1 as said Parcel is described and depicted in the Grant Deed to TRACY PHASE 4, LLC, recorded on August 9, 2023 as Document No. 2023-062989 of Official Records of San Joaquin County and being a portion of NEW PARCEL 2 as said Parcel is described and depicted in the Grant Deed to TRACY PHASE 3, LLC, recorded on August 9, 2023 as Document No. 2023-062990 of Official Records of San Joaquin County, and being more particularly described as follows:

BEGINNING at the most northerly corner of said NEW PARCEL 1 thence along the east lines of said New Parcels 1 and 2 the following twelve (12) courses:

- 1) South 53° 19' 26" East - 660.88 feet;
- 2) South 56° 06' 02" East - 501.22 feet;
- 3) South 52° 05' 47" East - 700.00 feet;
- 4) South 50° 03' 03" East - 700.45 feet;
- 5) South 56° 51' 36" East - 301.04 feet;
- 6) South 52° 05' 47" East - 1000.00 feet;
- 7) South 49° 48' 21" East, at 304.50 feet passing the common east corner to New Parcels 1 and 2, in all 500.40 feet;
- 8) South 53° 43' 58" East - 700.29 feet;
- 9) South 52° 05' 47" East - 1300.00 feet;
- 10) South 50° 11' 14" East - 600.33 feet;
- 11) South 52° 05' 47" East - 300.00 feet;
- 12) South 53° 14' 32" East - 811.28 feet for the southeasterly corner hereof;

Thence crossing through NEW PARCEL 2 the following sixty-one (61) courses:

- 1) South 36° 45' 28" West-151.15 feet;
- 2) North 52° 06' 57" West - 17.00 feet;
- 3) South 37° 53' 03" West - 41.50 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;
- 4) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00'00";
- 5) South 37° 53' 03" West - 167.00 feet for the beginning of a curve to the right;
- 6) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00'00";
- 7) South 37° 53' 03" West - 57.00 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;
- 8) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 9) South 37° 53' 03" West - 80.00 feet for the beginning of a curve to the right;
- 10) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00'00";
- 11) South 37° 53' 03" West - 57.00 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;

51) South 73° 25' 44" East - 57.00 feet;
 52) South 16° 34' 16" West - 37.53 feet;
 53) South 52° 06' 57" East - 595.39 feet;
 54) South 40° 06' 22" West - 131.53 feet;
 55) South 29° 13' 05" West - 41.67 feet;
 56) South 47° 07' 54" West - 115.46 feet;
 57) South 45° 09' 31" West - 241.24 feet;
 58) South 45° 21' 00" West - 69.92 feet;
 59) South 61° 48' 50" West - 305.17 feet;
 60) South 45° 20' 57" West - 485.89 feet;
 61) South 85° 06' 47" West - 214.60 feet to a southwesterly corner of said NEW PARCEL 2, said corner being at the northeasterly terminus of a line labeled as North 22° 25' 06" East - 50.07 feet;

Thence along the west lines of New Parcels 1 and 2, the following thirty-six (36) courses:

1) North 67° 34' 55" West - 91.49 feet;
 2) North 53° 52' 01" West - 918.37 feet;
 3) North 19° 27' 10" West - 85.89 feet;
 4) South 86° 30' 03" West - 46.95 feet for the beginning of a curve to the right from which the center bears North 03° 19' 57" West;
 5) in a northwesterly direction 1081.94 feet along the arc of said curve to the right, having a radius of 921.00 feet and through a central angle of 67° 18' 29";
 6) North 26° 02' 37" West - 364.68 feet;
 7) North 28° 16' 00" West - 415.82 feet;
 8) North 37° 55' 00" West - 356.76 feet;
 9) North 41° 08' 50" West - 347.13 feet;
 10) North 44° 08' 49" West - 62.07 feet;
 11) North 24° 46' 15" West - 435.91 feet;
 12) North 00° 46' 52" West - 53.79 feet;
 13) North 05° 22' 35" East - 382.86 feet;
 14) North 09° 49' 55" East - 214.10 feet;
 15) North 03° 22' 45" East - 395.20 feet;
 16) North 19° 38' 09" West - 2750.87 feet;
 17) North 10° 40' 59" West, at 81.67 feet passing the common west corner to NEW PARCELS 1 & 2, in all 293.96 feet;
 18) North 72° 57' 45" West - 464.35 feet;
 19) North 78° 35' 30" West - 261.49 feet;
 20) North 73° 29' 44" West - 210.75 feet;
 21) South 80° 05' 25" West - 222.48 feet;
 22) North 17° 43' 06" West - 252.76 feet;
 23) North 15° 25' 05" East - 144.97 feet;
 24) North 16° 17' 49" West - 107.32 feet;
 25) North 53° 28' 10" West - 77.09 feet;
 26) North 32° 20' 29" West - 120.34 feet;
 27) North 08° 22' 12" West - 196.02 feet;
 28) North 10° 59' 55" East - 175.33 feet;
 29) North 20° 34' 58" East - 170.92 feet;
 30) North 07° 48' 28" East - 336.20 feet;
 31) North 00° 09' 49" East - 144.59 feet;
 32) North 08° 00' 19" West - 330.77 feet;
 33) North 03° 33' 57" East - 523.83 feet;
 34) North 54° 38' 01" West - 83.61 feet;
 35) North 43° 40' 49" East - 758.85 feet;

36) North 36° 40' 34" East -99.99 feet to the POINT OF BEGINNING.

Except therefrom all oil, gas, hydrocarbons and other minerals as conveyed to Bertha G. Berger, a widow, Vera Grunauer, a single woman, and Doris G. Powell, a single woman, by deed recorded March 27, 1959 in Book 2160, Page 308, of official records, which provides as follows: together with all rights necessary and proper for the purpose of drilling and exploring for said substances and removing the same therefrom, as to the portion of said land described therein.

Also except therefrom all oil, gas, mineral and hydrocarbon substances lying below a depth of 500 feet below the surface, without the right of surface entry, as reserved in the deed recorded July 20, 1992 as document no. 92083244 San Joaquin County records, as to the portion of said land described therein.

Also except therefrom all oil, gas, and mineral rights lying below a depth of 500 feet below the surface, without the right of surface entry, as reserved in the deed recorded February 23, 2006, instrument no. 2006-040904, of official records, as to the portion of said land described therein.

Parcel 2:

A Non-exclusive and perpetual easement for ingress and egress appurtenant to Parcel 1 above, more particularly described in that certain Grant of Easement (Access Easement), recorded July 11, 2024, as Instrument No. 2024-057743, of Official Records, as follows:

Real property situate in the City of Tracy, County of San Joaquin, State of California and being a portion of New Parcel B, as said Parcel is shown on the Grant Deed to DRP Solaris Multistate, LLC, recorded as Document No. 2024-003609, Official Records of San Joaquin County, being more particularly described as follows:

Commencing at a westerly corner of said New Parcel B, said corner being at the northwest terminus of a course labeled as having a bearing of North 52°06'57" West, 876.82 feet;

Thence northeasterly, along the west line of New Parcel B North 37°53'03" East, 78.00 feet to the point of beginning:

Thence continuing along said west line, North 37°53'03" East, 20.00 feet;

Thence crossing through New Parcel B for the following three (3) courses:

- 1) South 52°06'57" East, 751.77 feet;
- 2) South 78°40'51" East, 11.18 feet;
- 3) South 52°06'57" East 204.56 feet to the east line of said New Parcel B;

Thence southwesterly, along said east line South 37°53'03" West 25.00 feet;

Thence across New Parcel B, North 52°06'57" West 966.32 feet to the point of beginning.

APN(S): 251-060-31, 251-060-33, 251-060-24 (Portion) and 251-060-34 (Portion);

New APN(s) not yet assessed are as follows:

251-060-40, 251-060-41 and 251-060-43

EXHIBIT "B"
Improvement Location

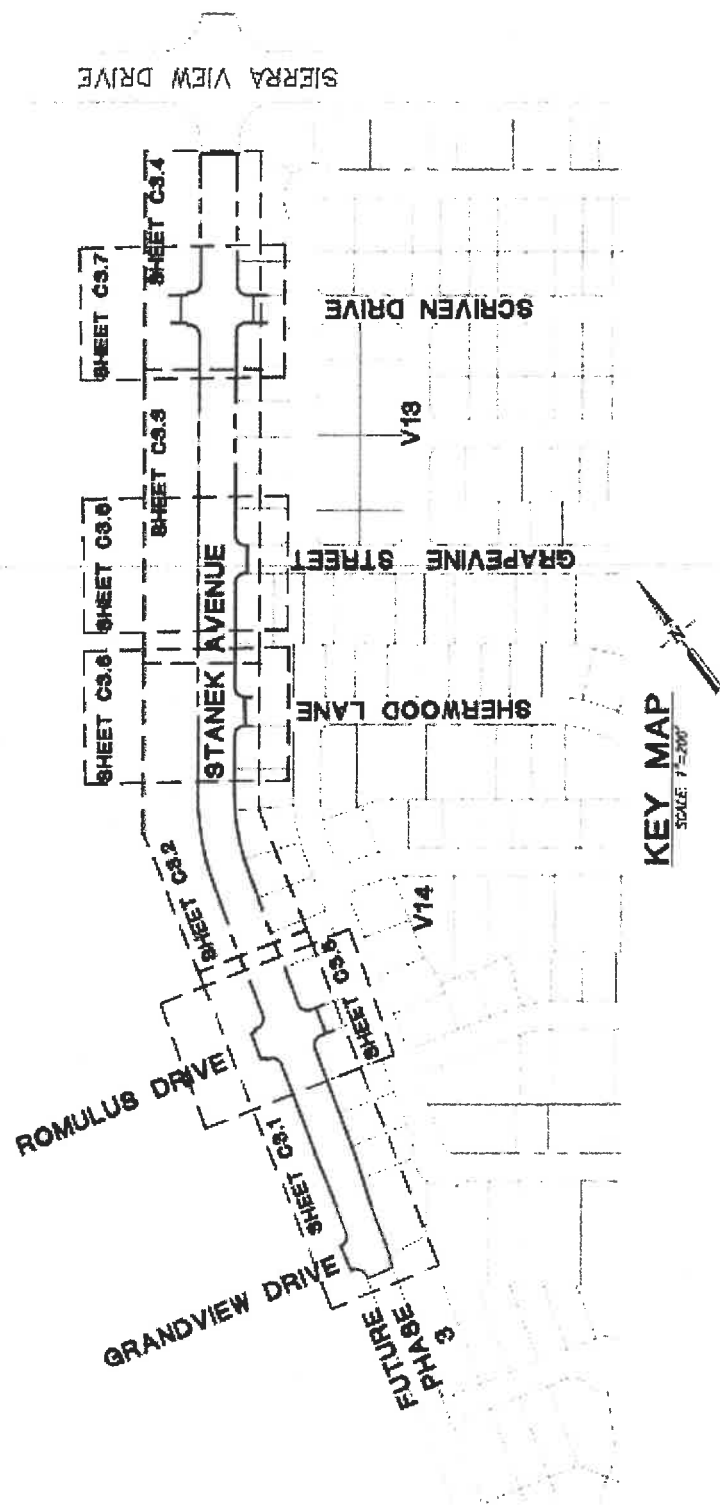


Exhibit "C"

Subdivider's Authorized Representative Information

<u>Name of Person</u>	<u>Company Name</u>	<u>Telephone Number</u>
Sergio Perez	Lennar Homes	916.261.8709
Lisa A. Mikelonis, PE	Integral Communities	925.260.4753

Recording Requested By:

City of Tracy
Development Services
333 Civic Center Plaza
Tracy, CA 95376

And When Recorded Mail To:

City of Tracy
Office of the City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attn: Adrienne Richardson

(No recording fee under Government Code Section 27383)

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

City of Tracy
OFFSITE IMPROVEMENT AGREEMENT
Tracy Hills 2B Sierra View/Lammers ROW Landscaping

This **OFFSITE IMPROVEMENT AGREEMENT** ("**Agreement**") is made and entered into by and between the **CITY OF TRACY** a municipal corporation ("**City**"), and **LENNAR HOMES OF CALIFORNIA, LLC**, a California limited liability company (hereinafter "**Developer**"). The effective date of this Agreement shall be the date on which City executes the Agreement ("**Effective Date**").

Recitals

A. Developer is a party responsible for the construction of the public improvements within a portion of the real property comprising Tracy Hills Phase 2, such portion being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (hereinafter "**Project**"). Tracy Phase 4, LLC, a Delaware limited liability company, is the fee owner holding fee title to the property described in Exhibit A which is intended to be conveyed to Developer and consents to the recordation of this Agreement as evidenced by its signature below.

B. October 19, 2021, the Tracy City Council ("**City Council**") adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 2 and approved various related land use entitlements, including that certain Vesting Tentative Subdivision Map for Tracy Hills Phase 2, Tract 4057, processed under Application No. TSM20-0003 and approved by Resolution No. 2021-154 ("**Tentative Map**"). The Tentative Map includes 1,470 single-family residential lots, in addition to park parcels, HOA recreation area parcel, retention basin parcels, school parcels, and numerous other parcels to be owned and maintained by a Homeowner's Association, Developer or City on approximately 1,143 acres within

*City of Tracy – Offsite Improvement Agreement
For Tracy Hills 2B Sierra View/Lammers ROW Landscaping*

the Tracy Hills Specific Plan Area, located south of the I-580 Freeway and west of Corral Hollow Road. The Tentative Map is on file with the City Clerk, and is incorporated herein by this reference.

C. The approval of the Tentative Map by the City Council was subject to specified conditions of approval attached as Exhibit 1 to Resolution No. 2021-154 and are on file with the City Engineer ("**Conditions of Approval**"). The Conditions of Approval describe, among other things, improvements that are required for approval of the Final Subdivision Map pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards.

D. In accordance with the Subdivision Map Act (California Government Code sections 66410, et seq) and the Subdivision Ordinance (Tracy Municipal Code, Title 12), Developer has submitted to the City the Final Subdivision Map for Tract 4182 - Tracy Hills Village 13 (the "**Final Subdivision Map**"). Developer is required to execute this Agreement as a condition of the City's approval of the Final Subdivision Map.

E. Pursuant to the Conditions of Approval, Developer is required to construct the landscaping improvements associated with the Sierra View and Lammers public right-of-way as more particularly depicted in **Exhibit "B"**.

F. In accordance with the Conditions of Approval, Developer has prepared, and the City Engineer has approved, certain improvement plans and specifications (which incorporate portions of the City's Standard Specifications), which describe the improvements that are required for approval of the Final Subdivision Map and are incorporated herein by reference. The approved plans and specifications ("**Approved Plans and Specifications**") include: *Seventy-five (75) sheets of landscape construction drawings entitled "Sierra View Drive and Lammers Rd ROW Tracy Hills Phase 2B", prepared by FORMA, dated November 13, 2024.* The Approved Plans and Specifications are on file with the City Engineer under Tracking No. ENG23-0007, incorporated herein by reference.

G. Because the required improvements have not been completed, Developer is required to execute this Agreement as authorized by Government Code section 66462.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Scope of Work; Location.** Developer shall perform, or cause to be performed, the work in the manner and as described in the Approved Plans and Specifications, to the satisfaction of the City Engineer pursuant to this Agreement (the "**Work**"). The Work shall be performed, and all materials and labor shall be provided, at Developer's sole expense. No material change shall be made to the scope of Work unless authorized in writing by the City Engineer. Developer may submit a written request to the City Engineer for a change in the Work, as required by Tracy Municipal Code Section 12.36.060(f). To the extent applicable, all of the Work shall be performed by Developer in accordance with the requirements of the State prevailing wage laws. Developer shall perform all Work at the locations and grades

*City of Tracy – Offsite Improvement Agreement
For Tracy Hills 2B Sierra View/Lammers ROW Landscaping*

- shown on the Approved Plans and Specifications. Developer (a) has acquired any necessary easement or right-of-way or (b) has entered into a separate Agreement with the City to acquire the necessary easement or right-of-way at Developer's expense.
2. **Time of Performance.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
- 2.1 **Commencement of Work.** The Work shall begin within 60 days after the Effective Date of the Agreement. No later than fifteen (15) days prior to the commencement of such Work, Developer shall provide written notice to the City Engineer of the date on which Developer intends to commence Work. To the extent required, Developer shall not commence Work until after the notice required by this section is properly provided, and Developer shall not commence Work prior to the date specified in the written notice.
- 2.2 **Schedule of Work.** Concurrently with the written notice of commencement of Work, Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect Developer's prosecution of the Work.
- 2.3 **Completion of Work.** Developer shall complete all Work by no later than three hundred sixty-five (365) calendar days after Developer's submittal of its notice of commencement of Work pursuant to Section 2.1 above. If the Work is not completed by this date, City Engineer may grant an extension of time if (a) Developer submits a written request for extension at least ten (10) days prior to expiring date of completion, (b) the City Engineer determines that Work is progressing satisfactorily and an extension is warranted, and (c) Developer pays all processing fees for such time extension.
3. **Improvement Security.** Concurrently with the execution of this Agreement, Developer shall furnish contract security, in a form authorized by the Subdivision Map Act including Government Code Sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:
- 3.1 **Faithful Performance** security in the amount of **\$2,276,464.91** to secure faithful performance of this Agreement.
- 3.2 **Labor and Material** security in the amount of **\$2,276,464.91** to secure payment by Developer to laborers and materialmen.

- 3.3 **Warranty** security in the amount of **\$227,646.49** to guarantee improvements against any defective work or labor done or defective materials used in performance of Work for one year from the date on which the City Council accepts the Work as complete.
4. **Indemnification.** Developer shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees, except when caused by the active negligence or willful misconduct of City, until such time as all of the following have occurred: (1) the City Council accepts all of the improvements comprising the Work, (2) the City becomes responsible for the maintenance, operation and repair of all of the improvements comprising the Work, and (3) the one year warranty period set forth in Section 14, below, has expired, at which time the indemnification obligations under this Section 4 shall automatically terminate, with regard to any cause of action arising after such date. For avoidance of doubt, Developer's obligations under this Section 4 are in addition to all other Developer's obligations set forth in this Agreement, and shall not affect Developer's warranty obligations set forth in Section 14, below.
5. **Insurance.** Concurrently with the execution of this Agreement by Developer, and before beginning any Work, Developer shall furnish evidence to the City that the following insurance requirements have been satisfied. The insurance requirements contained in this Section 5 are material terms of this Agreement. These insurance coverage requirements below may be satisfied by umbrella or excess liability policies upon City approval.
- 5.1 **General.** Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
- 5.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) coverage shall be maintained in an amount not less than \$4,000,000 per occurrence and \$8,000,000 general aggregate for general liability, bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse, and underground property hazards.
- 5.3 **Professional Contracts.** Developer shall cause its design professionals to maintain professional liability insurance that insures against professional errors and omissions that may be made in performing services related to

the Work to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Developer agrees to cause its design professionals to maintain continuous coverage through a period no less than three years after completion of the services required pursuant to this Agreement.

- 5.4 **Automobile Liability** (with coverage at least as broad as ISO form 00 01 07 97 for "any auto" including "hired autos" and "non-owned autos") coverage shall be maintained in an amount not less than \$2,000,000 per accident for bodily injury and property damage.

5.4.1 If Developer has no employees, or does not own automobiles, then "hired autos" and "non-owned autos" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

- 5.5 **Workers' Compensation** coverage shall be maintained as required by the State of California.

- 5.6 **Endorsements.** Developer shall obtain endorsements to the commercial general liability and automobile policies with the following provisions:

5.6.1 The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an Additional Insured on Developer's Commercial General Liability policy utilizing endorsement form CG 20 10 (or its equivalent) for ongoing operations and CG 20 37 (or its equivalent) for products/completed operations.

5.6.2 For any claims related to this Agreement, Developer's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of Developer's insurance and shall not contribute with it.

5.6.3 Developer shall require its contractors and subcontractors providing services required by this Agreement (e.g. general contractors, design professionals) to name it and the City as Additional Insureds.

- 5.7 **Notice of Cancellation.** Developer shall notify the City of any cancellation of either the commercial general liability policy or automobile insurance policy before the expiration date. For the purpose of this notice requirement, any material change in the policy before the expiration shall be considered a cancellation. Developer shall immediately obtain a replacement policy.

- 5.8 **Authorized Insurers.** All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, with an AM Best rating of at least A-VII.
- 5.9 **Insurance Certificate.** Developer shall provide evidence of compliance with the commercial general liability insurance and automobile insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City Attorney before the City executes this Agreement.
- 5.10 **Substitute Certificates.** No later than thirty (30) days before the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.
- 5.11 **Developer's Obligation.** Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any responsibility whatsoever (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary.
6. **Independent Contractor Status.** Developer is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.
7. **Default**
- 7.1 **Notice of Default.** In the event that Developer is in default of this Agreement, as defined in this section, the City Engineer shall provide written notice to Developer and Developer's surety (if any) in which the default is described.
- 7.2 **Events of default.** Developer shall be in default ("Default") of this Agreement if the City Engineer determines that any one of the following conditions exist (which conditions are not intended to constitute the exclusive bases for default):
- 7.2.1 Developer fails to complete the work by the Trigger Date as required by the Conditions.
- 7.2.2 Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.
- 7.2.3 Developer abandons the Work site.

- 7.2.4 Developer fails to perform one or more requirements of this Agreement and fails to cure any such non-performance pursuant to Section 7.3 below.
- 7.2.5 Developer fails to replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.
- 7.2.6 Developer violates any legal requirement related to the Work and fails to cure such violation pursuant to Section 7.3 below.
- 7.3 **Cure of Default.** In the event that Developer fails, within thirty (30) calendar days after receipt of written notice from the City, to either cure the default or provide adequate written assurance to the reasonable satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in its discretion, take any or all of the following actions:
 - 7.3.1 Demand that Developer complete performance of the Work.
 - 7.3.2 Demand that Developer's surety (if any) complete performance of the Work.
 - 7.3.3 Resort to any judicial remedies available to the City.
- 8. **Ownership of Work.** All original documents prepared by Developer for this Agreement are the property of the City and shall be given to the City at the completion of Developer's Work, or upon demand from the City. Prior to acceptance of the Work, Developer shall submit the as-built drawings in AutoCAD format Release-14 or higher.
- 9. **Repair of any Damage.** In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other property owners, then Developer shall promptly take all reasonable steps to repair or replace (as necessary) such property to remedy the damage caused thereto.
- 10. **Inspection by the City; Inspection Fees.** To permit City to inspect the Work, Developer shall, at all times, provide to City reasonable and safe access to the Work site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.
 - 10.1 **Inspection Fees.** Concurrently with the execution of this Agreement by Developer, and prior to the commencement of any Work, Developer shall pay the City Inspection Fees in the amount of three and one-half percent (3.5%) of the estimated Project costs (as approved by the City Engineer).

In the event that the City requires an independent inspection, the City may retain an independent inspector to inspect the Work and prepare an inspection report for the City, and all costs associated therewith shall be borne by Developer.

11. **[Intentionally Left Blank]**
12. **Developer's Authorized Representative.** At all times during the progress of the Work, Developer shall have a competent foreperson or superintendent ("**Authorized Representative**") on site with authority to act on Developer's behalf. Developer shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work. **Exhibit "C"** attached hereto includes the initial contact information referenced in this **Section 12**.
13. **Acceptance of Work.** Prior to acceptance of the Work by the City Council, Developer shall be solely responsible for maintaining the quality of the Work and maintaining safety at the Work site. Developer's obligations to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.
14. **Warranty Period.** Developer shall warrant the quality of the Work, in accordance with the terms of the Approved Plans and Specifications, for a period of one year after acceptance of the Work by the City Council. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this Agreement, Developer shall be in default of this Agreement and shall without delay and without any cost to City repair, replace or reconstruct any defective improvements.
15. **[Intentionally Left Blank]**
16. **Miscellaneous.**
 - 16.1 **Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be

*City of Tracy – Offsite Improvement Agreement
For Tracy Hills 2B Sierra View/Lammers ROW Landscaping*

personally delivered or electronically mailed to the respective party as follows:

To City	To Developer:
City of Tracy 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer notice@cityoftracy.org	Lennar Homes of California, LLC 2603 Camino Ramon, Suite 525 San Ramon, CA 94583 Attn: Bridgit Koller bridgit.koller@lennar.com
With a copy to:	With a copy to:
City Attorney 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer attorney@cityoftracy.org	Tracy Phase 4, LLC Attn: John Stanek/Caren Read 888 San Clemente, Suite 100 Newport Beach, CA 92660 jstanek@integralcommunities.com

Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the email address designated above, or (2) two working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

- 16.2 **Approvals by City.** Any approval or consent that is to be given by City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on City.
- 16.3 **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 16.4 **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 16.5 **Assignment and Delegation.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.
- 16.6 **Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related

to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

16.7 **Permits, Licenses, and Compliance with Law.** Developer shall, at its expense, obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, Developer shall obtain a City of Tracy Business License. Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.

16.8 **Entire Agreement; Exhibits; Severability.** The recitals and all defined terms in this Agreement are part of this Agreement. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the improvements to be constructed pursuant to this Agreement. This Agreement supersedes all prior negotiations, representations, or agreements. The following Exhibits attached hereto are incorporated into this Agreement and made a part hereof by this reference:

- A. Description of Property (Recital A.)
- B. Improvement Location (Recital E.)
- C. Subdivider's Authorized Representative Information (Section 12.)

If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

16.9 **Signatures.** The individuals executing this Agreement on behalf of Developer represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of Developer. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

[Signatures of Following Pages]

*City of Tracy – Offsite Improvement Agreement
For Tracy Hills 2B Sierra View/Lammers ROW Landscaping*

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY,
a municipal corporation

DEVELOPER:

LENNAR HOMES OF CALIFORNIA, LLC
a California limited liability company

By: Dan Arriola
Title: Mayor

Date: _____


By: Bridgit Koller
Title: Vice President

Date: 1/13/25

Attest:

By: Adrienne Richardson
Title: City Clerk

Date: _____

Approved As To Form:

By: Andrew Shen
Title: Interim City Attorney

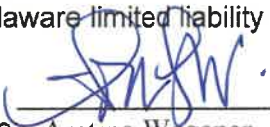
Date: _____

*City of Tracy – Offsite Improvement Agreement
For Tracy Hills 2B Sierra View/Lammers ROW Landscaping*

Consent to Recordation

Tracy Phase 4, LLC, is the owner in fee simple of the real property described in Exhibit A and hereby consents to the recordation of this Subdivision Improvement Agreement.

TRACY PHASE 4, LLC
a Delaware limited liability company

By: 
Name: Aretina Wegener
Its: Authorized Representative

Date: January 15, 2025

[ATTACHED]

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

STATE OF CALIFORNIA
COUNTY OF Contra Costa

On this 13th day of January, 2025 before me, Lauren Mary Christopher,
Notary Public, personally appeared Bridgit Koller,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature: L. Christopher

(Seal)

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

STATE OF CALIFORNIA
COUNTY OF ORANGE

On this 15th day of January, 2025 before me, Anne Nguyen,
Notary Public, personally appeared Arctina Wegener,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____



(Seal)

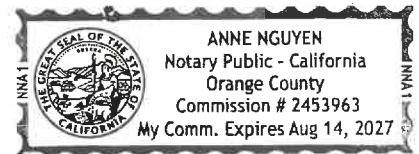


EXHIBIT "A"
(Legal Description of Property)

LEGAL DESCRIPTION

Real property in the City of Tracy, County of San Joaquin, State of California, described as follows:

Parcel 1:

New Parcel A of Certificate of Compliance for Lot Line Adjustment No. MS 23-0004 recorded November 28, 2023 as Instrument No. 2023-096708 of official records and more particularly described as follows:

Real property situate in the City of Tracy, County of San Joaquin, State of California and being all of NEW PARCEL 1 as said Parcel is described and depicted in the Grant Deed to TRACY PHASE 4, LLC, recorded on August 9, 2023 as Document No. 2023-062989 of Official Records of San Joaquin County and being a portion of NEW PARCEL 2 as said Parcel is described and depicted in the Grant Deed to TRACY PHASE 3, LLC, recorded on August 9, 2023 as Document No. 2023-062990 of Official Records of San Joaquin County, and being more particularly described as follows:

BEGINNING at the most northerly corner of said NEW PARCEL 1 thence along the east lines of said New Parcels 1 and 2 the following twelve (12) courses:

- 1) South 53° 19' 26" East - 660.88 feet;
- 2) South 56° 06' 02" East - 501.22 feet;
- 3) South 52° 05' 47" East - 700.00 feet;
- 4) South 50° 03' 03" East - 700.45 feet;
- 5) South 56° 51' 36" East - 301.04 feet;
- 6) South 52° 05' 47" East - 1000.00 feet;
- 7) South 49° 48' 21" East, at 304.50 feet passing the common east corner to New Parcels 1 and 2, in all 500.40 feet;
- 8) South 53° 43' 58" East - 700.29 feet;
- 9) South 52° 05' 47" East - 1300.00 feet;
- 10) South 50° 11' 14" East - 600.33 feet;
- 11) South 52° 05' 47" East - 300.00 feet;
- 12) South 53° 14' 32" East - 811.28 feet for the southeasterly corner hereof;

Thence crossing through NEW PARCEL 2 the following sixty-one (61) courses:

- 1) South 36° 45' 28" West - 151.15 feet;
- 2) North 52° 06' 57" West - 17.00 feet;
- 3) South 37° 53' 03" West - 41.50 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;
- 4) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 5) South 37° 53' 03" West - 167.00 feet for the beginning of a curve to the right;
- 6) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 7) South 37° 53' 03" West - 57.00 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;
- 8) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 9) South 37° 53' 03" West - 80.00 feet for the beginning of a curve to the right;
- 10) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 11) South 37° 53' 03" West - 57.00 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;

12) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 13) South $37^{\circ} 53' 03''$ West - 168.00 feet for the beginning of a curve to the right;
 14) in a westerly direction 39.27 feet along the arc of said curve to the right having a radius of 25.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 15) South $37^{\circ} 53' 03''$ West - 57.00 feet;
 16) South $52^{\circ} 06' 57''$ East - 5.00 feet for the beginning of a curve to the right;
 17) in a southerly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 18) South $37^{\circ} 53' 03''$ West - 176.00 feet for the beginning of a curve to the right;
 19) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 20) South $37^{\circ} 53' 03''$ West - 57.00 feet;
 21) South $52^{\circ} 06' 57''$ East - 64.68 feet;
 22) South $37^{\circ} 53' 03''$ West - 208.00 feet;
 23) South $52^{\circ} 06' 57''$ East - 876.82 feet for the beginning of a curve to the right;
 24) in a southerly direction 128.81 feet along the arc of said curve to the right, having a radius of 82.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 25) South $37^{\circ} 53' 03''$ West - 292.50 feet for the beginning of a curve to the right;
 26) in a westerly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 27) North $52^{\circ} 06' 57''$ West - 21.00 feet;
 28) South $37^{\circ} 53' 03''$ West - 57.00 feet;
 29) South $52^{\circ} 06' 57''$ East - 12.50 feet;
 30) South $37^{\circ} 53' 03''$ West - 3.00 feet;
 31) South $52^{\circ} 06' 57''$ East - 6.00 feet for the beginning of a curve to the right;
 32) in a southerly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 33) South $37^{\circ} 53' 03''$ West - 942.10 feet for the beginning of a curve to the left;
 34) in a southwesterly direction 200.31 feet along the arc of said curve to the left, having a radius of 538.50 feet and through a central angle of $21^{\circ} 18' 47''$;
 35) South $16^{\circ} 34' 16''$ West - 282.68 feet for the beginning of a curve to the right;
 36) in a southwesterly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 37) North $73^{\circ} 25' 44''$ West - 16.00 feet;
 38) South $16^{\circ} 34' 16''$ West - 57.00 feet;
 39) South $73^{\circ} 25' 44''$ East - 16.00 feet for the beginning of a curve to the right;
 40) in a southeasterly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 41) South $16^{\circ} 34' 16''$ West - 215.00 feet for the beginning of a curve to the left;
 42) in a southerly direction 45.53 feet along the arc of said curve to the left, having a radius of 1018.00 feet and through a central angle of $02^{\circ} 33' 45''$ for the beginning of a reverse curve;
 43) continuing in a southerly direction 43.92 feet along the arc of said reverse curve, having a radius of 982.00 feet and through a central angle of $02^{\circ} 33' 45''$;
 44) South $16^{\circ} 34' 16''$ West - 74.99 feet for the beginning of a curve to the right;
 45) in a southwesterly direction 30.46 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $87^{\circ} 15' 46''$;
 46) North $76^{\circ} 09' 59''$ West - 1.68 feet;
 47) South $13^{\circ} 50' 01''$ West - 56.00 feet;
 48) South $76^{\circ} 09' 59''$ East - 5.10 feet for the beginning of a curve to the right;
 49) in a southeasterly direction 32.37 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $92^{\circ} 44' 14''$;
 50) South $16^{\circ} 34' 16''$ West - 7.74 feet;

51) South 73° 25' 44" East - 57.00 feet;
 52) South 16° 34' 16" West - 37.53 feet;
 53) South 52° 06' 57" East - 595.39 feet;
 54) South 40° 06' 22" West - 131.53 feet;
 55) South 29° 13' 05" West - 41.67 feet;
 56) South 47° 07' 54" West - 115.46 feet;
 57) South 45° 09' 31" West - 241.24 feet;
 58) South 45° 21' 00" West - 69.92 feet;
 59) South 61° 48' 50" West - 305.17 feet;
 60) South 45° 20' 57" West - 485.89 feet;
 61) South 85° 06' 47" West - 214.60 feet to a southwesterly corner of said NEW PARCEL 2, said corner being at the northeasterly terminus of a line labeled as North 22° 25' 06" East - 50.07 feet;

Thence along the west lines of New Parcels 1 and 2, the following thirty-six (36) courses:

1) North 67° 34' 55" West - 91.49 feet;
 2) North 53° 52' 01" West - 918.37 feet;
 3) North 19° 27' 10" West - 85.89 feet;
 4) South 86° 30' 03" West - 46.95 feet for the beginning of a curve to the right from which the center bears North 03° 19' 57" West;
 5) in a northwesterly direction 1081.94 feet along the arc of said curve to the right, having a radius of 921.00 feet and through a central angle of 67° 18' 29";
 6) North 26° 02' 37" West - 364.68 feet;
 7) North 28° 16' 00" West - 415.82 feet;
 8) North 37° 55' 00" West - 356.76 feet;
 9) North 41° 08' 50" West - 347.13 feet;
 10) North 44° 08' 49" West - 62.07 feet;
 11) North 24° 46' 15" West - 435.91 feet;
 12) North 00° 46' 52" West - 53.79 feet;
 13) North 05° 22' 35" East - 382.86 feet;
 14) North 09° 49' 55" East - 214.10 feet;
 15) North 03° 22' 45" East - 395.20 feet;
 16) North 19° 38' 09" West - 2750.87 feet;
 17) North 10° 40' 59" West, at 81.67 feet passing the common west corner to NEW PARCELS 1 & 2, in all 293.96 feet;
 18) North 72° 57' 45" West - 464.35 feet;
 19) North 78° 35' 30" West - 261.49 feet;
 20) North 73° 29' 44" West - 210.75 feet;
 21) South 80° 05' 25" West - 222.48 feet;
 22) North 17° 43' 06" West - 252.76 feet;
 23) North 15° 25' 05" East - 144.97 feet;
 24) North 16° 17' 49" West - 107.32 feet;
 25) North 53° 28' 10" West - 77.09 feet;
 26) North 32° 20' 29" West - 120.34 feet;
 27) North 08° 22' 12" West - 196.02 feet;
 28) North 10° 59' 55" East - 175.33 feet;
 29) North 20° 34' 58" East - 170.92 feet;
 30) North 07° 48' 28" East - 336.20 feet;
 31) North 00° 09' 49" East - 144.59 feet;
 32) North 08° 00' 19" West - 330.77 feet;
 33) North 03° 33' 57" East - 523.83 feet;
 34) North 54° 38' 01" West - 83.61 feet;
 35) North 43° 40' 49" East - 758.85 feet;

36) North 36° 40' 34" East -99.99 feet to the POINT OF BEGINNING.

Except therefrom all oil, gas, hydrocarbons and other minerals as conveyed to Bertha G. Berger, a widow, Vera Grunauer, a single woman, and Doris G. Powell, a single woman, by deed recorded March 27, 1959 in [Book 2160, Page 308](#), of official records, which provides as follows: together with all rights necessary and proper for the purpose of drilling and exploring for said substances and removing the same therefrom, as to the portion of said land described therein.

Also except therefrom all oil, gas, mineral and hydrocarbon substances lying below a depth of 500 feet below the surface, without the right of surface entry, as reserved in the deed recorded July 20, 1992 as document no. [92083244](#) San Joaquin County records, as to the portion of said land described therein.

Also except therefrom all oil, gas, and mineral rights lying below a depth of 500 feet below the surface, without the right of surface entry, as reserved in the deed recorded February 23, 2006, instrument no. [2006-040904](#), of official records, as to the portion of said land described therein.

Parcel 2:

A Non-exclusive and perpetual easement for ingress and egress appurtenant to Parcel 1 above, more particularly described in that certain Grant of Easement (Access Easement), recorded July 11, 2024, as Instrument No. [2024-057743](#), of Official Records, as follows:

Real property situate in the City of Tracy, County of San Joaquin, State of California and being a portion of New Parcel B, as said Parcel is shown on the Grant Deed to DRP Solaris Multistate, LLC, recorded as Document No. [2024-003609](#), Official Records of San Joaquin County, being more particularly described as follows:

Commencing at a westerly corner of said New Parcel B, said corner being at the northwest terminus of a course labeled as having a bearing of North 52°06'57" West, 876.82 feet;

Thence northeasterly, along the west line of New Parcel B North 37°53'03" East, 78.00 feet to the point of beginning:

Thence continuing along said west line, North 37°53'03" East, 20.00 feet;

Thence crossing through New Parcel B for the following three (3) courses:

- 1) South 52°06'57" East, 751.77 feet;
- 2) South 78°40'51" East, 11.18 feet;
- 3) South 52°06'57" East 204.56 feet to the east line of said New Parcel B;

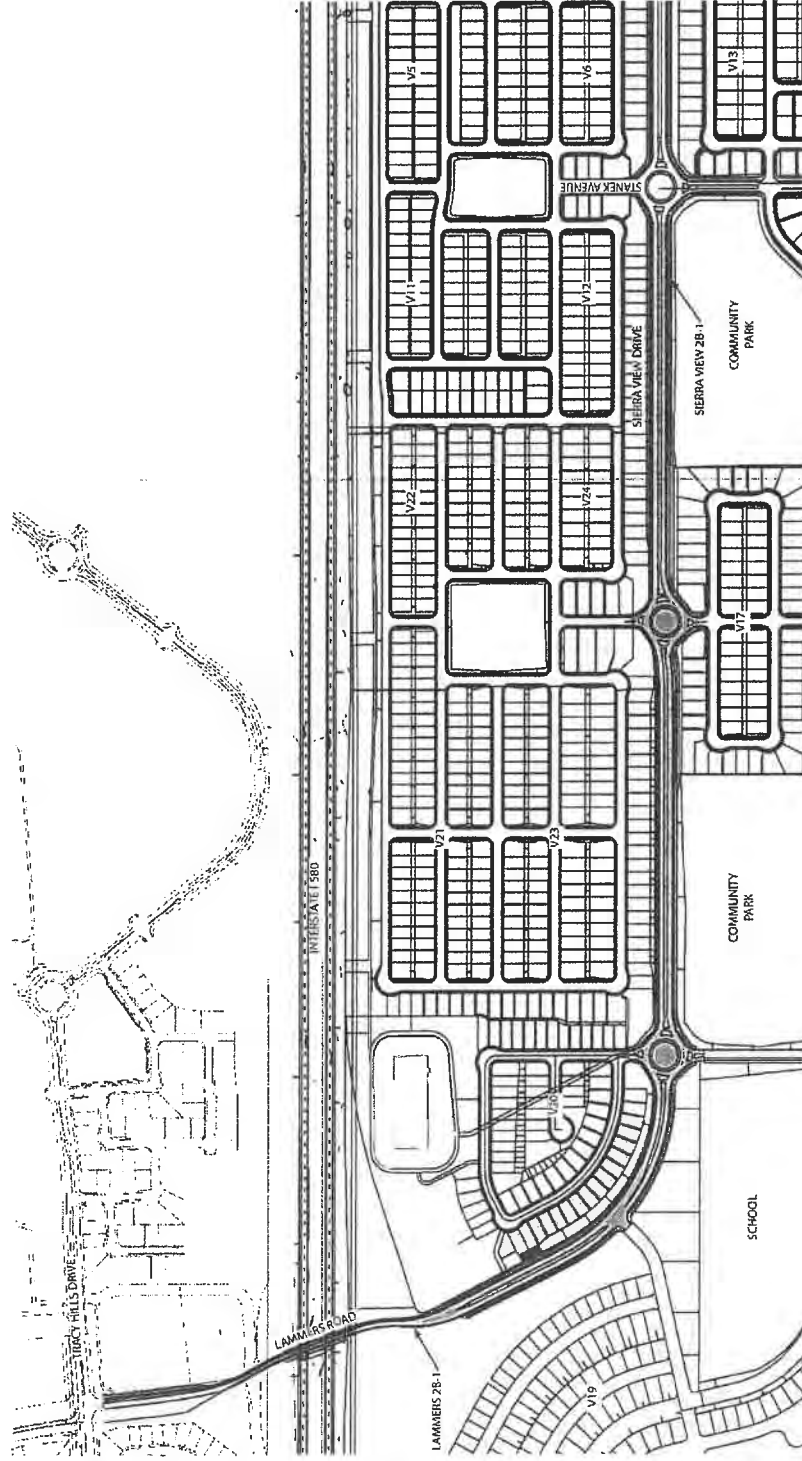
Thence southwesterly, along said east line South 37°53'03" West 25.00 feet;

Thence across New Parcel B, North 52°06'57" West 966.32 feet to the point of beginning.

APN(S): 251-060-31, 251-060-33, 251-060-24 (Portion) and 251-060-34 (Portion);

New APN(s) not yet assessed are as follows:
251-060-40, 251-060-41 and 251-060-43

EXHIBIT "B" Improvement Location



Tracy Hills Phase 2B-1 Sierra View to Lammers OIA Exhibit
 TRACY HILLS Phase 3, LLC

Location Map

FORM
 Date: 10/10/10
 Project No: 21228-016
 S:\Projects\21228-016\2B-1 Sierra View to Lammers OIA Exhibit\Map\Map_101010.dwg

EXHIBIT "C"

Subdivider's Authorized Representative Information

<u>Name of Person</u>	<u>Company Name</u>	<u>Telephone Number</u>
Sergio Perez	Lennar Homes	916.261.8709
Lisa A. Mikelonis, PE	Integral Communities	925.260.4753

Recording Requested By:

City of Tracy
Development Services
333 Civic Center Plaza
Tracy, CA 95376

And When Recorded Mail To:

City of Tracy
Office of the City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attn: Adrienne Richardson

(No recording fee under Government Code Section 27383)

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

City of Tracy
OFFSITE IMPROVEMENT AGREEMENT
Tracy Hills Phase 2A Retention Basin Landscaping

This **OFFSITE IMPROVEMENT AGREEMENT** ("**Agreement**") is made and entered into by and between the **CITY OF TRACY** a municipal corporation ("**City**"), and **LENNAR HOMES OF CALIFORNIA, LLC**, a California limited liability company (hereinafter "**Developer**"). The effective date of this Agreement shall be the date on which City executes the Agreement ("**Effective Date**").

Recitals

A. Developer is a party responsible for the construction of the public improvements within a portion of the real property comprising Tracy Hills Phase 2, such portion being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (hereinafter "**Project**"). Tracy Phase 4, LLC, a Delaware limited liability company, is the fee owner holding fee title to the property described in Exhibit A which is intended to be conveyed to Developer and consents to the recordation of this Agreement as evidenced by its signature below.

B. October 19, 2021, the Tracy City Council ("**City Council**") adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 2 and approved various related land use entitlements, including that certain Vesting Tentative Subdivision Map for Tracy Hills Phase 2, Tract 4057, processed under Application No. TSM20-0003 and approved by Resolution No. 2021-154 ("**Tentative Map**"). The Tentative Map includes 1,470 single-family residential lots, in addition to park parcels, HOA recreation area parcel, retention basin parcels, school parcels, and numerous other parcels to be owned and maintained by a Homeowner's Association, Developer or City on approximately 1,143 acres within

*City of Tracy – Offsite Improvement Agreement
For Tracy Hills 2A Retention Basin Landscaping*

the Tracy Hills Specific Plan Area, located south of the I-580 Freeway and west of Corral Hollow Road. The Tentative Map is on file with the City Clerk, and is incorporated herein by this reference.

C. The approval of the Tentative Map by the City Council was subject to specified conditions of approval attached as Exhibit 1 to Resolution No. 2021-154 and are on file with the City Engineer ("**Conditions of Approval**"). The Conditions of Approval describe, among other things, improvements that are required for approval of the Final Subdivision Map pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards.

D. In accordance with the Subdivision Map Act (California Government Code sections 66410, et seq) and the Subdivision Ordinance (Tracy Municipal Code, Title 12), Developer has submitted to the City the Final Subdivision Map for Tract 4182 - Tracy Hills Village 13 (the "**Final Subdivision Map**"). Developer is required to execute this Agreement as a condition of the City's approval of the Final Subdivision Map.

E. Pursuant to the Conditions of Approval, Developer is required to construct the landscaping improvements associated with the Phase 2A retention basin as more particularly depicted in **Exhibit "B"**.

F. In accordance with the Conditions of Approval, Developer has prepared, and the City Engineer has approved, certain improvement plans and specifications (which incorporate portions of the City's Standard Specifications), which describe the improvements that are required for approval of the Final Subdivision Map and are incorporated herein by reference. The approved plans and specifications ("**Approved Plans and Specifications**") include: *thirty-nine (39) sheets of landscape construction drawings entitled "Tracy Hills – Phase 2A – Retention Basin", prepared by FORMA, dated September 19, 2024*. The Approved Plans and Specifications are on file with the City Engineer under Tracking No. ENG23-0014, incorporated herein by reference.

G. Because the required improvements have not been completed, Developer is required to execute this Agreement as authorized by Government Code section 66462.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Scope of Work; Location.** Developer shall perform, or cause to be performed, the work in the manner and as described in the Approved Plans and Specifications, to the satisfaction of the City Engineer pursuant to this Agreement (the "**Work**"). The Work shall be performed, and all materials and labor shall be provided, at Developer's sole expense. No material change shall be made to the scope of Work unless authorized in writing by the City Engineer. Developer may submit a written request to the City Engineer for a change in the Work, as required by Tracy Municipal Code Section 12.36.060(f). To the extent applicable, all of the Work shall be performed by Developer in accordance with the requirements of the State prevailing wage laws. Developer shall perform all Work at the locations and grades shown on the Approved Plans and Specifications. Developer (a) has acquired any

necessary easement or right-of-way or(b) has entered into a separate Agreement with the City to acquire the necessary easement or right-of-way at Developer's expense.

2. **Time of Performance.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
 - 2.1 **Commencement of Work.** The Work shall begin within 60 days after the Effective Date of the Agreement. No later than fifteen (15) days prior to the commencement of such Work, Developer shall provide written notice to the City Engineer of the date on which Developer intends to commence Work. To the extent required, Developer shall not commence Work until after the notice required by this section is properly provided, and Developer shall not commence Work prior to the date specified in the written notice.
 - 2.2 **Schedule of Work.** Concurrently with the written notice of commencement of Work, Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect Developer's prosecution of the Work.
 - 2.3 **Completion of Work.** Developer shall complete all Work by no later than three hundred sixty-five (365) calendar days after Developer's submittal of its notice of commencement of Work pursuant to Section 2.1 above. If the Work is not completed by this date, City Engineer may grant an extension of time if (a) Developer submits a written request for extension at least ten (10) days prior to expiring date of completion, (b) the City Engineer determines that Work is progressing satisfactorily and an extension is warranted, and (c) Developer pays all processing fees for such time extension.
3. **Improvement Security.** Concurrently with the execution of this Agreement, Developer shall furnish contract security, in a form authorized by the Subdivision Map Act including Government Code Sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:
 - 3.1 **Faithful Performance** security in the amount of **\$707,869.36** to secure faithful performance of this Agreement.
 - 3.2 **Labor and Material** security in the amount of **\$707,869.36** to secure payment by Developer to laborers and materialmen.
 - 3.3 **Warranty** security in the amount of **\$70,786.94** to guarantee improvements against any defective work or labor done or defective materials used in

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performance of Work for one year from the date on which the City Council accepts the Work as complete.

4. **Indemnification.** Developer shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees, except when caused by the active negligence or willful misconduct of City, until such time as all of the following have occurred: (1) the City Council accepts all of the improvements comprising the Work, (2) the City becomes responsible for the maintenance, operation and repair of all of the improvements comprising the Work, and (3) the one year warranty period set forth in Section 14, below, has expired, at which time the indemnification obligations under this Section 4 shall automatically terminate, with regard to any cause of action arising after such date. For avoidance of doubt, Developer's obligations under this Section 4 are in addition to all other Developer's obligations set forth in this Agreement, and shall not affect Developer's warranty obligations set forth in Section 14, below.
5. **Insurance.** Concurrently with the execution of this Agreement by Developer, and before beginning any Work, Developer shall furnish evidence to the City that the following insurance requirements have been satisfied. The insurance requirements contained in this Section 5 are material terms of this Agreement. These insurance coverage requirements below may be satisfied by umbrella or excess liability policies upon City approval.
 - 5.1 **General.** Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
 - 5.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) coverage shall be maintained in an amount not less than \$4,000,000 per occurrence and \$8,000,000 general aggregate for general liability, bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse, and underground property hazards.
 - 5.3 **Professional Contracts.** Developer shall cause its design professionals to maintain professional liability insurance that insures against professional errors and omissions that may be made in performing services related to the Work to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate.

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Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Developer agrees to cause its design professionals to maintain continuous coverage through a period no less than three years after completion of the services required pursuant to this Agreement.

- 5.4 **Automobile Liability** (with coverage at least as broad as ISO form 00 01 07 97 for "any auto" including "hired autos" and "non-owned autos") coverage shall be maintained in an amount not less than \$2,000,000 per accident for bodily injury and property damage.

5.4.1 If Developer has no employees, or does not own automobiles, then "hired autos" and "non-owned autos" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

- 5.5 **Workers' Compensation** coverage shall be maintained as required by the State of California.

- 5.6 **Endorsements**. Developer shall obtain endorsements to the commercial general liability and automobile policies with the following provisions:

5.6.1 The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an Additional Insured on Developer's Commercial General Liability policy utilizing endorsement form CG 20 10 (or its equivalent) for ongoing operations and CG 20 37 (or its equivalent) for products/completed operations.

5.6.2 For any claims related to this Agreement, Developer's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of Developer's insurance and shall not contribute with it.

5.6.3 Developer shall require its contractors and subcontractors providing services required by this Agreement (e.g. general contractors, design professionals) to name it and the City as Additional Insureds.

- 5.7 **Notice of Cancellation**. Developer shall notify the City of any cancellation of either the commercial general liability policy or automobile insurance policy before the expiration date. For the purpose of this notice requirement, any material change in the policy before the expiration shall be considered a cancellation. Developer shall immediately obtain a replacement policy.

- 5.8 **Authorized Insurers**. All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance

Commissioner of the State of California to transact the business of insurance in the State of California, with an AM Best rating of at least A-VII.

- 5.9 **Insurance Certificate.** Developer shall provide evidence of compliance with the commercial general liability insurance and automobile insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City Attorney before the City executes this Agreement.
- 5.10 **Substitute Certificates.** No later than thirty (30) days before the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.
- 5.11 **Developer's Obligation.** Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any responsibility whatsoever (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary.
6. **Independent Contractor Status.** Developer is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.
7. **Default**
 - 7.1 **Notice of Default.** In the event that Developer is in default of this Agreement, as defined in this section, the City Engineer shall provide written notice to Developer and Developer's surety (if any) in which the default is described.
 - 7.2 **Events of default.** Developer shall be in default ("Default") of this Agreement if the City Engineer determines that any one of the following conditions exist (which conditions are not intended to constitute the exclusive bases for default):
 - 7.2.1 Developer fails to complete the work by the Trigger Date as required by the Conditions.
 - 7.2.2 Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.
 - 7.2.3 Developer abandons the Work site.

7.2.4 Developer fails to perform one or more requirements of this Agreement and fails to cure any such non-performance pursuant to Section 7.3 below.

7.2.5 Developer fails to replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.

7.2.6 Developer violates any legal requirement related to the Work and fails to cure such violation pursuant to Section 7.3 below.

7.3 **Cure of Default.** In the event that Developer fails, within thirty (30) calendar days after receipt of written notice from the City, to either cure the default or provide adequate written assurance to the reasonable satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in its discretion, take any or all of the following actions:

7.3.1 Demand that Developer complete performance of the Work.

7.3.2 Demand that Developer's surety (if any) complete performance of the Work.

7.3.3 Resort to any judicial remedies available to the City.

8. **Ownership of Work.** All original documents prepared by Developer for this Agreement are the property of the City and shall be given to the City at the completion of Developer's Work, or upon demand from the City. Prior to acceptance of the Work, Developer shall submit the as-built drawings in AutoCAD format Release-14 or higher.

9. **Repair of any Damage.** In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other property owners, then Developer shall promptly take all reasonable steps to repair or replace (as necessary) such property to remedy the damage caused thereto.

10. **Inspection by the City; Inspection Fees.** To permit City to inspect the Work, Developer shall, at all times, provide to City reasonable and safe access to the Work site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

10.1 **Inspection Fees.** Concurrently with the execution of this Agreement by Developer, and prior to the commencement of any Work, Developer shall pay the City Inspection Fees in the amount of three and one-half percent (3.5%) of the estimated Project costs (as approved by the City Engineer).

In the event that the City requires an independent inspection, the City may retain an independent inspector to inspect the Work and prepare an inspection report for the City, and all costs associated therewith shall be borne by Developer.

11. **[Intentionally Left Blank]**
12. **Developer's Authorized Representative.** At all times during the progress of the Work, Developer shall have a competent foreperson or superintendent ("**Authorized Representative**") on site with authority to act on Developer's behalf. Developer shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work. **Exhibit "C"** attached hereto includes the initial contact information referenced in this Section 12.
13. **Acceptance of Work.** Prior to acceptance of the Work by the City Council, Developer shall be solely responsible for maintaining the quality of the Work and maintaining safety at the Work site. Developer's obligations to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.
14. **Warranty Period.** Developer shall warrant the quality of the Work, in accordance with the terms of the Approved Plans and Specifications, for a period of one year after acceptance of the Work by the City Council. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this Agreement, Developer shall be in default of this Agreement and shall without delay and without any cost to City repair, replace or reconstruct any defective improvements.
15. **[Intentionally Left Blank]**
16. **Miscellaneous.**
 - 16.1 **Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be

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personally delivered or electronically mailed to the respective party as follows:

To City	To Developer:
City of Tracy 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer notice@cityoftracy.org	Lennar Homes of California, LLC 2603 Camino Ramon, Suite 525 San Ramon, CA 94583 Attn: Bridgit Koller bridgit.koller@lennar.com
With a copy to:	With a copy to:
City Attorney 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer attorney@cityoftracy.org	Tracy Phase 4, LLC Attn: John Stanek/Caren Read 888 San Clemente, Suite 100 Newport Beach, CA 92660 jstanek@integralcommunities.com

Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the email address designated above, or (2) two working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

- 16.2 **Approvals by City.** Any approval or consent that is to be given by City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on City.
- 16.3 **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 16.4 **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 16.5 **Assignment and Delegation.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.
- 16.6 **Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related

to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

16.7 **Permits, Licenses, and Compliance with Law.** Developer shall, at its expense, obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, Developer shall obtain a City of Tracy Business License. Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.

16.8 **Entire Agreement; Exhibits; Severability.** The recitals and all defined terms in this Agreement are part of this Agreement. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the improvements to be constructed pursuant to this Agreement. This Agreement supersedes all prior negotiations, representations, or agreements. The following Exhibits attached hereto are incorporated into this Agreement and made a part hereof by this reference:

- A. Description of Property (Recital A.)
- B. Improvement Location (Recital E.)
- C. Subdivider's Authorized Representative Information (Section 12.)

If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

16.9 **Signatures.** The individuals executing this Agreement on behalf of Developer represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of Developer. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

[Signatures of Following Pages]

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IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY,

a municipal corporation

DEVELOPER:

LENNAR HOMES OF CALIFORNIA, LLC
a California limited liability company

By: Dan Arriola
Title: Mayor

Date: _____

By: 
Title: Vice President

Date: 1/13/25

Attest:

By: Adrienne Richardson
Title: City Clerk

Date: _____

Approved As To Form:

By: Andrew Shen
Title: Interim City Attorney

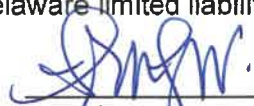
Date: _____

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Consent to Recordation

Tracy Phase 4, LLC, is the owner in fee simple of the real property described in Exhibit A and hereby consents to the recordation of this Subdivision Improvement Agreement.

TRACY PHASE 4, LLC
a Delaware limited liability company

By: 
Name: Aretina Wegener
Its: Authorized Representative

Date: January 15, 2025

[ATTACHED]

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

STATE OF CALIFORNIA
COUNTY OF Contra Costa

On this 13th day of January, 2025 before me, Lauren Mary Christopher,
Notary Public, personally appeared Bridgit Koller,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature: L. Christopher

(Seal)

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

STATE OF CALIFORNIA
COUNTY OF ORANGE

On this 15th day of January, 2025 before me, Anne Nguyen,
Notary Public, personally appeared Aretina Wegener,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by
~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____



(Seal)

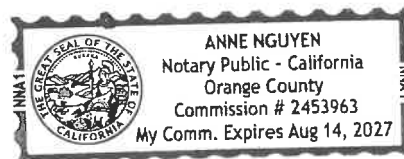


EXHIBIT "A"
(Legal Description of Property)

LEGAL DESCRIPTION

Real property in the City of Tracy, County of San Joaquin, State of California, described as follows:

Parcel 1:

New Parcel A of Certificate of Compliance for Lot Line Adjustment No. MS 23-0004 recorded November 28, 2023 as Instrument No. 2023-096708 of official records and more particularly described as follows:

Real property situate in the City of Tracy, County of San Joaquin, State of California and being all of NEW PARCEL 1 as said Parcel is described and depicted in the Grant Deed to TRACY PHASE 4, LLC, recorded on August 9, 2023 as Document No. 2023-062989 of Official Records of San Joaquin County and being a portion of NEW PARCEL 2 as said Parcel is described and depicted in the Grant Deed to TRACY PHASE 3, LLC, recorded on August 9, 2023 as Document No. 2023-062990 of Official Records of San Joaquin County, and being more particularly described as follows:

BEGINNING at the most northerly corner of said NEW PARCEL 1 thence along the east lines of said New Parcels 1 and 2 the following twelve (12) courses:

- 1) South 53° 19' 26" East - 660.88 feet;
- 2) South 56° 06' 02" East - 501.22 feet;
- 3) South 52° 05' 47" East - 700.00 feet;
- 4) South 50° 03' 03" East - 700.45 feet;
- 5) South 56° 51' 36" East - 301.04 feet;
- 6) South 52° 05' 47" East - 1000.00 feet;
- 7) South 49° 48' 21" East, at 304.50 feet passing the common east corner to New Parcels 1 and 2, in all 500.40 feet;
- 8) South 53° 43' 58" East - 700.29 feet;
- 9) South 52° 05' 47" East - 1300.00 feet;
- 10) South 50° 11' 14" East - 600.33 feet;
- 11) South 52° 05' 47" East - 300.00 feet;
- 12) South 53° 14' 32" East - 811.28 feet for the southeasterly corner hereof;

Thence crossing through NEW PARCEL 2 the following sixty-one (61) courses:

- 1) South 36° 45' 28" West - 151.15 feet;
- 2) North 52° 06' 57" West - 17.00 feet;
- 3) South 37° 53' 03" West - 41.50 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;
- 4) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 5) South 37° 53' 03" West - 167.00 feet for the beginning of a curve to the right;
- 6) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 7) South 37° 53' 03" West - 57.00 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;
- 8) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 9) South 37° 53' 03" West - 80.00 feet for the beginning of a curve to the right;
- 10) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 11) South 37° 53' 03" West - 57.00 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;

12) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 13) South $37^{\circ} 53' 03''$ West - 168.00 feet for the beginning of a curve to the right;
 14) in a westerly direction 39.27 feet along the arc of said curve to the right having a radius of 25.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 15) South $37^{\circ} 53' 03''$ West - 57.00 feet;
 16) South $52^{\circ} 06' 57''$ East - 5.00 feet for the beginning of a curve to the right;
 17) in a southerly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 18) South $37^{\circ} 53' 03''$ West - 176.00 feet for the beginning of a curve to the right;
 19) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 20) South $37^{\circ} 53' 03''$ West - 57.00 feet;
 21) South $52^{\circ} 06' 57''$ East - 64.68 feet;
 22) South $37^{\circ} 53' 03''$ West - 208.00 feet;
 23) South $52^{\circ} 06' 57''$ East - 876.82 feet for the beginning of a curve to the right;
 24) in a southerly direction 128.81 feet along the arc of said curve to the right, having a radius of 82.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 25) South $37^{\circ} 53' 03''$ West - 292.50 feet for the beginning of a curve to the right;
 26) in a westerly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 27) North $52^{\circ} 06' 57''$ West - 21.00 feet;
 28) South $37^{\circ} 53' 03''$ West - 57.00 feet;
 29) South $52^{\circ} 06' 57''$ East - 12.50 feet;
 30) South $37^{\circ} 53' 03''$ West - 3.00 feet;
 31) South $52^{\circ} 06' 57''$ East - 6.00 feet for the beginning of a curve to the right;
 32) in a southerly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 33) South $37^{\circ} 53' 03''$ West - 942.10 feet for the beginning of a curve to the left;
 34) in a southwesterly direction 200.31 feet along the arc of said curve to the left, having a radius of 538.50 feet and through a central angle of $21^{\circ} 18' 47''$;
 35) South $16^{\circ} 34' 16''$ West - 282.68 feet for the beginning of a curve to the right;
 36) in a southwesterly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 37) North $73^{\circ} 25' 44''$ West - 16.00 feet;
 38) South $16^{\circ} 34' 16''$ West - 57.00 feet;
 39) South $73^{\circ} 25' 44''$ East - 16.00 feet for the beginning of a curve to the right;
 40) in a southeasterly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 41) South $16^{\circ} 34' 16''$ West - 215.00 feet for the beginning of a curve to the left;
 42) in a southerly direction 45.53 feet along the arc of said curve to the left, having a radius of 1018.00 feet and through a central angle of $02^{\circ} 33' 45''$ for the beginning of a reverse curve;
 43) continuing in a southerly direction 43.92 feet along the arc of said reverse curve, having a radius of 982.00 feet and through a central angle of $02^{\circ} 33' 45''$;
 44) South $16^{\circ} 34' 16''$ West - 74.99 feet for the beginning of a curve to the right;
 45) in a southwesterly direction 30.46 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $87^{\circ} 15' 46''$;
 46) North $76^{\circ} 09' 59''$ West - 1.68 feet;
 47) South $13^{\circ} 50' 01''$ West - 56.00 feet;
 48) South $76^{\circ} 09' 59''$ East - 5.10 feet for the beginning of a curve to the right;
 49) in a southeasterly direction 32.37 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $92^{\circ} 44' 14''$;
 50) South $16^{\circ} 34' 16''$ West - 7.74 feet;

51) South 73° 25' 44" East - 57.00 feet;
 52) South 16° 34' 16" West - 37.53 feet;
 53) South 52° 06' 57" East - 595.39 feet;
 54) South 40° 06' 22" West - 131.53 feet;
 55) South 29° 13' 05" West - 41.67 feet;
 56) South 47° 07' 54" West - 115.46 feet;
 57) South 45° 09' 31" West - 241.24 feet;
 58) South 45° 21' 00" West - 69.92 feet;
 59) South 61° 48' 50" West - 305.17 feet;
 60) South 45° 20' 57" West - 485.89 feet;
 61) South 85° 06' 47" West - 214.60 feet to a southwesterly corner of said NEW PARCEL 2, said corner being at the northeasterly terminus of a line labeled as North 22° 25' 06" East - 50.07 feet;

Thence along the west lines of New Parcels 1 and 2, the following thirty-six (36) courses:

1) North 67° 34' 55" West - 91.49 feet;
 2) North 53° 52' 01" West - 918.37 feet;
 3) North 19° 27' 10" West - 85.89 feet;
 4) South 86° 30' 03" West - 46.95 feet for the beginning of a curve to the right from which the center bears North 03° 19' 57" West;
 5) in a northwesterly direction 1081.94 feet along the arc of said curve to the right, having a radius of 921.00 feet and through a central angle of 67° 18' 29";
 6) North 26° 02' 37" West - 364.68 feet;
 7) North 28° 16' 00" West - 415.82 feet;
 8) North 37° 55' 00" West - 356.76 feet;
 9) North 41° 08' 50" West - 347.13 feet;
 10) North 44° 08' 49" West - 62.07 feet;
 11) North 24° 46' 15" West - 435.91 feet;
 12) North 00° 46' 52" West - 53.79 feet;
 13) North 05° 22' 35" East - 382.86 feet;
 14) North 09° 49' 55" East - 214.10 feet;
 15) North 03° 22' 45" East - 395.20 feet;
 16) North 19° 38' 09" West - 2750.87 feet;
 17) North 10° 40' 59" West, at 81.67 feet passing the common west corner to NEW PARCELS 1 & 2, in all 293.96 feet;
 18) North 72° 57' 45" West - 464.35 feet;
 19) North 78° 35' 30" West - 261.49 feet;
 20) North 73° 29' 44" West - 210.75 feet;
 21) South 80° 05' 25" West - 222.48 feet;
 22) North 17° 43' 06" West - 252.76 feet;
 23) North 15° 25' 05" East - 144.97 feet;
 24) North 16° 17' 49" West - 107.32 feet;
 25) North 53° 28' 10" West - 77.09 feet;
 26) North 32° 20' 29" West - 120.34 feet;
 27) North 08° 22' 12" West - 196.02 feet;
 28) North 10° 59' 55" East - 175.33 feet;
 29) North 20° 34' 58" East - 170.92 feet;
 30) North 07° 48' 28" East - 336.20 feet;
 31) North 00° 09' 49" East - 144.59 feet;
 32) North 08° 00' 19" West - 330.77 feet;
 33) North 03° 33' 57" East - 523.83 feet;
 34) North 54° 38' 01" West - 83.61 feet;
 35) North 43° 40' 49" East - 758.85 feet;

36) North 36° 40' 34" East -99.99 feet to the POINT OF BEGINNING.

Except therefrom all oil, gas, hydrocarbons and other minerals as conveyed to Bertha G. Berger, a widow, Vera Grunauer, a single woman, and Doris G. Powell, a single woman, by deed recorded March 27, 1959 in Book 2160, Page 308, of official records, which provides as follows: together with all rights necessary and proper for the purpose of drilling and exploring for said substances and removing the same therefrom, as to the portion of said land described therein.

Also except therefrom all oil, gas, mineral and hydrocarbon substances lying below a depth of 500 feet below the surface, without the right of surface entry, as reserved in the deed recorded July 20, 1992 as document no. 92083244 San Joaquin County records, as to the portion of said land described therein.

Also except therefrom all oil, gas, and mineral rights lying below a depth of 500 feet below the surface, without the right of surface entry, as reserved in the deed recorded February 23, 2006, instrument no. 2006-040904, of official records, as to the portion of said land described therein.

Parcel 2:

A Non-exclusive and perpetual easement for ingress and egress appurtenant to Parcel 1 above, more particularly described in that certain Grant of Easement (Access Easement), recorded July 11, 2024, as Instrument No. 2024-057743, of Official Records, as follows:

Real property situate in the City of Tracy, County of San Joaquin, State of California and being a portion of New Parcel B, as said Parcel is shown on the Grant Deed to DRP Solaris Multistate, LLC, recorded as Document No. 2024-003609, Official Records of San Joaquin County, being more particularly described as follows:

Commencing at a westerly corner of said New Parcel B, said corner being at the northwest terminus of a course labeled as having a bearing of North 52°06'57" West, 876.82 feet;

Thence northeasterly, along the west line of New Parcel B North 37°53'03" East, 78.00 feet to the point of beginning;

Thence continuing along said west line, North 37°53'03" East, 20.00 feet;

Thence crossing through New Parcel B for the following three (3) courses:

- 1) South 52°06'57" East, 751.77 feet;
- 2) South 78°40'51" East, 11.18 feet;
- 3) South 52°06'57" East 204.56 feet to the east line of said New Parcel B;

Thence southwesterly, along said east line South 37°53'03" West 25.00 feet;

Thence across New Parcel B, North 52°06'57" West 966.32 feet to the point of beginning.

APN(S): 251-060-31, 251-060-33, 251-060-24 (Portion) and 251-060-34 (Portion);

New APN(s) not yet assessed are as follows:
251-060-40, 251-060-41 and 251-060-43

Retention Basin Location Map

☒ Month Day Year
 Date: 12/10/2016
 Project: No. 2776 Cook
 FORM
 44-38861-2016-2017-2018-2019-2020-2021-2022-2023-2024-2025-2026-2027-2028-2029-2030-2031-2032-2033-2034-2035-2036-2037-2038-2039-2040-2041-2042-2043-2044-2045-2046-2047-2048-2049-2050-2051-2052-2053-2054-2055-2056-2057-2058-2059-2060-2061-2062-2063-2064-2065-2066-2067-2068-2069-2070-2071-2072-2073-2074-2075-2076-2077-2078-2079-2080-2081-2082-2083-2084-2085-2086-2087-2088-2089-2090-2091-2092-2093-2094-2095-2096-2097-2098-2099-2100-2101-2102-2103-2104-2105-2106-2107-2108-2109-2110-2111-2112-2113-2114-2115-2116-2117-2118-2119-2120-2121-2122-2123-2124-2125-2126-2127-2128-2129-2130-2131-2132-2133-2134-2135-2136-2137-2138-2139-2140-2141-2142-2143-2144-2145-2146-2147-2148-2149-2150-2151-2152-2153-2154-2155-2156-2157-2158-2159-2160-2161-2162-2163-2164-2165-2166-2167-2168-2169-2170-2171-2172-2173-2174-2175-2176-2177-2178-2179-2180-2181-2182-2183-2184-2185-2186-2187-2188-2189-2190-2191-2192-2193-2194-2195-2196-2197-2198-2199-2200-2201-2202-2203-2204-2205-2206-2207-2208-2209-2210-2211-2212-2213-2214-2215-2216-2217-2218-2219-2220-2221-2222-2223-2224-2225-2226-2227-2228-2229-2230-2231-2232-2233-2234-2235-2236-2237-2238-2239-2240-2241-2242-2243-2244-2245-2246-2247-2248-2249-2250-2251-2252-2253-2254-2255-2256-2257-2258-2259-2260-2261-2262-2263-2264-2265-2266-2267-2268-2269-2270-2271-2272-2273-2274-2275-2276-2277-2278-2279-2280-2281-2282-2283-2284-2285-2286-2287-2288-2289-2290-2291-2292-2293-2294-2295-2296-2297-2298-2299-2300-2301-2302-2303-2304-2305-2306-2307-2308-2309-2310-2311-2312-2313-2314-2315-2316-2317-2318-2319-2320-2321-2322-2323-2324-2325-2326-2327-2328-2329-2330-2331-2332-2333-2334-2335-2336-2337-2338-2339-2340-2341-2342-2343-2344-2345-2346-2347-2348-2349-2350-2351-2352-2353-2354-2355-2356-2357-2358-2359-2360-2361-2362-2363-2364-2365-2366-2367-2368-2369-2370-2371-2372-2373-2374-2375-2376-2377-2378-2379-2380-2381-2382-2383-2384-2385-2386-2387-2388-2389-2390-2391-2392-2393-2394-2395-2396-2397-2398-2399-2400-2401-2402-2403-2404-2405-2406-2407-2408-2409-2410-2411-2412-2413-2414-2415-2416-2417-2418-2419-2420-2421-2422-2423-2424-2425-2426-2427-2428-2429-2430-2431-2432-2433-2434-2435-2436-2437-2438-2439-2440-2441-2442-2443-2444-2445-2446-2447-2448-2449-2450-2451-2452-2453-2454-2455-2456-2457-2458-2459-2460-2461-2462-2463-2464-2465-2466-2467-2468-2469-2470-2471-2472-2473-2474-2475-2476-2477-2478-2479-2480-2481-2482-2483-2484-2485-2486-2487-2488-2489-2490-2491-2492-2493-2494-2495-2496-2497-2498-2499-2500-2501-2502-2503-2504-2505-2506-2507-2508-2509-2510-2511-2512-2513-2514-2515-2516-2517-2518-2519-2520-2521-2522-2523-2524-2525-2526-2527-2528-2529-2530-2531-2532-2533-2534-2535-2536-2537-2538-2539-2540-2541-2542-2543-2544-2545-2546-2547-2548-2549-2550-2551-2552-2553-2554-2555-2556-2557-2558-2559-2560-2561-2562-2563-2564-2565-2566-2567-2568-2569-2570-2571-2572-2573-2574-2575-2576-2577-2578-2579-2580-2581-2582-2583-2584-2585-2586-2587-2588-2589-2590-2591-2592-2593-2594-2595-2596-2597-2598-2599-2600-2601-2602-2603-2604-2605-2606-2607-2608-2609-2610-2611-2612-2613-2614-2615-2616-2617-2618-2619-2620-2621-2622-2623-2624-2625-2626-2627-2628-2629-2630-2631-2632-2633-2634-2635-2636-2637-2638-2639-2640-2641-2642-2643-2644-2645-2646-2647-2648-2649-2650-2651-2652-2653-2654-2655-2656-2657-2658-2659-2660-2661-2662-2663-2664-2665-2666-2667-2668-2669-2670-2671-2672-2673-2674-2675-2676-2677-2678-2679-2680-2681-2682-2683-2684-2685-2686-2687-2688-2689-2690-2691-2692-2693-2694-2695-2696-2697-2698-2699-2700-2701-2702-2703-2704-2705-2706-2707-2708-2709-2710-2711-2712-2713-2714-2715-2716-2717-2718-2719-2720-2721-2722-2723-2724-2725-2726-2727-2728-2729-2730-2731-2732-2733-2734-2735-2736-2737-2738-2739-2740-2741-2742-2743-2744-2745-2746-2747-2748-2749-2750-2751-2752-2753-2754-2755-2756-2757-2758-2759-2760-2761-2762-2763-2764-2765-2766-2767-2768-2769-2770-2771-2772-2773-2774-2775-2776-2777-2778-2779-2780-2781-2782-2783-2784-2785-2786-2787-2788-2789-2790-2791-2792-2793-2794-2795-2796-2797-2798-2799-2800-2801-2802-2803-2804-2805-2806-2807-2808-2809-2810-2811-2812-2813-2814-2815-2816-2817-2818-2819-2820-2821

EXHIBIT "C"

Subdivider's Authorized Representative Information

<u>Name of Person</u>	<u>Company Name</u>	<u>Telephone Number</u>
Sergio Perez	Lennar Homes	916.261.8709
Lisa A. Mikelonis, PE	Integral Communities	925.260.4753

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2025-_____

STAFF RECOMMENDS THAT THE CITY COUNCIL ADOPT A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION AND THE RECORDATION OF TWO SUBDIVISION IMPROVEMENT AGREEMENTS, AND THREE OFFSITE IMPROVEMENT AGREEMENTS WITH LENNAR HOMES OF CALIFORNIA, LLC FOR THE RESIDENTIAL DEVELOPMENT PROJECT COMMONLY KNOWN AS PHASE 2 OF THE TRACY HILLS SPECIFIC PLAN.

WHEREAS, Lennar Homes of California, LLC, is a subdivider (Developer) within the residential development project commonly known as Tracy Hills Specific Plan (Project); and

WHEREAS, on April 5, 2016, City Council certified an Environmental Impact Report and approved a General Plan Amendment and a comprehensive update to the Tracy Hills Specific Plan; and

WHEREAS, on June 18, 2019, City Council passed Ordinance 1270 and amended the Tracy Hills Specific Plan; and

WHEREAS, on May 19, 2020, City Council passed Ordinance 1286 and amended the Tracy Hills Specific Plan; and

WHEREAS, on July 21, 2020, City Council passed Ordinance 1294 and amended the Tracy Hills Specific Plan; and

WHEREAS, on November 3, 2020, an application was submitted for a Vesting Tentative Subdivision Map (VTSM) for the Phase 2 of the Project to create 1,470 single-family residential lots and various other parcels on approximately 1,143 acres located south of Interstate-580 (I-580), west of Corral Hollow Road, Application Number TSM20-0003; and

WHEREAS, on October 6, 2021, the Planning Commission held a duly noticed public hearing and recommended that the City Council approve the VTSM for the Tracy Hills Phase 2 Project Application Number TSM20-0003; and

WHEREAS, on October 19, 2021, pursuant to Resolution No. 2021-153, the City Council approved General Plan Amendment for Tracy Hills Specific Plan Area GPA 21-0001 and pursuant to Resolution No. 2021-154, the City Council approved the VTSM; and

WHEREAS, the VTSM is subject to certain Conditions of Approval (COAs) as shown on Exhibit 1, which describe, among other things, improvements that are required for approval of a Final Subdivision Map pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards; and

WHEREAS, the Developer has guaranteed the construction of all public facilities necessary to serve the subdivision or mitigate any impacts created by the subdivision and has submitted the required security to guarantee completion of the required facilities through legally binding Subdivision Improvement Agreements (SIAs), and Offsite Improvement Agreements (OIAs); and

WHEREAS, staff recommends that the City Council approve the proposed two SIAs for Tracts 4182, and 4183; and

WHEREAS, the proposed SIAs are for the construction of streets, sidewalks, curbs, gutters, sewers, water, and storm drain mains, landscaping, underground utilities, traffic signs, street signs, and other subdivision improvements; and

WHEREAS, the Developer has executed those SIAs, shown in Exhibits 2-A through 2-B, and has submitted the required security to guarantee completion of the required improvements; and

WHEREAS, staff recommends that the City Council approve the proposed OIAs to address the three offsite improvement obligations; and

WHEREAS, the first proposed OIA is related to the Developer's obligation, under the COAs, to construct new public roadway (Stanek Avenue) improvements to access the tracts, generally extending from Sierra View Drive to the new water tanks; and

WHEREAS, the Developer has executed that OIA, shown in Exhibit 3-A, and has submitted the required security to guarantee completion of the required improvements; and

WHEREAS, the second proposed OIA is related to the Developer's obligation, under the COAs, for the construction of public roadway landscaping and irrigation improvements to Sierra View (Lammers) Road, generally extending from Tracy Hills Drive to Corral Hollow Road; and

WHEREAS, when completed, the public roadway improvements will improve traffic flow; and

WHEREAS, the Developer has executed that OIA, shown in Exhibit 3-B, and has submitted the required security to guarantee completion of the required improvements; and

WHEREAS, the third proposed OIA is related to the Developer's obligation, under the COAs, to design the public landscape and irrigation improvements surrounding Phase 2 Retention Basin; and

WHEREAS, the Developer has executed that OIA, shown in Exhibit 3-C, and has submitted the required security to guarantee completion of the required improvements; and

WHEREAS, the final maps for Phase 2B will be brought to City Council for consideration at a later date; and

WHEREAS, there will be no impact to the General Fund associated with the proposed items because the Developer will pay for the cost of review and recordation of the SIAs and

OIAs, and the Developer has paid the applicable engineering plan check fees which includes the cost of review of the Improvement Plans; and

WHEREAS, all public outreach for the Tracy Hills development (notifications, public hearings, etc.) was conducted for the Planning Commission and City Council hearings that were held to consider the specific plan approval, Environmental Impact Report (EIR), and VTSM for the overall project; and

WHEREAS, this action is consistent with the Final Environmental Impact Report (EIR) certified by the City Council on April 5, 2016, for the Tracy Hills Specific Plan, (SCH#2013102053); and now, therefore be it

RESOLVED: That the City Council of the City of Tracy hereby approves the Subdivision Improvement Agreements between City and Lennar Homes of California, LLC attached hereto as Exhibits 1 through 2-B, for the Tracy Hills subdivision improvements; and be it

FURTHER RESOLVED: That the City Council hereby approves the Off-Site Improvement Agreements between City and Lennar Homes of California, LLC attached hereto as Exhibits 3-A through 3-C, for the Stanek Avenue improvements, Sierra View Drive (Lammers) Road landscape and irrigation improvements, and the landscape and irrigation improvements surrounding Phase 2 Retention Basin; and be it

FURTHER RESOLVED: That the City Council authorizes the City Manager and City Attorney to take all such actions necessary to effectuate the purposes of this Resolution; and be it

FURTHER RESOLVED: That the City Council hereby finds that the actions set forth herein are consistent with the Final Environmental Impact Report (EIR) certified by the City Council on April 5, 2016, for the Tracy Hills Specific Plan, (SCH#2013102053), by Resolution No. 2016-063, and therefore, pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15162, no further environmental review is necessary.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 18TH day of February 2025 by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST: _____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of the
City of Tracy, California

EXHIBITS

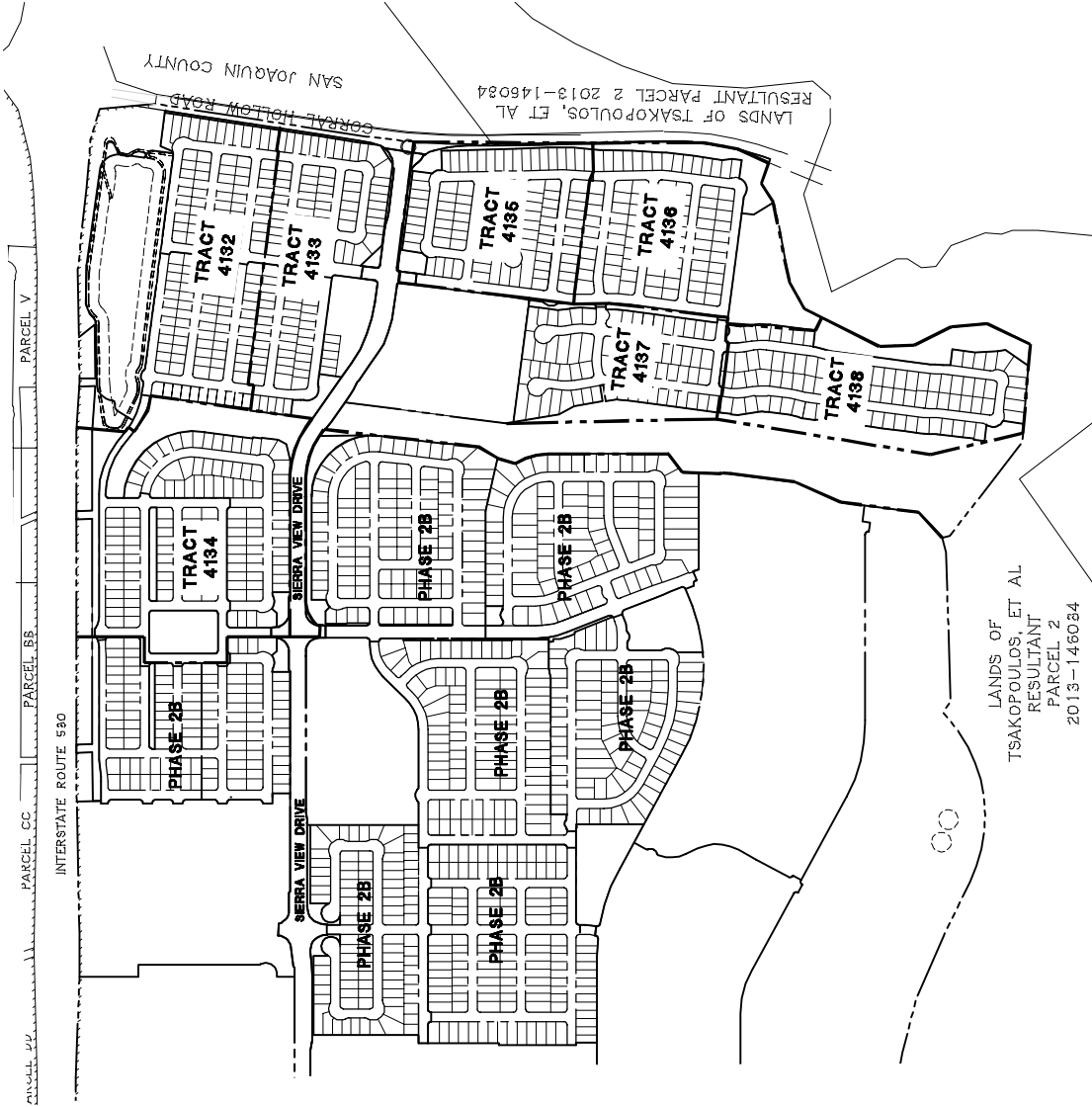
Exhibit 1 - Location Map and Phasing Exhibit
Exhibit 2-A - SIA Tract 4182
Exhibit 2-B - SIA Tract 4183
Exhibit 3-A - OIA - Stanek Avenue 2B
Exhibit 3-B - OIA - Sierra View (Lammers) Road 2B ROW Landscaping
Exhibit 3-C - OIA - Phase 2 Retention Basin Landscaping

ATTACHEMENT A - LOCATION MAP & PHASING EXHIBIT



RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4680 CORTLANDT AVENUE, SUITE 200
SAN JOAQUIN, CA 95834
PHONE: (925) 227-9100 • FAX: (925) 227-9300

DATE: APRIL 24, 2024 JOB NO.: 201068V1N



City of Tracy – Subdivision Improvement Agreement
Tract 4182, Tracy Hills Village 13

Recording Requested By:

City of Tracy
Development Services
333 Civic Center Plaza
Tracy, CA 95376

And When Recorded Mail To:

City of Tracy
Office of the City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attn: Adrienne Richardson

(No recording fee under Government Code Section 27383)

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

City of Tracy
SUBDIVISION IMPROVEMENT AGREEMENT
Tract 4182 - Tracy Hills Village 13

This **SUBDIVISION IMPROVEMENT AGREEMENT** ("**Agreement**") is made and entered into by and between the **CITY OF TRACY** a municipal corporation ("**City**"), and **LENNAR HOMES OF CALIFORNIA, LLC**, a California limited liability company (hereinafter "**Developer**"). The effective date of this Agreement shall be the date on which City executes the Agreement ("**Effective Date**").

Recitals

A. Developer is the party responsible for the construction of the public improvements within a portion of the real property comprising the subject Final Subdivision Map for Tract 4182 - Tracy Hills Village 13, and being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (hereinafter "**Project**"). DRP SOLARIS MULTISTATE, LLC is a landbank holding fee title to the property described in Exhibit A until such time as it is conveyed to Developer and consents to the recordation of this Agreement as evidenced by its signature below.

B. October 19, 2021, the Tracy City Council ("**City Council**") adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 2 and approved various related land use entitlements, including that certain Vesting Tentative Subdivision Map for Tracy Hills Phase 2, Tract 4057, processed under Application No. TSM20-0003 and approved by Resolution No. 2021-154 ("**Tentative Map**"). The Tentative Map includes 1,470 single-family residential lots, in addition to park parcels, HOA recreation area parcel, retention basin parcels, school parcels, and numerous other parcels to be owned and maintained by a Homeowner's Association, Developer or City on approximately 1,143 acres within

the Tracy Hills Specific Plan Area, located south of the I-580 Freeway and west of Corral Hollow Road. The Tentative Map is on file with the City Clerk, and is incorporated herein by this reference.

C. The approval of the Tentative Map by the City Council was subject to specified conditions of approval attached as Exhibit 1 to Resolution No. 2021-154 and are on file with the City Engineer ("**Conditions of Approval**"). The Conditions of Approval describe, among other things, improvements that are required for approval of the Final Subdivision Map pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards.

D. In accordance with the Subdivision Map Act (California Government Code sections 66410, et seq) and the Subdivision Ordinance (Tracy Municipal Code, Title 12), Developer has submitted to the City the Final Subdivision Map for Tract 4182 - Tracy Hills Village 13 (the "**Final Subdivision Map**"), consisting of 122 single-family residential lots, and other parcels to be owned by a Homeowner's Association, all to be located on approximately 31.25 +/- acres within the boundaries of the Project. **Exhibit "B"** shows the overall Project area and the location of the Final Subdivision Map for Tract 4182 - Tracy Hills Village 13. Developer is required to execute this Agreement as a condition of the City's approval of the Final Subdivision Map.

E. In accordance with the Conditions of Approval, Developer has prepared, and the City Engineer has approved, certain improvement plans and specifications (which incorporate portions of the City's Standard Specifications), which describe the improvements that are required for approval of the Final Subdivision Map and are incorporated herein by reference. The approved plans and specifications ("**Approved Plans and Specifications**") include: (a) *Fifteen (15) sheets of improvement plans entitled "Improvement Plans-Tract 4182- Village 13 Tracy Hills Phase 2B" prepared by Ruggeri-Jensen-Azar dated June 26, 2024;* (b) *seven (7) sheets of joint trench plans entitled "Joint Trench Composite Plan Tracy Hills Phase 2B Village 13" prepared by Power Systems Design dated May 3, 2024;* (c) *six(6) sheets of street light plans entitled "City of Tracy Street Light Plan Set Tracy Hills Village 13" prepared by Power Systems Design dated February 5, 2024;* and (d) *thirty-eight (38) sheets of landscape construction drawings entitled "Village 13 Landscape Improvement Plan Tracy Hills Phase 2B-1", prepared by FORMA, dated April 10, 2024.* The improvement plans, joint trench plans and street lighting plans are on file with the City Engineer under Tracking No. ENG23-0023 and the landscape plans are on file with the City Engineer under Tracking No. ENG23-0024 (the "**Landscape Plans**"), all incorporated herein by reference.

F. Because the required improvements have not been completed, Developer is required to execute this Agreement as authorized by Government Code section 66462.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Scope of Work; Location.** Developer shall perform, or cause to be performed, the work in the manner and as described in the Approved Plans and Specifications, to the satisfaction of the City Engineer pursuant to this Agreement (the "**Work**").

The Work shall be performed, and all materials and labor shall be provided, at Developer's sole expense. No material change shall be made to the scope of Work unless authorized in writing by the City Engineer. Developer may submit a written request to the City Engineer for a change in the Work, as required by Tracy Municipal Code Section 12.36.060(f). To the extent applicable, all of the Work shall be performed by Developer in accordance with the requirements of the State prevailing wage laws. Developer shall perform all Work at the locations and grades shown on the Approved Plans and Specifications. Developer (a) has acquired any necessary easement or right-of-way or (b) has entered into a separate Agreement with the City to acquire the necessary easement or right-of-way at Developer's expense.

2. **Time of Performance.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

- 2.1 **Commencement of Work.** The Work shall begin within 60 days after the Effective Date of the Agreement. No later than fifteen (15) days prior to the commencement of such Work, Developer shall provide written notice to the City Engineer of the date on which Developer intends to commence Work. To the extent required, Developer shall not commence Work until after the notice required by this section is properly provided, and Developer shall not commence Work prior to the date specified in the written notice.

- 2.2 **Schedule of Work.** Concurrently with the written notice of commencement of Work, Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect Developer's prosecution of the Work.

- 2.3 **Completion of Work.** Developer shall complete all Work by no later than three hundred sixty-five (365) calendar days after Developer's submittal of its notice of commencement of Work pursuant to Section 2.1 above. If the Work is not completed by this date, City Engineer may grant an extension of time if (a) Developer submits a written request for extension at least ten (10) days prior to expiring date of completion, (b) the City Engineer determines that Work is progressing satisfactorily and an extension is warranted, and (c) Developer pays all processing fees for such time extension.

3. **Improvement Security.** Concurrently with the execution of this Agreement, Developer shall furnish contract security, in a form authorized by the Subdivision Map Act including Government Code Sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:

- 3.1 **Faithful Performance** security in the amount of **\$4,809,841.00** to secure faithful performance of this Agreement.
 - 3.2 **Labor and Material** security in the amount of **\$4,809,841.00** to secure payment by Developer to laborers and materialmen.
 - 3.3 **Warranty** security in the amount of **\$480,984.00** to guarantee improvements against any defective work or labor done or defective materials used in performance of Work for one year from the date on which the City Council accepts the Work as complete.
 - 3.4 **Monumentation** security in the amount of **\$37,250.00** to secure faithful performance of setting monuments pursuant to Government Code section 66496.
4. **Indemnification**. Developer shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees, except when caused by the active negligence or willful misconduct of City, until such time as all of the following have occurred: (1) the City Council accepts all of the improvements comprising the Work, (2) the City becomes responsible for the maintenance, operation and repair of all of the improvements comprising the Work, and (3) the one year warranty period set forth in Section 14, below, has expired, at which time the indemnification obligations under this Section 4 shall automatically terminate, with regard to any cause of action arising after such date. For avoidance of doubt, Developer's obligations under this Section 4 are in addition to all other Developer's obligations set forth in this Agreement, and shall not affect Developer's warranty obligations set forth in Section 14, below.
 5. **Insurance**. Concurrently with the execution of this Agreement by Developer, and before beginning any Work, Developer shall furnish evidence to the City that the following insurance requirements have been satisfied. The insurance requirements contained in this Section 5 are material terms of this Agreement. These insurance coverage requirements below may be satisfied by umbrella or excess liability policies upon City approval.
 - 5.1 **General**. Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

- 5.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) coverage shall be maintained in an amount not less than \$4,000,000 per occurrence and \$8,000,000 general aggregate for general liability, bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse, and underground property hazards.
- 5.3 **Professional Contracts**. Developer shall cause its design professionals to maintain professional liability insurance that insures against professional errors and omissions that may be made in performing services related to the Work to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Developer agrees to cause its design professionals to maintain continuous coverage through a period no less than three years after completion of the services required pursuant to this Agreement.
- 5.4 **Automobile Liability** (with coverage at least as broad as ISO form 00 01 07 97 for “any auto” including “hired autos” and “non-owned autos”) coverage shall be maintained in an amount not less than \$2,000,000 per accident for bodily injury and property damage.
- 5.4.1 If Developer has no employees, or does not own automobiles, then “hired autos” and “non-owned autos” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 5.5 **Workers’ Compensation** coverage shall be maintained as required by the State of California.
- 5.6 **Endorsements**. Developer shall obtain endorsements to the commercial general liability and automobile policies with the following provisions:
- 5.6.1 The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an Additional Insured on Developer’s Commercial General Liability policy utilizing endorsement form CG 20 10 (or its equivalent) for ongoing operations and CG 20 37 (or its equivalent) for products/completed operations.
- 5.6.2 For any claims related to this Agreement, Developer’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of Developer’s insurance and shall not contribute with it.

- 5.6.3 Developer shall require its contractors and subcontractors providing services required by this Agreement (e.g. general contractors, design professionals) to name it and the City as Additional Insureds.
- 5.7 **Notice of Cancellation.** Developer shall notify the City of any cancellation of either the commercial general liability policy or automobile insurance policy before the expiration date. For the purpose of this notice requirement, any material change in the policy before the expiration shall be considered a cancellation. Developer shall immediately obtain a replacement policy.
- 5.8 **Authorized Insurers.** All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, with an AM Best rating of at least A-VII.
- 5.9 **Insurance Certificate.** Developer shall provide evidence of compliance with the commercial general liability insurance and automobile insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City Attorney before the City executes this Agreement.
- 5.10 **Substitute Certificates.** No later than thirty (30) days before the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.
- 5.11 **Developer's Obligation.** Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any responsibility whatsoever (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary.
6. **Independent Contractor Status.** Developer is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.
7. **Default**
- 7.1 **Notice of Default.** In the event that Developer is in default of this Agreement, as defined in this section, the City Engineer shall provide written notice to Developer and Developer's surety (if any) in which the default is described.

7.2 **Events of default.** Developer shall be in default (“Default”) of this Agreement if the City Engineer determines that any one of the following conditions exist (which conditions are not intended to constitute the exclusive bases for default):

7.2.1 Developer fails to complete the work by the Trigger Date as required by the Conditions.

7.2.2 Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.

7.2.3 Developer abandons the Work site.

7.2.4 Developer fails to perform one or more requirements of this Agreement and fails to cure any such non-performance pursuant to Section 7.3 below.

7.2.5 Developer fails to replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.

7.2.6 Developer violates any legal requirement related to the Work and fails to cure such violation pursuant to Section 7.3 below.

7.3 **Cure of Default.** In the event that Developer fails, within thirty (30) calendar days after receipt of written notice from the City, to either cure the default or provide adequate written assurance to the reasonable satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in its discretion, take any or all of the following actions:

7.3.1 Demand that Developer complete performance of the Work.

7.3.2 Demand that Developer's surety (if any) complete performance of the Work.

7.3.3 Resort to any judicial remedies available to the City.

8. **Ownership of Work.** All original documents prepared by Developer for this Agreement are the property of the City and shall be given to the City at the completion of Developer's Work, or upon demand from the City. Prior to acceptance of the Work, Developer shall submit the as-built drawings in AutoCAD format Release-14 or higher.

9. **Repair of any Damage.** In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other

property owners, then Developer shall promptly take all reasonable steps to repair or replace (as necessary) such property to remedy the damage caused thereto.

10. **Inspection by the City; Inspection Fees**. To permit City to inspect the Work, Developer shall, at all times, provide to City reasonable and safe access to the Work site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

- 10.1 **Inspection Fees**. Concurrently with the execution of this Agreement by Developer, and prior to the commencement of any Work, Developer shall pay the City Inspection Fees in the amount of three and one-half percent (3.5%) of the estimated Project costs (as approved by the City Engineer).

In the event that the City requires an independent inspection, the City may retain an independent inspector to inspect the Work and prepare an inspection report for the City, and all costs associated therewith shall be borne by Developer.

11. **[Intentionally Left Blank]**

12. **Developer's Authorized Representative**. At all times during the progress of the Work, Developer shall have a competent foreperson or superintendent ("**Authorized Representative**") on site with authority to act on Developer's behalf. Developer shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work. **Exhibit "C"** attached hereto includes the initial contact information referenced in this Section 12.

13. **Acceptance of Work**. Prior to acceptance of the Work by the City Council, Developer shall be solely responsible for maintaining the quality of the Work and maintaining safety at the Work site. Developer's obligations to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.

14. **Warranty Period**. Developer shall warrant the quality of the Work, in accordance with the terms of the Approved Plans and Specifications, for a period of one year after acceptance of the Work by the City Council. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this Agreement, Developer shall be in default of this Agreement and shall without delay and without any cost to City repair, replace or reconstruct any defective improvements.

15. **[Intentionally Left Blank]**

16. **Miscellaneous.**

- 16.1 **Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or electronically mailed to the respective party as follows:

To City	To Developer:
City of Tracy 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer notice@cityoftracy.org	Lennar Homes of California, LLC 2603 Camino Ramon, Suite 525 San Ramon, CA 94583 Attn: Bridgit Koller bridgit.koller@lennar.com
With a copy to:	With a copy to:
City Attorney 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer attorney@cityoftracy.org	DRP Solaris Multistate, LLC 590 Madison Avenue, 13 th Floor New York, NY 10022 Attn: Houdin Honarvar Houdin.honarvar@dwpartners.com

Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the email address designated above, or (2) two working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

- 16.2 **Approvals by City.** Any approval or consent that is to be given by City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on City.
- 16.3 **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 16.4 **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 16.5 **Assignment and Delegation.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.

- 16.6 **Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 16.7 **Permits, Licenses, and Compliance with Law.** Developer shall, at its expense, obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, Developer shall obtain a City of Tracy Business License. Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
- 16.8 **Entire Agreement; Exhibits; Severability.** The recitals and all defined terms in this Agreement are part of this Agreement. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the improvements to be constructed pursuant to this Agreement. This Agreement supersedes all prior negotiations, representations, or agreements. The following Exhibits attached hereto are incorporated into this Agreement and made a part hereof by this reference:
- A. Description of Property (Recital A.)
 - B. Tract Location (Recital D.)
 - C. Subdivider's Authorized Representative Information (Section 12.)

If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

- 16.9 **Signatures.** The individuals executing this Agreement on behalf of Developer represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of Developer. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

[Signatures of Following Pages]

City of Tracy – Subdivision Improvement Agreement
Tract 4182, Tracy Hills Village 13

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY,

a municipal corporation

DEVELOPER:

LENNAR HOMES OF CALIFORNIA, LLC
a California limited liability company

By: Dan Arriola
Title: Mayor

Date: _____

By: 
Title: Vice President

Date: 1/13/25

Attest:

By: Adrienne Richardson
Title: City Clerk

Date: _____

Approved As To Form:

By: Andrew Shen
Title: Interim City Attorney

Date: _____

Consent to Recordation

DRP SOLARIS MULTISTATE, LLC, is the owner in fee simple of the real property described in Exhibit A and hereby consents to the recordation of this Subdivision Improvement Agreement.

DRP SOLARIS MULTISTATE, LLC
a Delaware Limited Liability Company

By: Domain Solaris Holdings, LLC
Its: Manager

By: DW General Partner, LLC, its
Manager


By: Houdin Honarvar
Its: Authorized Signatory
Date: January 14, 2025

[ATTACHED]

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

STATE OF CALIFORNIA
COUNTY OF Contra Costa

On this 13th day of January, 2025 before me, Lauren Mary Christopher,
Notary Public, personally appeared Bridgit Koller,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/~~they~~ executed the same in his/her/~~their~~ authorized capacity(ies), and that by
his/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



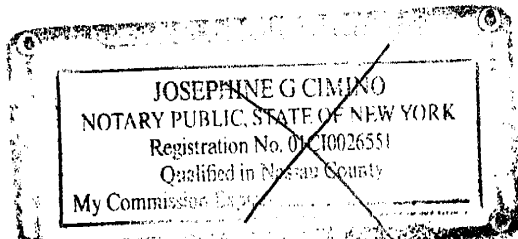
Signature: L. Christopher

(Seal)

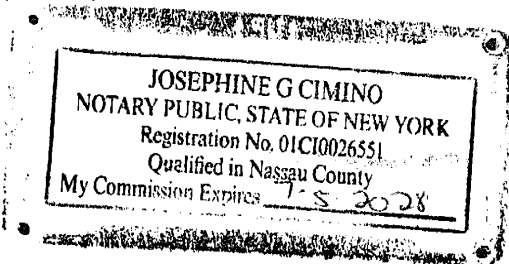
State of New York)
) ss.:

County of New York)

On the 14th day of Jan. in the year 2025 before me, the undersigned, a Notary Public
in _____ and _____ for _____ said _____ State,
personally appeared Houdin Honarvar,
personally known to me or proved to me on the basis of satisfactory evidence to be the
individual(s) whose name(s) is (are) subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their capacity(ies),
and that by his/her/their signature(s) on the instrument, the individual(s), or the person
upon behalf of which the individual(s) acted, executed the instrument.



(SEAL)



Josephine G. Cimino
Notary Public

EXHIBIT "A"
(Legal Description of Property)

Real property in the City of Tracy , County of San Joaquin, State of California, described as follows:

BEING A PORTION OF NEW PARCEL B AS SAID PARCEL IS DESCRIBED IN THE GRANT DEED TO TRACY PHASE 3, LLC RECORDED AS DOCUMENT NO. 2023-097077, OFFICIAL RECORDS OF SAN JOAQUIN COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN EASTERLY CORNER OF SAID NEW PARCEL B, SAID CORNER BEING AT THE NORTHEASTERLY TERMINUS OF A COURSE DESCRIBED AS NORTH 41° 52' 32" EAST - 55.73 FEET, SAME CORNER BEING THE NORTHWESTERLY CORNER OF LOT F AS SAID LOT IS SHOWN ON TRACT 4137 (VILLAGE 9);

THENCE ALONG THE LINE COMMON TO NEW PARCEL B AND LOT F THE FOLLOWING TWO (2) COURSES:

- 1) SOUTH 41° 52' 32" WEST - 55.73 FEET;
- 2) SOUTH 17° 14' 59" EAST - 13.20 FEET;

THENCE CROSSING THROUGH SAID NEW PARCEL B THE FOLLOWING EIGHT (8) COURSES:

- 1) SOUTH 37° 15' 09" WEST - 242.89 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT FROM WHICH THE CENTER BEARS NORTH 56° 25' 04" WEST;
- 2) IN A SOUTHWESTERLY DIRECTION 73.08 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 378.50 FEET AND THROUGH A CENTRAL ANGLE OF 11° 03' 48";
- 3) SOUTH 44° 38' 43" WEST - 394.70 FEET;
- 4) SOUTH 42° 01' 44" WEST - 65.72 FEET;
- 5) SOUTH 44° 38' 43" WEST - 154.51 FEET;
- 6) SOUTH 68° 58' 55" WEST - 134.86 FEET;
- 7) NORTH 39° 15' 32" WEST - 334.72 FEET;
- 8) NORTH 52° 06' 57" WEST - 785.52 FEET TO THE WEST LINE OF SAID NEW PARCEL B;

THENCE ALONG THE WEST LINE OF SAID NEW PARCEL B THE FOLLOWING NINE (9) COURSES:

- 1) NORTH 37° 53' 03" EAST - 635.00 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;
- 2) IN A NORTHERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
- 3) NORTH 52° 06' 57" WEST - 6.00 FEET;
- 4) NORTH 37° 53' 03" EAST - 3.00 FEET;
- 5) NORTH 52° 06' 57" WEST - 12.50 FEET;
- 6) NORTH 37° 53' 03" EAST - 57.00 FEET;
- 7) SOUTH 52° 06' 57" EAST - 21.00 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;
- 8) IN AN EASTERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
- 9) NORTH 37° 53' 03" EAST - 269.05 FEET TO A POINT IN SAID WEST LINE;

THENCE CROSSING THROUGH SAID NEW PARCEL 2 THE FOLLOWING THREE (3) COURSES:

- 1) SOUTH 52° 06' 57" EAST - 79.00 FEET;
- 2) NORTH 37° 53' 03" EAST - 25.44 FEET FOR THE BEGINNING OF A CURVE TO THE RIGHT;

3) IN AN EASTERLY DIRECTION 123.69 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING RADIUS OF 80.04 FEET AND THROUGH A CENTRAL ANGLE OF 88° 32' 11" TO THE EAST LINE OF NEW PARCEL B;

THENCE ALONG THE EAST LINE OF NEW PARCEL B THE FOLLOWING TWO (2) COURSES:

1) SOUTH 52° 06' 57" EAST - 828.19 FEET FOR THE BEGINNING OF A CURVE TO THE RIGHT;

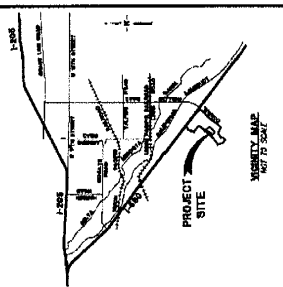
2) IN A SOUTHEASTERLY DIRECTION 271.01 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 453.50 FEET AND THROUGH A CENTRAL ANGLE OF 34° 14' 22" TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS, HYDROCARBONS AND OTHER MINERALS AS CONVEYED TO BERTHA G. BERGER, A WIDOW, VERA GRUNAUER, A SINGLE WOMAN, AND DORIS G. POWELL, A SINGLE WOMAN, BY DEED RECORDED MARCH 27, 1959 IN BOOK 2160, PAGE 308, OF OFFICIAL RECORDS, WHICH PROVIDES AS FOLLOWS: TOGETHER WITH ALL RIGHTS NECESSARY AND PROPER FOR THE PURPOSE OF DRILLING AND EXPLORING FOR SAID SUBSTANCES AND REMOVING THE SAME THEREFROM, AS TO THE PORTION OF SAID LAND DESCRIBED THEREIN.

ALSO EXCEPT THEREFROM ALL OIL, GAS, MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BELOW THE SURFACE, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN THE DEED RECORDED JULY 20, 1992 AS DOCUMENT NO. 92083244 SAN JOAQUIN COUNTY RECORDS, AS TO THE PORTION OF SAID LAND DESCRIBED THEREIN.

APN: Portion of 251-060-240-000

EXHIBIT "B"
Tract Location

[illegible]

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4000 13th Avenue, N.E. • Seattle, WA 98105
206/325-1100

EXHIBIT "C"

Subdivider's Authorized Representative Information

<u>Name of Person</u>	<u>Company Name</u>	<u>Telephone Number</u>
Sergio Perez	Lennar Homes	916.261.8709
Lisa A. Mikelonis, PE	Integral Communities	925.260.4753

City of Tracy – Subdivision Improvement Agreement
Tract 4183, Tracy Hills Village 14

Recording Requested By:

City of Tracy
Development Services
333 Civic Center Plaza
Tracy, CA 95376

And When Recorded Mail To:

City of Tracy
Office of the City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attn: Adrienne Richardson

(No recording fee under Government Code Section 27383)

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

City of Tracy
SUBDIVISION IMPROVEMENT AGREEMENT
Tract 4183 - Tracy Hills Village 14

This **SUBDIVISION IMPROVEMENT AGREEMENT** ("**Agreement**") is made and entered into by and between the **CITY OF TRACY** a municipal corporation ("**City**"), and **LENNAR HOMES OF CALIFORNIA, LLC**, a California limited liability company (hereinafter "**Developer**"). The effective date of this Agreement shall be the date on which City executes the Agreement ("**Effective Date**").

Recitals

A. Developer is the party responsible for the construction of the public improvements within a portion of the real property comprising the subject Final Subdivision Map for Tract 4183 - Tracy Hills Village 14, and being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (hereinafter "**Project**"). DRP SOLARIS MULTISTATE, LLC is a landbank holding fee title to the property described in Exhibit A until such time as it is conveyed to Developer and consents to the recordation of this Agreement as evidenced by its signature below.

B. October 19, 2021, the Tracy City Council ("**City Council**") adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 2 and approved various related land use entitlements, including that certain Vesting Tentative Subdivision Map for Tracy Hills Phase 2, Tract 4057, processed under Application No. TSM20-0003 and approved by Resolution No. 2021-154 ("**Tentative Map**"). The Tentative Map includes 1,470 single-family residential lots, in addition to park parcels, HOA recreation area parcel, retention basin parcels, school parcels, and numerous other parcels to be owned and maintained by a Homeowner's Association, Developer or City on approximately 1,143 acres within

the Tracy Hills Specific Plan Area, located south of the I-580 Freeway and west of Corral Hollow Road. The Tentative Map is on file with the City Clerk, and is incorporated herein by this reference.

C. The approval of the Tentative Map by the City Council was subject to specified conditions of approval attached as Exhibit 1 to Resolution No. 2021-154 and are on file with the City Engineer ("**Conditions of Approval**"). The Conditions of Approval describe, among other things, improvements that are required for approval of the Final Subdivision Map pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards.

D. In accordance with the Subdivision Map Act (California Government Code sections 66410, et seq) and the Subdivision Ordinance (Tracy Municipal Code, Title 12), Developer has submitted to the City the Final Subdivision Map for Tract 4183 - Tracy Hills Village 14 (the "**Final Subdivision Map**"), consisting of 89 single-family residential lots, and other parcels to be owned by a Homeowner's Association, all to be located on approximately 59.04 +/- acres within the boundaries of the Project. **Exhibit "B"** shows the overall Project area and the location of the Final Subdivision Map for Tract 4183 - Tracy Hills Village 14. Developer is required to execute this Agreement as a condition of the City's approval of the Final Subdivision Map.

E. In accordance with the Conditions of Approval, Developer has prepared, and the City Engineer has approved, certain improvement plans and specifications (which incorporate portions of the City's Standard Specifications), which describe the improvements that are required for approval of the Final Subdivision Map and are incorporated herein by reference. The approved plans and specifications ("**Approved Plans and Specifications**") include: (a) sixteen (16) sheets of improvement plans entitled "Improvement Plans-Tract 4183- Village 14 Tracy Hills Phase 2B" prepared by Ruggeri-Jensen-Azar dated June 26, 2024; (b) five (5) sheets of joint trench plans entitled "Joint Trench Composite Plan Tracy Hills Phase 2B Village 14" prepared by Power Systems Design dated June 10, 2024; (c) four (4) sheets of street light plans entitled "City of Tracy Street Light Plan Set Tracy Hills Village 14" prepared by Power Systems Design dated February 14, 2024; and (d) thirty-eight (38) sheets of landscape construction drawings entitled "Village 14 Landscape Improvement Plan Tracy Hills Phase 2B-1", prepared by FORMA, dated March 15, 2024. The improvement plans, joint trench plans and street lighting plans are on file with the City Engineer under Tracking No. ENG23-0025 and the landscape plans are on file with the City Engineer under Tracking No. ENG23-0026 (the "**Landscape Plans**"), all incorporated herein by reference.

F. Because the required improvements have not been completed, Developer is required to execute this Agreement as authorized by Government Code section 66462.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Scope of Work; Location.** Developer shall perform, or cause to be performed, the work in the manner and as described in the Approved Plans and Specifications, to the satisfaction of the City Engineer pursuant to this Agreement (the "**Work**").

The Work shall be performed, and all materials and labor shall be provided, at Developer's sole expense. No material change shall be made to the scope of Work unless authorized in writing by the City Engineer. Developer may submit a written request to the City Engineer for a change in the Work, as required by Tracy Municipal Code Section 12.36.060(f). To the extent applicable, all of the Work shall be performed by Developer in accordance with the requirements of the State prevailing wage laws. Developer shall perform all Work at the locations and grades shown on the Approved Plans and Specifications. Developer (a) has acquired any necessary easement or right-of-way or (b) has entered into a separate Agreement with the City to acquire the necessary easement or right-of-way at Developer's expense.

2. **Time of Performance.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

2.1 **Commencement of Work.** The Work shall begin within 60 days after the Effective Date of the Agreement. No later than fifteen (15) days prior to the commencement of such Work, Developer shall provide written notice to the City Engineer of the date on which Developer intends to commence Work. To the extent required, Developer shall not commence Work until after the notice required by this section is properly provided, and Developer shall not commence Work prior to the date specified in the written notice.

2.2 **Schedule of Work.** Concurrently with the written notice of commencement of Work, Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect Developer's prosecution of the Work.

2.3 **Completion of Work.** Developer shall complete all Work by no later than three hundred sixty-five (365) calendar days after Developer's submittal of its notice of commencement of Work pursuant to Section 2.1 above. If the Work is not completed by this date, City Engineer may grant an extension of time if (a) Developer submits a written request for extension at least ten (10) days prior to expiring date of completion, (b) the City Engineer determines that Work is progressing satisfactorily and an extension is warranted, and (c) Developer pays all processing fees for such time extension.

3. **Improvement Security.** Concurrently with the execution of this Agreement, Developer shall furnish contract security, in a form authorized by the Subdivision Map Act including Government Code Sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:

- 3.1 **Faithful Performance** security in the amount of **\$4,264,035.00** to secure faithful performance of this Agreement.
 - 3.2 **Labor and Material** security in the amount of **\$4,264,035.00** to secure payment by Developer to laborers and materialmen.
 - 3.3 **Warranty** security in the amount of **\$426,403.00** to guarantee improvements against any defective work or labor done or defective materials used in performance of Work for one year from the date on which the City Council accepts the Work as complete.
 - 3.4 **Monumentation** security in the amount of **\$31,500.00** to secure faithful performance of setting monuments pursuant to Government Code section 66496.
4. **Indemnification**. Developer shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees, except when caused by the active negligence or willful misconduct of City, until such time as all of the following have occurred: (1) the City Council accepts all of the improvements comprising the Work, (2) the City becomes responsible for the maintenance, operation and repair of all of the improvements comprising the Work, and (3) the one year warranty period set forth in Section 14, below, has expired, at which time the indemnification obligations under this Section 4 shall automatically terminate, with regard to any cause of action arising after such date. For avoidance of doubt, Developer's obligations under this Section 4 are in addition to all other Developer's obligations set forth in this Agreement, and shall not affect Developer's warranty obligations set forth in Section 14, below.
5. **Insurance**. Concurrently with the execution of this Agreement by Developer, and before beginning any Work, Developer shall furnish evidence to the City that the following insurance requirements have been satisfied. The insurance requirements contained in this Section 5 are material terms of this Agreement. These insurance coverage requirements below may be satisfied by umbrella or excess liability policies upon City approval.
- 5.1 **General**. Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

- 5.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) coverage shall be maintained in an amount not less than \$4,000,000 per occurrence and \$8,000,000 general aggregate for general liability, bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse, and underground property hazards.
- 5.3 **Professional Contracts**. Developer shall cause its design professionals to maintain professional liability insurance that insures against professional errors and omissions that may be made in performing services related to the Work to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Developer agrees to cause its design professionals to maintain continuous coverage through a period no less than three years after completion of the services required pursuant to this Agreement.
- 5.4 **Automobile Liability** (with coverage at least as broad as ISO form 00 01 07 97 for “any auto” including “hired autos” and “non-owned autos”) coverage shall be maintained in an amount not less than \$2,000,000 per accident for bodily injury and property damage.
- 5.4.1 If Developer has no employees, or does not own automobiles, then “hired autos” and “non-owned autos” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 5.5 **Workers’ Compensation** coverage shall be maintained as required by the State of California.
- 5.6 **Endorsements**. Developer shall obtain endorsements to the commercial general liability and automobile policies with the following provisions:
- 5.6.1 The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an Additional Insured on Developer’s Commercial General Liability policy utilizing endorsement form CG 20 10 (or its equivalent) for ongoing operations and CG 20 37 (or its equivalent) for products/completed operations.
- 5.6.2 For any claims related to this Agreement, Developer’s coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of Developer’s insurance and shall not contribute with it.

- 5.6.3 Developer shall require its contractors and subcontractors providing services required by this Agreement (e.g. general contractors, design professionals) to name it and the City as Additional Insureds.
- 5.7 **Notice of Cancellation.** Developer shall notify the City of any cancellation of either the commercial general liability policy or automobile insurance policy before the expiration date. For the purpose of this notice requirement, any material change in the policy before the expiration shall be considered a cancellation. Developer shall immediately obtain a replacement policy.
- 5.8 **Authorized Insurers.** All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, with an AM Best rating of at least A-VII.
- 5.9 **Insurance Certificate.** Developer shall provide evidence of compliance with the commercial general liability insurance and automobile insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City Attorney before the City executes this Agreement.
- 5.10 **Substitute Certificates.** No later than thirty (30) days before the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.
- 5.11 **Developer's Obligation.** Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any responsibility whatsoever (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary.
6. **Independent Contractor Status.** Developer is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.
7. **Default**
- 7.1 **Notice of Default.** In the event that Developer is in default of this Agreement, as defined in this section, the City Engineer shall provide written notice to Developer and Developer's surety (if any) in which the default is described.

7.2 **Events of default.** Developer shall be in default (“Default”) of this Agreement if the City Engineer determines that any one of the following conditions exist (which conditions are not intended to constitute the exclusive bases for default):

7.2.1 Developer fails to complete the work by the Trigger Date as required by the Conditions.

7.2.2 Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.

7.2.3 Developer abandons the Work site.

7.2.4 Developer fails to perform one or more requirements of this Agreement and fails to cure any such non-performance pursuant to Section 7.3 below.

7.2.5 Developer fails to replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.

7.2.6 Developer violates any legal requirement related to the Work and fails to cure such violation pursuant to Section 7.3 below.

7.3 **Cure of Default.** In the event that Developer fails, within thirty (30) calendar days after receipt of written notice from the City, to either cure the default or provide adequate written assurance to the reasonable satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in its discretion, take any or all of the following actions:

7.3.1 Demand that Developer complete performance of the Work.

7.3.2 Demand that Developer’s surety (if any) complete performance of the Work.

7.3.3 Resort to any judicial remedies available to the City.

8. **Ownership of Work.** All original documents prepared by Developer for this Agreement are the property of the City and shall be given to the City at the completion of Developer’s Work, or upon demand from the City. Prior to acceptance of the Work, Developer shall submit the as-built drawings in AutoCAD format Release-14 or higher.

9. **Repair of any Damage.** In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other

property owners, then Developer shall promptly take all reasonable steps to repair or replace (as necessary) such property to remedy the damage caused thereto.

10. **Inspection by the City; Inspection Fees.** To permit City to inspect the Work, Developer shall, at all times, provide to City reasonable and safe access to the Work site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

- 10.1 **Inspection Fees.** Concurrently with the execution of this Agreement by Developer, and prior to the commencement of any Work, Developer shall pay the City Inspection Fees in the amount of three and one-half percent (3.5%) of the estimated Project costs (as approved by the City Engineer).

In the event that the City requires an independent inspection, the City may retain an independent inspector to inspect the Work and prepare an inspection report for the City, and all costs associated therewith shall be borne by Developer.

11. **[Intentionally Left Blank]**

12. **Developer's Authorized Representative.** At all times during the progress of the Work, Developer shall have a competent foreperson or superintendent ("**Authorized Representative**") on site with authority to act on Developer's behalf. Developer shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work. **Exhibit "C"** attached hereto includes the initial contact information referenced in this **Section 12.**

13. **Acceptance of Work.** Prior to acceptance of the Work by the City Council, Developer shall be solely responsible for maintaining the quality of the Work and maintaining safety at the Work site. Developer's obligations to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.

14. **Warranty Period.** Developer shall warrant the quality of the Work, in accordance with the terms of the Approved Plans and Specifications, for a period of one year after acceptance of the Work by the City Council. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this Agreement, Developer shall be in default of this Agreement and shall without delay and without any cost to City repair, replace or reconstruct any defective improvements.

15. **[Intentionally Left Blank]**

16. **Miscellaneous.**

- 16.1 **Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or electronically mailed to the respective party as follows:

To City	To Developer:
City of Tracy 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer notice@cityoftracy.org	Lennar Homes of California, LLC 2603 Camino Ramon, Suite 525 San Ramon, CA 94583 Attn: Bridgit Koller bridgit.koller@lennar.com
With a copy to:	With a copy to:
City Attorney 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer attorney@cityoftracy.org	DRP Solaris Multistate, LLC 590 Madison Avenue, 13 th Floor New York, NY 10022 Attn: Houdin Honarvar Houdin.honarvar@dwpartners.com

Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the email address designated above, or (2) two working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

- 16.2 **Approvals by City.** Any approval or consent that is to be given by City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on City.
- 16.3 **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 16.4 **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 16.5 **Assignment and Delegation.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.

- 16.6 **Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 16.7 **Permits, Licenses, and Compliance with Law.** Developer shall, at its expense, obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, Developer shall obtain a City of Tracy Business License. Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
- 16.8 **Entire Agreement; Exhibits; Severability.** The recitals and all defined terms in this Agreement are part of this Agreement. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the improvements to be constructed pursuant to this Agreement. This Agreement supersedes all prior negotiations, representations, or agreements. The following Exhibits attached hereto are incorporated into this Agreement and made a part hereof by this reference:
- A. Description of Property (Recital A.)
 - B. Tract Location (Recital D.)
 - C. Subdivider's Authorized Representative Information (Section 12.)

If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

- 16.9 **Signatures.** The individuals executing this Agreement on behalf of Developer represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of Developer. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

[Signatures of Following Pages]

City of Tracy – Subdivision Improvement Agreement
Tract 4183, Tracy Hills Village 14

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY,
a municipal corporation

DEVELOPER:

LENNAR HOMES OF CALIFORNIA, LLC
a California limited liability company

By: Dan Arriola
Title: Mayor

Date: _____

By: 
Title: Vice President

Date: 1/13/25

Attest:

By: Adrienne Richardson
Title: City Clerk

Date: _____

Approved As To Form:

By: Andrew Shen
Title: Interim City Attorney

Date: _____

Consent to Recordation

DRP SOLARIS MULTISTATE, LLC, is the owner in fee simple of the real property described in Exhibit A and hereby consents to the recordation of this Subdivision Improvement Agreement.

DRP SOLARIS MULTISTATE, LLC
a Delaware Limited Liability Company

By: Domain Solaris Holdings, LLC
Its: Manager

By: DW General Partner, LLC, its
Manager


By: Houdin Honarvar
Its: Authorized Signatory
Date: January 14, 2025

[ATTACHED]

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

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

On this 13th day of JANUARY, 2025 before me, LAUREN MARY CHRISTOPHER,
Notary Public, personally appeared BRIDGET KOLLER,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by
~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature: L. Christopher

(Seal)

State of New York)
) ss.:

County of New York)

On the 14th day of Jan. in the year 2025 before me, the undersigned, a Notary Public
in _____ and _____ for _____ said _____ State,
personally appeared Houdin Honarvar,
personally known to me or proved to me on the basis of satisfactory evidence to be the
individual(s) whose name(s) is (are) subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their capacity(ies),
and that by his/her/their signature(s) on the instrument, the individual(s), or the person
upon behalf of which the individual(s) acted, executed the instrument.

JOSEPHINE G CIMINO
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01CI0026551
Qualified in Nassau County
My Commission Expires 7-5-2028

(SEAL)

Josephine G. Cimino
Notary Public

EXHIBIT "A"
(Legal Description of Property)

REAL PROPERTY SITUATE IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA AND BEING A PORTION OF NEW PARCEL B AS SAID PARCEL IS DESCRIBED IN THE GRANT DEED TO TRACY PHASE 3, LLC RECORDED AS DOCUMENT NO. 2023-097077, OFFICIAL RECORDS OF SAN JOAQUIN COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT AN EASTERLY CORNER OF SAID NEW PARCEL B, SAID CORNER BEING AT THE NORTHEASTERLY TERMINUS OF A COURSE DESCRIBED AS NORTH 41° 52' 32" EAST, 55.73 FEET, SAME CORNER BEING THE NORTHWESTERLY CORNER OF LOT F AS SAID LOT IS SHOWN ON TRACT 4137 (VILLAGE 9);

THENCE ALONG THE COMMON LINE BETWEEN NEW PARCEL B AND LOT F THE FOLLOWING TWO (2) COURSES:

- 1) SOUTH 41° 52' 32" WEST - 55.73 FEET;
- 2) SOUTH 17° 14' 59" EAST - 13.20 FEET FOR THE POINT OF BEGINNING;

THENCE LEAVING SAID COMMON LINE AND CONTINUING ALONG THE EAST, SOUTH AND WEST LINES OF NEW PARCEL B THE FOLLOWING FORTY-SEVEN (47) COURSES:

- 1) SOUTH 17° 14' 59" EAST, 246.59 FEET;
- 2) SOUTH 45° 20' 27" WEST, 961.87 FEET;
- 3) SOUTH 28° 32' 10" WEST, 122.18 FEET;
- 4) SOUTH 43° 45' 21" WEST, 41.54 FEET;
- 5) SOUTH 31° 42' 56" WEST, 169.52 FEET;
- 6) SOUTH 26° 13' 48" WEST, 245.35 FEET;
- 7) SOUTH 23° 35' 09" WEST, 217.62 FEET;
- 8) SOUTH 45° 20' 57" WEST, 332.71 FEET;
- 9) SOUTH 74° 42' 18" WEST, 107.80 FEET;
- 10) SOUTH 39° 06' 11" WEST, 369.49 FEET;
- 11) SOUTH 38° 54' 59" WEST, 412.05 FEET;
- 12) SOUTH 45° 20' 57" WEST, 3.98 FEET;
- 13) SOUTH 59° 11' 07" WEST, 320.22 FEET;
- 14) SOUTH 52° 45' 16" WEST, 351.21 FEET;
- 15) SOUTH 24° 55' 34" WEST, 584.76 FEET;
- 16) NORTH 47° 29' 28" WEST, 54.93 FEET;
- 17) NORTH 14° 23' 23" WEST, 729.52 FEET;
- 18) NORTH 22° 25' 05" EAST, 50.07 FEET;
- 19) NORTH 85° 06' 47" EAST, 214.60 FEET;
- 20) NORTH 45° 20' 57" EAST, 485.89 FEET;
- 21) NORTH 61° 48' 50" EAST, 305.17 FEET;
- 22) NORTH 45° 21' 00" EAST, 69.92 FEET;
- 23) NORTH 45° 09' 31" EAST, 241.24 FEET;
- 24) NORTH 47° 07' 54" EAST, 115.46 FEET;
- 25) NORTH 29° 13' 05" EAST, 41.67 FEET;
- 26) NORTH 40° 06' 22" EAST, 131.53 FEET;
- 27) NORTH 52° 06' 57" WEST, 595.39 FEET;
- 28) NORTH 16° 34' 16" EAST, 37.53 FEET;
- 29) NORTH 73° 25' 44" WEST, 57.00 FEET;
- 30) NORTH 16° 34' 16" EAST, 7.74 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;
- 31) IN A NORTHERLY DIRECTION 32.37 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 92° 44' 14";
- 32) NORTH 76° 09' 59" WEST, 5.10 FEET;
- 33) NORTH 13° 50' 01" EAST, 56.00 FEET;
- 34) SOUTH 76° 09' 59" EAST, 1.68 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;

35) IN A NORTHEASTERLY DIRECTION 30.46 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 87° 15' 46";
 36) NORTH 16° 34' 16" EAST, 74.99 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;
 37) IN A NORTHERLY DIRECTION 43.92 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 982.00 FEET AND THROUGH A CENTRAL ANGLE OF 02° 33' 45" FOR THE BEGINNING OF A REVERSE CURVE;
 38) IN A NORTHERLY DIRECTION 45.53 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 1018.00 FEET AND THROUGH A CENTRAL ANGLE OF 02° 33' 45";
 39) NORTH 16° 34' 16" EAST 215.00 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;
 40) IN A NORTHERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
 41) NORTH 73° 25' 44" WEST, 16.00 FEET;
 42) NORTH 16° 34' 16" EAST, 57.00 FEET;
 43) SOUTH 73° 25' 44" EAST, 16.00 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;
 44) IN A NORTHEASTERLY DIRECTION 31.42 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 90° 00' 00";
 45) NORTH 16° 34' 16" EAST, 282.68 FEET FOR THE BEGINNING OF A CURVE TO THE RIGHT;
 46) IN A NORTHEASTERLY DIRECTION 200.31 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 538.50 FEET AND THROUGH A CENTRAL ANGLE OF 21° 18' 47";
 47) NORTH 37° 53' 03" EAST 307.10 FEET;
 THENCE LEAVING SAID LINE AND CROSSING THROUGH NEW PARCEL B FOR THE FOLLOWING EIGHT (8) COURSES:
 1) SOUTH 52° 06' 57" EAST, 785.52 FEET;
 2) SOUTH 39° 15' 32" EAST, 334.72 FEET;
 3) NORTH 68° 58' 55" EAST, 134.86 FEET;
 4) NORTH 44° 38' 43" EAST, 154.51 FEET;
 5) NORTH 42° 01' 44" EAST, 65.72 FEET;
 6) NORTH 44° 38' 43" EAST, 394.70 FEET FOR THE BEGINNING OF A CURVE TO THE LEFT;
 7) IN A NORTHEASTERLY DIRECTION 73.08 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 378.50 FEET AND THROUGH A CENTRAL ANGLE OF 11° 03' 48";
 8) NORTH 37° 15' 09" EAST 242.89 FEET TO THE POINT OF BEGINNING.
 CONTAINING A LAND AREA OF 2,571,728 SQUARE FEET, MORE OR LESS.
 END OF DESCRIPTION

EXHIBIT "B"
Tract Location

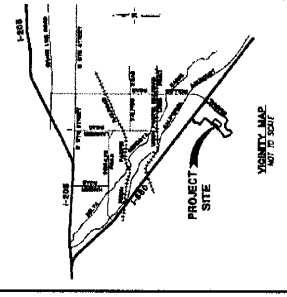
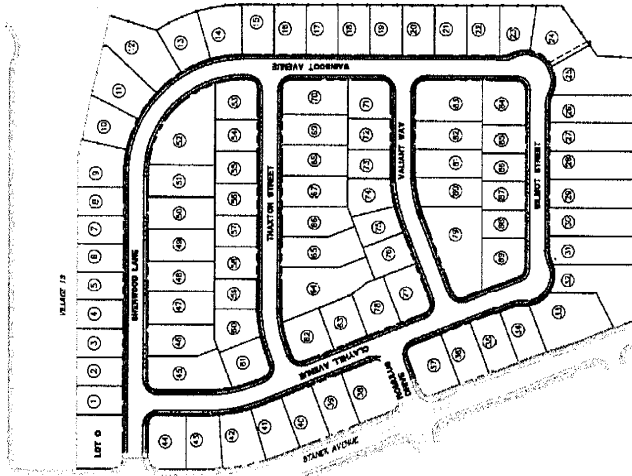


EXHIBIT "C"

Subdivider's Authorized Representative Information

<u>Name of Person</u>	<u>Company Name</u>	<u>Telephone Number</u>
Sergio Perez	Lennar Homes	916.261.8709
Lisa A. Mikelonis, PE	Integral Communities	925.260.4753

Recording Requested By:

City of Tracy
Development Services
333 Civic Center Plaza
Tracy, CA 95376

And When Recorded Mail To:

City of Tracy
Office of the City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attn: Adrienne Richardson

(No recording fee under Government Code Section 27383)

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

City of Tracy
OFFSITE IMPROVEMENT AGREEMENT
Stanek Avenue Tracy Hills Phase 2B

This **OFFSITE IMPROVEMENT AGREEMENT** ("**Agreement**") is made and entered into by and between the **CITY OF TRACY** a municipal corporation ("**City**"), and **LENNAR HOMES OF CALIFORNIA, LLC**, a California limited liability company (hereinafter "**Developer**"). The effective date of this Agreement shall be the date on which City executes the Agreement ("**Effective Date**").

Recitals

A. Developer is a party responsible for the construction of the public improvements within a portion of the real property comprising Tracy Hills Phase 2, such portion being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (hereinafter "**Project**"). Tracy Phase 4, LLC, a Delaware limited liability company, is the fee owner holding fee title to the property described in Exhibit A which is intended to be conveyed to Developer and consents to the recordation of this Agreement as evidenced by its signature below.

B. October 19, 2021, the Tracy City Council ("**City Council**") adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 2 and approved various related land use entitlements, including that certain Vesting Tentative Subdivision Map for Tracy Hills Phase 2, Tract 4057, processed under Application No. TSM20-0003 and approved by Resolution No. 2021-154 ("**Tentative Map**"). The Tentative Map includes 1,470 single-family residential lots, in addition to park parcels, HOA recreation area parcel, retention basin parcels, school parcels, and numerous other parcels to be owned and maintained by a Homeowner's Association, Developer or City on approximately 1,143 acres within

the Tracy Hills Specific Plan Area, located south of the I-580 Freeway and west of Corral Hollow Road. The Tentative Map is on file with the City Clerk, and is incorporated herein by this reference.

C. The approval of the Tentative Map by the City Council was subject to specified conditions of approval attached as Exhibit 1 to Resolution No. 2021-154 and are on file with the City Engineer ("**Conditions of Approval**"). The Conditions of Approval describe, among other things, improvements that are required for approval of the Final Subdivision Map pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards.

D. In accordance with the Subdivision Map Act (California Government Code sections 66410, et seq) and the Subdivision Ordinance (Tracy Municipal Code, Title 12), Developer has submitted to the City the Final Subdivision Map for Tract 4182 - Tracy Hills Village 13 (the "**Final Subdivision Map**"). Developer is required to execute this Agreement as a condition of the City's approval of the Final Subdivision Map.

E. Pursuant to the Conditions of Approval, Developer is required to construct the public roadway improvements known as the Stanek Avenue generally extending from Sierra View Drive through Village 14 as more particularly depicted in **Exhibit "B"**.

F. In accordance with the Conditions of Approval, Developer has prepared, and the City Engineer has approved, certain improvement plans and specifications (which incorporate portions of the City's Standard Specifications), which describe the improvements that are required for approval of the Final Subdivision Map and are incorporated herein by reference. The approved plans and specifications ("**Approved Plans and Specifications**") include: (a) *Fourteen (14) sheets of improvement plans entitled "Improvement Plans-Stanek Avenue Tracy Hills Phase 2B" prepared by Ruggeri-Jensen-Azar dated January 31, 2024;* (b) *five (5) sheets of joint trench plans entitled "Joint Trench Composite Plan Tracy Hills-Phase 2B Stanek Avenue" prepared by Power Systems Design January 1, 2024* (c) *four (4) sheets of street light plans entitled "City of Tracy Street Light Plan Set Tracy Hills-Stanek Avenue" prepared by Power Systems Design dated January 1, 2024;* and (d) *sixty-two (62) sheets of landscape construction drawings entitled "Phase 2B-1 Stanek Ave. HOA/Common Area Landscape Improvement Plans", prepared by FORMA, dated April 24 2024.* The improvement plans, joint trench plans and street lighting plans are on file with the City Engineer under Tracking No. ENG23-0018 and the landscape plans are on file with the City Engineer under Tracking No. ENG23-0019 (the "**Landscape Plans**"), all incorporated herein by reference.

G. Because the required improvements have not been completed, Developer is required to execute this Agreement as authorized by Government Code section 66462.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Scope of Work; Location.** Developer shall perform, or cause to be performed, the work in the manner and as described in the Approved Plans and Specifications, to the satisfaction of the City Engineer pursuant to this Agreement (the "**Work**").

The Work shall be performed, and all materials and labor shall be provided, at Developer's sole expense. No material change shall be made to the scope of Work unless authorized in writing by the City Engineer. Developer may submit a written request to the City Engineer for a change in the Work, as required by Tracy Municipal Code Section 12.36.060(f). To the extent applicable, all of the Work shall be performed by Developer in accordance with the requirements of the State prevailing wage laws. Developer shall perform all Work at the locations and grades shown on the Approved Plans and Specifications. Developer (a) has acquired any necessary easement or right-of-way or (b) has entered into a separate Agreement with the City to acquire the necessary easement or right-of-way at Developer's expense.

2. **Time of Performance.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

- 2.1 **Commencement of Work.** The Work shall begin within 60 days after the Effective Date of the Agreement. No later than fifteen (15) days prior to the commencement of such Work, Developer shall provide written notice to the City Engineer of the date on which Developer intends to commence Work. To the extent required, Developer shall not commence Work until after the notice required by this section is properly provided, and Developer shall not commence Work prior to the date specified in the written notice.

- 2.2 **Schedule of Work.** Concurrently with the written notice of commencement of Work, Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect Developer's prosecution of the Work.

- 2.3 **Completion of Work.** Developer shall complete all Work by no later than three hundred sixty-five (365) calendar days after Developer's submittal of its notice of commencement of Work pursuant to Section 2.1 above. If the Work is not completed by this date, City Engineer may grant an extension of time if (a) Developer submits a written request for extension at least ten (10) days prior to expiring date of completion, (b) the City Engineer determines that Work is progressing satisfactorily and an extension is warranted, and (c) Developer pays all processing fees for such time extension.

3. **Improvement Security.** Concurrently with the execution of this Agreement, Developer shall furnish contract security, in a form authorized by the Subdivision Map Act including Government Code Sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:

*City of Tracy – Offsite Improvement Agreement
For Stanek Avenue Tracy Hills Phase 2B*

- 3.1 **Faithful Performance** security in the amount of **\$2,642,387.00** to secure faithful performance of this Agreement.
 - 3.2 **Labor and Material** security in the amount of **\$2,642,387.00** to secure payment by Developer to laborers and materialmen.
 - 3.3 **Warranty** security in the amount of **\$264,239.00** to guarantee improvements against any defective work or labor done or defective materials used in performance of Work for one year from the date on which the City Council accepts the Work as complete.
 - 3.4 **Monumentation** security in the amount of **\$4,000.00** to secure faithful performance of setting monuments pursuant to Government Code section 66496.
4. **Indemnification**. Developer shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees, except when caused by the active negligence or willful misconduct of City, until such time as all of the following have occurred: (1) the City Council accepts all of the improvements comprising the Work, (2) the City becomes responsible for the maintenance, operation and repair of all of the improvements comprising the Work, and (3) the one year warranty period set forth in **Section 14**, below, has expired, at which time the indemnification obligations under this **Section 4** shall automatically terminate, with regard to any cause of action arising after such date. For avoidance of doubt, Developer's obligations under this **Section 4** are in addition to all other Developer's obligations set forth in this Agreement, and shall not affect Developer's warranty obligations set forth in **Section 14**, below.
5. **Insurance**. Concurrently with the execution of this Agreement by Developer, and before beginning any Work, Developer shall furnish evidence to the City that the following insurance requirements have been satisfied. The insurance requirements contained in this **Section 5** are material terms of this Agreement. These insurance coverage requirements below may be satisfied by umbrella or excess liability policies upon City approval.
- 5.1 **General**. Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

- 5.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) coverage shall be maintained in an amount not less than \$4,000,000 per occurrence and \$8,000,000 general aggregate for general liability, bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse, and underground property hazards.
- 5.3 **Professional Contracts**. Developer shall cause its design professionals to maintain professional liability insurance that insures against professional errors and omissions that may be made in performing services related to the Work to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Developer agrees to cause its design professionals to maintain continuous coverage through a period no less than three years after completion of the services required pursuant to this Agreement.
- 5.4 **Automobile Liability** (with coverage at least as broad as ISO form 00 01 07 97 for "any auto" including "hired autos" and "non-owned autos") coverage shall be maintained in an amount not less than \$2,000,000 per accident for bodily injury and property damage.
- 5.4.1 If Developer has no employees, or does not own automobiles, then "hired autos" and "non-owned autos" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- 5.5 **Workers' Compensation** coverage shall be maintained as required by the State of California.
- 5.6 **Endorsements**. Developer shall obtain endorsements to the commercial general liability and automobile policies with the following provisions:
- 5.6.1 The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an Additional Insured on Developer's Commercial General Liability policy utilizing endorsement form CG 20 10 (or its equivalent) for ongoing operations and CG 20 37 (or its equivalent) for products/completed operations.
- 5.6.2 For any claims related to this Agreement, Developer's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of Developer's insurance and shall not contribute with it.

- 5.6.3 Developer shall require its contractors and subcontractors providing services required by this Agreement (e.g. general contractors, design professionals) to name it and the City as Additional Insureds.
- 5.7 **Notice of Cancellation.** Developer shall notify the City of any cancellation of either the commercial general liability policy or automobile insurance policy before the expiration date. For the purpose of this notice requirement, any material change in the policy before the expiration shall be considered a cancellation. Developer shall immediately obtain a replacement policy.
- 5.8 **Authorized Insurers.** All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, with an AM Best rating of at least A-VII.
- 5.9 **Insurance Certificate.** Developer shall provide evidence of compliance with the commercial general liability insurance and automobile insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City Attorney before the City executes this Agreement.
- 5.10 **Substitute Certificates.** No later than thirty (30) days before the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.
- 5.11 **Developer's Obligation.** Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any responsibility whatsoever (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary.
6. **Independent Contractor Status.** Developer is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.
7. **Default**
- 7.1 **Notice of Default.** In the event that Developer is in default of this Agreement, as defined in this section, the City Engineer shall provide written notice to Developer and Developer's surety (if any) in which the default is described.

- 7.2 **Events of default.** Developer shall be in default ("**Default**") of this Agreement if the City Engineer determines that any one of the following conditions exist (which conditions are not intended to constitute the exclusive bases for default):
- 7.2.1 Developer fails to complete the work by the Trigger Date as required by the Conditions.
 - 7.2.2 Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.
 - 7.2.3 Developer abandons the Work site.
 - 7.2.4 Developer fails to perform one or more requirements of this Agreement and fails to cure any such non-performance pursuant to Section 7.3 below.
 - 7.2.5 Developer fails to replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.
 - 7.2.6 Developer violates any legal requirement related to the Work and fails to cure such violation pursuant to Section 7.3 below.
- 7.3 **Cure of Default.** In the event that Developer fails, within thirty (30) calendar days after receipt of written notice from the City, to either cure the default or provide adequate written assurance to the reasonable satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in its discretion, take any or all of the following actions:
- 7.3.1 Demand that Developer complete performance of the Work.
 - 7.3.2 Demand that Developer's surety (if any) complete performance of the Work.
 - 7.3.3 Resort to any judicial remedies available to the City.
8. **Ownership of Work.** All original documents prepared by Developer for this Agreement are the property of the City and shall be given to the City at the completion of Developer's Work, or upon demand from the City. Prior to acceptance of the Work, Developer shall submit the as-built drawings in AutoCAD format Release-14 or higher.
9. **Repair of any Damage.** In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other

property owners, then Developer shall promptly take all reasonable steps to repair or replace (as necessary) such property to remedy the damage caused thereto.

10. **Inspection by the City; Inspection Fees.** To permit City to inspect the Work, Developer shall, at all times, provide to City reasonable and safe access to the Work site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

- 10.1 **Inspection Fees.** Concurrently with the execution of this Agreement by Developer, and prior to the commencement of any Work, Developer shall pay the City Inspection Fees in the amount of three and one-half percent (3.5%) of the estimated Project costs (as approved by the City Engineer).

In the event that the City requires an independent inspection, the City may retain an independent inspector to inspect the Work and prepare an inspection report for the City, and all costs associated therewith shall be borne by Developer.

11. **[Intentionally Left Blank]**

12. **Developer's Authorized Representative.** At all times during the progress of the Work, Developer shall have a competent foreperson or superintendent ("**Authorized Representative**") on site with authority to act on Developer's behalf. Developer shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work. **Exhibit "C"** attached hereto includes the initial contact information referenced in this Section 12.

13. **Acceptance of Work.** Prior to acceptance of the Work by the City Council, Developer shall be solely responsible for maintaining the quality of the Work and maintaining safety at the Work site. Developer's obligations to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.

14. **Warranty Period.** Developer shall warrant the quality of the Work, in accordance with the terms of the Approved Plans and Specifications, for a period of one year after acceptance of the Work by the City Council. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this Agreement, Developer shall be in default of this Agreement and shall without delay and without any cost to City repair, replace or reconstruct any defective improvements.

15. **[Intentionally Left Blank]**

16. **Miscellaneous.**

- 16.1 **Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or electronically mailed to the respective party as follows:

To City	To Developer:
City of Tracy 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer notice@cityoftracy.org	Lennar Homes of California, LLC 2603 Camino Ramon, Suite 525 San Ramon, CA 94583 Attn: Bridgit Koller bridgit.koller@lennar.com
With a copy to:	With a copy to:
City Attorney 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer attorney@cityoftracy.org	Tracy Phase 4, LLC Attn: John Stanek/Caren Read 888 San Clemente, Suite 100 Newport Beach, CA 92660 jstanek@integralcommunities.com

Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the email address designated above, or (2) two working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

- 16.2 **Approvals by City.** Any approval or consent that is to be given by City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on City.
- 16.3 **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 16.4 **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 16.5 **Assignment and Delegation.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.

- 16.6 **Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 16.7 **Permits, Licenses, and Compliance with Law.** Developer shall, at its expense, obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, Developer shall obtain a City of Tracy Business License. Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.
- 16.8 **Entire Agreement; Exhibits; Severability.** The recitals and all defined terms in this Agreement are part of this Agreement. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the improvements to be constructed pursuant to this Agreement. This Agreement supersedes all prior negotiations, representations, or agreements. The following Exhibits attached hereto are incorporated into this Agreement and made a part hereof by this reference:
- A. Description of Property (Recital A.)
 - B. Improvement Location (Recital E.)
 - C. Subdivider's Authorized Representative Information (Section 12.)
- If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.
- 16.9 **Signatures.** The individuals executing this Agreement on behalf of Developer represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of Developer. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

[Signatures of Following Pages]

City of Tracy – Offsite Improvement Agreement
For Stanek Avenue Tracy Hills Phase 2B

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY,

a municipal corporation

DEVELOPER:

LENNAR HOMES OF CALIFORNIA, LLC
a California limited liability company

By: Dan Arriola
Title: Mayor

Date: _____

By: Bridgit Koller
Title: Vice President

Date: 1/13/25

Attest:

By: Adrienne Richardson
Title: City Clerk

Date: _____

Approved As To Form:

By: Andrew Shen
Title: Interim City Attorney

Date: _____

*City of Tracy – Offsite Improvement Agreement
For Stanek Avenue Tracy Hills Phase 2B*

Consent to Recordation

Tracy Phase 4, LLC, is the owner in fee simple of the real property described in Exhibit A and hereby consents to the recordation of this Subdivision Improvement Agreement.

TRACY PHASE 4, LLC
a Delaware limited liability company

By: 
Name: Aretina Wegener
Its: Authorized Representative

Date: January 15, 2025

[ATTACHED]

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

STATE OF CALIFORNIA
COUNTY OF Contra Costa

On this 13th day of January, 2025 before me, Lauren Mary Christopher,
Notary Public, personally appeared Bridgit Koller,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
~~he/she/they~~ executed the same in his/her/their authorized capacity(ies), and that by
~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: L. Christopher



(Seal)

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

STATE OF CALIFORNIA
COUNTY OF ORANGE

On this 15th day of January, 20 25 before me, Anne Nguyen,
Notary Public, personally appeared Aretina Wegener,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: 

(Seal)

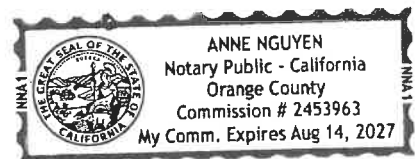


EXHIBIT "A"
(Legal Description of Property)

LEGAL DESCRIPTION

Real property in the City of Tracy, County of San Joaquin, State of California, described as follows:

Parcel 1:

New Parcel A of Certificate of Compliance for Lot Line Adjustment No. MS 23-0004 recorded November 28, 2023 as Instrument No. 2023-096708 of official records and more particularly described as follows:

Real property situate in the City of Tracy, County of San Joaquin, State of California and being all of NEW PARCEL 1 as said Parcel is described and depicted in the Grant Deed to TRACY PHASE 4, LLC, recorded on August 9, 2023 as Document No. 2023-062989 of Official Records of San Joaquin County and being a portion of NEW PARCEL 2 as said Parcel is described and depicted in the Grant Deed to TRACY PHASE 3, LLC, recorded on August 9, 2023 as Document No. 2023-062990 of Official Records of San Joaquin County, and being more particularly described as follows:

BEGINNING at the most northerly corner of said NEW PARCEL 1 thence along the east lines of said New Parcels 1 and 2 the following twelve (12) courses:

- 1) South 53° 19' 26" East - 660.88 feet;
- 2) South 56° 06' 02" East - 501.22 feet;
- 3) South 52° 05' 47" East - 700.00 feet;
- 4) South 50° 03' 03" East - 700.45 feet;
- 5) South 56° 51' 36" East - 301.04 feet;
- 6) South 52° 05' 47" East - 1000.00 feet;
- 7) South 49° 48' 21" East, at 304.50 feet passing the common east corner to New Parcels 1 and 2, in all 500.40 feet;
- 8) South 53° 43' 58" East - 700.29 feet;
- 9) South 52° 05' 47" East - 1300.00 feet;
- 10) South 50° 11' 14" East - 600.33 feet;
- 11) South 52° 05' 47" East - 300.00 feet;
- 12) South 53° 14' 32" East - 811.28 feet for the southeasterly corner hereof;

Thence crossing through NEW PARCEL 2 the following sixty-one (61) courses:

- 1) South 36° 45' 28" West-151.15 feet;
- 2) North 52° 06' 57" West - 17.00 feet;
- 3) South 37° 53' 03" West - 41.50 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;
- 4) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00'00";
- 5) South 37° 53' 03" West - 167.00 feet for the beginning of a curve to the right;
- 6) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00'00";
- 7) South 37° 53' 03" West - 57.00 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;
- 8) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 9) South 37° 53' 03" West - 80.00 feet for the beginning of a curve to the right;
- 10) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00'00";
- 11) South 37° 53' 03" West - 57.00 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;

51) South 73° 25' 44" East - 57.00 feet;
 52) South 16° 34' 16" West - 37.53 feet;
 53) South 52° 06' 57" East - 595.39 feet;
 54) South 40° 06' 22" West - 131.53 feet;
 55) South 29° 13' 05" West - 41.67 feet;
 56) South 47° 07' 54" West - 115.46 feet;
 57) South 45° 09' 31" West - 241.24 feet;
 58) South 45° 21' 00" West - 69.92 feet;
 59) South 61° 48' 50" West - 305.17 feet;
 60) South 45° 20' 57" West - 485.89 feet;
 61) South 85° 06' 47" West - 214.60 feet to a southwesterly corner of said NEW PARCEL 2, said corner being at the northeasterly terminus of a line labeled as North 22° 25' 06" East - 50.07 feet;

Thence along the west lines of New Parcels 1 and 2, the following thirty-six (36) courses:

1) North 67° 34' 55" West - 91.49 feet;
 2) North 53° 52' 01" West - 918.37 feet;
 3) North 19° 27' 10" West - 85.89 feet;
 4) South 86° 30' 03" West - 46.95 feet for the beginning of a curve to the right from which the center bears North 03° 19' 57" West;
 5) in a northwesterly direction 1081.94 feet along the arc of said curve to the right, having a radius of 921.00 feet and through a central angle of 67° 18' 29";
 6) North 26° 02' 37" West - 364.68 feet;
 7) North 28° 16' 00" West - 415.82 feet;
 8) North 37° 55' 00" West - 356.76 feet;
 9) North 41° 08' 50" West - 347.13 feet;
 10) North 44° 08' 49" West - 62.07 feet;
 11) North 24° 46' 15" West - 435.91 feet;
 12) North 00° 46' 52" West - 53.79 feet;
 13) North 05° 22' 35" East - 382.86 feet;
 14) North 09° 49' 55" East - 214.10 feet;
 15) North 03° 22' 45" East - 395.20 feet;
 16) North 19° 38' 09" West - 2750.87 feet;
 17) North 10° 40' 59" West, at 81.67 feet passing the common west corner to NEW PARCELS 1 & 2, in all 293.96 feet;
 18) North 72° 57' 45" West - 464.35 feet;
 19) North 78° 35' 30" West - 261.49 feet;
 20) North 73° 29' 44" West - 210.75 feet;
 21) South 80° 05' 25" West - 222.48 feet;
 22) North 17° 43' 06" West - 252.76 feet;
 23) North 15° 25' 05" East - 144.97 feet;
 24) North 16° 17' 49" West - 107.32 feet;
 25) North 53° 28' 10" West - 77.09 feet;
 26) North 32° 20' 29" West - 120.34 feet;
 27) North 08° 22' 12" West - 196.02 feet;
 28) North 10° 59' 55" East - 175.33 feet;
 29) North 20° 34' 58" East - 170.92 feet;
 30) North 07° 48' 28" East - 336.20 feet;
 31) North 00° 09' 49" East - 144.59 feet;
 32) North 08° 00' 19" West - 330.77 feet;
 33) North 03° 33' 57" East - 523.83 feet;
 34) North 54° 38' 01" West - 83.61 feet;
 35) North 43° 40' 49" East - 758.85 feet;

36) North 36° 40' 34" East -99.99 feet to the POINT OF BEGINNING.

Except therefrom all oil, gas, hydrocarbons and other minerals as conveyed to Bertha G. Berger, a widow, Vera Grunauer, a single woman, and Doris G. Powell, a single woman, by deed recorded March 27, 1959 in Book 2160, Page 308, of official records, which provides as follows: together with all rights necessary and proper for the purpose of drilling and exploring for said substances and removing the same therefrom, as to the portion of said land described therein.

Also except therefrom all oil, gas, mineral and hydrocarbon substances lying below a depth of 500 feet below the surface, without the right of surface entry, as reserved in the deed recorded July 20, 1992 as document no. 92083244 San Joaquin County records, as to the portion of said land described therein.

Also except therefrom all oil, gas, and mineral rights lying below a depth of 500 feet below the surface, without the right of surface entry, as reserved in the deed recorded February 23, 2006, instrument no. 2006-040904, of official records, as to the portion of said land described therein.

Parcel 2:

A Non-exclusive and perpetual easement for ingress and egress appurtenant to Parcel 1 above, more particularly described in that certain Grant of Easement (Access Easement), recorded July 11, 2024, as Instrument No. 2024-057743, of Official Records, as follows:

Real property situate in the City of Tracy, County of San Joaquin, State of California and being a portion of New Parcel B, as said Parcel is shown on the Grant Deed to DRP Solaris Multistate, LLC, recorded as Document No. 2024-003609, Official Records of San Joaquin County, being more particularly described as follows:

Commencing at a westerly corner of said New Parcel B, said corner being at the northwest terminus of a course labeled as having a bearing of North 52°06'57" West, 876.82 feet;

Thence northeasterly, along the west line of New Parcel B North 37°53'03" East, 78.00 feet to the point of beginning:

Thence continuing along said west line, North 37°53'03" East, 20.00 feet;

Thence crossing through New Parcel B for the following three (3) courses:

- 1) South 52°06'57" East, 751.77 feet;
- 2) South 78°40'51" East, 11.18 feet;
- 3) South 52°06'57" East 204.56 feet to the east line of said New Parcel B;

Thence southwesterly, along said east line South 37°53'03" West 25.00 feet;

Thence across New Parcel B, North 52°06'57" West 966.32 feet to the point of beginning.

APN(S): 251-060-31, 251-060-33, 251-060-24 (Portion) and 251-060-34 (Portion);

New APN(s) not yet assessed are as follows:

251-060-40, 251-060-41 and 251-060-43

EXHIBIT "B"
Improvement Location

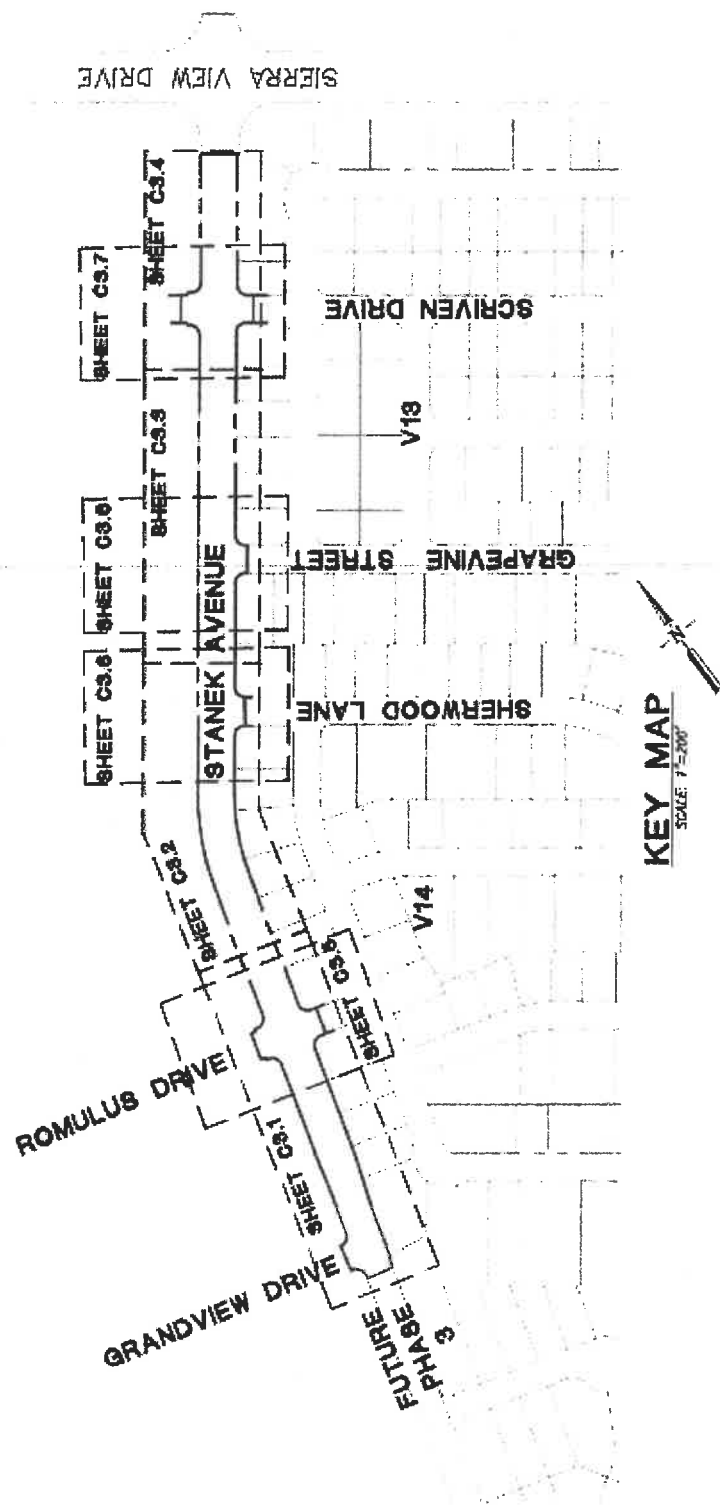


Exhibit "C"

Subdivider's Authorized Representative Information

<u>Name of Person</u>	<u>Company Name</u>	<u>Telephone Number</u>
Sergio Perez	Lennar Homes	916.261.8709
Lisa A. Mikelonis, PE	Integral Communities	925.260.4753

Recording Requested By:

City of Tracy
Development Services
333 Civic Center Plaza
Tracy, CA 95376

And When Recorded Mail To:

City of Tracy
Office of the City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attn: Adrienne Richardson

(No recording fee under Government Code Section 27383)

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

City of Tracy
OFFSITE IMPROVEMENT AGREEMENT
Tracy Hills 2B Sierra View/Lammers ROW Landscaping

This **OFFSITE IMPROVEMENT AGREEMENT** ("**Agreement**") is made and entered into by and between the **CITY OF TRACY** a municipal corporation ("**City**"), and **LENNAR HOMES OF CALIFORNIA, LLC**, a California limited liability company (hereinafter "**Developer**"). The effective date of this Agreement shall be the date on which City executes the Agreement ("**Effective Date**").

Recitals

A. Developer is a party responsible for the construction of the public improvements within a portion of the real property comprising Tracy Hills Phase 2, such portion being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (hereinafter "**Project**"). Tracy Phase 4, LLC, a Delaware limited liability company, is the fee owner holding fee title to the property described in Exhibit A which is intended to be conveyed to Developer and consents to the recordation of this Agreement as evidenced by its signature below.

B. October 19, 2021, the Tracy City Council ("**City Council**") adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 2 and approved various related land use entitlements, including that certain Vesting Tentative Subdivision Map for Tracy Hills Phase 2, Tract 4057, processed under Application No. TSM20-0003 and approved by Resolution No. 2021-154 ("**Tentative Map**"). The Tentative Map includes 1,470 single-family residential lots, in addition to park parcels, HOA recreation area parcel, retention basin parcels, school parcels, and numerous other parcels to be owned and maintained by a Homeowner's Association, Developer or City on approximately 1,143 acres within

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the Tracy Hills Specific Plan Area, located south of the I-580 Freeway and west of Corral Hollow Road. The Tentative Map is on file with the City Clerk, and is incorporated herein by this reference.

C. The approval of the Tentative Map by the City Council was subject to specified conditions of approval attached as Exhibit 1 to Resolution No. 2021-154 and are on file with the City Engineer ("**Conditions of Approval**"). The Conditions of Approval describe, among other things, improvements that are required for approval of the Final Subdivision Map pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards.

D. In accordance with the Subdivision Map Act (California Government Code sections 66410, et seq) and the Subdivision Ordinance (Tracy Municipal Code, Title 12), Developer has submitted to the City the Final Subdivision Map for Tract 4182 - Tracy Hills Village 13 (the "**Final Subdivision Map**"). Developer is required to execute this Agreement as a condition of the City's approval of the Final Subdivision Map.

E. Pursuant to the Conditions of Approval, Developer is required to construct the landscaping improvements associated with the Sierra View and Lammers public right-of-way as more particularly depicted in **Exhibit "B"**.

F. In accordance with the Conditions of Approval, Developer has prepared, and the City Engineer has approved, certain improvement plans and specifications (which incorporate portions of the City's Standard Specifications), which describe the improvements that are required for approval of the Final Subdivision Map and are incorporated herein by reference. The approved plans and specifications ("**Approved Plans and Specifications**") include: *Seventy-five (75) sheets of landscape construction drawings entitled "Sierra View Drive and Lammers Rd ROW Tracy Hills Phase 2B", prepared by FORMA, dated November 13, 2024.* The Approved Plans and Specifications are on file with the City Engineer under Tracking No. ENG23-0007, incorporated herein by reference.

G. Because the required improvements have not been completed, Developer is required to execute this Agreement as authorized by Government Code section 66462.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Scope of Work; Location.** Developer shall perform, or cause to be performed, the work in the manner and as described in the Approved Plans and Specifications, to the satisfaction of the City Engineer pursuant to this Agreement (the "**Work**"). The Work shall be performed, and all materials and labor shall be provided, at Developer's sole expense. No material change shall be made to the scope of Work unless authorized in writing by the City Engineer. Developer may submit a written request to the City Engineer for a change in the Work, as required by Tracy Municipal Code Section 12.36.060(f). To the extent applicable, all of the Work shall be performed by Developer in accordance with the requirements of the State prevailing wage laws. Developer shall perform all Work at the locations and grades

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- shown on the Approved Plans and Specifications. Developer (a) has acquired any necessary easement or right-of-way or (b) has entered into a separate Agreement with the City to acquire the necessary easement or right-of-way at Developer's expense.
2. **Time of Performance.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
- 2.1 **Commencement of Work.** The Work shall begin within 60 days after the Effective Date of the Agreement. No later than fifteen (15) days prior to the commencement of such Work, Developer shall provide written notice to the City Engineer of the date on which Developer intends to commence Work. To the extent required, Developer shall not commence Work until after the notice required by this section is properly provided, and Developer shall not commence Work prior to the date specified in the written notice.
- 2.2 **Schedule of Work.** Concurrently with the written notice of commencement of Work, Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect Developer's prosecution of the Work.
- 2.3 **Completion of Work.** Developer shall complete all Work by no later than three hundred sixty-five (365) calendar days after Developer's submittal of its notice of commencement of Work pursuant to Section 2.1 above. If the Work is not completed by this date, City Engineer may grant an extension of time if (a) Developer submits a written request for extension at least ten (10) days prior to expiring date of completion, (b) the City Engineer determines that Work is progressing satisfactorily and an extension is warranted, and (c) Developer pays all processing fees for such time extension.
3. **Improvement Security.** Concurrently with the execution of this Agreement, Developer shall furnish contract security, in a form authorized by the Subdivision Map Act including Government Code Sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:
- 3.1 **Faithful Performance** security in the amount of **\$2,276,464.91** to secure faithful performance of this Agreement.
- 3.2 **Labor and Material** security in the amount of **\$2,276,464.91** to secure payment by Developer to laborers and materialmen.

- 3.3 **Warranty** security in the amount of **\$227,646.49** to guarantee improvements against any defective work or labor done or defective materials used in performance of Work for one year from the date on which the City Council accepts the Work as complete.
4. **Indemnification.** Developer shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees, except when caused by the active negligence or willful misconduct of City, until such time as all of the following have occurred: (1) the City Council accepts all of the improvements comprising the Work, (2) the City becomes responsible for the maintenance, operation and repair of all of the improvements comprising the Work, and (3) the one year warranty period set forth in Section 14, below, has expired, at which time the indemnification obligations under this Section 4 shall automatically terminate, with regard to any cause of action arising after such date. For avoidance of doubt, Developer's obligations under this Section 4 are in addition to all other Developer's obligations set forth in this Agreement, and shall not affect Developer's warranty obligations set forth in Section 14, below.
5. **Insurance.** Concurrently with the execution of this Agreement by Developer, and before beginning any Work, Developer shall furnish evidence to the City that the following insurance requirements have been satisfied. The insurance requirements contained in this Section 5 are material terms of this Agreement. These insurance coverage requirements below may be satisfied by umbrella or excess liability policies upon City approval.
- 5.1 **General.** Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
- 5.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) coverage shall be maintained in an amount not less than \$4,000,000 per occurrence and \$8,000,000 general aggregate for general liability, bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse, and underground property hazards.
- 5.3 **Professional Contracts.** Developer shall cause its design professionals to maintain professional liability insurance that insures against professional errors and omissions that may be made in performing services related to

the Work to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Developer agrees to cause its design professionals to maintain continuous coverage through a period no less than three years after completion of the services required pursuant to this Agreement.

- 5.4 **Automobile Liability** (with coverage at least as broad as ISO form 00 01 07 97 for "any auto" including "hired autos" and "non-owned autos") coverage shall be maintained in an amount not less than \$2,000,000 per accident for bodily injury and property damage.

5.4.1 If Developer has no employees, or does not own automobiles, then "hired autos" and "non-owned autos" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

- 5.5 **Workers' Compensation** coverage shall be maintained as required by the State of California.

- 5.6 **Endorsements.** Developer shall obtain endorsements to the commercial general liability and automobile policies with the following provisions:

5.6.1 The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an Additional Insured on Developer's Commercial General Liability policy utilizing endorsement form CG 20 10 (or its equivalent) for ongoing operations and CG 20 37 (or its equivalent) for products/completed operations.

5.6.2 For any claims related to this Agreement, Developer's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of Developer's insurance and shall not contribute with it.

5.6.3 Developer shall require its contractors and subcontractors providing services required by this Agreement (e.g. general contractors, design professionals) to name it and the City as Additional Insureds.

- 5.7 **Notice of Cancellation.** Developer shall notify the City of any cancellation of either the commercial general liability policy or automobile insurance policy before the expiration date. For the purpose of this notice requirement, any material change in the policy before the expiration shall be considered a cancellation. Developer shall immediately obtain a replacement policy.

- 5.8 **Authorized Insurers.** All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, with an AM Best rating of at least A-VII.
- 5.9 **Insurance Certificate.** Developer shall provide evidence of compliance with the commercial general liability insurance and automobile insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City Attorney before the City executes this Agreement.
- 5.10 **Substitute Certificates.** No later than thirty (30) days before the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.
- 5.11 **Developer's Obligation.** Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any responsibility whatsoever (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary.
6. **Independent Contractor Status.** Developer is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.
7. **Default**
- 7.1 **Notice of Default.** In the event that Developer is in default of this Agreement, as defined in this section, the City Engineer shall provide written notice to Developer and Developer's surety (if any) in which the default is described.
- 7.2 **Events of default.** Developer shall be in default ("Default") of this Agreement if the City Engineer determines that any one of the following conditions exist (which conditions are not intended to constitute the exclusive bases for default):
- 7.2.1 Developer fails to complete the work by the Trigger Date as required by the Conditions.
- 7.2.2 Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.
- 7.2.3 Developer abandons the Work site.

- 7.2.4 Developer fails to perform one or more requirements of this Agreement and fails to cure any such non-performance pursuant to Section 7.3 below.
- 7.2.5 Developer fails to replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.
- 7.2.6 Developer violates any legal requirement related to the Work and fails to cure such violation pursuant to Section 7.3 below.
- 7.3 **Cure of Default.** In the event that Developer fails, within thirty (30) calendar days after receipt of written notice from the City, to either cure the default or provide adequate written assurance to the reasonable satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in its discretion, take any or all of the following actions:
 - 7.3.1 Demand that Developer complete performance of the Work.
 - 7.3.2 Demand that Developer's surety (if any) complete performance of the Work.
 - 7.3.3 Resort to any judicial remedies available to the City.
- 8. **Ownership of Work.** All original documents prepared by Developer for this Agreement are the property of the City and shall be given to the City at the completion of Developer's Work, or upon demand from the City. Prior to acceptance of the Work, Developer shall submit the as-built drawings in AutoCAD format Release-14 or higher.
- 9. **Repair of any Damage.** In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other property owners, then Developer shall promptly take all reasonable steps to repair or replace (as necessary) such property to remedy the damage caused thereto.
- 10. **Inspection by the City; Inspection Fees.** To permit City to inspect the Work, Developer shall, at all times, provide to City reasonable and safe access to the Work site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.
 - 10.1 **Inspection Fees.** Concurrently with the execution of this Agreement by Developer, and prior to the commencement of any Work, Developer shall pay the City Inspection Fees in the amount of three and one-half percent (3.5%) of the estimated Project costs (as approved by the City Engineer).

In the event that the City requires an independent inspection, the City may retain an independent inspector to inspect the Work and prepare an inspection report for the City, and all costs associated therewith shall be borne by Developer.

11. **[Intentionally Left Blank]**
12. **Developer's Authorized Representative.** At all times during the progress of the Work, Developer shall have a competent foreperson or superintendent ("**Authorized Representative**") on site with authority to act on Developer's behalf. Developer shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work. **Exhibit "C"** attached hereto includes the initial contact information referenced in this Section 12.
13. **Acceptance of Work.** Prior to acceptance of the Work by the City Council, Developer shall be solely responsible for maintaining the quality of the Work and maintaining safety at the Work site. Developer's obligations to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.
14. **Warranty Period.** Developer shall warrant the quality of the Work, in accordance with the terms of the Approved Plans and Specifications, for a period of one year after acceptance of the Work by the City Council. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this Agreement, Developer shall be in default of this Agreement and shall without delay and without any cost to City repair, replace or reconstruct any defective improvements.
15. **[Intentionally Left Blank]**
16. **Miscellaneous.**
 - 16.1 **Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be

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personally delivered or electronically mailed to the respective party as follows:

To City	To Developer:
City of Tracy 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer notice@cityoftracy.org	Lennar Homes of California, LLC 2603 Camino Ramon, Suite 525 San Ramon, CA 94583 Attn: Bridgit Koller bridgit.koller@lennar.com
With a copy to:	With a copy to:
City Attorney 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer attorney@cityoftracy.org	Tracy Phase 4, LLC Attn: John Stanek/Caren Read 888 San Clemente, Suite 100 Newport Beach, CA 92660 jstanek@integralcommunities.com

Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the email address designated above, or (2) two working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

- 16.2 **Approvals by City.** Any approval or consent that is to be given by City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on City.
- 16.3 **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 16.4 **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 16.5 **Assignment and Delegation.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.
- 16.6 **Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related

to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

16.7 **Permits, Licenses, and Compliance with Law.** Developer shall, at its expense, obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, Developer shall obtain a City of Tracy Business License. Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.

16.8 **Entire Agreement; Exhibits; Severability.** The recitals and all defined terms in this Agreement are part of this Agreement. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the improvements to be constructed pursuant to this Agreement. This Agreement supersedes all prior negotiations, representations, or agreements. The following Exhibits attached hereto are incorporated into this Agreement and made a part hereof by this reference:

- A. Description of Property (Recital A.)
- B. Improvement Location (Recital E.)
- C. Subdivider's Authorized Representative Information (Section 12.)

If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

16.9 **Signatures.** The individuals executing this Agreement on behalf of Developer represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of Developer. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

[Signatures of Following Pages]

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IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY,
a municipal corporation

DEVELOPER:

LENNAR HOMES OF CALIFORNIA, LLC
a California limited liability company

By: Dan Arriola
Title: Mayor

Date: _____


By: Bridgit Koller
Title: Vice President

Date: 1/13/25

Attest:

By: Adrienne Richardson
Title: City Clerk

Date: _____

Approved As To Form:

By: Andrew Shen
Title: Interim City Attorney

Date: _____

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Consent to Recordation

Tracy Phase 4, LLC, is the owner in fee simple of the real property described in Exhibit A and hereby consents to the recordation of this Subdivision Improvement Agreement.

TRACY PHASE 4, LLC
a Delaware limited liability company

By: 
Name: Aretina Wegener
Its: Authorized Representative

Date: January 15, 2025

[ATTACHED]

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

STATE OF CALIFORNIA
COUNTY OF Contra Costa

On this 13th day of January, 2025 before me, Lauren Mary Christopher,
Notary Public, personally appeared Bridgit Koller,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature: L. Christopher

(Seal)

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

STATE OF CALIFORNIA
COUNTY OF ORANGE

On this 15th day of January, 2025 before me, Anne Nguyen,
Notary Public, personally appeared Arctina Wegener,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____



(Seal)

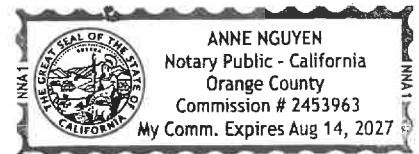


EXHIBIT "A"
(Legal Description of Property)

LEGAL DESCRIPTION

Real property in the City of Tracy, County of San Joaquin, State of California, described as follows:

Parcel 1:

New Parcel A of Certificate of Compliance for Lot Line Adjustment No. MS 23-0004 recorded November 28, 2023 as Instrument No. 2023-096708 of official records and more particularly described as follows:

Real property situate in the City of Tracy, County of San Joaquin, State of California and being all of NEW PARCEL 1 as said Parcel is described and depicted in the Grant Deed to TRACY PHASE 4, LLC, recorded on August 9, 2023 as Document No. 2023-062989 of Official Records of San Joaquin County and being a portion of NEW PARCEL 2 as said Parcel is described and depicted in the Grant Deed to TRACY PHASE 3, LLC, recorded on August 9, 2023 as Document No. 2023-062990 of Official Records of San Joaquin County, and being more particularly described as follows:

BEGINNING at the most northerly corner of said NEW PARCEL 1 thence along the east lines of said New Parcels 1 and 2 the following twelve (12) courses:

- 1) South 53° 19' 26" East - 660.88 feet;
- 2) South 56° 06' 02" East - 501.22 feet;
- 3) South 52° 05' 47" East - 700.00 feet;
- 4) South 50° 03' 03" East - 700.45 feet;
- 5) South 56° 51' 36" East - 301.04 feet;
- 6) South 52° 05' 47" East - 1000.00 feet;
- 7) South 49° 48' 21" East, at 304.50 feet passing the common east corner to New Parcels 1 and 2, in all 500.40 feet;
- 8) South 53° 43' 58" East - 700.29 feet;
- 9) South 52° 05' 47" East - 1300.00 feet;
- 10) South 50° 11' 14" East - 600.33 feet;
- 11) South 52° 05' 47" East - 300.00 feet;
- 12) South 53° 14' 32" East - 811.28 feet for the southeasterly corner hereof;

Thence crossing through NEW PARCEL 2 the following sixty-one (61) courses:

- 1) South 36° 45' 28" West - 151.15 feet;
- 2) North 52° 06' 57" West - 17.00 feet;
- 3) South 37° 53' 03" West - 41.50 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;
- 4) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 5) South 37° 53' 03" West - 167.00 feet for the beginning of a curve to the right;
- 6) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 7) South 37° 53' 03" West - 57.00 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;
- 8) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 9) South 37° 53' 03" West - 80.00 feet for the beginning of a curve to the right;
- 10) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 11) South 37° 53' 03" West - 57.00 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;

12) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 13) South $37^{\circ} 53' 03''$ West - 168.00 feet for the beginning of a curve to the right;
 14) in a westerly direction 39.27 feet along the arc of said curve to the right having a radius of 25.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 15) South $37^{\circ} 53' 03''$ West - 57.00 feet;
 16) South $52^{\circ} 06' 57''$ East - 5.00 feet for the beginning of a curve to the right;
 17) in a southerly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 18) South $37^{\circ} 53' 03''$ West - 176.00 feet for the beginning of a curve to the right;
 19) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 20) South $37^{\circ} 53' 03''$ West - 57.00 feet;
 21) South $52^{\circ} 06' 57''$ East - 64.68 feet;
 22) South $37^{\circ} 53' 03''$ West - 208.00 feet;
 23) South $52^{\circ} 06' 57''$ East - 876.82 feet for the beginning of a curve to the right;
 24) in a southerly direction 128.81 feet along the arc of said curve to the right, having a radius of 82.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 25) South $37^{\circ} 53' 03''$ West - 292.50 feet for the beginning of a curve to the right;
 26) in a westerly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 27) North $52^{\circ} 06' 57''$ West - 21.00 feet;
 28) South $37^{\circ} 53' 03''$ West - 57.00 feet;
 29) South $52^{\circ} 06' 57''$ East - 12.50 feet;
 30) South $37^{\circ} 53' 03''$ West - 3.00 feet;
 31) South $52^{\circ} 06' 57''$ East - 6.00 feet for the beginning of a curve to the right;
 32) in a southerly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 33) South $37^{\circ} 53' 03''$ West - 942.10 feet for the beginning of a curve to the left;
 34) in a southwesterly direction 200.31 feet along the arc of said curve to the left, having a radius of 538.50 feet and through a central angle of $21^{\circ} 18' 47''$;
 35) South $16^{\circ} 34' 16''$ West - 282.68 feet for the beginning of a curve to the right;
 36) in a southwesterly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 37) North $73^{\circ} 25' 44''$ West - 16.00 feet;
 38) South $16^{\circ} 34' 16''$ West - 57.00 feet;
 39) South $73^{\circ} 25' 44''$ East - 16.00 feet for the beginning of a curve to the right;
 40) in a southeasterly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
 41) South $16^{\circ} 34' 16''$ West - 215.00 feet for the beginning of a curve to the left;
 42) in a southerly direction 45.53 feet along the arc of said curve to the left, having a radius of 1018.00 feet and through a central angle of $02^{\circ} 33' 45''$ for the beginning of a reverse curve;
 43) continuing in a southerly direction 43.92 feet along the arc of said reverse curve, having a radius of 982.00 feet and through a central angle of $02^{\circ} 33' 45''$;
 44) South $16^{\circ} 34' 16''$ West - 74.99 feet for the beginning of a curve to the right;
 45) in a southwesterly direction 30.46 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $87^{\circ} 15' 46''$;
 46) North $76^{\circ} 09' 59''$ West - 1.68 feet;
 47) South $13^{\circ} 50' 01''$ West - 56.00 feet;
 48) South $76^{\circ} 09' 59''$ East - 5.10 feet for the beginning of a curve to the right;
 49) in a southeasterly direction 32.37 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $92^{\circ} 44' 14''$;
 50) South $16^{\circ} 34' 16''$ West - 7.74 feet;

51) South 73° 25' 44" East - 57.00 feet;
 52) South 16° 34' 16" West - 37.53 feet;
 53) South 52° 06' 57" East - 595.39 feet;
 54) South 40° 06' 22" West - 131.53 feet;
 55) South 29° 13' 05" West - 41.67 feet;
 56) South 47° 07' 54" West - 115.46 feet;
 57) South 45° 09' 31" West - 241.24 feet;
 58) South 45° 21' 00" West - 69.92 feet;
 59) South 61° 48' 50" West - 305.17 feet;
 60) South 45° 20' 57" West - 485.89 feet;
 61) South 85° 06' 47" West - 214.60 feet to a southwesterly corner of said NEW PARCEL 2, said corner being at the northeasterly terminus of a line labeled as North 22° 25' 06" East - 50.07 feet;

Thence along the west lines of New Parcels 1 and 2, the following thirty-six (36) courses:

1) North 67° 34' 55" West - 91.49 feet;
 2) North 53° 52' 01" West - 918.37 feet;
 3) North 19° 27' 10" West - 85.89 feet;
 4) South 86° 30' 03" West - 46.95 feet for the beginning of a curve to the right from which the center bears North 03° 19' 57" West;
 5) in a northwesterly direction 1081.94 feet along the arc of said curve to the right, having a radius of 921.00 feet and through a central angle of 67° 18' 29";
 6) North 26° 02' 37" West - 364.68 feet;
 7) North 28° 16' 00" West - 415.82 feet;
 8) North 37° 55' 00" West - 356.76 feet;
 9) North 41° 08' 50" West - 347.13 feet;
 10) North 44° 08' 49" West - 62.07 feet;
 11) North 24° 46' 15" West - 435.91 feet;
 12) North 00° 46' 52" West - 53.79 feet;
 13) North 05° 22' 35" East - 382.86 feet;
 14) North 09° 49' 55" East - 214.10 feet;
 15) North 03° 22' 45" East - 395.20 feet;
 16) North 19° 38' 09" West - 2750.87 feet;
 17) North 10° 40' 59" West, at 81.67 feet passing the common west corner to NEW PARCELS 1 & 2, in all 293.96 feet;
 18) North 72° 57' 45" West - 464.35 feet;
 19) North 78° 35' 30" West - 261.49 feet;
 20) North 73° 29' 44" West - 210.75 feet;
 21) South 80° 05' 25" West - 222.48 feet;
 22) North 17° 43' 06" West - 252.76 feet;
 23) North 15° 25' 05" East - 144.97 feet;
 24) North 16° 17' 49" West - 107.32 feet;
 25) North 53° 28' 10" West - 77.09 feet;
 26) North 32° 20' 29" West - 120.34 feet;
 27) North 08° 22' 12" West - 196.02 feet;
 28) North 10° 59' 55" East - 175.33 feet;
 29) North 20° 34' 58" East - 170.92 feet;
 30) North 07° 48' 28" East - 336.20 feet;
 31) North 00° 09' 49" East - 144.59 feet;
 32) North 08° 00' 19" West - 330.77 feet;
 33) North 03° 33' 57" East - 523.83 feet;
 34) North 54° 38' 01" West - 83.61 feet;
 35) North 43° 40' 49" East - 758.85 feet;

36) North 36° 40' 34" East -99.99 feet to the POINT OF BEGINNING.

Except therefrom all oil, gas, hydrocarbons and other minerals as conveyed to Bertha G. Berger, a widow, Vera Grunauer, a single woman, and Doris G. Powell, a single woman, by deed recorded March 27, 1959 in [Book 2160, Page 308](#), of official records, which provides as follows: together with all rights necessary and proper for the purpose of drilling and exploring for said substances and removing the same therefrom, as to the portion of said land described therein.

Also except therefrom all oil, gas, mineral and hydrocarbon substances lying below a depth of 500 feet below the surface, without the right of surface entry, as reserved in the deed recorded July 20, 1992 as document no. [92083244](#) San Joaquin County records, as to the portion of said land described therein.

Also except therefrom all oil, gas, and mineral rights lying below a depth of 500 feet below the surface, without the right of surface entry, as reserved in the deed recorded February 23, 2006, instrument no. [2006-040904](#), of official records, as to the portion of said land described therein.

Parcel 2:

A Non-exclusive and perpetual easement for ingress and egress appurtenant to Parcel 1 above, more particularly described in that certain Grant of Easement (Access Easement), recorded July 11, 2024, as Instrument No. [2024-057743](#), of Official Records, as follows:

Real property situate in the City of Tracy, County of San Joaquin, State of California and being a portion of New Parcel B, as said Parcel is shown on the Grant Deed to DRP Solaris Multistate, LLC, recorded as Document No. [2024-003609](#), Official Records of San Joaquin County, being more particularly described as follows:

Commencing at a westerly corner of said New Parcel B, said corner being at the northwest terminus of a course labeled as having a bearing of North 52°06'57" West, 876.82 feet;

Thence northeasterly, along the west line of New Parcel B North 37°53'03" East, 78.00 feet to the point of beginning:

Thence continuing along said west line, North 37°53'03" East, 20.00 feet;

Thence crossing through New Parcel B for the following three (3) courses:

- 1) South 52°06'57" East, 751.77 feet;
- 2) South 78°40'51" East, 11.18 feet;
- 3) South 52°06'57" East 204.56 feet to the east line of said New Parcel B;

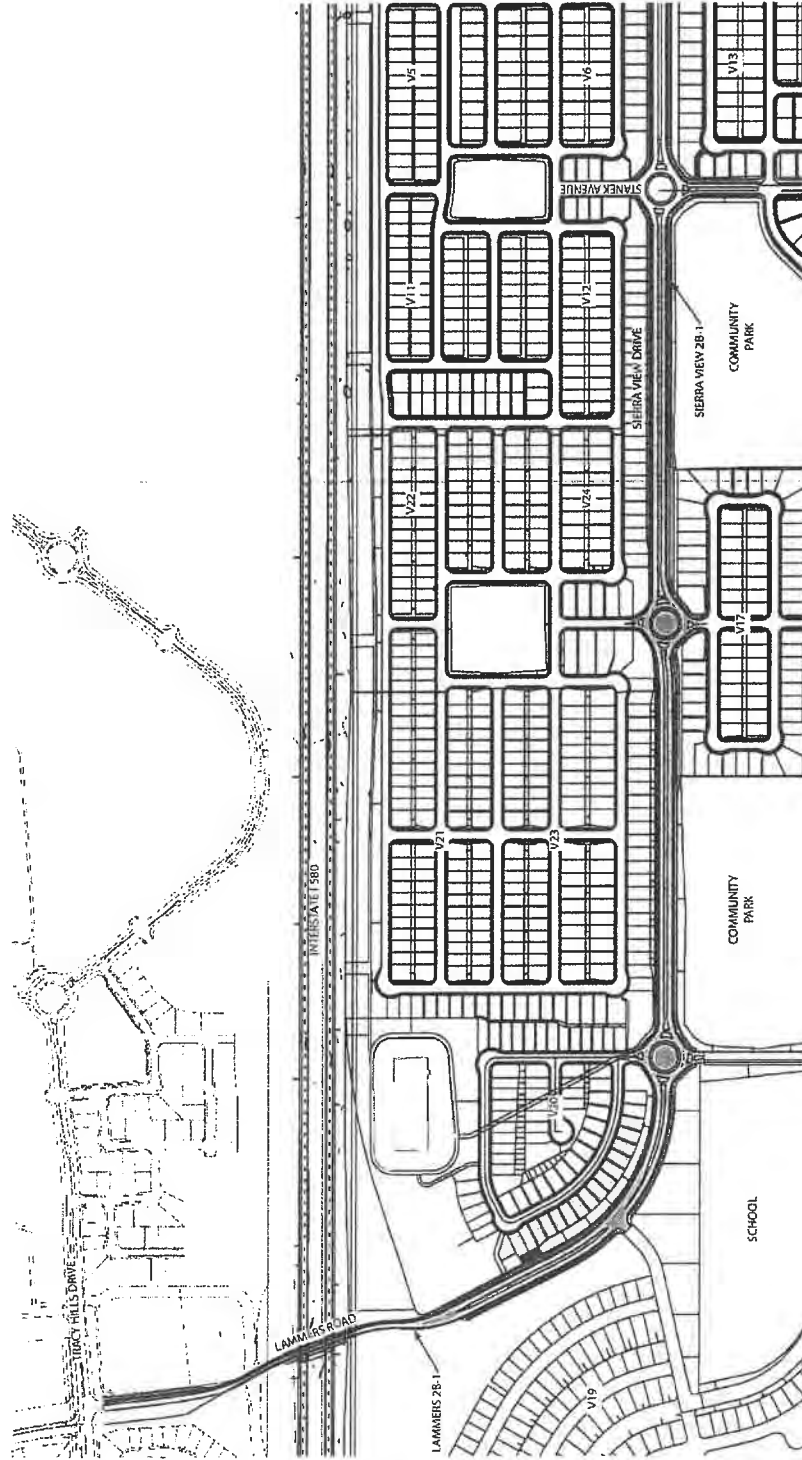
Thence southwesterly, along said east line South 37°53'03" West 25.00 feet;

Thence across New Parcel B, North 52°06'57" West 966.32 feet to the point of beginning.

APN(S): 251-060-31, 251-060-33, 251-060-24 (Portion) and 251-060-34 (Portion);

New APN(s) not yet assessed are as follows:
251-060-40, 251-060-41 and 251-060-43

EXHIBIT "B" Improvement Location



Tracy Hills Phase 2B-1 Sierra View to Lammers OIA Exhibit

TRACY HILLS Phase 3, LLC.

Location Map

 North
 **FORMA**
 Incorporated AS 10/22
 Project No. 2328016
 S:\tracy_hills\phase_3\2B-1\Sierra View to Lammers OIA Exhibit\Map\Map_11.dwg

EXHIBIT "C"

Subdivider's Authorized Representative Information

<u>Name of Person</u>	<u>Company Name</u>	<u>Telephone Number</u>
Sergio Perez	Lennar Homes	916.261.8709
Lisa A. Mikelonis, PE	Integral Communities	925.260.4753

Recording Requested By:

City of Tracy
Development Services
333 Civic Center Plaza
Tracy, CA 95376

And When Recorded Mail To:

City of Tracy
Office of the City Clerk
333 Civic Center Plaza
Tracy, CA 95376
Attn: Adrienne Richardson

(No recording fee under Government Code Section 27383)

SPACE ABOVE THIS LINE FOR RECORDER'S INFORMATION

City of Tracy
OFFSITE IMPROVEMENT AGREEMENT
Tracy Hills Phase 2A Retention Basin Landscaping

This **OFFSITE IMPROVEMENT AGREEMENT** ("**Agreement**") is made and entered into by and between the **CITY OF TRACY** a municipal corporation ("**City**"), and **LENNAR HOMES OF CALIFORNIA, LLC**, a California limited liability company (hereinafter "**Developer**"). The effective date of this Agreement shall be the date on which City executes the Agreement ("**Effective Date**").

Recitals

A. Developer is a party responsible for the construction of the public improvements within a portion of the real property comprising Tracy Hills Phase 2, such portion being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (hereinafter "**Project**"). Tracy Phase 4, LLC, a Delaware limited liability company, is the fee owner holding fee title to the property described in Exhibit A which is intended to be conveyed to Developer and consents to the recordation of this Agreement as evidenced by its signature below.

B. October 19, 2021, the Tracy City Council ("**City Council**") adopted the Tracy Hills Specific Plan Amendment for Tracy Hills Phase 2 and approved various related land use entitlements, including that certain Vesting Tentative Subdivision Map for Tracy Hills Phase 2, Tract 4057, processed under Application No. TSM20-0003 and approved by Resolution No. 2021-154 ("**Tentative Map**"). The Tentative Map includes 1,470 single-family residential lots, in addition to park parcels, HOA recreation area parcel, retention basin parcels, school parcels, and numerous other parcels to be owned and maintained by a Homeowner's Association, Developer or City on approximately 1,143 acres within

*City of Tracy – Offsite Improvement Agreement
For Tracy Hills 2A Retention Basin Landscaping*

the Tracy Hills Specific Plan Area, located south of the I-580 Freeway and west of Corral Hollow Road. The Tentative Map is on file with the City Clerk, and is incorporated herein by this reference.

C. The approval of the Tentative Map by the City Council was subject to specified conditions of approval attached as Exhibit 1 to Resolution No. 2021-154 and are on file with the City Engineer ("**Conditions of Approval**"). The Conditions of Approval describe, among other things, improvements that are required for approval of the Final Subdivision Map pursuant to the Subdivision Map Act, the Subdivision Ordinance, and applicable City Standards.

D. In accordance with the Subdivision Map Act (California Government Code sections 66410, et seq) and the Subdivision Ordinance (Tracy Municipal Code, Title 12), Developer has submitted to the City the Final Subdivision Map for Tract 4182 - Tracy Hills Village 13 (the "**Final Subdivision Map**"). Developer is required to execute this Agreement as a condition of the City's approval of the Final Subdivision Map.

E. Pursuant to the Conditions of Approval, Developer is required to construct the landscaping improvements associated with the Phase 2A retention basin as more particularly depicted in **Exhibit "B"**.

F. In accordance with the Conditions of Approval, Developer has prepared, and the City Engineer has approved, certain improvement plans and specifications (which incorporate portions of the City's Standard Specifications), which describe the improvements that are required for approval of the Final Subdivision Map and are incorporated herein by reference. The approved plans and specifications ("**Approved Plans and Specifications**") include: *thirty-nine (39) sheets of landscape construction drawings entitled "Tracy Hills – Phase 2A – Retention Basin", prepared by FORMA, dated September 19, 2024*. The Approved Plans and Specifications are on file with the City Engineer under Tracking No. ENG23-0014, incorporated herein by reference.

G. Because the required improvements have not been completed, Developer is required to execute this Agreement as authorized by Government Code section 66462.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Scope of Work; Location.** Developer shall perform, or cause to be performed, the work in the manner and as described in the Approved Plans and Specifications, to the satisfaction of the City Engineer pursuant to this Agreement (the "**Work**"). The Work shall be performed, and all materials and labor shall be provided, at Developer's sole expense. No material change shall be made to the scope of Work unless authorized in writing by the City Engineer. Developer may submit a written request to the City Engineer for a change in the Work, as required by Tracy Municipal Code Section 12.36.060(f). To the extent applicable, all of the Work shall be performed by Developer in accordance with the requirements of the State prevailing wage laws. Developer shall perform all Work at the locations and grades shown on the Approved Plans and Specifications. Developer (a) has acquired any

necessary easement or right-of-way or(b) has entered into a separate Agreement with the City to acquire the necessary easement or right-of-way at Developer's expense.

2. **Time of Performance.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
 - 2.1 **Commencement of Work.** The Work shall begin within 60 days after the Effective Date of the Agreement. No later than fifteen (15) days prior to the commencement of such Work, Developer shall provide written notice to the City Engineer of the date on which Developer intends to commence Work. To the extent required, Developer shall not commence Work until after the notice required by this section is properly provided, and Developer shall not commence Work prior to the date specified in the written notice.
 - 2.2 **Schedule of Work.** Concurrently with the written notice of commencement of Work, Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect Developer's prosecution of the Work.
 - 2.3 **Completion of Work.** Developer shall complete all Work by no later than three hundred sixty-five (365) calendar days after Developer's submittal of its notice of commencement of Work pursuant to Section 2.1 above. If the Work is not completed by this date, City Engineer may grant an extension of time if (a) Developer submits a written request for extension at least ten (10) days prior to expiring date of completion, (b) the City Engineer determines that Work is progressing satisfactorily and an extension is warranted, and (c) Developer pays all processing fees for such time extension.
3. **Improvement Security.** Concurrently with the execution of this Agreement, Developer shall furnish contract security, in a form authorized by the Subdivision Map Act including Government Code Sections 66499 *et seq.*) and Tracy Municipal Code Section 12.36.080, in the following amounts:
 - 3.1 **Faithful Performance** security in the amount of **\$707,869.36** to secure faithful performance of this Agreement.
 - 3.2 **Labor and Material** security in the amount of **\$707,869.36** to secure payment by Developer to laborers and materialmen.
 - 3.3 **Warranty** security in the amount of **\$70,786.94** to guarantee improvements against any defective work or labor done or defective materials used in

*City of Tracy – Offsite Improvement Agreement
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performance of Work for one year from the date on which the City Council accepts the Work as complete.

4. **Indemnification.** Developer shall indemnify, defend, and hold harmless City (including its elected officials, officers, agents and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from the performance of the Work by Developer or Developer's agents, representatives, contractors, subcontractors, or employees, except when caused by the active negligence or willful misconduct of City, until such time as all of the following have occurred: (1) the City Council accepts all of the improvements comprising the Work, (2) the City becomes responsible for the maintenance, operation and repair of all of the improvements comprising the Work, and (3) the one year warranty period set forth in Section 14, below, has expired, at which time the indemnification obligations under this Section 4 shall automatically terminate, with regard to any cause of action arising after such date. For avoidance of doubt, Developer's obligations under this Section 4 are in addition to all other Developer's obligations set forth in this Agreement, and shall not affect Developer's warranty obligations set forth in Section 14, below.
5. **Insurance.** Concurrently with the execution of this Agreement by Developer, and before beginning any Work, Developer shall furnish evidence to the City that the following insurance requirements have been satisfied. The insurance requirements contained in this Section 5 are material terms of this Agreement. These insurance coverage requirements below may be satisfied by umbrella or excess liability policies upon City approval.
 - 5.1 **General.** Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.
 - 5.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01) coverage shall be maintained in an amount not less than \$4,000,000 per occurrence and \$8,000,000 general aggregate for general liability, bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse, and underground property hazards.
 - 5.3 **Professional Contracts.** Developer shall cause its design professionals to maintain professional liability insurance that insures against professional errors and omissions that may be made in performing services related to the Work to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate.

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For Tracy Hills 2A Retention Basin Landscaping*

Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Developer agrees to cause its design professionals to maintain continuous coverage through a period no less than three years after completion of the services required pursuant to this Agreement.

- 5.4 **Automobile Liability** (with coverage at least as broad as ISO form 00 01 07 97 for "any auto" including "hired autos" and "non-owned autos") coverage shall be maintained in an amount not less than \$2,000,000 per accident for bodily injury and property damage.

5.4.1 If Developer has no employees, or does not own automobiles, then "hired autos" and "non-owned autos" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

- 5.5 **Workers' Compensation** coverage shall be maintained as required by the State of California.

- 5.6 **Endorsements**. Developer shall obtain endorsements to the commercial general liability and automobile policies with the following provisions:

5.6.1 The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an Additional Insured on Developer's Commercial General Liability policy utilizing endorsement form CG 20 10 (or its equivalent) for ongoing operations and CG 20 37 (or its equivalent) for products/completed operations.

5.6.2 For any claims related to this Agreement, Developer's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of Developer's insurance and shall not contribute with it.

5.6.3 Developer shall require its contractors and subcontractors providing services required by this Agreement (e.g. general contractors, design professionals) to name it and the City as Additional Insureds.

- 5.7 **Notice of Cancellation**. Developer shall notify the City of any cancellation of either the commercial general liability policy or automobile insurance policy before the expiration date. For the purpose of this notice requirement, any material change in the policy before the expiration shall be considered a cancellation. Developer shall immediately obtain a replacement policy.

- 5.8 **Authorized Insurers**. All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance

Commissioner of the State of California to transact the business of insurance in the State of California, with an AM Best rating of at least A-VII.

- 5.9 **Insurance Certificate.** Developer shall provide evidence of compliance with the commercial general liability insurance and automobile insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City Attorney before the City executes this Agreement.
- 5.10 **Substitute Certificates.** No later than thirty (30) days before the policy expiration date of any insurance policy required by this Agreement, Developer shall provide a substitute certificate of insurance.
- 5.11 **Developer's Obligation.** Maintenance of insurance by Developer as specified in this Agreement shall in no way be interpreted as relieving Developer of any responsibility whatsoever (including indemnity obligations under this Agreement), and Developer may carry, at its own expense, such additional insurance as it deems necessary.
6. **Independent Contractor Status.** Developer is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Developer is not City's employee and Developer shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.
7. **Default**
 - 7.1 **Notice of Default.** In the event that Developer is in default of this Agreement, as defined in this section, the City Engineer shall provide written notice to Developer and Developer's surety (if any) in which the default is described.
 - 7.2 **Events of default.** Developer shall be in default ("Default") of this Agreement if the City Engineer determines that any one of the following conditions exist (which conditions are not intended to constitute the exclusive bases for default):
 - 7.2.1 Developer fails to complete the work by the Trigger Date as required by the Conditions.
 - 7.2.2 Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.
 - 7.2.3 Developer abandons the Work site.

7.2.4 Developer fails to perform one or more requirements of this Agreement and fails to cure any such non-performance pursuant to Section 7.3 below.

7.2.5 Developer fails to replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.

7.2.6 Developer violates any legal requirement related to the Work and fails to cure such violation pursuant to Section 7.3 below.

7.3 **Cure of Default.** In the event that Developer fails, within thirty (30) calendar days after receipt of written notice from the City, to either cure the default or provide adequate written assurance to the reasonable satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in its discretion, take any or all of the following actions:

7.3.1 Demand that Developer complete performance of the Work.

7.3.2 Demand that Developer's surety (if any) complete performance of the Work.

7.3.3 Resort to any judicial remedies available to the City.

8. **Ownership of Work.** All original documents prepared by Developer for this Agreement are the property of the City and shall be given to the City at the completion of Developer's Work, or upon demand from the City. Prior to acceptance of the Work, Developer shall submit the as-built drawings in AutoCAD format Release-14 or higher.

9. **Repair of any Damage.** In the event and to the extent Developer or its agents, representatives, contractors, subcontractors, or employees, in connection with performance of the Work, cause any damage to property owned by City or other property owners, then Developer shall promptly take all reasonable steps to repair or replace (as necessary) such property to remedy the damage caused thereto.

10. **Inspection by the City; Inspection Fees.** To permit City to inspect the Work, Developer shall, at all times, provide to City reasonable and safe access to the Work site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

10.1 **Inspection Fees.** Concurrently with the execution of this Agreement by Developer, and prior to the commencement of any Work, Developer shall pay the City Inspection Fees in the amount of three and one-half percent (3.5%) of the estimated Project costs (as approved by the City Engineer).

In the event that the City requires an independent inspection, the City may retain an independent inspector to inspect the Work and prepare an inspection report for the City, and all costs associated therewith shall be borne by Developer.

11. **[Intentionally Left Blank]**
12. **Developer's Authorized Representative.** At all times during the progress of the Work, Developer shall have a competent foreperson or superintendent ("**Authorized Representative**") on site with authority to act on Developer's behalf. Developer shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. Developer shall, at all times, keep the City Engineer reasonably informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work. **Exhibit "C"** attached hereto includes the initial contact information referenced in this Section 12.
13. **Acceptance of Work.** Prior to acceptance of the Work by the City Council, Developer shall be solely responsible for maintaining the quality of the Work and maintaining safety at the Work site. Developer's obligations to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the City Council has accepted the Work as complete.
14. **Warranty Period.** Developer shall warrant the quality of the Work, in accordance with the terms of the Approved Plans and Specifications, for a period of one year after acceptance of the Work by the City Council. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of Developer under this Agreement, Developer shall be in default of this Agreement and shall without delay and without any cost to City repair, replace or reconstruct any defective improvements.
15. **[Intentionally Left Blank]**
16. **Miscellaneous.**
 - 16.1 **Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be

*City of Tracy – Offsite Improvement Agreement
For Tracy Hills 2A Retention Basin Landscaping*

personally delivered or electronically mailed to the respective party as follows:

To City	To Developer:
City of Tracy 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer notice@cityoftracy.org	Lennar Homes of California, LLC 2603 Camino Ramon, Suite 525 San Ramon, CA 94583 Attn: Bridgit Koller bridgit.koller@lennar.com
With a copy to:	With a copy to:
City Attorney 333 Civic Center Plaza Tracy, CA 95376 Attn: City Engineer attorney@cityoftracy.org	Tracy Phase 4, LLC Attn: John Stanek/Caren Read 888 San Clemente, Suite 100 Newport Beach, CA 92660 jstanek@integralcommunities.com

Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the email address designated above, or (2) two working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

- 16.2 **Approvals by City.** Any approval or consent that is to be given by City under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on City.
- 16.3 **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 16.4 **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 16.5 **Assignment and Delegation.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of Developer's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.
- 16.6 **Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related

to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

16.7 **Permits, Licenses, and Compliance with Law.** Developer shall, at its expense, obtain and maintain all necessary permits and licenses for the performance of the Work. Prior to the commencement of the Work, Developer shall obtain a City of Tracy Business License. Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.

16.8 **Entire Agreement; Exhibits; Severability.** The recitals and all defined terms in this Agreement are part of this Agreement. This Agreement, including all documents incorporated by reference, comprises the entire integrated understanding between the parties concerning the improvements to be constructed pursuant to this Agreement. This Agreement supersedes all prior negotiations, representations, or agreements. The following Exhibits attached hereto are incorporated into this Agreement and made a part hereof by this reference:

- A. Description of Property (Recital A.)
- B. Improvement Location (Recital E.)
- C. Subdivider's Authorized Representative Information (Section 12.)

If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

16.9 **Signatures.** The individuals executing this Agreement on behalf of Developer represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of Developer. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

[Signatures of Following Pages]

*City of Tracy – Offsite Improvement Agreement
For Tracy Hills 2A Retention Basin Landscaping*

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF TRACY,

a municipal corporation

DEVELOPER:

LENNAR HOMES OF CALIFORNIA, LLC
a California limited liability company

By: Dan Arriola
Title: Mayor

Date: _____

By: 
Title: Vice President

Date: 1/13/25

Attest:

By: Adrienne Richardson
Title: City Clerk

Date: _____

Approved As To Form:

By: Andrew Shen
Title: Interim City Attorney

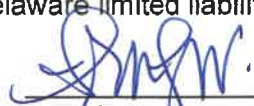
Date: _____

*City of Tracy – Offsite Improvement Agreement
For Tracy Hills 2A Retention Basin Landscaping*

Consent to Recordation

Tracy Phase 4, LLC, is the owner in fee simple of the real property described in Exhibit A and hereby consents to the recordation of this Subdivision Improvement Agreement.

TRACY PHASE 4, LLC
a Delaware limited liability company

By: 
Name: Aretina Wegener
Its: Authorized Representative

Date: January 15, 2025

[ATTACHED]

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

STATE OF CALIFORNIA
COUNTY OF Contra Costa

On this 13th day of January, 2025 before me, Lauren Mary Christopher,
Notary Public, personally appeared Bridgit Koller,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature: L. Christopher

(Seal)

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

STATE OF CALIFORNIA
COUNTY OF ORANGE

On this 15th day of January, 2025 before me, Anne Nguyen,
Notary Public, personally appeared Aretina Wegener,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by
~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____



(Seal)

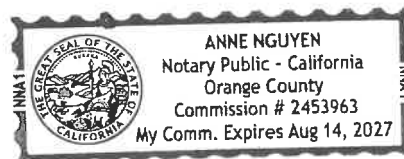


EXHIBIT "A"
(Legal Description of Property)

LEGAL DESCRIPTION

Real property in the City of Tracy, County of San Joaquin, State of California, described as follows:

Parcel 1:

New Parcel A of Certificate of Compliance for Lot Line Adjustment No. MS 23-0004 recorded November 28, 2023 as Instrument No. 2023-096708 of official records and more particularly described as follows:

Real property situate in the City of Tracy, County of San Joaquin, State of California and being all of NEW PARCEL 1 as said Parcel is described and depicted in the Grant Deed to TRACY PHASE 4, LLC, recorded on August 9, 2023 as Document No. 2023-062989 of Official Records of San Joaquin County and being a portion of NEW PARCEL 2 as said Parcel is described and depicted in the Grant Deed to TRACY PHASE 3, LLC, recorded on August 9, 2023 as Document No. 2023-062990 of Official Records of San Joaquin County, and being more particularly described as follows:

BEGINNING at the most northerly corner of said NEW PARCEL 1 thence along the east lines of said New Parcels 1 and 2 the following twelve (12) courses:

- 1) South 53° 19' 26" East - 660.88 feet;
- 2) South 56° 06' 02" East - 501.22 feet;
- 3) South 52° 05' 47" East - 700.00 feet;
- 4) South 50° 03' 03" East - 700.45 feet;
- 5) South 56° 51' 36" East - 301.04 feet;
- 6) South 52° 05' 47" East - 1000.00 feet;
- 7) South 49° 48' 21" East, at 304.50 feet passing the common east corner to New Parcels 1 and 2, in all 500.40 feet;
- 8) South 53° 43' 58" East - 700.29 feet;
- 9) South 52° 05' 47" East - 1300.00 feet;
- 10) South 50° 11' 14" East - 600.33 feet;
- 11) South 52° 05' 47" East - 300.00 feet;
- 12) South 53° 14' 32" East - 811.28 feet for the southeasterly corner hereof;

Thence crossing through NEW PARCEL 2 the following sixty-one (61) courses:

- 1) South 36° 45' 28" West - 151.15 feet;
- 2) North 52° 06' 57" West - 17.00 feet;
- 3) South 37° 53' 03" West - 41.50 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;
- 4) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 5) South 37° 53' 03" West - 167.00 feet for the beginning of a curve to the right;
- 6) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 7) South 37° 53' 03" West - 57.00 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;
- 8) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 9) South 37° 53' 03" West - 80.00 feet for the beginning of a curve to the right;
- 10) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of 90° 00' 00";
- 11) South 37° 53' 03" West - 57.00 feet for the beginning of a curve to the right from which the center bears South 37° 53' 03" West;

- 12) in a southerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of $90^{\circ} 00' 00''$;
- 13) South $37^{\circ} 53' 03''$ West - 168.00 feet for the beginning of a curve to the right;
- 14) in a westerly direction 39.27 feet along the arc of said curve to the right having a radius of 25.00 feet and through a central angle of $90^{\circ} 00' 00''$;
- 15) South $37^{\circ} 53' 03''$ West - 57.00 feet;
- 16) South $52^{\circ} 06' 57''$ East - 5.00 feet for the beginning of a curve to the right;
- 17) in a southerly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
- 18) South $37^{\circ} 53' 03''$ West - 176.00 feet for the beginning of a curve to the right;
- 19) in a westerly direction 39.27 feet along the arc of said curve to the right, having a radius of 25.00 feet and through a central angle of $90^{\circ} 00' 00''$;
- 20) South $37^{\circ} 53' 03''$ West - 57.00 feet;
- 21) South $52^{\circ} 06' 57''$ East - 64.68 feet;
- 22) South $37^{\circ} 53' 03''$ West - 208.00 feet;
- 23) South $52^{\circ} 06' 57''$ East - 876.82 feet for the beginning of a curve to the right;
- 24) in a southerly direction 128.81 feet along the arc of said curve to the right, having a radius of 82.00 feet and through a central angle of $90^{\circ} 00' 00''$;
- 25) South $37^{\circ} 53' 03''$ West - 292.50 feet for the beginning of a curve to the right;
- 26) in a westerly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
- 27) North $52^{\circ} 06' 57''$ West - 21.00 feet;
- 28) South $37^{\circ} 53' 03''$ West - 57.00 feet;
- 29) South $52^{\circ} 06' 57''$ East - 12.50 feet;
- 30) South $37^{\circ} 53' 03''$ West - 3.00 feet;
- 31) South $52^{\circ} 06' 57''$ East - 6.00 feet for the beginning of a curve to the right;
- 32) in a southerly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
- 33) South $37^{\circ} 53' 03''$ West - 942.10 feet for the beginning of a curve to the left;
- 34) in a southwesterly direction 200.31 feet along the arc of said curve to the left, having a radius of 538.50 feet and through a central angle of $21^{\circ} 18' 47''$;
- 35) South $16^{\circ} 34' 16''$ West - 282.68 feet for the beginning of a curve to the right;
- 36) in a southwesterly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
- 37) North $73^{\circ} 25' 44''$ West - 16.00 feet;
- 38) South $16^{\circ} 34' 16''$ West - 57.00 feet;
- 39) South $73^{\circ} 25' 44''$ East - 16.00 feet for the beginning of a curve to the right;
- 40) in a southeasterly direction 31.42 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $90^{\circ} 00' 00''$;
- 41) South $16^{\circ} 34' 16''$ West - 215.00 feet for the beginning of a curve to the left;
- 42) in a southerly direction 45.53 feet along the arc of said curve to the left, having a radius of 1018.00 feet and through a central angle of $02^{\circ} 33' 45''$ for the beginning of a reverse curve;
- 43) continuing in a southerly direction 43.92 feet along the arc of said reverse curve, having a radius of 982.00 feet and through a central angle of $02^{\circ} 33' 45''$;
- 44) South $16^{\circ} 34' 16''$ West - 74.99 feet for the beginning of a curve to the right;
- 45) in a southwesterly direction 30.46 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $87^{\circ} 15' 46''$;
- 46) North $76^{\circ} 09' 59''$ West - 1.68 feet;
- 47) South $13^{\circ} 50' 01''$ West - 56.00 feet;
- 48) South $76^{\circ} 09' 59''$ East - 5.10 feet for the beginning of a curve to the right;
- 49) in a southeasterly direction 32.37 feet along the arc of said curve to the right, having a radius of 20.00 feet and through a central angle of $92^{\circ} 44' 14''$;
- 50) South $16^{\circ} 34' 16''$ West - 7.74 feet;

51) South 73° 25' 44" East - 57.00 feet;
 52) South 16° 34' 16" West - 37.53 feet;
 53) South 52° 06' 57" East - 595.39 feet;
 54) South 40° 06' 22" West - 131.53 feet;
 55) South 29° 13' 05" West - 41.67 feet;
 56) South 47° 07' 54" West - 115.46 feet;
 57) South 45° 09' 31" West - 241.24 feet;
 58) South 45° 21' 00" West - 69.92 feet;
 59) South 61° 48' 50" West - 305.17 feet;
 60) South 45° 20' 57" West - 485.89 feet;
 61) South 85° 06' 47" West - 214.60 feet to a southwesterly corner of said NEW PARCEL 2, said corner being at the northeasterly terminus of a line labeled as North 22° 25' 06" East - 50.07 feet;

Thence along the west lines of New Parcels 1 and 2, the following thirty-six (36) courses:

1) North 67° 34' 55" West - 91.49 feet;
 2) North 53° 52' 01" West - 918.37 feet;
 3) North 19° 27' 10" West - 85.89 feet;
 4) South 86° 30' 03" West - 46.95 feet for the beginning of a curve to the right from which the center bears North 03° 19' 57" West;
 5) in a northwesterly direction 1081.94 feet along the arc of said curve to the right, having a radius of 921.00 feet and through a central angle of 67° 18' 29";
 6) North 26° 02' 37" West - 364.68 feet;
 7) North 28° 16' 00" West - 415.82 feet;
 8) North 37° 55' 00" West - 356.76 feet;
 9) North 41° 08' 50" West - 347.13 feet;
 10) North 44° 08' 49" West - 62.07 feet;
 11) North 24° 46' 15" West - 435.91 feet;
 12) North 00° 46' 52" West - 53.79 feet;
 13) North 05° 22' 35" East - 382.86 feet;
 14) North 09° 49' 55" East - 214.10 feet;
 15) North 03° 22' 45" East - 395.20 feet;
 16) North 19° 38' 09" West - 2750.87 feet;
 17) North 10° 40' 59" West, at 81.67 feet passing the common west corner to NEW PARCELS 1 & 2, in all 293.96 feet;
 18) North 72° 57' 45" West - 464.35 feet;
 19) North 78° 35' 30" West - 261.49 feet;
 20) North 73° 29' 44" West - 210.75 feet;
 21) South 80° 05' 25" West - 222.48 feet;
 22) North 17° 43' 06" West - 252.76 feet;
 23) North 15° 25' 05" East - 144.97 feet;
 24) North 16° 17' 49" West - 107.32 feet;
 25) North 53° 28' 10" West - 77.09 feet;
 26) North 32° 20' 29" West - 120.34 feet;
 27) North 08° 22' 12" West - 196.02 feet;
 28) North 10° 59' 55" East - 175.33 feet;
 29) North 20° 34' 58" East - 170.92 feet;
 30) North 07° 48' 28" East - 336.20 feet;
 31) North 00° 09' 49" East - 144.59 feet;
 32) North 08° 00' 19" West - 330.77 feet;
 33) North 03° 33' 57" East - 523.83 feet;
 34) North 54° 38' 01" West - 83.61 feet;
 35) North 43° 40' 49" East - 758.85 feet;

36) North 36° 40' 34" East -99.99 feet to the POINT OF BEGINNING.

Except therefrom all oil, gas, hydrocarbons and other minerals as conveyed to Bertha G. Berger, a widow, Vera Grunauer, a single woman, and Doris G. Powell, a single woman, by deed recorded March 27, 1959 in Book 2160, Page 308, of official records, which provides as follows: together with all rights necessary and proper for the purpose of drilling and exploring for said substances and removing the same therefrom, as to the portion of said land described therein.

Also except therefrom all oil, gas, mineral and hydrocarbon substances lying below a depth of 500 feet below the surface, without the right of surface entry, as reserved in the deed recorded July 20, 1992 as document no. 92083244 San Joaquin County records, as to the portion of said land described therein.

Also except therefrom all oil, gas, and mineral rights lying below a depth of 500 feet below the surface, without the right of surface entry, as reserved in the deed recorded February 23, 2006, instrument no. 2006-040904, of official records, as to the portion of said land described therein.

Parcel 2:

A Non-exclusive and perpetual easement for ingress and egress appurtenant to Parcel 1 above, more particularly described in that certain Grant of Easement (Access Easement), recorded July 11, 2024, as Instrument No. 2024-057743, of Official Records, as follows:

Real property situate in the City of Tracy, County of San Joaquin, State of California and being a portion of New Parcel B, as said Parcel is shown on the Grant Deed to DRP Solaris Multistate, LLC, recorded as Document No. 2024-003609, Official Records of San Joaquin County, being more particularly described as follows:

Commencing at a westerly corner of said New Parcel B, said corner being at the northwest terminus of a course labeled as having a bearing of North 52°06'57" West, 876.82 feet;

Thence northeasterly, along the west line of New Parcel B North 37°53'03" East, 78.00 feet to the point of beginning;

Thence continuing along said west line, North 37°53'03" East, 20.00 feet;

Thence crossing through New Parcel B for the following three (3) courses:

- 1) South 52°06'57" East, 751.77 feet;
- 2) South 78°40'51" East, 11.18 feet;
- 3) South 52°06'57" East 204.56 feet to the east line of said New Parcel B;

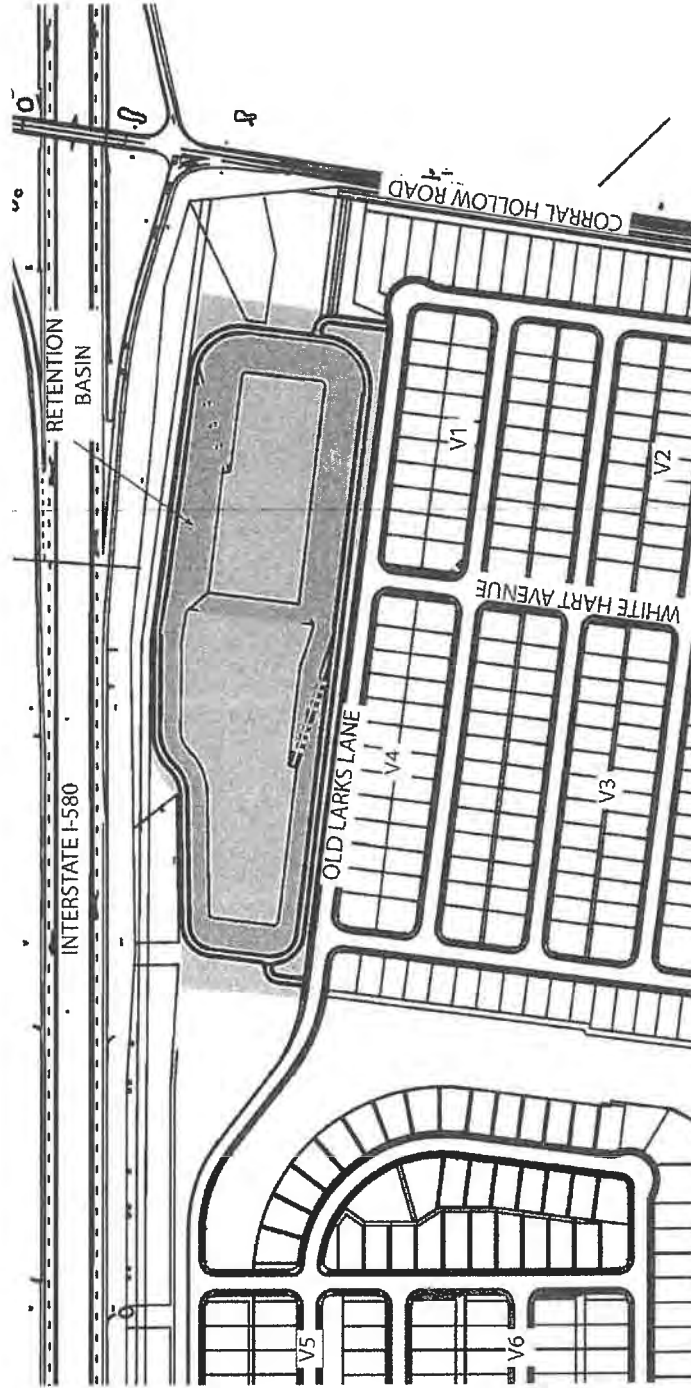
Thence southwesterly, along said east line South 37°53'03" West 25.00 feet;

Thence across New Parcel B, North 52°06'57" West 966.32 feet to the point of beginning.

APN(S): 251-060-31, 251-060-33, 251-060-24 (Portion) and 251-060-34 (Portion);

New APN(s) not yet assessed are as follows:
251-060-40, 251-060-41 and 251-060-43

EXHIBIT "B" Improvement Location



Retention Basin Location Map

Tracy Hills Phase 2A Retention Basin OIA Exhibit

FORM

North

1/4" = 1' Scale

December 11, 2014

Project File # 2746000

Project File # 2746000

Project File # 2746000

Project File # 2746000

Project File # 2746000

Project File # 2746000

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EXHIBIT "C"

Subdivider's Authorized Representative Information

<u>Name of Person</u>	<u>Company Name</u>	<u>Telephone Number</u>
Sergio Perez	Lennar Homes	916.261.8709
Lisa A. Mikelonis, PE	Integral Communities	925.260.4753

Agenda Item 1.N

RECOMMENDATION

Staff recommends that the City Council adopt a resolution:

- 1) Determining that compliance with the standard procurement processes is not in the best interests of the City pursuant to Tracy Municipal Code 2.20.140(b)(6) and dispensing such requirement for the procurement of security and alarm services for City facilities.**
- (2) Reinstating the existing General Services Agreement with B.I.C SEC Security (Contractor) and authorizing execution of Amendment No. 2 to be effective retroactively from July 1, 2024; and**
- (3) Authorizing payment in the amount of \$64,200 for security and alarm services, including equipment, monitoring, and inspections.**
- (4) Authorizing an administrative option to extend the agreement on a month-to-month basis for up to an additional six (6) months.**

EXECUTIVE SUMMARY

This agenda item seeks adoption of resolution by the City Council that compliance with the standard procurement processes is not in the best interests of the City pursuant to Tracy Municipal Code 2.20.140(b)(6) and dispensing such requirement for the procurement of security and alarm services for City facilities and reinstating the existing General Services Agreement (Agreement) with the Contractor for these services. Staff is also requesting the City Council to adopt a Resolution authorizing Amendment No. 2 (Amendment) to the Agreement. This reinstatement and Amendment is required as City has been utilizing services from the Contractor since July 1, 2024 without any formal contract as the existing Agreement as amended by Amendment No. 1 expired on April 30, 2024. This action is required to issue payment to the Contractor for services rendered and to provide security and alarm services, including equipment, monitoring, and inspections, for various City facilities from July 1, 2024, to June 30, 2025, in the amount of \$64,200. The Contractor has been providing these services for the City since July 1, 2015, without a formal contract (except for the Temporary Housing facility which had a contract that has since expired). To ensure the uninterrupted provision of security services and to provide time to award a new contract in accordance with City procurement procedures, Council approval is required to issue payment to the Contractor for provision of security services for this fiscal year.

BACKGROUND AND LEGISLATIVE HISTORY

The City of Tracy requires security and alarm services, including equipment, monitoring, and inspections for various City facilities to ensure the safety and protection of City property and personnel. The City began utilizing the Contractor's services on July 1, 2015, initially for only a few facilities requiring security monitoring. At that time, no formal contract was established. Over the past ten years, additional facilities have been added to receive various security services, all without formal contracts. The only exception was the Temporary Housing facility, whose contract has since expired.

The relationship history with the Contractor is as follows:

- July 1, 2015: Contractor began providing services for several City facilities without a formal contract.
- September 26, 2023: Stand-alone contract was established for the Temporary Housing facility (expired April 2024).
- Present: Contractor is providing security services for most City facilities, including the Temporary Housing facility. Total cost for the entire fiscal year is \$64,200.

ANALYSIS

To obtain the required security services in the short term, compliance with the formal competitive bidding procedures, as outlined in the Tracy Municipal Code (TMC) 2.20.140(b)(6), is not in the best interest of the City. The reasons are as follows:

- Continuity of Service: Contractor has been providing satisfactory service since 2015, and an abrupt change could disrupt the security of City facilities.
- Time Constraints: The City needs time to prepare a comprehensive request for proposals (RFP) for a long-term security services contract.
- Cost-Effectiveness: Obtaining the required security services from the Contractor is estimated to be more cost-effective than initiating an emergency procurement process.

Total cost for Contractor to provide monitoring services from July 1, 2024, to June 30, 2025 is \$64,200. Approving payment to Contractor for these services will provide time to develop and issue an RFP, evaluate proposals, and transition to a new long-term contract.

CEQA DETERMINATION

The action is for services only and does not involve any construction. As such, this action is not a "project" under the California Environmental Quality Act.

STRATEGIC PLAN

This agenda item is consistent with the City's Public Safety Strategy and meets the goals to ensure the security and protection of City facilities, staff, and the public.

FISCAL IMPACT

The cost of the services provided by B.I.C SEC Security beginning July 1, 2024, is \$64,200, and is accounted for in the adopted FY24-25 annual budget, distributed across relevant department budgets based on the facilities served.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution:

1) Determining that compliance with the standard procurement processes is not in the best interests of the City pursuant to Tracy Municipal Code 2.20.140(b)(6) and dispensing such requirement for the procurement of security and alarm services for City facilities.

(2) Reinstating the existing General Services Agreement with B.I.C SEC Security (Contractor) and authorizing execution of Amendment No. 2 to be effective retroactively from July 1, 2024.

(3) Authorizing payment in the amount of \$64,200 for security and alarm services, including equipment, monitoring, and inspections.

(4) Authorizing an administrative option to extend the agreement on a month-to-month basis for up to an additional six (6) months.

Prepared by: Jim Thompson, Operations Superintendent

Reviewed by: David Murphy, Assistant Director of Operations
Gordon MacKay, Interim Director of Public Works
Sara Castro, Director of Finance
Andrew Shen, Interim City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments: A – Amendment No. 2 with BIC SEC Security

Reinstatement and Amendment No. 2 To General Services Agreement

This Amendment No. 2 (**Amendment**) to the General Services Agreement entered between the City of Tracy, a municipal corporation (**City**), and B.I.C. SEC Security, Inc., a California corporation (**Contractor**) dated 2/13/25 (**Agreement**) is entered into as of the date of last signature below. City and Consultant are referred to individually as "**Party**" and collectively as "**Parties**."

Recitals

- A. The Agreement was executed pursuant to the authority granted in Resolution No. 2023-179, approved by the Tracy City Council on September 5, 2023.
- B. Amendment No. 1 was executed pursuant to the authority granted in Resolution No. 2024-028, approved by the Tracy City Council on March 5, 2024.
- C. The Agreement had an initial term of one year with a not to exceed annual budget of \$66,888.
- D. The term of the original Agreement expires on April 30, 2024.
- E. Parties now desire to reinstate the Agreement and execute Amendment No. 2 to the Agreement
- F. Parties hereby intend and agree that this Reinstatement and Amendment shall be effective as of July 1, 2024, and at all times thereafter, with the same force and effect as if this Amendment had been executed on that date.

Now therefore, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Terms of Amendment.

Section 1 Scope of Work is hereby amended and replaced in its entirety to read as follows:

Contractor shall perform the services described in Exhibit A and A-2 attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Contractor's Authorized Representative: B.I.C. SEC Security Inc. Contractor shall not replace its Authorized Representative, nor shall Contractor use or replace any subcontractors or subconsultants, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in the personnel or subcontractor may result in the termination of this agreement.

Section 2.1 Term is hereby amended and replace in its entirety to read as follows:

The term of this Agreement shall begin on July 1, 2024 and end on June 30, 2025, unless terminated in accordance with Section 6.

2. **Effect.** The Parties hereto ratify the Agreement and, except as expressly modified by this Amendment, all provisions of the Agreement will remain unchanged and in full force and effect.
3. **Entire Agreement.** This Amendment represents the entire agreement and understanding of the Parties and shall supersede any prior agreement—written or oral—between the Parties. This Amendment will not be valid and enforceable until executed by all of the Parties hereto. This Amendment may not be modified or altered except through a subsequent writing signed by both Parties.
4. **Severability.** If any term of this Amendment is held invalid by a court of competent jurisdiction, this Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in effect.
5. **Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter and to execute this Amendment. This Amendment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. This Amendment may be executed in one or more counterparts. All counterparts so executed shall constitute one contract, binding on all Parties, even though all Parties are not signatory to the same counterpart.

The Parties agree to the full performance of the terms set forth here.

City of Tracy

By: _____
Dan Arriola
Title: Mayor
Date: _____

Contractor

B.I.C. SEC Security, Inc., a California corporation

By: _____
Title: CEO
Date: 2-13-2025

Attest:

By: _____
Necy Lopez, Interim City Clerk

Federal Tax Employer ID No. 7705810053

By: _____
Title: CFO
Date: 2-13-2025

Approved as to form.

By: _____
Andrew Shen, Interim City Attorney

Exhibit A-2
Scope of Work

Police Annex: 400 East 10 th Street	Animal Shelter 2375 Paradise Road
Tracy Museum 1141 Adams Street	Community Center 950 East Street
Fire Admin 835 N. Central Ave.	Joe Wilson Pool 900 Lowell Street
Lolly Hansen Senior Center 375 E. 9th Street	Fire Station (91) 1701 W. 11th Street
Tracy Sports Complex 955 Crossroads Drive	Police Department North Annex - Evidence Facility 1325 N. MacArthur Drive
City Hall 333 Civic Center Plaza	Waste Water Treatment Plant 3900 Holly Drive
Lammersville 1753 Blanford Lane	Police Department Antenna 15178 W Shulte Rd 15180 W Shulte Rd
Boyd Service Center 520 N. Tracy Blvd	John Jones Water Treatment Plant 6649 S. Tracy Blvd
Support Services 325 Civic Center Plaza	Emergency Housing: 370 W Arbor Ave.
Tracy Transit Station 50 E. 6th Street	Tracy Hills Water Tank 5403 Tracy Hills Dr
Grand Theater 715 N. Central Ave	Tracy Hills Phase 23 Tank 7963 S. Corral Hollow Rd.
Fire Station 96 1800 W. Grantline Road	Support Services- Fire 301 W. Grantline Road
Fire Station 92 1035 E. Grantline Road	Tracy Police Department 1000 Civic Center Drive
Tracy Library 20 E. Eaton Street	

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

-
- 1) DETERMINING THAT COMPLIANCE WITH THE STANDARD PROCUREMENT PROCESSES IS NOT IN THE BEST INTERESTS OF THE CITY PURSUANT TO TRACY MUNICIPAL CODE 2.20.140(B)(6) AND DISPENSING SUCH REQUIREMENT FOR THE PROCUREMENT OF SECURITY AND ALARM SERVICES FOR CITY FACILITIES.**
 - 2) REINSTATING THE EXISTING GENERAL SERVICES AGREEMENT WITH B.I.C SEC SECURITY (CONTRACTOR) AND AUTHORIZING EXECUTION OF AMENDMENT NO. 2 TO BE EFFECTIVE RETROACTIVELY FROM JULY 1, 2024.**
 - 2) AUTHORIZING PAYMENT IN THE AMOUNT OF \$64,200 FOR SECURITY AND ALARM SERVICES, INCLUDING EQUIPMENT, MONITORING, AND INSPECTIONS, FOR A TERM OF ONE YEAR FROM JULY 1, 2024, TO JUNE 30, 2025.**
 - 3) AUTHORIZING AN ADMINISTRATIVE OPTION TO EXTEND THE AGREEMENT ON A MONTH-TO-MONTH BASIS FOR UP TO AN ADDITIONAL SIX (6) MONTHS.**

WHEREAS, the City of Tracy (City) requires security and alarm services, including equipment, monitoring, and inspections for various City facilities to ensure the safety and protection of City property and personnel; and

WHEREAS, the City began utilizing B.I.C SEC Security on July 1, 2015, to provide burglar and fire monitoring initially for a handful of city facilities without establishing a formal contract. Since then, multiple facilities have been added to receive burglar and fire monitoring, all without a formal contract except for one facility, that has had the limited time contract expire; and

WHEREAS, the City has received equipment and monitoring services from B.I.C SEC as of July 1, 2024, for which annual payment in the amount of \$64,200 has not been issued because the existing General Service Agreement expired on April 30, 2024 and a valid Contract is required for City to issue a payment; and

WHEREAS, staff is in process of preparing a Request for Proposals for these services in future; and

WHEREAS, this reinstatement and Amendment is required to receive uninterrupted services during this transition and issuance of payment for the services already received by the City; now therefore be it;

RESOLVED: The City Council for the City of Tracy hereby finds that compliance with the standard procurement process is not in the best interest of the City pursuant to Tracy Municipal Code 2.20.140(b)(6) and dispensing such requirement for the procurement of security and alarm services for City facilities; and be it

FURTHER RESOLVED: The City Council hereby reinstates the existing General Services Agreement with B.I.C SEC Security and authorizes execution of Amendment No.2 to be effective retroactively from July 1, 2024; and be it

FURTHER RESOLVED: Authorize payment to B.I.C SEC Security for security and alarm services, including equipment and inspections for a term of one year from July 1, 2024, to June 30, 2025, in the amount of \$64,200; and be it

FURTHER RESOLVED: Authorize an administrative option to extend the agreement on a month-to-month basis for up to an additional six (6) months.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 18th day of February, 2025, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

ATTEST: _____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of
the City of Tracy, California

February 18, 2025

Agenda Item 3.A

RECOMMENDATION

Introduce an Ordinance adding Section 1.24.040 to Chapter 1.24 of the Tracy Municipal Code establishing an administrative remedies procedure for challenges to fees, charges, and assessments.

EXECUTIVE SUMMARY

Staff recommends that the City Council introduce an Ordinance adding Section 1.24.040 to Chapter 1.24 of the Tracy Municipal Code establishing an administrative remedies procedure for challenges to fees, charges, and assessments.

BACKGROUND AND LEGISLATIVE HISTORY

Proposition 218, enacted in 1996, amended the California Constitution to establish stricter requirements for local governments regarding property-related fees, charges, and assessments. Under Proposition 218, local governments must conduct a public hearing and allow property owners to file written protests against proposed fees, charges, and assessments. If a majority of property owners submit protests, the proposal is not adopted.

However, Proposition 218 does not provide a clear mechanism for addressing situations where ratepayers fail to raise timely objections during the protest process but later attempt to challenge the fees, charges, or assessments in court. Assembly Bill 2257 (2024) seeks to address this issue by providing a procedural safeguard that will limit the ability of ratepayers to challenge a fee, charge, or assessment after the close of the protest hearing if they failed to submit a timely written objection.

Adopting AB 2257 is consistent with Proposition 218 and provides an additional tool for local governments to ensure the integrity of the protest process. The bill strengthens the City's ability to defend against court challenges by clarifying that ratepayers must raise objections during the official protest period. This ordinance will help reduce frivolous or late legal challenges, which could undermine the City's fiscal stability.

ANALYSIS

This ordinance would prohibit a person or entity from bringing a judicial action or proceeding alleging noncompliance with the constitutional provisions for any new, increased, or extended fee or assessment, as defined, unless that person or entity has timely submitted to the local agency a written objection to that fee or assessment that specifies the grounds for alleging noncompliance, as specified. If the agency complies with the public process described by AB 2257, litigants would be required to participate in the City's public process prior to challenging an adopted fee or assessment. AB 2257 would also limit the scope of evidence that could be introduced in litigation.

Agenda Item 3.A

February 18, 2025

Page 2

This ordinance establishes the process the City must follow to limit challenges in this way. The City must:

1. Make the proposed fee, charge, or assembly publicly available at least 45 days before the deadline for submitting written objections;
2. Post a written basis for the proposed fee, charge, or assessment on the City's website and include a link to that website on public hearing notices regarding the proposed adoption of the proposed fee, charge, or assessment;
3. Mail the written basis for the proposed fee, charge, or assessment to ratepayers or property owners upon request;
4. Provide at least 45 days for ratepayers or property owners to submit written objections to the fee, charge, or assessment;
5. Respond in writing to any timely submitted objections with an explanation for keeping or changing the proposed fee, charge or assessment;
6. Present any timely submitted objections and responses thereto to the City Council for its consideration, either before or during the public hearing on the proposed fee, charge or assessment;
7. Include on its public hearing notices a statement in bold-faced type of 12 points or larger:
 - a. that all written objections must be submitted to the City Clerk by the end of public comment period at the hearing, that a failure to timely object in writing bars any right to challenge that fee, charge, or assessment in court, and that any such action will be limited to issues identified in such objections; and
 - b. All substantive and procedural requirements for submitting an objection to the proposed fee, charge, or assessment.

FISCAL IMPACT

The development of the proposed ordinance is within the existing budget for staff's duties. The adoption and implementation of the proposed ordinance will have an uncertain, but expected to be positive, fiscal impact as it increases the defensibility of the City's water, sewer, and solid waste rates and other fees and assessments subject to Proposition 218.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The adoption of this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 21065 and 15061(b)(3) as the establishment of an administrative remedies procedure will not result in a reasonably foreseeable direct or indirect physical change in the environment.

STRATEGIC PLAN

This agenda item supports the City's Governance Strategic Priority, with Goal 2: Ensure short and long-term fiscal health.

ACTION REQUESTED OF THE CITY COUNCIL

Introduce an Ordinance adding Section 1.24.040 to Chapter 1.24 of the Tracy Municipal Code establishing an administrative remedies procedure for challenges to fees, charges, and assessments.

Prepared by: Karin Schnaider, Assistant City Manager

Reviewed by: Sara Castro, Finance Director
Matthew Summers, Interim Assistant City Attorney

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Exhibit A - Ordinance

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

ORDINANCE 2025-_____

AN ORDINANCE OF THE CITY OF TRACY ADDING SECTION 1.24.040 TO CHAPTER 1.24 OF THE TRACY MUNICIPAL CODE ESTABLISHING AN ADMINISTRATIVE REMEDIES PROCEDURE FOR CHALLENGES TO FEES, CHARGES, AND ASSESSMENTS

Be it ordained by the Council of the City of Tracy:

SECTION 1. Authority. This Ordinance is authorized by the City's authority under California Constitution, article XI, sections 7 (police power) and 9 (utility power) as well as Government Code section 53759.1.

SECTION 2. Code Amendment. Chapter 1.24 of Title 1 of the Tracy Municipal Code is hereby amended to add a new section 1.24.040 to read as follows:

Section 1.24.040 — Exhaustion of administrative remedies for challenges to fees, charges, and assessments on real property.

A. Scope. The duty to exhaust administrative remedies imposed by this section extends to:

- a. any fee or charge subject to articles XIII C or XIII D of the California Constitution,
- b. any assessment on real property levied by the City, and
- c. the methodology used to develop and levy such a fee, charge, or assessment.

B. "Hearing" as used in this section means the hearing referenced in paragraph 4 of subsection D of this section.

C. Duty to Exhaust Issues. No person may bring a judicial action or

proceeding alleging noncompliance with the California Constitution or other applicable law for any new, increased, or extended fee, charge, or assessment levied by the City, unless that person submitted to the City Clerk a timely, written objection to that fee, charge, or assessment specifying the grounds for alleging noncompliance. The issues raised in any such action or proceeding shall be limited to those raised in such an objection unless a court finds the issue could

not have been raised in such an objection by those exercising reasonable diligence.

D. Procedures. The City shall:

(1) Make available to the public any proposed fee, charge, or assessment to which this section is to apply no less than 45 days before the deadline for a ratepayer or assessed property owner to submit an objection pursuant to paragraph 4 of this subsection D.

(2) Post on its internet website a written basis for the fee, charge, or assessment, such as a cost of service analysis or an engineer's report, and include a link to the internet website in the written notice of the Hearing, including, but not limited to, a notice pursuant to subdivision (c) of Section 4 or paragraph (1) of subdivision (a) of Section 6 of Article XIII D of the California Constitution.

(3) Mail the written basis described in paragraph 2 of this subsection D to a ratepayer or property owner on request.

(4) (4) Provide at least 45 days for a ratepayer or assessed property owner to review the proposed fee or assessment and to timely submit to the City Clerk a written objection to that fee, charge, or assessment that specifies the grounds for alleging noncompliance. Any objection shall be submitted before the end of the public comment portion of a Hearing on the rate, charge or assessment.

(5) (5) Include in a written notice of the Hearing, a statement in bold-faced type of 12 points or larger that:

(6) (A) All written objections must be submitted to the City Clerk by the end of public comment period at the Hearing and that a failure to timely object in writing bars any right to challenge that fee, charge, or assessment in court and that any such action will be limited to issues identified in such objections.

(7) (B) All substantive and procedural requirements for submitting an objection to the proposed fee, charge, or assessment such as those specified for a property-related fee under California Constitution, article XIII D, section 6(a) or for an assessment on real property under California Constitution, article XIII D, section 4(e).

(8) E. Council Consideration; City Responses. Before or during the Hearing, the City Council shall consider and the City shall respond in writing to, any timely written objections. The City Council may adjourn the Hearing to another date if necessary to respond to comments received after the agenda is posted for the meeting at which the Hearing occurs. The City's responses shall explain the substantive basis for retaining or altering the proposed fee, charge, or assessment in response to written objections, including any reasons to reject requested amendments.

F. City Council Determinations. The City Council, in exercising its legislative discretion, shall determine whether:

- (1) The written objections and the City’s response warrant clarifications to the proposed fee, charge, or assessment.
- (2) To reduce the proposed fee, charge or assessment.
- (3) To further review the proposed fee, charge, or assessment before determining whether clarification or reduction is needed.
- (4) To proceed with the Hearing, to continue it, or to abandon the proposal.

SECTION 3. CEQA Determination. The City Council finds that adoption of this Ordinance is exempt from CEQA because: (i) it is not a project within the meaning of Public Resources Code, section 21065 because it has no potential to alter the physical environment; (ii) and pursuant to CEQA Guidelines section 15061(b)(3), the so-called “common sense” exemption, for this same reason.

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 5. Effective Date. This Ordinance shall become effective thirty days after its final adoption.

SECTION 6. Publication. The City Clerk is directed to publish this Ordinance in a manner required by law.

SECTION 7. Codification. This Ordinance shall be codified in the Tracy Municipal Code.

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 18th day of February 2025 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTENTION:	COUNCIL MEMBERS:

DAN ARRIOLA
MAYOR OF THE CITY OF TRACY

ATTEST _____
NECY LOPEZ
Acting City Clerk and Clerk of the Council of the
City of Tracy, California

Agenda Item 3.B

RECOMMENDATION

Receive the annual report of the Parks and Community Services Commission for Fiscal Year 2023-2024.

EXECUTIVE SUMMARY

The Parks and Community Services Commission was formed by the City Council for the purpose of advising the Council on the planning and development of park and recreation facilities and delivery of recreation and community service programs. At the April 6, 2021, regular City Council meeting, the Council expressed the desire to receive an annual report. This report is an accounting of the Parks and Community Services Commission for Fiscal Year (FY) 23/24 and goals for FY 24/25.

BACKGROUND AND LEGISLATIVE HISTORY

The Parks and Community Services Commission (Parks Commission) was formed with the purpose of providing citizen and community perspective and input and advising the Council on the planning and development of park and recreation facilities and delivery of recreation and community service programs. The Parks Commission also provides the Parks and Recreation Department and Community Development with review of park planning and design, the naming of parks and recreation facilities, and provides input and community perspective regarding recreational programs and services. In addition, the Commission reviews applications and makes recommendations to City Council for the Community Development Block Grant (CDBG) funding of service programs provided by non-governmental organizations (NGOs).

In FY 23/24, the Parks Commission had three primary focus areas as listed below. Under each area, there is an update on Commission activities.

Focus Area: COMMUNITY OUTREACH

- 1.A Ensure representation with the Tracy Friends for Parks, Recreation & Community Services Foundation
 - o The Commission assigned a member of the Commission to participate regularly at the Foundation's bi-monthly meeting and report back to the Commission.
- 1.B. Ensure representation with the Tracy Senior Association
 - o The Commission assigned a member of the Commission to participate regularly at the Tracy Senior Association's meetings and report back monthly to the Commission.
- 1.C. Public Outreach at Community attended events twice per year
 - o The Commission assigned members of the Commission to attend the following events:
 1. Farmers Market (attend at least twice per year)
 2. Block Parties (attend at least twice per year)
 3. Blues, Brews, & BBQ (October)
 4. Movies on the Plaza (attend at least twice per year)
 5. Youth Events (attend at least twice per year)

- 1.D. Public Outreach to Senior Community
 - o Each year, the Commission conducts a Special Meeting in November at the Lolly Hansen Senior Center to discuss specific concerns and needs of the senior community. This meeting was held on November 1, 2023.
- 1.E. Increase communications with local school districts
 - o E.1 - One TUSD School Board member participates as a Commissioner and provides monthly reports on the Parks Commission activities to Tracy Unified School District.
 - o 1. E.2. - The Commission assigned a member to participate and attend the City/School Liaison meetings and report back to the Commission.

Focus Area: PROGRAM ENHANCEMENT

- 2.A. Sponsor and Support the Rollin' Rec Program
 - o 3 Commissioners will attend 2 rollin' rec programs per year.

Focus Area: PARK FACILITY & SPORTS FIELD SAFETY

- 3.A. Safety Needs
 - o One Commissioner will attend meetings as needed related to Parks & Facility Concerns.
 - o Attend quarterly Homeless Advisory meeting.

In addition to the above goals, the Parks Commission had the opportunity to support staff and better advise City Council in regard to City and Community needs. During FY 23/24 the Parks Commission was instrumental in making decisions for the following projects:

1. In August of 2023, the Commission reviewed, provided feedback and approved the changes to the Tracy Facility Reservation Handbook.
2. In September of 2023, the Commission reviewed and provided feedback on changes to the Sports Field Reservation Handbook.
3. In September of 2023, the Commission reviewed and approved the Tracy Hills Open Space Improvement proposal and reviewed and approved the Tracy Hills Community Park Conceptual Design and made a recommendation to City Council.
4. In November of 2023, the Commission held a Special Meeting on the 1st of November to hear the needs and concerns of the Seniors in our community as we are the liaison for the senior community.
5. In November of 2023, the Commission reviewed and approved the changes to the Sports Field Handbook as well as they appointed two Parks Commissioners to be part of the subcommittee to review and make funding allocation recommendations for the Community Block Grant Fund and Home Investment Program (CDBG) for FY 24/25.
6. In December of 2023, the Commission reviewed and approved the Youth Advisory Annual Report and made the recommendation to City Council.
7. In February 2024, the Parks Commission reviewed and accepted the recommendation of the Community Development Block Grant (CDBG) Subcommittee's funding allocations and made the recommendation for approval to City Council. In total, 13 applications were awarded funds through the CDBG program for use in projects that make for a viable community, with local programs and

services that provide decent housing, a suitable living environment, and expand economic opportunities for low- and moderate-income individuals and families.

8. In March of 2024, the Parks Commission reviewed, approved, and made a recommendation to City Council to adopt the FY 24-25 Recreation Program Facility Use Fee Schedule.
9. In March of 2024, the Parks Commission heard an appeal of a facility permit suspension for S&H Athletics and made the recommendation to uphold the suspension set forth by staff.
10. In April of 2024, the Commission had a discussion regarding making a recommendation to City Council to 1) reject the use of the developer's design development plans for the Aquatic Center, and 2) authorize staff to proceed with the base program option B with a \$55M project budget.
11. In April of 2024, the Commission also heard another appeal of a facility permit suspension for Delta Soccer League and made the recommendation to uphold the suspension as set forth by staff.
12. In May of 2024, the Commission heard an appeal of a facility permit suspension for Tracy Sports League and made the recommendation to uphold the suspension as set forth by staff.
13. In June of 2024, the Commission reviewed 46 applications from the public naming process to name the Tracy Hills Phase 2 Neighborhood Parks 1 & 4 and prioritize the top three for consideration by the City Council.
14. In June of 2024, the commission also provided feedback to staff on the proposed location and size of the Tracy Hill Phase 1C City Park.
15. In June of 2024, the Commission reviewed and provided feedback on the 2025 Sports Field Reservation Handbook.
16. In June of 2024, the Commission reviewed and accepted changes to the 2024 Tracy Facility Reservation Handbook.

Goals for FY 24/25

The Parks Commission adopted their goals for FY 24/25 on June 6, 2024, summarized below:

Focus Area: COMMUNITY OUTREACH

- Ensure representation with the Tracy Friends for Parks, Recreation & Community Services Foundation
- Ensure representation with the Tracy Senior Association
- Public outreach at community events twice per year
- Public outreach to senior community
- Increase communications with local school districts

Focus Area: PROGRAM ENHANCEMENT

- Sponsor and support the revitalization of the Rollin' Rec Program

Focus Area: PARK FACILITY & SPORTS FIELD SAFETY

- Attend meetings as needed related to Parks & Facility concerns
- Attend Quarterly Homeless Advisory Meeting

FISCAL IMPACT

Staff costs related to support of the Parks and Community Services Commission are included in the Parks and Recreation Department General Fund budget.

STRATEGIC PLAN

This agenda item relates to the City of Tracy's Quality of Life Strategic Priority, which is to provide an outstanding quality of life by enhancing the City's amenities, business mix and services, and cultivating connections to promote positive change and progress in our community.

ACTION REQUESTED OF THE CITY COUNCIL

That the City Council accept the annual report of the Parks and Community Services Commission for Fiscal Year 2024-2025.

Prepared by: Andrea Pedigo, Executive Assistant

Reviewed by: Parks & Community Services Commission
Jolene Jauregui, Recreation Services Manager
Brian MacDonald, Director of Parks, Recreation & Community Services
Sara Castro, Director of Finance
Andrew Shen, Interim City Attorney
Arturo Sanchez, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager



Parks & Community Services Commission

Annual Report FY 2023-2024

February 18, 2025

Overview

- ❖ 5 Member Council Appointed Commission
- ❖ Establish rules and regulations governing the conduct of recreation programs
- ❖ Protection of property, and activities of persons in all parks
- ❖ Hold public hearings on recreation programming and facility usage
- ❖ Advise the City Council about recreation, and facility master planning development

FY 2023-2024 Highlights Staff Support for City Projects

- ❖ In August of 2023, the Commission reviewed, provided feedback and approved the changes to the Tracy Facility Reservation Handbook.
- ❖ In September of 2023, the Commission reviewed and provided feedback on changes to the Sports Field Reservation Handbook.
- ❖ In September, the Commission Reviewed and Approved the Tracy Hills Community Park Conceptual Design



FY 2023-2024 Highlights

Staff Support for City Projects

- ❖ In November of 2023, the Commission held a Special Meeting on the 1st of November to hear the needs and concerns of the Seniors in our community as we are the liaison for the senior community.
- ❖ In November of 2023, the Commission reviewed and approved the changes to the Sports Field Handbook as well as they appointed two Parks Commissioners to be part of the subcommittee to review and make funding allocation recommendations for the Community Block Grant Fund and Home Investment Program (CDBG) for FY 24/25.
- ❖ In December of 2023, the Commission reviewed and approved the Youth Advisory Annual Report and made the recommendation to city council.
- ❖ In February 2024, the Parks Commission reviewed and accepted the recommendation of the Community Development Block Grant (CDBG) Subcommittee's funding allocations and made the recommendation for approval to City Council. In total, 13 applications were awarded funds thru the CDBG program for use in projects that make for a viable community, with local programs and services that provide decent housing, a suitable living environment, and expand economic opportunities for low- and moderate-income individuals and families.
- ❖ In March of 2024, the Parks Commission reviewed, approved, and made a recommendation to City Council to adopt the FY 24-25 Recreation Program Facility Use Fee Schedule.
- ❖ In March of 2024, the Parks Commission heard an appeal of a facility permit suspension for S&H Athletics and made the recommendation to uphold the suspension set forth by staff.



Think Inside the 'Triangle'

FY 2023-2024 Highlights

Staff Support for City Projects

- ❖ In April of 2024, the Commission had a discussion regarding making a recommendation to city council to 1) reject the use of the developer's design development plans for the Aquatic Center, and 2) authorize staff to proceed with the base program option B with a \$55M project budget.
- ❖ In April of 2024, the Commission also heard another appeal of a facility permit suspension for Delta Soccer League and made the recommendation to uphold the suspension as set forth by staff.
- ❖ In May of 2024, the Commission heard an appeal of a facility permit suspension for Tracy Sports League and made the recommendation to uphold the suspension as set forth by staff.
- ❖ In June of 2024, the Commission reviewed 46 applications from the public naming process to name the Tracy Hills Phase 2 Neighborhood Parks 1 & 4 and prioritize the top three for consideration by the City Council.
- In June of 2024, the commission also provided feedback to staff on the proposed location and size of the Tracy Hill Phase 1C City Park.



Think Inside the Triangle™

FY 2023-2024 Highlights

Staff Support for City Projects

- ❖ In June of 2024, the Commission reviewed and provided feedback on the 2025 Sports Field Reservation Handbook.
- ❖ In June of 2024, the Commission reviewed and accepted changes to the 2024 Tracy Facility Reservation Handbook.



Think Inside the Triangle™

Goals FY 2024/2025

Community Outreach

- ❖ Ensure representation with the Tracy Friends for Parks, Recreation and Community Foundation
- ❖ Ensure representation with the Tracy Senior Association
- ❖ Public outreach at community events twice per year
- ❖ Public outreach to senior community
- ❖ Increase communications with local school districts

Program Enhancement

- ❖ Continue to sponsor and support the Rollin' Rec Program

Park Facility and Sports Field Safety

- ❖ Attend meeting as needed related to Parks & Facility Concerns
- ❖ Attend Quarterly Homeless Advisory Meeting



Questions



Agenda Item 3.C

RECOMMENDATION

Staff recommends that the City Council receive the annual informational report regarding the City of Tracy's Senior Services Program for 2024.

EXECUTIVE SUMMARY

This report discusses the activities of the Senior Services Program during the previous year, including program highlights and increases in attendance. The report includes an update on the senior needs and concerns based on the finding from the annual senior forum and summarizes the efforts of the Parks and Community Services Commission, which has an active role within the senior community.

BACKGROUND AND LEGISLATIVE HISTORY

The City of Tracy Parks, Recreation, and Community Services Department provides a wide variety of programs, services and activities for seniors including educational programs, health and wellness presentations, recreational programs, special events, senior related seminars, and volunteer and intergenerational opportunities. At the center of these programs is the Lolly Hansen Senior Center. Dedicated in 1986, the facility serves as a resource hub to connect seniors and their families to services and referrals in coordination with various local agencies. Most importantly, it is a place for older adults in the Tracy community to gather and socialize.

Parks & Community Services Commission

The Parks and Community Services Commission acts as an advisory body to the Council in the areas of parks and programming for youth, adults, and seniors. The Commission has made it a priority to actively engage seniors in the Tracy community. Staff from the Recreation Division provides quarterly updates on senior comments and concerns to the Commission in addition to meeting with the various subcommittees that have been established to meet the Commission's goals for FY's 2024/2025.

Informally, the Commission has also attended senior center activities and events, Downtown Block Parties, and various other community events that provide the Commissioners the opportunity to interact with the community and engage with seniors. The Community Involvement subcommittee is available upon request to provide presentations to various community groups in Tracy where they provide information regarding the various senior services and the role of the Commission, including how to connect to City services, the Local Senior Resource Guide, the Senior Link-Tracy program, and the Recreation Activity Guide.

The Commission's Community Involvement subcommittee will continue to increase the Commission's visibility in the senior community by attending community events and senior center events and will continue to outreach to the various neighborhood groups and service clubs.

ANALYSIS

Currently, 8,145 seniors are registered with the senior center, an 7.3% increase from last year. In 2024, there were approximately 43,659 visits by seniors who utilized the 99 individual program offerings for the year. Over the past year, staff has added the following new activities: 9 new social events, 3 technology assistance classes, 4 new recreational programs, and 2 new art programs. "Attachment A" to this report outlines the senior center's improved program impact numbers through increased offerings for 2024. The senior center continues to partner with Tracy Golden Agers, a local nonprofit group that was established to create activities to unite seniors to support and encourage each other to stay active and involved. Through this partnership the senior center and Golden Agers will continue two casino trips a year and a new senior event.

On November 18, 2014, Council supported staff's recommendation to create "Senior Link-Tracy" to address an alternative way to outreach to seniors regarding their needs and concerns. For the past 10 years, the Senior Link-Tracy program has provided an opportunity for senior citizens in Tracy to voice their concerns, share their needs, and identify resources that will assist them in living full, vibrant, and independent lives. This service is provided by phone, email, or in person at the senior center. Approximately 214 seniors used this service in 2024. Council also supported the Local Senior Resource Guide, which assists seniors and caregivers in connecting with a wide variety of local resources and non-profit agencies, as well as to City Council and Commissions. The guides can be found at the senior center, City facilities, City website and throughout the community. With this service, approximately 517 inquiries were made in 2024 to connect people to various resources.

Recreation staff and the Parks and Community Services Commission will continue to outreach to the senior community and provide an opportunity for seniors to address their needs and concerns by:

- Reporting to the Commission on a quarterly basis on current and future needs for seniors in the Tracy community.
- Using the senior center as a resource hub to inform the senior community on how to connect with City services and other senior-related agencies.
- Marketing the Senior Link-Tracy program and Local Senior Services and Resources guide.
- Hosting the annual Community Conversations event in May 2025, and a special meeting in November 2025, at the senior center to gather the needs and concerns from seniors to report back to City Council in February 2026.
- Attending the Tracy Senior Association and Tracy Golden Agers meetings.

FISCAL IMPACT

Costs related to supporting senior services are included in the Parks, Recreation, and Community Services budget.

PUBLIC OUTREACH/ INTEREST

On May 15, 2024, the yearly “Community Conversation” forum was held at the Lolly Hansen Senior Center. This resulted in the Senior Center’s largest attendance of 70 seniors and community members.

On November 6, 2024, the Senior Center held a community meeting at the Lolly Hansen Senior Center to provide seniors the opportunity to address their questions, comments, needs and concerns. The meeting was held in the early afternoon and approximately 29 seniors and community members were in attendance. “Attachment B” to this report outlines the senior concerns expressed at both gatherings, with staff responses.

Marketing efforts for these outreach meetings and senior center activities, programs and events include advertisement on the City website, social media, outreach to the various local senior living facilities and apartments, community service clubs, local churches, local newspaper, throughout City facilities, TRACER buses, Channel 26, and local business throughout the City of Tracy.

STRATEGIC PLAN

This agenda item supports the Quality-of-Life Strategy, specifically:

Goal 3: Provide City programming and events that bolster quality of Life.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive the annual informational report regarding the City of Tracy’s Senior Services Program for 2024.

Prepared by: Justin Geibig, Recreation Services Supervisor

Reviewed by: Jolene Jauregui-Correll, Recreation Services Manager
Brian MacDonald, Director of Parks, Recreation, and Community Services
Sara Castro, Director of Finance
Andrew Shen, Interim City Attorney
Arturo Sanchez, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

Attachment A – Summary of the Senior Center program impact numbers and offerings
Attachment B – Status of senior needs and concerns from two senior forums

LOLLY HANSEN SENIOR CENTER - PROGRAM IMPACT

LIFE ENRICHMENT & WELLNESS PROGRAMS

PURPOSE: To promote health and wellness by providing access to activities, programs, and services.

2023 STATISTICS & SIGNIFICANT INFORMATION:

- Yearly attendance = 41,083
- Average daily attendance = 171
- Average weekly attendance = 856
- Average monthly attendance = 3,424
- 97 Individual educational opportunities, activities, recreational programs, and services were offered.
- New events = 6
- New programs = 10
- New classes = 2
- Information & Assistance appointments = 4,204
- Average number of meals served:
 - 27/day
 - 134/week
 - 536/month
 - 6,430/year
- Number of meals delivered = 4,800
- AARP Tax Assistance appointments = 278

2024 STATISTICS & SIGNIFICANT INFORMATION:

- Yearly attendance = 43,659
- Average daily attendance = 173
- Average weekly attendance = 909
- Average monthly attendance = 3,638
- 99 Individual educational opportunities, activities, recreational programs, and services were offered.
- New events = 9
- New programs = 4
- New classes = 9
- Information & Assistance appointments = 4,182
- Average number of meals served:
 - 24/day
 - 114/week
 - 502/month
 - 6,025/year
- Number of meals delivered = 4,944

VOLUNTEER SUPPORT

2023 Hours of Volunteer Support:

The number of unduplicated volunteers that reported volunteer hours = 40

Total of reported volunteer hours = 6,125

2024 Hours of Volunteer Support:

The number of unduplicated volunteers that reported volunteer hours = 52

Total of reported volunteer hours = 6,446

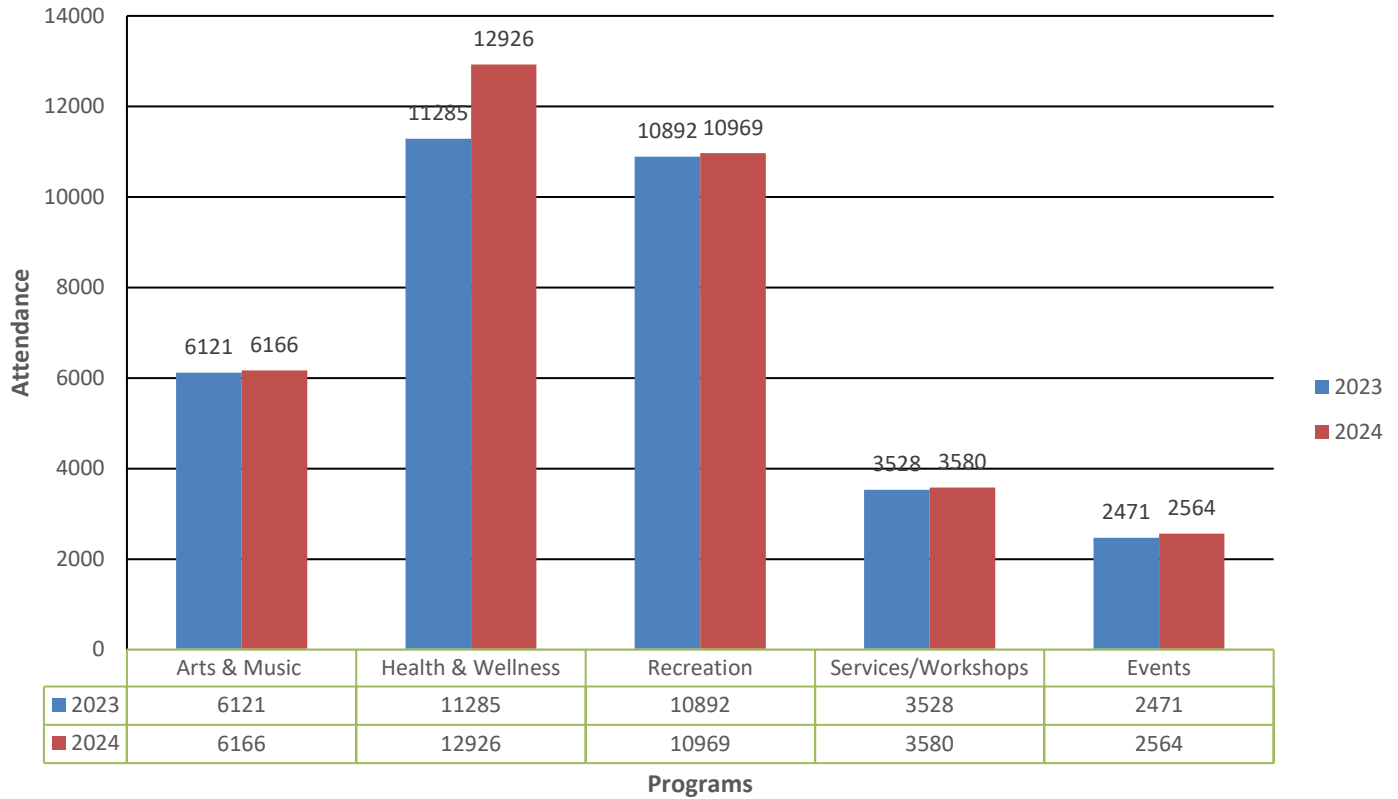
We continue to work at increasing the number of volunteers who record their hours in our database.

We appreciate all volunteer service, whether formally recorded or not.

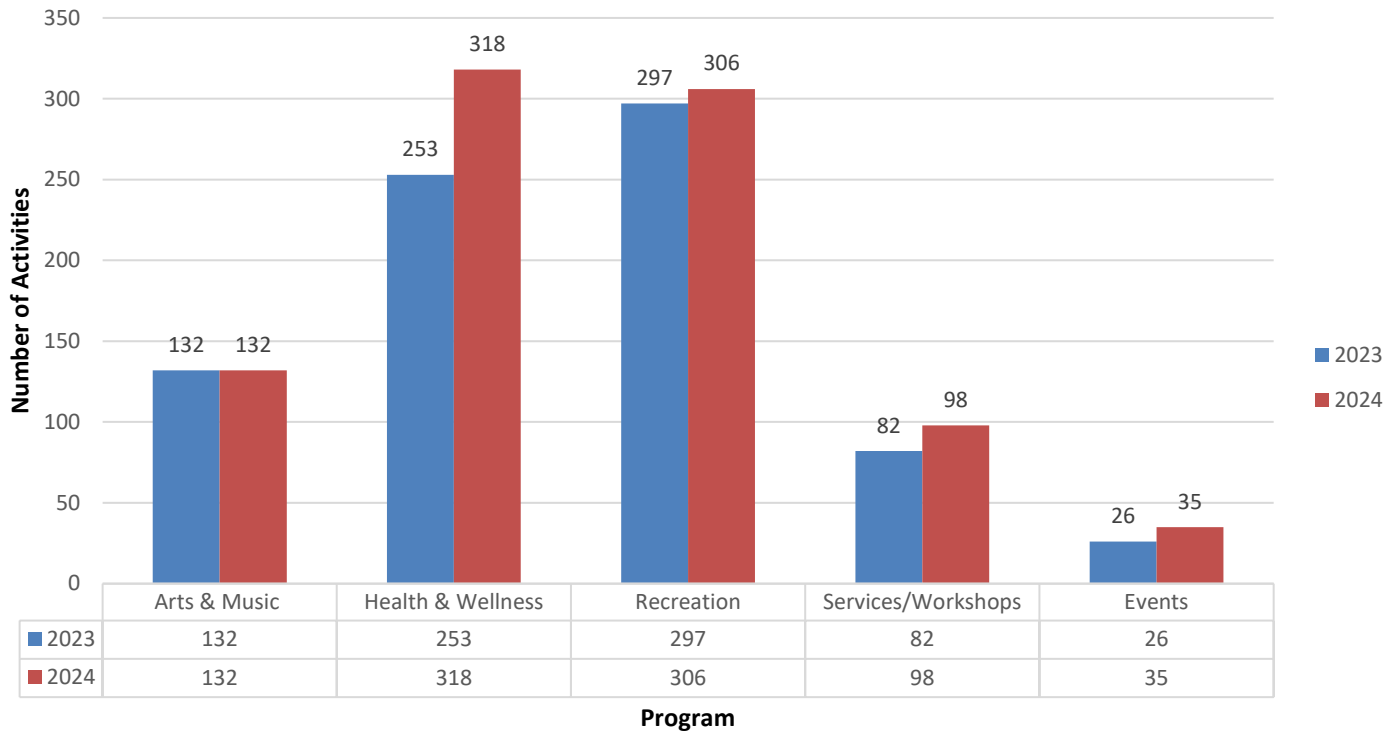
SERVICE-RELATED OFFERINGS:

- AARP Driver Safety Classes
- AARP Driver Refresher Course
- Brown Bag
- Daily Nutrition Lunch
- HICAP (Health Insurance Counseling & Advocacy Program)
- Meals on Wheels
- Mobile Farmer's Market
- Paralegal
- Senior Link – Tracy Program

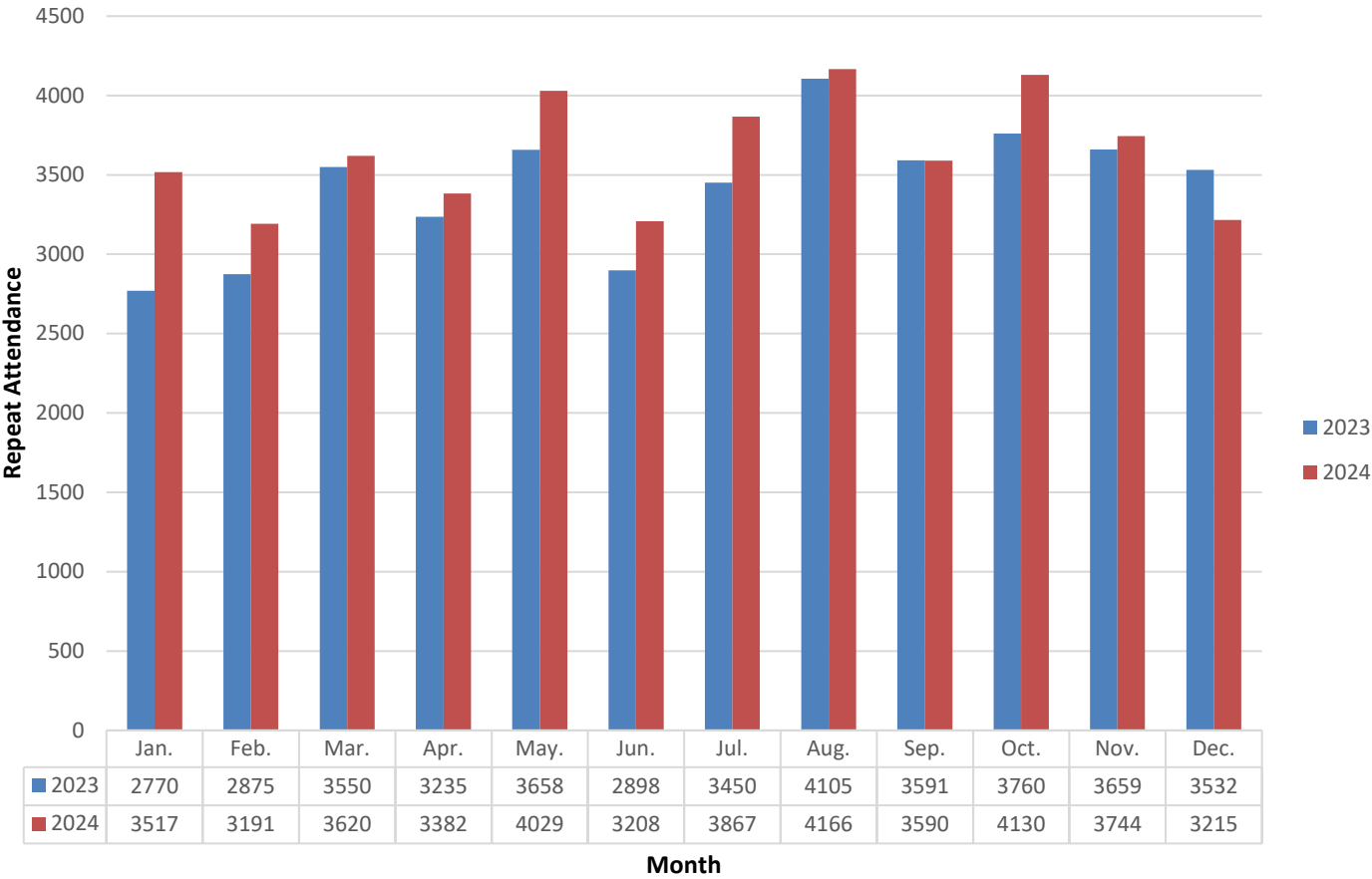
Lolly Hansen Senior Center Attendance for Programs



Programs and Activities Offered at the Lolly Hansen Senior Center



Lolly Hansen Senior Center
Monthly Total - Repeat Senior Attendance



**Senior Community Conversation Meeting 2024
Current Senior Citizen Needs and Concerns
May 15, 2024**

Attendance: 70

Staff Present:

- Jolene Jauregui, Recreation Services Manager
- Justin Geibig, Recreation Services Supervisor
- Caitlin Perkey, Recreation Program Coordinator
- Suzette Lovell, Recreation Leader III
- Jayne Pramod, Transit Coordinator
- Ed Lovell; Transit Manager
- Connie Lopes; Public Works Management Analyst

Organizations Present:

- Tracy Golden Agers
- Tracy Senior Association
- San Joaquin Housing Authority
- San Joaquin County Commission on Aging

What's Working:

- Bingo
- Great staff
- Great kitchen service
- Golden Agers
- Lunch
- Diversity
- Nice center
- Exercise Classes
- Chess Group

Department:

Parks, Recreation, & Community Services – Senior Division

Senior Concern/Comments	Recommendation	By When
New Class/Program	Recreation staff consistently work to broaden program offerings and explore new seasonal programs to introduce. Staff will work to add new program offerings to introduce in the 2025 Summer Activity guide.	Ongoing
Recommendations:	Update as of January 1, 2025: New programs implemented include Mat Yoga, Friday Karaoke, and Lunch and Learn Seminars. New events include: a Murder Mystery Dinner, Diamond of the Season Soiree, and Senior Spring Games.	Ongoing
• Golf • Zumba • Cycling • Archery • More Trips	Recreation staff currently offers one new trip that is promoted in each activity guide. Staff will continue to survey participants to receive feedback for new trip ideas and research possible options to add additional trip offerings.	Completed December 2024
• Tracy Community Center for Dance Events	For Senior Center events with a significant increase in attendance, Recreation staff will have the option to move the events to the Tracy	

• Technology Trainings • Tax Help • More Bingo Days • Father's Day Event • Mother's Day Event • Beach Event • Fiesta de Mayo food was bad • Fiesta de Mayo needs entertainment • Less sugary event menu items • Nutritional menus for lunch	Community Center to expand event capacity. In December 2024, due to popularity, the Black and White Ball and New Year's Eve Bash was relocated to the Tracy Community Center. Recreation staff is constantly outreaching to outside resources to provide high quality technology trainings. In 2024, the Senior Center offered the following "new" technology trainings: a Cell Phone Training for iPhones by California Telephone Access Program in January and April, Senior Scams Seminar hosted by Tracy Police Department in May, and a Computer Literacy Class through El Concilio in September. The Senior Center also offers private technology literacy classes on Thursdays by appointment only taught by a senior volunteer. Staff is communicating with AARP and other local tax preparation organizations for options to offer tax assistance at the Senior Center. Staff is also researching other low-cost tax assistance resources to have available for seniors. Recreation staff will review the current Senior Center schedule for options to expand the Bingo program. Recreation staff strive to incorporate at least one new senior program or event to be offered in each activity guide. Staff will work to add new senior events based on the feedback received to incorporate in the 2025 Summer Activity Guide. Staff will research other types of entertainment to incorporate for future events. Staff will also explore other food vendors and alternative food options including less sugary options for events. The San Joaquin County Congregate Meal Program provides hot meals that meet Federal, USDA and Older Americans Act guidelines. All menus are approved by the San Joaquin County's Registered Dietitian and are designed to be low fat, low salt, and low sugar. San Joaquin County provides the nutritional information of the meals on the menu.	Completed December 2024 Ongoing Ongoing Summer 2025 Ongoing Completed November 22, 2024

Increase Financial Aid	Seniors 62 year or older are eligible to receive \$150 to spend on programs offered through Parks and Recreation, and the Grand.	Completed December 2024
Horseshoe Pit Upgrade	Staff will work with Operations staff to convert the Horseshoe Pit to a Bocce Ball Court based on participant feedback.	Ongoing
Pickleball Indoor Pickleball on Fridays	Staff will review the current senior center weekly schedule for opportunities to increase pickleball offerings. Additionally, the pickleball court at Hoyt Park is reserved on Tuesdays, Thursdays and Saturdays from 8:30am-10:30am for seniors and indoor pickleball is offered at the senior center on Wednesdays from 3:30pm-5:30pm.	Ongoing
Larger Senior Center Multipurpose room not big enough for events & fitness classes	The Senior Center was just recently renovated and expanded by over 1,000 square feet. Staff will look at additional layout options for both events and fitness class. If events continue to grow, staff will look into hosting them at the Tracy Community Center.	Ongoing
Parking at the Senior Center Valet Parking	Recreation staff currently monitors the parking lots for non-participants and drivers who park incorrectly, causing loss of parking in the stalls next to the vehicle. Staff also communicates with Tracy Police Department on an ongoing basis for additional enforcement.	Ongoing

Department: Development Services

Senior Concern	Recommendation	By When
More senior housing	The Senior Center currently offers the Tracy Senior Link Program that connects seniors to resources such as housing, transportation and health services. Seniors can make an appointment at the senior center to meet with Recreation staff.	Completed December 2024

Outside Agency: ACE Rail

Senior Concern	Recommendation	By When
Expanded discount for ACE train	Recreation staff reached out to the ACE Rail representatives. Currently, ACE rail discounts are available to people aged 65 and older. To receive the discount, an original valid photo ID needs to be presented during the purchase at station sales and kept available upon request while aboard the train.	Completed December 2024

SENIOR MEETING ON NEEDS AND CONCERNS UPDATE NOVEMBER 6, 2024

Organizations Present:

- Tracy Golden Agers

Attendance: 29

Staff Present:

- Justin Geibig, Rec. Services Supervisor
- Caitlin Perkey, Rec. Program Coordinator
- Suzette Lovell, Rec. Leader III
- Brandi Reybol, Transit Coordinator

What's Working:

- Matter of Balance Classes
- Staff and Leadership
- Alzheimer Seminar

Department: Parks, Recreation, & Community Services – Senior Division

Senior Concern/Comments	Recommendation	By When
New Class/Program Recommendations: • Class or seminar on Home Improvement • Black History Month Event • Spanish Class • Health Seminars • Bocce Ball • Treadmills	Recreation staff continuously seeking to expand program offerings and research new programs to implement seasonally. Recreation Staff highlighted the Tracy Senior Association offer's a handyman program where community volunteers help local Tracy seniors with basic household repairs. The Senior Center will be hosting a Life Lessons seminar in February 2025 focused on Black History Month. Recreation staff will continue to solicit instructors or volunteers to offer a Spanish Class. In previous years the Senior Center had a volunteer to offer the Spanish Class. Free seminars are offered monthly. Staff will continue to reach out to different health organizations to offer new seminars related to health. Based on prior feedback, there are future plans to convert the current horseshoe pit located in the outdoor area into a bocce ball court. There are no future plans to add treadmills at the Senior Center. While the Senior Center is not a fitness center, there are different fitness programs or activities offered such as, Walkers and Talkers Group, fitness classes, and functional workout equipment in the outdoor area.	Ongoing

	Additionally, the Multi-Generational Recreation Center will have an indoor walking track once completed.	
Pickleball • Introduction to Pickleball • Extended hours to accommodate additional Indoor Pickleball play time • Hoyt Park - o Court in Bad condition; want a contractor who specializes in Pickleball courts to repair the cracks - o Need to add signs of court etiquette - o Need to add paddle holders	Pickleball is open to all skill levels. Indoor Pickleball is offered on Wednesdays at the Senior Center and a volunteer is onsite that is available to assist new or beginner players. Recreation Staff will review the current senior center weekly schedule for opportunities to increase pickleball offerings. Recreation Staff is the in the process of researching pickleball holders and court etiquette signs to add court rules at the pickleball courts located at Hoyt, Kenner, and Western Park to ensure the courts are equitable for everyone. Recreation Staff shared this information with the Parks Maintenance Division regarding the court conditions at Hoyt Park.	Ongoing Spring 2025 Completed November 22, 2024
Bingo • Extend Time by 30 Minutes	Recreation Staff will review the current Senior Center weekly schedule for opportunities to extend the Bingo program.	Ongoing
Ping Pong • Extended hours to accommodate additional Ping Pong play time • No cancellations of Ping Pong for events • Add make up times if cancelled • Add refreshments • Would like to take over Seated Volleyball's time on Friday since it is not attended	Ping Pong is currently scheduled three days a week, totaling 8.5 hours per week, and is the most frequently scheduled senior program. The Senior Center strives to provide diverse program offerings to be inclusive to all seniors. Recreation Staff will continue to meet with the Ping Pong group to discuss other alternatives to increase capacity within the allotted times reserved for Ping Pong. Outdoor Ping Pong is alternative when the weather is nice. Recreation Staff strives to prevent cancelling or disrupting any Senior Center activity or program. On occasion, a program or activity may get cancelled for an event or program that will serve a broader community of seniors. Water, tea, and coffee are available during Ping Pong hours as well as during Senior Center daily operations.	Ongoing

	Seated Volleyball was a new pilot program offered in the fall. Based on limited participation, Recreation Staff will be re-evaluating Seated Volleyball and will begin researching new program offerings to replace in spring 2025.	
Multi-Generational Recreational Facility Naming it after Donald and Charlotte Bisby	Recreation Staff shared the City is not currently soliciting names for the Multi-Generational Recreation Center.	Spring 2025
Gretchen Tally Park - Unfinished for year - Neighboring community would like a timeline of when it will be completed	Recreation Staff will share this information with the Parks Planning and Development Division. The community can stay up to date with project timelines by visiting the City's website.	Completed November 22, 2024
Lolly Hansen Senior Center - Facility - Solar Energy - Less commercial lighting in Senior Center Walkways and Entryway - Clock in Lounge Area - How is LHSC sorting waste? - Opening earlier to avoid seniors standing in the cold	Staff will share the solar information with the Public Works Department. All City facilities follow specific building and lighting requirements to safely operate for public use that cannot be modified. Clocks are located on the walls throughout the Senior Center in the following areas: multipurpose room, receptionist's desk/Lobby Area, and classrooms 1 & 2. The Senior Center works closely with the Public Works Department to ensure the facility is compliant with all County and State rules. The Senior Center is currently equipped with bins to sort for landfill, recycling, and compost. Additionally, the Senior Center hosted a Recycling Seminar for seniors to attend in August presented by the Public Works Department. The Senior Center opens daily at 8:00 AM Monday-Friday. During inclement weather, participants are encouraged to plan accordingly and limit their time outdoors during high or low temperatures.	Completed November 22, 2024
Brown Bag	Recreation staff will review the current Senior Center schedule to explore other locations for the Brown Bag distribution. Prior to Brown	Ongoing

• Moving brown bag indoors since it is cold outside	Bag distribution, participants are encouraged to wait in the Senior Center lobby during inclement weather.	
San Joaquin County Congregate Meal Program • Variety of food options; too much pork being served • Ingredient list and nutritional information should be provided • No sugar options	The San Joaquin County Congregate Meal Program provides hot meals that meet Federal, USDA and Older Americans Act guidelines. All menus are approved by the San Joaquin County's Registered Dietitian and are designed to be low fat, low salt, and low sugar. Recreation Staff will contact the San Joaquin County Dietitian if additional nutritional and ingredient information can be provided.	Completed November 22, 2024

Department: Public Works – Transportation Division

Senior Concern/Comments	Recommendation	By When
• Bus lines A & B are full, and wheelchair lifts do not always function on the small buses • Bus to Multi-Generational Center • Bus service that serves Tracy Boulevard and HWY 4 area	Transit Coordinator reported on the following: • ADA services the Transit buses provide and how to contact the Transit office with issues or concerns. • Service plans to the Multi-Generational Recreation Center are in the planning stages. • Information on the services that the City Transit Station provides including on demand services and paratransit services. Highlighting that if users are enrolled in paratransit services, they are automatically enrolled in Free rides on Tracer fixed routes. • Tracer does not currently service areas surrounding Highway 4. Transit staff will reach out to RTD to ensure what types of Transit programs will service those areas	Completed



SENIOR SERVICES 2024 ANNUAL REPORT



HIGHLIGHTS

- Activities provided by the Senior Services Program
- Current and future needs of seniors in Tracy
- Update on the efforts of the Parks & Community Services Commission



LOLLY HANSEN SENIOR CENTER

- Activities, Programs & Services
- Resource Hub:
 - San Joaquin County Services
 - AARP, HICAP, Paralegal
 - Local Non-Profits
 - Tracy Golden Agers &
 - Tracy Senior Association
- Gather & Socialize



HEALTH SERVICES Behavioral Health Services of Tracy (209) 831-0841 www.bhs.org Tracy Family Resource Center (209) 229-4522 Pollen Control Hotline (800) 222-1222 Scabies Prevention Hotline (800) 273-9050 Tracy Volunteer Services (209) 831-2712 www.tracyvolunteer.com Disability Insurance (800) 486-2257 Spanish (888) 636-8646 HICAP (209) 479-7812 hicap@tracyhicap.org Covered California - Help Call (800) 200-1506 www.coveredca.com In-Home Supportive Services (IHSS) (209) 482-1194 www.sjshs.org/assistedliving/home-care Dr. Mary's Driving School (209) 467-0763 www.drmarysdrivingschool.org UCP Dental Hygiene Clinic (209) 345-7604 Catholic Charities (209) 444-6200 www.ccsjackson.org LATE LIFE SERVICES Community Hospice (209) 519-6309 Hospice of San Joaquin (209) 957-3586	GET CONNECTED City Council 1st & 2nd Tuesday of each month at 7:00pm City Hall, 333 Civic Center Plaza council@cityoftracy.org Parks & Community Services Commission 1st Thursday of each month at 7:00pm City Hall, 333 Civic Center Plaza park@cityoftracy.org Planning Commission 2nd & 4th Wednesday of each month at 7:00pm City Hall, 333 Civic Center Plaza planning@cityoftracy.org Tracy Arts Commission 2nd Tuesday of each month at 7:00pm Grand Theatre Center for the Arts 315 Center Avenue arts@cityoftracy.org Transportation Advisory Commission 2nd Thursday of each month at 7:00pm Tracy Transit Station 80 East 6th Street park@cityoftracy.org SI County Commission on Aging 1st Monday of each month at 10:00pm Human Services Agency 102 S. San Joaquin Street, Stockton "Information Subject to Change" Veronica Serrano Subject to Fee **The City of Tracy only provides information for non-profit organizations.	Local Senior Services & Resources  Lolly Hansen Senior Center Hours of Operation Monday - Friday 8:00am to 4:00pm 375 E. 9th Street (209) 831-6240 tracyseniorscenter@cityoftracy.org  Parks & Recreation Department 333 Civic Center Plaza (209) 831-6200 Monday-Thursday 8:00am to 5:00pm Every other Friday 8:00am to 5:00pm www.cityoftracy.org	DISCOUNTED SERVICES AARP - Driver Safety Classes & Tax Act (209) 831-6240 California Lifeline Program English: (866) 272-6349 Spanish: (866) 272-6350 City of Tracy Program (Scholarships) (209) 831-6240 City of Tracy Finance Department Ask for LIRA Application (209) 831-6305 cslira@cityoftracy.org Low Income Home Energy Assistance Program (LIHEAP) (209) 458-3989 Utility Payment Assistance (209) 458-1100 Senior Link - Tracy Need help finding services? - Senior Housing - Transportation - Health Services - In-Home Care - Discounted Services - Volunteer Opportunities Appointments available upon request (209) 831-6240 tracyseniorscenter@cityoftracy.org Senior Link - Tracy is assisting Senior Citizens in living a full, vibrant and independent life by providing information of local agencies and services providers.



Think Inside the Triangle™

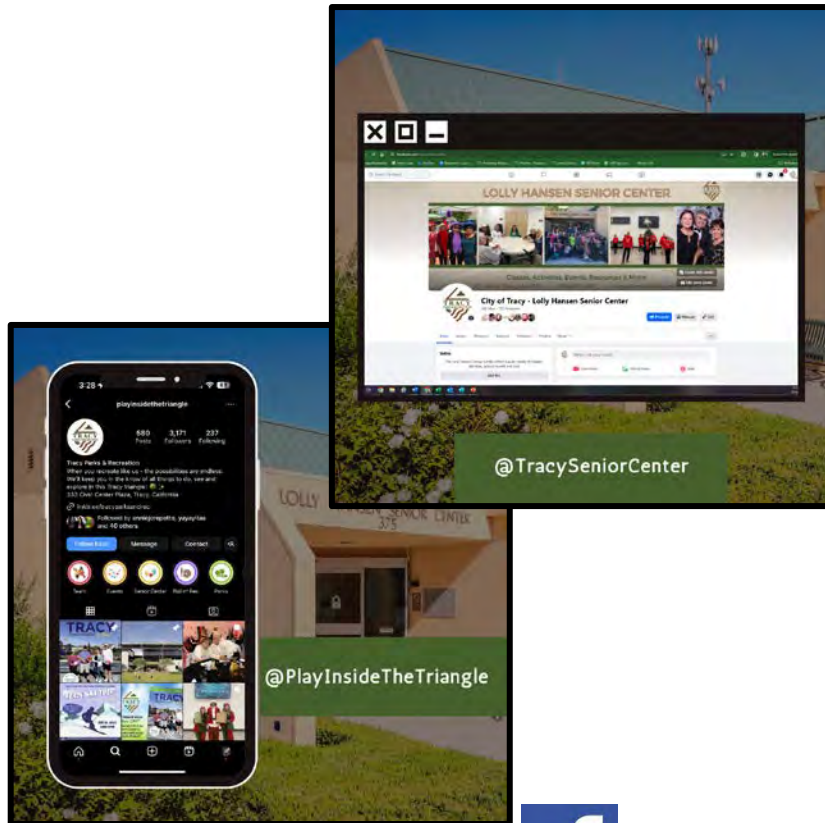
PROGRAM HIGHLIGHTS

- 8,099 Seniors Registered
- 506 New Seniors
- New Programs & Events For 2024
 - Arts & Craft Studio
 - Hand + Foot
 - Meditative Art
 - Open Workshop
 - Seated Volleyball
 - Writing Group
 - Beginning French
 - Intermediate French
 - Beginning Ukulele
 - Computer Literacy Class
 - Zumba Gold
 - iPhone Training Class
 - Android Training Class
 - Learn about Finances
- New Events for 2024
 - Sweetheart Dance
 - Rootin' Tootin' Rootbeer Social
 - Let's Flamingle
 - Karaoke and Dance Party
 - Golden Game Night
 - Fun Flick Fridays
 - Red, White, & Blue Extravaganza
 - Multicultural Event
 - Flapjacks and Flannels



MARKETING EFFORTS

Social Media Outlets Facebook & Instagram



@tracyseniorcenter

@playinsidethetriangle

Flyers & Posters

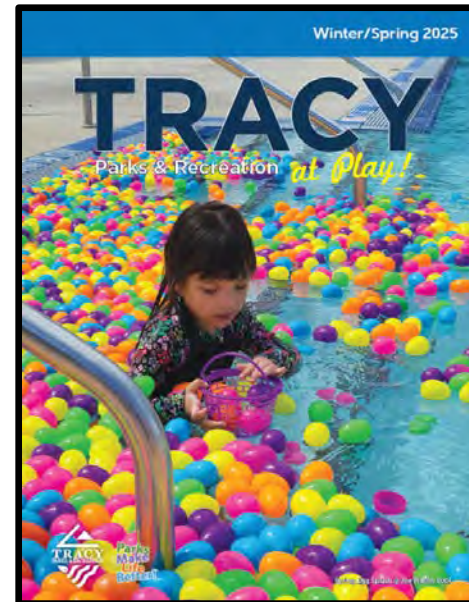


MARKETING EFFORTS

- Daily updates @ Senior Center
- City Facilities & Parks
- City Website
- Recreation Activity Guide
- Channel 26
- Email Blasts
- Tracy Press Datebook
- Chamber of Commerce
- Community Events
- Farmer's Market
- TRACER/Paratransit buses

Outreach to:

- Senior Community
- Churches
- Local organizations
- Doctors' offices



Think Inside the 'Triangle'

PARKS & COMMUNITY SERVICES COMMISSION

- Priority to actively engage seniors in the Tracy Community
- Quarterly updates on Senior Comments and Concerns



Think Inside the 'Triangle'

PARKS & COMMUNITY SERVICES COMMISSION

Commission's FY 2023/2024 Goals:

- 1.B. – Ensure representation with the Tracy Senior Association and Tracy Golden Agers
- 1.D. – Public outreach to senior community
 - Conduct a special meeting of the Parks Commission at the Lolly Hansen Senior Center



NEXT STEPS

Parks Commission



Recreation Staff & Parks Commission



Think Inside the Triangle™

Thank you!



Coffee with a Cop



Older American's Month
Proclamation