

CORRECTION MADE TO RESOLUTION

June 20, 2024

AGENDA ITEM 3.B

RECOMMENDATION

Staff recommends that the Tracy Homelessness Advisory Committee 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 high tension membrane structure from Sprung Instant Structures, Inc., pursuant to California Public Contract Code Section 22050 and Tracy Municipal Code Section 2.20.270(a); and (2) rescinding the approval, given pursuant to Resolution 2022-098, of a Purchase Agreement with Sprung Instant Structures, Inc. for a high-tension membrane structure in the amount of \$455,000; and (3) approving, instead, a Purchase Agreement with Sprung Instant Structures, Inc., for such structure at the Not-To-Exceed amount of \$481,275.

EXECUTIVE SUMMARY

This agenda item requests that City Council make a determination that compliance with standard procurement process is not in the best interest of the City and dispense with standard procurement process for procurement of the Sprung high tension membrane structure, recommends the rescission of a prior approval to execute a Purchase Agreement with Sprung Instant Structure, which was approved pursuant to Resolution no. 2022-098, and seeks new approval of a Purchase Agreement with Sprung Instant Structures, Inc., (Vendor) for the purchase of a sixty (60) foot wide by one hundred and five (105) foot long high tension membrane structure to be installed as part of the Phase II 2024 Site Improvements at the Temporary Emergency Housing Facility (TEHF) Project, City of Tracy Capital Improvement Project (CIP) 71112, at 370 W. Arbor Avenue, for a Not-To-Exceed amount of \$481,275.

BACKGROUND AND LEGISLATIVE HISTORY

On September 1, 2020, the City Council authorized the creation of a CIP 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 Project it was determined that the use of prefabricated structures would best meet the City's goal to expedite the facility occupancy schedule. A steel component building structure was considered, however, lead times for a standard steel building component package was anticipated to take eleven (11) months. The Vendor utilizes aluminum structural ribs and bracing components that are kept in stock and a complete structure package can be delivered in six to eight weeks. The structure has high-tension membrane interior and exterior skins with an insulation layer between, that fully encloses the structure and provides energy efficiency as required by California Building and Energy codes. The structure package will include all components and specialized fittings to meet the City's design layout.

On December 21, 2021, pursuant to Resolution 2021-196, City Council authorized the use United States General Services Administration Cooperative purchase agreement with Sprung Instant Structures, Inc. for the purchase of pre-manufactured sixty (60) foot by one hundred five (105) foot long high-tension membrane structures. The resolution was amended with Resolution

2022-056 on May 3, 2022 because the United States General Services Agency, Cooperative purchasing MAS purchasing requires the use of federal grant funds and authorization of a federal contracting officer to utilize the program and the Community Development Block Grant (CDBG) Funding through the Department of Housing and Urban Development (HUD), does not support the use of the GSA purchasing program. Pursuant to Resolution 2022-056 the City Council authorized the direct purchase of the pre-manufactured sixty (60) foot by one hundred five (105) foot long high-tension membrane structures.

Phase II Site Improvements were advertised for bids in June of 2022, work for this contract included all work required for the installation of the Sprung Structure purchased directly by the City pursuant to Resolution 2022-056. Only a single bid was received, and it exceeded the available project funds. On August 16, 2022, the City Council, pursuant to Resolution 2022-120, rejected the bid received on July 20, 2022 and authorized staff to readvertise the project with modifications.

On July 5, 2022, pursuant to Resolution 2022-098, the City Council approved a Purchase Agreement with the Vendor, in the amount of \$455,000.00. However, the then approved Purchase Agreement was not executed pending the outcome of the upcoming TEHF Site Improvement bid process, but the vendor agreed to hold the price until its execution.

The modified Phase II Site Improvements were readvertised for bids in September of 2022, and all work required for the installation of the Sprung Structure, purchased directly by the City remained in the project scope. On Wednesday, October 19, 2022, bids for the construction of the TEHF Site Improvements were received. All bids received exceeded the available funding; therefore, the construction contract could not be awarded.

On August 15, 2023, the City Council, pursuant to Resolution 2023-150, rejected all bids received in October of 2022, so that staff could prepare the TEHF Phase II Site Improvements to be readvertised. Because the Phase II Improvements were not able to move forward in 2022, the Purchase Agreement approved pursuant to Resolution 2022-098 was not executed.

Additional funding was obtained from the San Joaquin County Board of Supervisors, in the form of a grant of American Rescue Plan Act funding in the amount of \$7.1 million and a federal Housing and Urban Development Community Project Funding Grant in the amount of \$3 million, that now allows for the construction of Phase II.

On August 31, 2023, Sprung provided an updated cost proposal of for a total of \$481,275. The not-to-exceed total includes:

Sprung Structure	\$ 425,802
Ancillary Services	\$ 11,853
Shipping/Delivery	\$ 6,940
California sales tax (8.25%)	\$ 36,680
Total Agreement Not-to-Exceed	<u>\$ 481,275</u>

The 2023 proposal from Sprung, reflects a 6.8% increase in proposed cost from the 2022 proposed cost. Sprung Instant Structures, Inc. has agreed to honor the proposal provided in 2023 for this Agreement.

Foundation preparation, utility connections and interior buildout for the Sprung structure is included in the Phase II Site Improvement construction work. All information for the Sprung structure, including notations regarding the City's purchase of said materials, have been coordinated into the plans and specifications for the those bid documents, the award of which work you are considering by separate agenda item.

As the two components are related, staff recommends that this item be included on the City Council Agenda on the same date that the construction contract award for the Phase II Site Improvements is being considered.

FISCAL IMPACT

The Temporary Emergency Homeless Shelter, CIP 71112, is an approved Capital Improvement Project with a total budget of \$20,947,654. There are sufficient funds available in the project for the purchase of the Sprung structure, 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	\$ 4,229,546	\$ 270,454
San Joaquin County (ARPA) R1	\$ 3,661,113	\$ 3,661,113	\$ -
San Joaquin County (ARPA) R2	\$ 7,167,798	\$ -	\$ 7,167,798
HHAP	\$ 329,240	\$ 329,240	\$ -
HHAP R2	\$ 414,042	\$ 414,042	\$ -
Federal Grant	\$ 3,000,000	\$ -	\$ 3,000,000
CDBG (4 Grants)	\$ 1,185,461	\$ 836,294	\$ 349,167
Housing Asset Funds	\$ 690,000	\$ 101,979	\$ 588,021
Current Budget	\$ 20,947,654	\$ 9,572,214	\$ 11,375,440

CEQA DETERMINATION AND NEPA

A Notice of Exemption was issued on October 16, 2020, for the TEHF in accordance with Government Code sections 65660-65662 for low barrier navigation Centers and Section 15269(c) of the CEQA Guidelines. This action is consistent with the project considered in the Notice of Exemption and no further environmental review is necessary.

San Joaquin County, as the responsible entity under the National Environmental Protection Act (NEPA) for the federal grants related to this Project, conducted an Environmental Assessment in 2023 and released a Finding of No Significant Impact on January 18, 2024, in compliance with NEPA and applicable federal regulations.

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 Tracy Homelessness Advisory Committee 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 high tension membrane structure from Sprung Instant Structures, Inc., pursuant to California Public Contract Code Section 22050 and Tracy Municipal Code Section 2.20.270(a); and (2) rescinding the approval, given pursuant to Resolution 2022-098, of a Purchase Agreement with Sprung Instant Structures, Inc. for a high-tension membrane structure in the amount of \$455,000; and (3) approving, instead, a Purchase Agreement with Sprung Instant Structures, Inc., for such structure at the Not-To-Exceed amount of \$481,275.

Prepared by: Ilene Macintire, PE, Senior Civil Engineer

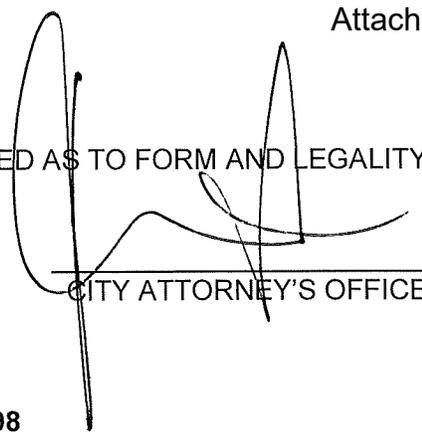
Reviewed by: Sara Cowell, Director of Finance
Arturo Sanchez, Assistant City Manager
Bijal Patel, City Attorney

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS:

Attachment A-Resolution 2022-098
Attachment B-Purchase Agreement with Sprung Instant Structures, Inc.

APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY'S OFFICE

**TRACY CITY COUNCIL
RESOLUTION NO. 2022-098**

APPROVING A PROCUREMENT AGREEMENT WITH SPRUNG INSTANT STRUCTURES, INC. FOR THE PURCHASE OF A SIXTY (60) FOOT WIDE BY ONE HUNDRED FIVE (105) FOOT LONG, HIGH TENSION MEMBRANE STRUCTURE IN THE AMOUNT OF \$451,786, TO BE INSTALLED AS PART OF THE SITE IMPROVEMENTS AT THE TEMPORARY EMERGENCY HOUSING PROJECT, CIP 71112, AT 370 W. ARBOR AVENUE

WHEREAS, The City Engineer's Office has finalized the construction documents for Site Improvements at the Temporary Emergency Housing Project, CIP 71112, at Arbor Avenue, and a significant component of the site improvements is a sixty (60) foot wide by one hundred five foot (105) long high-tension membrane structure; and

WHEREAS, The City Council, on December 21, 2021, via Resolution No. 2021-196, amended on May 3, 2022, via Resolution No. 2022-056, Council authorized the direct purchase of a sixty (60) foot wide by one hundred five foot (105) long high-tension membrane structure; and

WHEREAS, The City Council, on September 1, 2020, authorized the creation of a Capital Improvement Project, the Temporary Emergency Housing Project, CIP 71112, to fund the improvements at 370 W. Arbor Avenue; and

WHEREAS, The vendor, Sprung Instant Structures, Inc., manufactures and stocks the components of the high-tension membrane structure and a complete structure package can be delivered in about six to eight weeks; and

WHEREAS, By purchasing the structures in advance and directly from the manufacturer, staff expects to minimize production time delays to the Project; now, therefore, be it

RESOLVED, That the City Council of the City of Tracy hereby approves, via resolution, the Procurement Agreement with Sprung Instant Structures, Inc. in a not-to-exceed amount of \$451,786 for the purchase of a sixty (60) foot wide by one hundred five foot (105) long high-tension membrane structure for installation as part of the Temporary Emergency Housing Project, CIP 71112, at 370 W. Arbor Avenue.

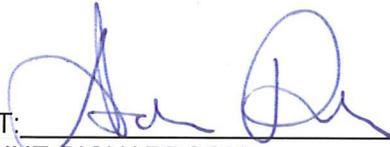
CORRECTION MADE TO RESOLUTION

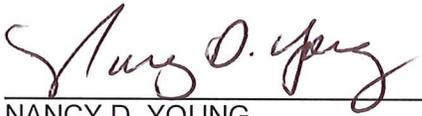
Resolution 2022-098

Page 2

The foregoing Resolution 2022-098 was passed and adopted by the Tracy City Council on the 5th day of July 2022, by the following vote:

AYES:	COUNCIL MEMBERS: ARRIOLA, BEDOLLA, DAVIS, VARGAS, YOUNG
NOES:	COUNCIL MEMBERS: NONE
ABSENT:	COUNCIL MEMBERS: NONE
ABSTENTION:	COUNCIL MEMBERS: NONE

ATTEST: 
ADRIANNE RICHARDSON
City Clerk and Clerk of the Council of the City
of Tracy, California


NANCY D. YOUNG
Mayor of the City of Tracy, California

**CITY OF TRACY
PURCHASE AGREEMENT FOR GOODS, COMMODITIES, AND ANCILLARY SERVICES WITH
SPRUNG INSTANT STRUCTURES, INC.**

This Purchase Agreement for Goods, Commodities, and Ancillary Services (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and Sprung Instant Structures, Inc. a Texas 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 will allow 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 construction is being funded by grants from the Department of Housing and Urban Development (**HUD**) through Community Development Block Grants (**CDBG**) and Community Project Funding (**CPF**), Urban Development Homeless Housing, Assistance & Prevention Grants (**HHAP**); American Rescue Plan Act (**ARPA**) funds from San Joaquin County and the City of Tracy, and City of Tracy Housing Asset Funds.
- C.** During preliminary design, City staff researched the available options for main shelter structures suitable for timely implementation of the Project and initially concluded that purchasing a sixty (60) foot wide by one hundred five (105) foot long high predesigned and fabricated tension membrane structure (as further described in **Exhibit A** attached hereto, "**Goods**") was the best option for meeting the City's timeframe for implementing the Project.
- 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.** On May 3, 2022, City Council approved Resolution No. 2021-196 to authorize the direct purchase of Goods from the Vendor.
- F.** 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.
- G.** Under Tracy Municipal Code Section 2.20.180(b)(2) purchases of \$50,000.00 or greater are exempt from formal bidding requirements if the City Manager reviews and approves that the purchase may be obtained only from one source. The City Manager for the City of Tracy has so reviewed and approved that the Goods described hereunder are unique and available only from Vendor.
- H.** Consistent with the authority granted in Resolution No. 2021-196, the Parties have reached an agreement for the City's purchase of the agreed-upon Goods and ancillary services by the terms outlined in this Agreement.

NOW THEREFORE, in exchange for the mutual covenants provided herein, which the parties hereto acknowledge as good and valuable consideration, the parties 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 installation or delivery 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: **Bo Comings, Business Development Manager.** 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. A list of all personnel who will be conducting the Ancillary Services in conjunction with this Agreement will be outlined in **Exhibit B**.

2. DELIVERY DATES. The Vendor shall ship the 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**. Vendor shall give the City written notice when the Goods have been shipped or caused to be shipped.

2.1 Time is of the essence for the delivery schedule. Any failure by the Vendor to meet the delivery schedule established pursuant to **Exhibit C** will constitute a material default of this Agreement. If Vendor fails to meet the delivery timeline set out in this Agreement of **Exhibit C**, the City may cancel the order of any Goods and Ancillary Services not delivered by the required time, without liability and/or 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 total purchase price is delineated the products and services provided by Vendor to City: the price of the Goods, the price of the Ancillary Services, taxes, and the cost of delivery of Goods.

3.1 NOT TO EXCEED AMOUNT. Vendor's total compensation for the aggregate of the Goods and the Ancillary Services under this Agreement shall not exceed **\$481,275.00 (Four Hundred Eighty-One Thousand, Two Hundred Seventy-Five Dollars)**. Notwithstanding the foregoing, the payment of any funds 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. 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) to the City per the outlined schedule in Purchase of Goods and Ancillary Services in **Exhibit D.**

3.2.1 If Vendor 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 Vendor's failure to submit invoice(s) in accordance with this Section may result in the City rejecting said invoice(s) and thereby delaying payment to Vendor.

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 compensation to Vendor for anything completed, finished or relating to Vendor's 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.

3.6 Taxes. The Seller must separately state on all invoices any taxes imposed by the local, state, or federal state government applicable to furnishing of the Goods provided, however, where a tax exemption is available, the tax must be subtracted from the total price and identified. Unless otherwise outlined in this Agreement, the Purchase Price will be considered to include state and city sales or use tax.

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, with or without cause, 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 deposited in the mail by the City. Should the city terminate this agreement after manufacturing has begun, the City agrees to pay Vendor \$208,632 for mobilization, restocking and custom parts as shown in Exhibit D-1.

5. **BREACH**. In the event of a breach of the Purchase 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 and accepted by 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** and **B**. Any Goods and Ancillary Services rejected may be returned to the Vendor at the Vendor's risk and expense.
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 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; and/or Vendor's breach of this Agreement, except to the extent such Claim is caused solely by the active negligence or willful misconduct of the City. In this Section 4, "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 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.
- 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.
- 8.2 **WORKERS' COMPENSATION**. Coverage shall be maintained as required by the State of California.
- 8.3 **PROFESSIONAL LIABILITY**. "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Vendor in an amount not less than \$1,000,000 per claim.
- 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 For any claims related to 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.

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 provide structure components to be assembled on site by others. Vendor will direct structure components to be delivered to the project General Construction Contractor at the project site. 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. WARRANTY. The Vendor warrants that all Goods 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 Vendor assumes design responsibility and warrants the Goods to be free from design defect and suitable for the purposes intended by the City, and that such Goods provided by the Vendor shall conform to applicable specifications.

10.1 The Vendor's warranties, together with its service guarantees, are hereby assigned to the City and shall run to the City and its customers or users of the Goods and Ancillary Services and must not be deemed exclusive to Vendor. The City's inspection, approval, acceptance, use of, and payment for all or any part of the Goods and Ancillary Services must in no way affect its warranty rights whether or not a breach of warranty had become evident in time.

11. DUTY TO DEFEND. Vendor agrees, (1) at its cost and expense, to promptly defend and hold the City and the City's employees, officers, managers, agents, and council members (collectively the **Parties to be Defended**) harmless 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 Goods and Ancillary Services; (ii) allegations that the Goods are defective in manufacture or design; (iii) any patent or other intellectual property right or infringement related to the Goods and (iv) the work, activities, operations, or duties of Vendor, or of anyone employed by or working under the Vendor, or (2) any breach of this Agreement by Vendor.

11.1 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. Vendor 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.

- 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
City of Tracy, Utilities Division
3900 Holly Drive
Tracy, CA 95376

To Vendor:

Bo Comings
Business Development Manager
Sprung Instant Structures Inc.
5711 West Dannon Way
West Jordan, UT 84081

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 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. 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.** Vendor 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.
- 14.6.2** **PREVAILING WAGE LAWS.** Vendor is aware of the potentially applicable 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, Vendor 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>. Vendor 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. Notwithstanding or limiting the foregoing, Vendor believes the Prevailing Wage Laws outlined above are not applicable as Vendor is not providing any labor or supervision to the work site. Vendor will include a Technical Consultant (TC) to provide the City’s contractor advice on the best methods of assembling and erecting the structure only; the TC is not authorized to perform any work or to directly supervise a crew and as such is considered Vendor management.
- 14.6.3** **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. Vendor 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]

IN WITNESS HEREOF, 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: Nancy Young
Title: Mayor

Date: _____

Attest:

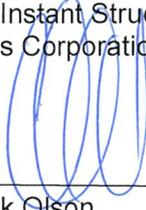
Adrienne Richardson, City Clerk

Approved as to form:

Bijal Patel
City Attorney

Vendor

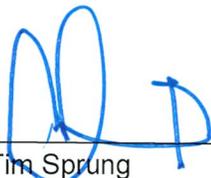
Sprung Instant Structures, Inc.
(A Texas Corporation)



By: Clark Olson
Title: Vice President

Date: 5-1-24

Federal Employer Tax ID No. 742 114 504



By: Tim Sprung
Title: Vice President

Date: 5-1-24

Exhibits:

- A Description of Goods
- B Description of Ancillary Services
- C Delivery Timeline
- D Purchase Price
- D-1 Restocking Fee Calculation

EXHIBIT A- Description of Goods

The Vendor shall furnish a high-tension membrane structure per the following:

Structure Description:

Signature Series 60 feet wide by 105 feet long, measured by maximum width by maximum length including the following accessories:

- 1 - 14'3" Hood with (2) 3'x7' frame only (Door by others)
- 1 - 6'x7' Door Frame in Flat End (Door by others)
- 1 - 4'x7' Door Frame in Flat End (Door by others)
- 1 - City of Tracy Graphic Logo at Entrance
- 1 - Frameless Penetration Kit(s) for insulated structures (Medium) 3" to 6"
- 1 - Frameless Penetration Kit(s) for insulated structures (X Large) 7" to 13"
- 2 - 3'x7' Door Frame in Flat End (Door by others)
- 2 - Bay(s) of Cable Bracing
- 2 - Engineered Flat End(s)
- 2 - Tempered Safety Glass Window(s) 39" X 39" - Insulated R4.0
- 3 - 10' hood with 3'x7' Door Frame (Door by others)
- 3 - Standard Framed Penetration(s) for insulated structure - size 4' wide by 4' high and smaller
- 3 - Tempered Safety Glass Window(s) 85" X 39" - Insulated R4.0
- 8 - Frameless Penetration Kit(s) for insulated structures (Small) 1/4" to 4"
- 8 - LED Hood Light(s) 120-277, 50 or 60 Hz c/w Bracket and Photocell
- 48 - 75 lb. Hanging Brackets - Interior suspension eye-nuts, powder coated or mill finish
 - 8" (R-25) blanket of fiberglass insulation c/w white interior liner
 - Conduit Holes Set as per diagram provided by Sprung
 - Engineered Stamped Drawings
 - Perimeter Flat Bar
 - Tedlar or Kynar opaque membrane with Daylight Panels (Colored Tedlar or Kynar)
 - Color: Hunter Green

Structure Warranty: The Vendor shall Warranty the Sprung Structure with a 50-year pro-rata guarantee on the aluminum substructure and architectural membrane pro-rata guarantee, per the attached Guarantee Certificate. The Architectural Membrane shall be Tedlar® or Kynar coated opaque membrane, with a 25-year warranty per the attached Guarantee Certificate.

Structure Erection: The Vendor is not responsible for erection of the structure. The City's general contractor shall be responsible for erecting the structure connecting any and all electrical for any options requiring power. Electrical specifications are available from the Vendor.



Build
Faster

EXHIBIT B – Description of Ancillary Services

Ancillary Services: The Vendor will supply a **Technical Consultant** on site to provide advice on the best methods of structure assembly and erection to a construction supervisor (or equivalent). The Technical Consultant is not authorized to perform any other services or directly supervise workers.

City General Contractor Responsibilities: The City's general contractor shall be responsible for supervision of and safety compliance in structure location, orientation, assembly, and erection. The Technical Consultant is not a project manager, City is solely responsible for project management if this is a requirement.

Required Equipment and Manpower: The required equipment and manpower to erect the structure shall be provided by the City's general contractor and includes:

- a) Manlifts.
- b) Appropriate fall protection (body harness and lifeline).
- c) Electrical power to site.
- d) Estimated 7 workmen for approximately 25, 8 hour working days, approximately half of which should be manlift qualified. Total manhours to complete is estimated at 1,400.
- e) A construction supervisor with construction experience.
- f) A crane with an operator and rigger will be required for approximately 7 hours, to assist in raising the assist in raising the free span aluminum beams during the erection sequence.

Specialized Hand Tools: The Vendor will provide specialized hand tools at no additional charge. The City's General Contractor is responsible for the tools while they are on the project site and until picked up by Sprung following completion of the erection of the structure. Lost, stolen, or damaged tools will be billed at their full replacement cost.

Structural Calculations and Anchorage: Concrete Footing and Base Reactions will be provided by the Vendor when required.

Permits, Licenses, and Taxes: The City will be responsible to obtain all permits, licenses and pay all applicable taxes. This structure is designed to meet the CBC 2019.

Onsite Engineering Inspections: If onsite engineering inspections are required, please advise our sales office to request a quotation. These services will be quoted at our cost. Onsite inspections are not included as a part of Engineered Stamped Drawings.

EXHIBIT C– Delivery Timeline

Delivery will be determined as set forth below. Delivery is typically 6-8 weeks. Once the order is processed, Sprung's Contract Manager will contact the City to coordinated shipping and Technical Consultant arrival dates.

The City and Vendor agree and acknowledge that (i) the scheduled delivery date is dependent on the City's construction contractor's (Contractor) construction schedule (Schedule), including when the foundation for the structure is complete and (ii) the City will not have the Schedule until the City awards and executes a construction contract to Contractor.

Accordingly, within 20 calendar days of Vendor's receipt of this executed Agreement and an email Notice to Proceed from the City, the City, Vendor, the City's construction manager, and the Contractor shall meet at a mutually agreeable date and time for a Project pre-construction meeting. During, or within five (5) calendar days of, the pre-construction meeting, Vendor shall propose to the City a commercially reasonable delivery schedule for all Project components and Ancillary Services in a form acceptable to the City. Once approved by the City, the schedule shall be incorporated and annexed into this Agreement by this reference. All deliveries and Ancillary Services to be made and/or performed under this Agreement shall be made and/or performed pursuant to the approved schedule. The Vendor will provide Ancillary Services on the project site during the timeframe for installation of the structure as established by the Schedule. The Vendor will cooperate in coordinating the delivery schedule with the City and City Contractor.

EXHIBIT D – Purchase Price and Payment Schedule

Purchase Price

Structure and Accessories **\$ 425,802.00**

F.O.B. Salt Lake City, Utah, USA. Sales and/or use taxes extra.

Ancillary Services: Technical Consultant **\$ 11,853.00**

Consultant's travel, accommodation, and meals will be charged at the fixed cost shown.

Shipping and Delivery **\$ 6,940.00**

Vendor will arrange for delivery of the structure package by commercial carrier to the project site in Tracy, California at a fixed cost shown. Structure is sold F.O.B. Utah, 2010 Incoterms. Sprung will maintain responsibility of the shipment and will insure the shipment up until the point of delivery. The City is responsible to receive and unload freight in a timely manner.

Sales & Use Tax **\$ 36,680.00**

Total Cost **\$481,275.00**

Payment Schedule

All payments will be made in accordance with Section 3 of the Agreement and the schedule below.

Structure Payment Schedule

50% to be invoiced upon notice to proceed

25% to be invoiced upon delivery of the structure to the Project Site according to the agreed upon construction and delivery schedule

25% to be invoice upon formal acceptance by the City. Acceptance will require all structure components are received and installed per plan, all punch list items are resolved, and Ancillary Services required under the Agreement have been provided to the Contractor.

Ancillary Services Payment Schedule

75% of Ancillary Services will be invoiced upon completion of the Vendor's technicians and staff providing said service on the Project Site.

25% to be invoiced upon formal acceptance by the City. Acceptance will require all Ancillary Services be completed to the City's satisfaction and a statement from the Contractor stating that no additional Ancillary Service support is required.

RESTOCKING CALCULATION

EXHIBIT D-1

Structure:	City of Tracy	
Currency	USD	
width	50' - 90'	
length	105	
Sq.Ft. (from quote report)	6300	4.29
MEMBRANE	outer skin	27,027.00
(membrane cost listed below):	liner	27,027.00
Membrane Options:		0.00
Kynar/Tedlar/LTA/Greenhouse:	surcharge	31,185.00
	sub total	85,239.00
Total Membrane:		85,239.00
CUSTOM ACCESSORIES:		
		0.00
FE		85,070.00
		0.00
		0.00
		0.00
		0.00
		0.00
	subtotal	85,070.00
Total Custom Accessories:		85,070.00
RESTOCKING		
Total Purchase Price:		425,802.00
Less: Total Membrane		85,239.00
Less: Custom Accessories:		85,070.00
Total Above:		255,493.00
15% of above Total:		38,323.95
Add: Total Membrane:		85,239.00
Add: Custom Accessories:		85,070.00
TOTAL RESTOCK		208,632.95

Structure Size	USS	CONS
30'	6.05	6.88
40'	4.95	6.16
50' - 90'	4.29	5.50
100'	4.07	5.28
110'	4.07	5.28
120'	4.07	5.28
130' - 160'	4.07	5.28
130'L-160' L	4.07	5.28

Sprung Instant Structures

This Guarantee is presented to:

City of Tracy

The architectural membrane and aluminum materials utilized in Sprung Structures have been selected for their proven strength, durability and longevity. To show our sincere confidence in our product, Sprung Instant Structures is pleased to issue the following guarantees.

ARCHITECTURAL MEMBRANE WITH TEDLAR PVF FILM or KYNAR COATING

All membranes used are water and mildew resistant, insect proof and flame retardant. These membranes withstand extreme climatic variations and contain ultra-violet inhibitors to reduce degradation by the sun's rays. Flame retardant status has been warranted by the membrane suppliers.

Sprung Instant Structures guarantees to supply new replacement membrane, on a pro-rata basis at the then current price, for all colors of Tedlar or Kynar coated membranes which deteriorate from any of the aforementioned factors within Tedlar/Kynar TWENTY FIVE (25) YEARS from the date of delivery of the structure(s).

EXTRUDED ALUMINUM SUBSTRUCTURE AND COMPONENTS

Aluminum used is professionally engineered and is of the highest quality and structural capability. Sprung Instant Structures guarantees to replace, on a pro-rata basis at the then current price, any aluminum which deteriorates from normal usage within FIFTY (50) YEARS from the date of delivery of the structure(s).

The guarantee will not be valid if a Sprung technical consultant is not present during all erections and dismantling's of the structure during the guarantee period or if any payments associated with the structure(s) are not made on time.

August 31, 2023



PHIL SPRUNG - PRESIDENT

TRACY CITY COUNCIL

RESOLUTION NO. _____

(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 HIGH-TENSION MEMBRANE STRUCTURE FROM SPRUNG INSTANT STRUCTURES, INC., PURSUANT TO CALIFORNIA PUBLIC CONTRACT CODE SECTION 22050 AND TRACY MUNICIPAL CODE SECTION 2.20.279(a) and:

(2) RESCINDING RESOLUTION 2022-098, DATED JULY 5, 2022, APPROVING A PURCHASE AGREEMENT WITH SPRUNG INSTANT STRUCTURES, INC., A UTAH CORPORATION, IN THE AMOUNT OF \$455,000.00 AND

(3) APPROVING - A PURCHASE AGREEMENT WITH SPRUNG INSTANT STRUCTURES, INC., FOR SUCH A STRUCTURE, AT THE NOT-TO-EXCEED AMOUNT OF \$481,275.

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, during design development for the TEHF Project it was determined that the use of prefabricated structures would best meet the City's goal to expedite the facility occupancy schedule; and

WHEREAS, on December 21, 2021, pursuant to Resolution 2021-196, City Council authorized the use United States General Services Administration Cooperative purchase agreement with Sprung Instant Structures, Inc. for the purchase of pre-manufactured sixty (60) foot by one hundred five (105) foot long high-tension membrane structures; and

WHEREAS, Phase I of the Project, demolition of the existing structures, site and preparation, and underground utilities began in May of 2022 and was substantially complete by December of 2022; and

WHEREAS, Resolution 2021-196 was amended with Resolution 2022-056 on May 3, 2022 because the United States General Services Agency, Cooperative purchasing MAS purchasing requires the use of federal grant funds and authorization of a federal contracting officer to utilize the program and the Community Development Block Grant (CDBG) Funding through the Department of Housing and Urban Development (HUD), does not support the use of the GSA purchasing program; and

WHEREAS, City Council authorized the direct purchase of the Sprung Structure -pursuant to Resolution 2022-056; and

WHEREAS, City Council approved a purchase agreement with Sprung Instant Structures, Inc., in the amount of \$455,000.00, on July 5, 2022, under Resolution 2022-098 and the agreement was not executed pending the outcome of the Phase II Site Improvement Bids; and

WHEREAS, the bids received on October 19, 2022 for the Phase II Site Improvement Bids exceeded the available funding, therefor construction was not able to move forward and the purchase agreement was not executed; and

WHEREAS, bid for the Phase II 2024 Site Improvements including the Sprung Structure construction were received on May 7, 2024, and the notice of award is being approved by City Council on May 21, 2024; and

WHEREAS, the Temporary Emergency Homeless Facility, CIP 71112, is an approved Capital Improvement Project with a total budget of \$20,947,654 and sufficient funds are available in the project for the purchase of the structure; and

WHEREAS, the Tracy Homelessness Advisory Committee heard this item on June 20, 2024 and recommended that the City Council adopt the proposed Resolution; 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) pursuant to Government Code section 8698.4 as provided for homeless shelters; and be it further

RESOLVED: That the City Council for the City of Tracy finds 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 high-tension membrane structure from Sprung Instant Structures, Inc., 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 hereby rescinds Resolution 2022-098, approving a purchase agreement with Sprung Instant Structures, Inc., that was not executed; and be it further

RESOLVED: That the City Council approves a Purchase Agreement with Sprung Instant Structures, Inc. for the purchase of a sixty (60) foot wide by one hundred five (105) foot long high-tension membrane structure to be installed as part of the Phase II 2024 Site Improvements at the Temporary Emergency Housing Facility, CIP 71112, at 370 W. Arbor Avenue, in the not-to-exceed amount of \$481,275.00, attached hereto as Attachment 1; and be it further

RESOLVED: That the Mayor is authorized to execute the Purchase Agreement with Sprung Instant Structures, Inc. for the Temporary Emergency Housing Facility Project, CIP 71112, at 370 W. Arbor Avenue, attached hereto as Attachment 1.

The foregoing Resolution 2024-_____ was adopted by the City Council on July 2, 2024, by the following vote:

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

NANCY D. YOUNG
Mayor of the City of Tracy, California

ATTEST: _____
ADRIANNE RICHARDSON
City Clerk and Clerk of the Council of the
City of Tracy, California

Attachments:

- (1) Purchase Agreement – Sprung Instant Structures, Inc.

**CITY OF TRACY
PURCHASE AGREEMENT FOR GOODS, COMMODITIES, AND ANCILLARY SERVICES WITH
SPRUNG INSTANT STRUCTURES, INC.**

This Purchase Agreement for Goods, Commodities, and Ancillary Services (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and Sprung Instant Structures, Inc. a Texas 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 will allow 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 construction is being funded by grants from the Department of Housing and Urban Development (**HUD**) through Community Development Block Grants (**CDBG**) and Community Project Funding (**CPF**), Urban Development Homeless Housing, Assistance & Prevention Grants (**HHAP**); American Rescue Plan Act (**ARPA**) funds from San Joaquin County and the City of Tracy, and City of Tracy Housing Asset Funds.
- C.** During preliminary design, City staff researched the available options for main shelter structures suitable for timely implementation of the Project and initially concluded that purchasing a sixty (60) foot wide by one hundred five (105) foot long high predesigned and fabricated tension membrane structure (as further described in **Exhibit A** attached hereto, "**Goods**") was the best option for meeting the City's timeframe for implementing the Project.
- 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.** On May 3, 2022, City Council approved Resolution No. 2021-196 to authorize the direct purchase of Goods from the Vendor.
- F.** 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.
- G.** Under Tracy Municipal Code Section 2.20.180(b)(2) purchases of \$50,000.00 or greater are exempt from formal bidding requirements if the City Manager reviews and approves that the purchase may be obtained only from one source. The City Manager for the City of Tracy has so reviewed and approved that the Goods described hereunder are unique and available only from Vendor.
- H.** Consistent with the authority granted in Resolution No. 2021-196, the Parties have reached an agreement for the City's purchase of the agreed-upon Goods and ancillary services by the terms outlined in this Agreement.

NOW THEREFORE, in exchange for the mutual covenants provided herein, which the parties hereto acknowledge as good and valuable consideration, the parties 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 installation or delivery 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: **Bo Comings, Business Development Manager.** 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. A list of all personnel who will be conducting the Ancillary Services in conjunction with this Agreement will be outlined in **Exhibit B**.

2. DELIVERY DATES. The Vendor shall ship the 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**. Vendor shall give the City written notice when the Goods have been shipped or caused to be shipped.

2.1 Time is of the essence for the delivery schedule. Any failure by the Vendor to meet the delivery schedule established pursuant to **Exhibit C** will constitute a material default of this Agreement. If Vendor fails to meet the delivery timeline set out in this Agreement of **Exhibit C**, the City may cancel the order of any Goods and Ancillary Services not delivered by the required time, without liability and/or 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 total purchase price is delineated the products and services provided by Vendor to City: the price of the Goods, the price of the Ancillary Services, taxes, and the cost of delivery of Goods.

3.1 NOT TO EXCEED AMOUNT. Vendor's total compensation for the aggregate of the Goods and the Ancillary Services under this Agreement shall not exceed **\$481,275.00 (Four Hundred Eighty-One Thousand, Two Hundred Seventy-Five Dollars)**. Notwithstanding the foregoing, the payment of any funds 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. 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) to the City per the outlined schedule in Purchase of Goods and Ancillary Services in **Exhibit D.**

3.2.1 If Vendor 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 Vendor's failure to submit invoice(s) in accordance with this Section may result in the City rejecting said invoice(s) and thereby delaying payment to Vendor.

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 compensation to Vendor for anything completed, finished or relating to Vendor's 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.

3.6 Taxes. The Seller must separately state on all invoices any taxes imposed by the local, state, or federal state government applicable to furnishing of the Goods provided, however, where a tax exemption is available, the tax must be subtracted from the total price and identified. Unless otherwise outlined in this Agreement, the Purchase Price will be considered to include state and city sales or use tax.

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, with or without cause, 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 deposited in the mail by the City. Should the city terminate this agreement after manufacturing has begun, the City agrees to pay Vendor \$208,632 for mobilization, restocking and custom parts as shown in Exhibit D-1.

5. **BREACH**. In the event of a breach of the Purchase 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 and accepted by 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** and **B**. Any Goods and Ancillary Services rejected may be returned to the Vendor at the Vendor's risk and expense.
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 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; and/or Vendor's breach of this Agreement, except to the extent such Claim is caused solely by the active negligence or willful misconduct of the City. In this Section 4, "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 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.
- 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.
- 8.2 **WORKERS' COMPENSATION**. Coverage shall be maintained as required by the State of California.
- 8.3 **PROFESSIONAL LIABILITY**. "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Vendor in an amount not less than \$1,000,000 per claim.
- 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 For any claims related to 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.

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 provide structure components to be assembled on site by others. Vendor will direct structure components to be delivered to the project General Construction Contractor at the project site. 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. WARRANTY. The Vendor warrants that all Goods 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 Vendor assumes design responsibility and warrants the Goods to be free from design defect and suitable for the purposes intended by the City, and that such Goods provided by the Vendor shall conform to applicable specifications.

10.1 The Vendor's warranties, together with its service guarantees, are hereby assigned to the City and shall run to the City and its customers or users of the Goods and Ancillary Services and must not be deemed exclusive to Vendor. The City's inspection, approval, acceptance, use of, and payment for all or any part of the Goods and Ancillary Services must in no way affect its warranty rights whether or not a breach of warranty had become evident in time.

11. DUTY TO DEFEND. Vendor agrees, (1) at its cost and expense, to promptly defend and hold the City and the City's employees, officers, managers, agents, and council members (collectively the **Parties to be Defended**) harmless 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 Goods and Ancillary Services; (ii) allegations that the Goods are defective in manufacture or design; (iii) any patent or other intellectual property right or infringement related to the Goods and (iv) the work, activities, operations, or duties of Vendor, or of anyone employed by or working under the Vendor, or (2) any breach of this Agreement by Vendor.

11.1 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. Vendor 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.

- 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
City of Tracy, Utilities Division
3900 Holly Drive
Tracy, CA 95376

To Vendor:

Bo Comings
Business Development Manager
Sprung Instant Structures Inc.
5711 West Dannon Way
West Jordan, UT 84081

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 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. 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.** Vendor 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.
- 14.6.2** **PREVAILING WAGE LAWS.** Vendor is aware of the potentially applicable 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, Vendor 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>. Vendor 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. Notwithstanding or limiting the foregoing, Vendor believes the Prevailing Wage Laws outlined above are not applicable as Vendor is not providing any labor or supervision to the work site. Vendor will include a Technical Consultant (TC) to provide the City’s contractor advice on the best methods of assembling and erecting the structure only; the TC is not authorized to perform any work or to directly supervise a crew and as such is considered Vendor management.
- 14.6.3** **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. Vendor 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]

IN WITNESS HEREOF, 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: Nancy Young
Title: Mayor

Date: _____

Attest:

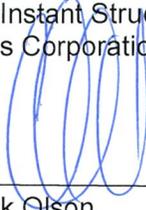
Adrienne Richardson, City Clerk

Approved as to form:

Bijal Patel
City Attorney

Vendor

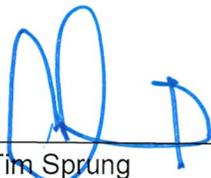
Sprung Instant Structures, Inc.
(A Texas Corporation)



By: Clark Olson
Title: Vice President

Date: 5-1-24

Federal Employer Tax ID No. 742 114 504



By: Tim Sprung
Title: Vice President

Date: 5-1-24

Exhibits:

- A Description of Goods
- B Description of Ancillary Services
- C Delivery Timeline
- D Purchase Price
- D-1 Restocking Fee Calculation

EXHIBIT A- Description of Goods

The Vendor shall furnish a high-tension membrane structure per the following:

Structure Description:

Signature Series 60 feet wide by 105 feet long, measured by maximum width by maximum length including the following accessories:

- 1 - 14"3 Hood with (2) 3'x7' frame only (Door by others)
- 1 - 6'x7' Door Frame in Flat End (Door by others)
- 1 - 4'x7' Door Frame in Flat End (Door by others)
- 1 - City of Tracy Graphic Logo at Entrance
- 1 - Frameless Penetration Kit(s) for insulated structures (Medium) 3" to 6"
- 1 - Frameless Penetration Kit(s) for insulated structures (X Large) 7" to 13"
- 2 - 3'x7' Door Frame in Flat End (Door by others)
- 2 - Bay(s) of Cable Bracing
- 2 - Engineered Flat End(s)
- 2 - Tempered Safety Glass Window(s) 39" X 39" - Insulated R4.0
- 3 - 10' hood with 3'x7' Door Frame (Door by others)
- 3 - Standard Framed Penetration(s) for insulated structure - size 4' wide by 4' high and smaller
- 3 - Tempered Safety Glass Window(s) 85" X 39" - Insulated R4.0
- 8 - Frameless Penetration Kit(s) for insulated structures (Small) 1/4" to 4"
- 8 - LED Hood Light(s) 120-277, 50 or 60 Hz c/w Bracket and Photocell
- 48 - 75 lb. Hanging Brackets - Interior suspension eye-nuts, powder coated or mill finish
 - 8" (R-25) blanket of fiberglass insulation c/w white interior liner
 - Conduit Holes Set as per diagram provided by Sprung
 - Engineered Stamped Drawings
 - Perimeter Flat Bar
 - Tedlar or Kynar opaque membrane with Daylight Panels (Colored Tedlar or Kynar)
 - Color: Hunter Green

Structure Warranty: The Vendor shall Warranty the Sprung Structure with a 50-year pro-rata guarantee on the aluminum substructure and architectural membrane pro-rata guarantee, per the attached Guarantee Certificate. The Architectural Membrane shall be Tedlar® or Kynar coated opaque membrane, with a 25-year warranty per the attached Guarantee Certificate.

Structure Erection: The Vendor is not responsible for erection of the structure. The City's general contractor shall be responsible for erecting the structure connecting any and all electrical for any options requiring power. Electrical specifications are available from the Vendor.



**Build
Faster**

EXHIBIT B – Description of Ancillary Services

Ancillary Services: The Vendor will supply a **Technical Consultant** on site to provide advice on the best methods of structure assembly and erection to a construction supervisor (or equivalent). The Technical Consultant is not authorized to perform any other services or directly supervise workers.

City General Contractor Responsibilities: The City's general contractor shall be responsible for supervision of and safety compliance in structure location, orientation, assembly, and erection. The Technical Consultant is not a project manager, City is solely responsible for project management if this is a requirement.

Required Equipment and Manpower: The required equipment and manpower to erect the structure shall be provided by the City's general contractor and includes:

- a) Manlifts.
- b) Appropriate fall protection (body harness and lifeline).
- c) Electrical power to site.
- d) Estimated 7 workmen for approximately 25, 8 hour working days, approximately half of which should be manlift qualified. Total manhours to complete is estimated at 1,400.
- e) A construction supervisor with construction experience.
- f) A crane with an operator and rigger will be required for approximately 7 hours, to assist in raising the assist in raising the free span aluminum beams during the erection sequence.

Specialized Hand Tools: The Vendor will provide specialized hand tools at no additional charge. The City's General Contractor is responsible for the tools while they are on the project site and until picked up by Sprung following completion of the erection of the structure. Lost, stolen, or damaged tools will be billed at their full replacement cost.

Structural Calculations and Anchorage: Concrete Footing and Base Reactions will be provided by the Vendor when required.

Permits, Licenses, and Taxes: The City will be responsible to obtain all permits, licenses and pay all applicable taxes. This structure is designed to meet the CBC 2019.

Onsite Engineering Inspections: If onsite engineering inspections are required, please advise our sales office to request a quotation. These services will be quoted at our cost. Onsite inspections are not included as a part of Engineered Stamped Drawings.

EXHIBIT C– Delivery Timeline

Delivery will be determined as set forth below. Delivery is typically 6-8 weeks. Once the order is processed, Sprung's Contract Manager will contact the City to coordinated shipping and Technical Consultant arrival dates.

The City and Vendor agree and acknowledge that (i) the scheduled delivery date is dependent on the City's construction contractor's (Contractor) construction schedule (Schedule), including when the foundation for the structure is complete and (ii) the City will not have the Schedule until the City awards and executes a construction contract to Contractor.

Accordingly, within 20 calendar days of Vendor's receipt of this executed Agreement and an email Notice to Proceed from the City, the City, Vendor, the City's construction manager, and the Contractor shall meet at a mutually agreeable date and time for a Project pre-construction meeting. During, or within five (5) calendar days of, the pre-construction meeting, Vendor shall propose to the City a commercially reasonable delivery schedule for all Project components and Ancillary Services in a form acceptable to the City. Once approved by the City, the schedule shall be incorporated and annexed into this Agreement by this reference. All deliveries and Ancillary Services to be made and/or performed under this Agreement shall be made and/or performed pursuant to the approved schedule. The Vendor will provide Ancillary Services on the project site during the timeframe for installation of the structure as established by the Schedule. The Vendor will cooperate in coordinating the delivery schedule with the City and City Contractor.

EXHIBIT D – Purchase Price and Payment Schedule

Purchase Price

Structure and Accessories **\$ 425,802.00**

F.O.B. Salt Lake City, Utah, USA. Sales and/or use taxes extra.

Ancillary Services: Technical Consultant **\$ 11,853.00**

Consultant's travel, accommodation, and meals will be charged at the fixed cost shown.

Shipping and Delivery **\$ 6,940.00**

Vendor will arrange for delivery of the structure package by commercial carrier to the project site in Tracy, California at a fixed cost shown. Structure is sold F.O.B. Utah, 2010 Incoterms. Sprung will maintain responsibility of the shipment and will insure the shipment up until the point of delivery. The City is responsible to receive and unload freight in a timely manner.

Sales & Use Tax **\$ 36,680.00**

Total Cost **\$481,275.00**

Payment Schedule

All payments will be made in accordance with Section 3 of the Agreement and the schedule below.

Structure Payment Schedule

50% to be invoiced upon notice to proceed

25% to be invoiced upon delivery of the structure to the Project Site according to the agreed upon construction and delivery schedule

25% to be invoice upon formal acceptance by the City. Acceptance will require all structure components are received and installed per plan, all punch list items are resolved, and Ancillary Services required under the Agreement have been provided to the Contractor.

Ancillary Services Payment Schedule

75% of Ancillary Services will be invoiced upon completion of the Vendor's technicians and staff providing said service on the Project Site.

25% to be invoiced upon formal acceptance by the City. Acceptance will require all Ancillary Services be completed to the City's satisfaction and a statement from the Contractor stating that no additional Ancillary Service support is required.

Sprung Instant Structures

This Guarantee is presented to:

City of Tracy

The architectural membrane and aluminum materials utilized in Sprung Structures have been selected for their proven strength, durability and longevity. To show our sincere confidence in our product, Sprung Instant Structures is pleased to issue the following guarantees.

ARCHITECTURAL MEMBRANE WITH TEDLAR PVF FILM or KYNAR COATING

All membranes used are water and mildew resistant, insect proof and flame retardant. These membranes withstand extreme climatic variations and contain ultra-violet inhibitors to reduce degradation by the sun's rays. Flame retardant status has been warranted by the membrane suppliers.

Sprung Instant Structures guarantees to supply new replacement membrane, on a pro-rata basis at the then current price, for all colors of Tedlar or Kynar coated membranes which deteriorate from any of the aforementioned factors within Tedlar/Kynar TWENTY FIVE (25) YEARS from the date of delivery of the structure(s).

EXTRUDED ALUMINUM SUBSTRUCTURE AND COMPONENTS

Aluminum used is professionally engineered and is of the highest quality and structural capability. Sprung Instant Structures guarantees to replace, on a pro-rata basis at the then current price, any aluminum which deteriorates from normal usage within FIFTY (50) YEARS from the date of delivery of the structure(s).

The guarantee will not be valid if a Sprung technical consultant is not present during all erections and dismantling's of the structure during the guarantee period or if any payments associated with the structure(s) are not made on time.

August 31, 2023



PHIL SPRUNG - PRESIDENT
