



TRACY CITY COUNCIL

REGULAR MEETING AGENDA

Tuesday, April 1, 2025, 7:00 P.M.

Tracy City Hall Chambers, 333 Civic Center Plaza, Tracy

Web Site: www.cityoftracy.org

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

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

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

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

Remote Public Comment:

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

- *Comments via:*
 - o **Online by visiting** <https://cityoftracyevents.webex.com> and using the following **Event Number 2558 475 7636** and **Event Password: TracyCC**
 - o ***If you would like to participate in the public comment anonymously***, you may submit your comment in WebEx by typing "Anonymous" when prompted to provide a First and Last Name and inserting Anonymous@example.com when prompted to provide an email address.
 - o Join by phone by dialing +1-408-418-9388, enter 25584757636#8722922# Press *3 to raise the hand icon to speak on an item.
- *Protocols for commenting via WebEx:*
 - o *If you wish to comment on the "Consent Calendar", "Items from the Audience/Public Comment" or "Regular Agenda" portions of the agenda:*
 - 1) *Listen for the Mayor to open that portion of the agenda for discussion, then raise your hand to speak by clicking on the Hand icon on the Participants panel to the right of your screen.*
 - 2) *If you no longer wish to comment, you may lower your hand by clicking on the Hand icon again.*
 - o *Comments for the "Consent Calendar" "Items from the Agenda/Public Comment" or "Regular Agenda" portions of the agenda will be accepted until the public comment for that item is closed.*
 - o *Comments received on Webex outside of the comment periods outlined above will not be included in the record.*

Date Posted: March 27, 2025

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

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

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

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

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

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

Date Posted: March 27, 2025

CALL TO ORDER

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

ROLL CALL AND DECLARATION OF CONFLICTS

PLEDGE OF ALLEGIANCE

INVOCATION

PRESENTATIONS

1. Employee of the Month for April
2. Certificates of Appointment for Measure V Residents' Oversight Committee
3. Certificate of Recognition for enlistments to the United States Army, Marines, and Air Force
4. Proclamation for National Volunteer Week

ORDER OF BUSINESS

1. CONSENT CALENDAR

- 1.A. Adoption of March 4, 2025 Closed Session and Regular Meeting and March 18, 2025 Special and Regular Meeting Minutes.
- 1.B. Staff recommend that the City Council adopt a resolution approving the execution of a General Services Agreement with Telstar Instruments, Inc., a California corporation, to replace and program the Programmable Logic Controller (PLC) for the Final Effluent Pump Station at the City of Tracy Wastewater Treatment Plant in a not-to-exceed amount of \$157,401 and a term ending on December 31, 2025.
- 1.C. Staff recommend that City Council adopt a resolution approving the execution of a General Services Agreement with Valentine Corporation for the replacement of the Sedimentation Basin Sludge Removal Rakes at the John Jones Water Treatment Plant with a term ending on December 31, 2025, and a total not-to-exceed amount of \$242,369.
- 1.D. Staff recommends that City Council adopt a Resolution: 1) determining that compliance with the Formal Contract Procedure is not in the best interest of the City and dispose such requirements for the replacement of certain underdrains at the John Jones Water Treatment Plant for the Capital Improvement Project (CIP) 75126 pursuant to Tracy Municipal Code Section 2.20.180(b)(4); and 2) authorizing the execution of Amendment No. 1 to the General Services Agreement with Calgon Carbon, a Delaware Corporation for Capital Improvement Project No. 75126 Filter Media Replacement at the John Jones Water Treatment Plant, for a total not-to-exceed amount of \$2,651,806 and make it effective retroactively from February 1, 2025.
- 1.E. Staff recommend that the City Council adopt a resolution: (1) Awarding a construction contract to Mozingo Construction, Inc. of Oakdale, California, in the amount of \$7,048,372 for construction of the Recycled Water Expansion Project – Pipelines, Capital Improvement Project 74168 (Project); (2) Authorizing the City Manager to approve change orders up to the contingency amount of \$704,837; and (3) Authorizing a Not-to-Exceed Construction Budget of \$ 7,903,209.

- 1.F. Staff recommends that the City Council adopt a resolution (1) accepting public improvements as complete for the Tracy Desalination Plant constructed by Combined Solar Technologies, Inc., (2) authorizing the City Engineer to release bonds for the public improvements in accordance with the Tracy Municipal Code Section 12.36.080, and (3) authorizing the City Clerk to file the Notice of Completion for improvements with the San Joaquin County Recorder's Office.
- 1.G. Staff recommends that the City Council adopt a resolution: (1) making a determination that strict compliance with the standard bidding process is not in the best interests of the City pursuant to Tracy Municipal Code 2.20.180(b)(4) and dispensing such requirements for actions herein; and (2) approving a License Agreement with Magnet Forensics, LLC for the renewal and maintenance of the Tracy Police Department's Axiom and GrayKey digital forensic technology for a 12-month term not to exceed \$63,830.
- 1.H. Staff recommends that the City Council adopt a resolution, (1) accepting public improvements for Tracy Hills Village 7B, Tract 3956, as complete and assume responsibility for the future maintenance and repairs, (2) authorizing the City Engineer to release the Subdivider furnished bonds in accordance with the Subdivision Improvement Agreement, and Subsequent First Amendment, and (3) authorizing the City Clerk to file a Notice of Completion with the San Joaquin County Recorder's Office.
- 1.I. Staff recommends that the City Council adopt a resolution (1) accepting public improvements for Tracy Hills Village 7A, Tract 3955, as complete, and assume responsibility for the future maintenance and operations, (2) authorizing the City Engineer to release the Subdivider furnished bonds in accordance with the Subdivision Improvement Agreement, and (3) authorizing the City Clerk to file a Notice of Completion with the San Joaquin County Recorder's Office.
- 1.J. Staff recommends that the City Council approve amendment no. 2 to the professional services agreement with The Pun Group, LLP to add cannabis revenue auditing services.
- 1.K. Staff recommend that the City Council adopt a resolution approving the execution of a General Services Agreement with Carbon Activated Corporation, a California corporation to remove, dispose, and replace the iron sponge media at the City of Tracy Wastewater Treatment Plant for a not-to-exceed amount of \$58,005 and a term ending December 31, 2025.
- 1.L. Staff recommends that the City Council adopt a resolution approving the schedule of towing fees charged by private towing service operators for tow services within the City.
- 1.M. Staff recommends that the City Council adopt a resolution 1) making a determination that strict compliance with standard procurement procedures is not in the best interests of the City and disposing these requirements pursuant to Tracy Municipal Code Section 2.20.180 for the purchase, installation, operation, training and maintenance of Peregrine software; and 2) approving the execution of Master Service Agreement with Peregrine Technologies, Inc. for these services for a two-year term and total not to exceed \$220,000.

- 1.N. Staff recommends that the City Council adopt a resolution approving the selection of the Interstate 205/Mountain House Parkway Interchange Project as the City of Tracy 2025 Regional Transportation Project submittal for congressional appropriation requests during San Joaquin Council of Governments' One Voice trip to Washington D.C.

1. ITEMS FROM THE AUDIENCE

2. REGULAR AGENDA

- 3.A. Staff recommends that the City Council receive an informational report on the South San Joaquin County Fire Authority (SSJCFA) Board's February 12, 2025, decision to form a Joint Powers Authority (JPA) with the City of Stockton and the City of Lodi, referred to as the CENCAL Fire EMS Authority (CENCAL), to pursue the award of an ambulance contract for San Joaquin County to provide ambulance services.
- 3.B. The Tracy Finance Committee recommends that the City Council receive a report on the Five-year forecast for the City's General Fund and provide direction regarding the City's preliminary Fiscal Year 2025-26 Operating and Capital Budget.

3. ITEMS FROM THE AUDIENCE

5. STAFF ITEMS

6. COUNCIL ITEMS

7. ADJOURNMENT

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

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

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

1. Mayor Arriola called the meeting to order at 5:01 p.m.
2. There were no actions taken pursuant to AB 2449.
3. Roll Call and Declaration of Conflicts – Council Members Evans, Nygard, Mayor Pro Tem Abercrombie, and Mayor Arriola present. City Council had no declarations of conflict. Council Member Bedolla was absent from roll call.
4. ITEMS FROM THE AUDIENCE – None.
5. Request to Conduct Closed Session: Time: 5:04 p.m.

5.A Conference with Legal Counsel – Anticipated Litigation (Gov. Code Section 54956.9(d)(2), (e)(3))

A point has been reached where, in the opinion of the City Council on the advice of its legal counsel, based on the below-described existing facts and circumstances, there is a significant exposure to litigation against the City. Receipt of Claim pursuant to Tort Claims Act or other written communication threatening litigation (copy available for public inspection in City Clerk's office).

(Gov. Code § 54956.9(e)(3)) Claimant: Tad Neave, Workers Compensation Claim NO.FR250137 and Workers Compensation Appeals Board Case #ADJ19742525

5.B. CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION (Gov. Code Section 54956.9(d)(1))

The City Council finds, based on advice from legal counsel, that discussion in open session will prejudice the position of the City in the litigation. Case Name: *Patrick Vargas v. City of Tracy, et al.*

USDC Case No. 2:22-cv-01454-WBS-KJN

5.C CONFERENCE WITH LEGAL COUNSEL —EXISTING LITIGATION (Gov. Code Section 54956.9, (d)(1))

The City Council finds, based on advice from legal counsel, that discussion in open session will prejudice the position of the City in the litigation. Case Name: *City of Tracy v. Surland Communities, LLC.*, San Joaquin County Superior Court, Case No. STK-CV-UBC-2024-0002338

There was no public comment on item 5.A.

ACTION: Motion was made by Mayor Pro Tem Abercrombie and seconded by Council Member Evans to recess to closed session. Time: 5:04 p.m. Roll call found all in favor; passed and so ordered.

Council Member Bedolla arrived at 5:04 p.m.

6. Reconvene to Open Session – Time: 6:43 p.m.
7. Report of Final Action – No report of final action.
8. Council Items and Comments – None.
9. Adjournment: Time: 6:43 p.m.

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

The above agenda was posted at the Tracy City Hall on February 27, 2025. The above are action minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk

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

City Hall, 333 Civic Center Plaza, Tracy

Web Site: www.cityoftracy.org

Mayor Arriola called the meeting to order at 7:00 p.m.

There were no actions taken pursuant to AB 2449.

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

Mayor Arriola led the Pledge of Allegiance.

Pastor Kevin James, New Creation Bible Fellowship offered the invocation.

Mayor Arriola presented a Certificate of Appointment to the Environmental Sustainability Commission to Gurdeep Shergill.

Midori Lichtwardt, City Manager presented to Cristian Cobian, Community and Economic Development Department, Employee of the Month for March.

1. CONSENT CALENDAR – Motion was made by Council Member Bedolla and seconded by Council Member Nygard to adopt the Consent Calendar. Roll call found all in favor; passed and so ordered.
 - 1.A. Adoption of February 4, 2025 Special Meeting, February 18, 2025 Closed Session, Special Meeting and Regular Meeting Minutes. Minutes were adopted.
 - 1.B. Staff recommends that the City Council adopt an Ordinance adding Section 1.24.040 to Chapter 1.24 of the Tracy Municipal Code, establishing an administrative remedies procedure for challenges to fees, charges, and assessments. – Ordinance 1352
 - 1.C. The Tracy Homelessness Advisory Committee recommend that the City Council adopt a Resolution approving Amendment No. 2 to the General Services Agreement with United Site Services of California, Inc. at the Temporary Emergency Housing Facility, Capital Improvement Project 71112, at 370 West Arbor Avenue to: (1) extend the term from June 30, 2025 to June 30, 2026 and (2) increase the total not-to- exceed amount to \$646,310 which would provide the additional funds needed for Fiscal Year 2024-2025 in the amount of \$135,183 and for Fiscal Year 2025-2026 in the amount of \$255,564 for additional sanitation services. – Resolution 2025-042
 - 1.D. The Tracy Homelessness Advisory Committee recommend that the City Council adopt a resolution: (1) Authorizing the acceptance of a grant award from the Emergency Food and Shelter Program ARPA R allocation in the amount of \$18,282 to support the cost of meals and shelter bed nights at the Temporary Emergency Housing Facility Project Capital Improvement Project CIP 71112; and (2) Appropriating the full grant funds to the Parks, Recreation and Community

Services Department, Homeless Services Division for Fiscal Year 2024-2025. – Resolution 2025-043

- 1.E. Staff recommends that the City Council adopt a resolution approving (1) making a determination that compliance with standard procurement process is not in the best interest of the City and dispensing with the procurement requirements for certain software services pursuant to Tracy Municipal Code Section 2.20.140; and (2) the execution of an amendment to an existing contract with Granicus adding services to redesign and modernize the City's website and extending the term for an additional 4 years for a total not-to exceed amount of \$102,400 annually. – Resolution 2025-044
- 1.F. Staff recommends that the City Council adopt resolutions:
1) authorizing: A) the execution of a Master Professional Services Agreement with West Yost & Associates, Inc. to provide report writing consulting for an initial term of two years and a not-to-exceed amount of \$200,000 per fiscal year; and B) the execution of a Master Professional Services Agreement with EKI Environmental & Water, Inc to provide report writing consulting for an initial term of two years and a not-to-exceed amount of \$200,000 per fiscal year, and C) the City Manager to administratively extend the length of one or both contracts for up to three additional years upon satisfactory performance and available budget authorization. – Resolution 2025-045 - West Yost & Associates, Inc. Resolution 2025-046 - EKI Environmental & Water, Inc.
- 1.G. Staff recommends that the Tracy City Council (1) adopt a resolution amending the existing agreement with San Joaquin County Behavioral Health Services accepting the unused funding balance of \$206,406 for the Familiar Faces grant award received from the California Department of Health Services in partnership with the San Joaquin County Behavioral Health Services (2) extend the agreement to June 30, 2025, and (3) appropriate the remaining balance to the Police Department's operational budget. – Resolution 2025-047
- 1.H. Staff recommends that the City Council adopt a resolution 1) authorizing the increase of the annual Not to Exceed amount for fuel supply services at the Tracy Municipal Airport from \$500,000 per fiscal year to \$1,200,000 as part of the agreement with Avfuel Corporation for the remainder of the seven-year term and 2) appropriating \$700,000 to the Airport Operating fund (F561). – Resolution 2025-048
- 1.I. Staff recommends that the City Council adopt a resolution (1) awarding a construction contract to Tennyson Electric, LLC., of Livermore, CA, in the amount of \$797,850 for the Adaptive Traffic Signal System - Eleventh Street Project, Capital Improvement Project 72098, Federal Project Number STPCML-5192(051), (2) accepting the Surface Transportation Block Grant in the amount of \$379,161 (3) appropriating grant funds to project budget, and (4) authorizing the City Manager to approve change orders up to the contingency amount of \$79,785 and an overall project not-to-exceed budget of \$1,054,280. – Resolution 2025-049.

Staff Highlights: Midori Lichtwardt, City Manager shared that PG&E will be holding an open forum with the concerned citizens in the Tracy Hills Community to discuss the installation of the overhead powerlines, that meeting will be held March 5, 2025 and the hour of that meeting will be confirmed at the end of this meeting. Item 3.C will discuss the interim options for the animal shelter.

2. ITEMS FROM THE AUDIENCE – Gary Amata expressed his frustration with a City tree that is located between his and his neighbors home that has caused damage to their water main, filed a claim for reimbursement for the water main repairs, has submitted multiple claims to the Public Works Department and requested further action than just sidewalk repairs.

Robert Tanner wanted to bring awareness for the safe disposal of unused or expired medication including pet medication and shared that the Police Department has a box located in their lobby and an additional box that is utilized as a SHARPS Container where needles and syringes can be disposed of safely.

Denise from Tracy Dog Girls provided Council an update as to the activities that they are participating in rescuing dogs and cats. Shared that a location or warehouse is needed, asked Council for assistance, and that Tracy Dog Girls is open to discussing solutions with Council.

3. REGULAR AGENDA

- 3.A. The Planning Commission recommends that the City Council conduct a public hearing, and upon its conclusion:
1. Adopt a resolution that (A) certifies an Environmental Impact Report ("EIR") and adopts a mitigation monitoring and reporting program ("MMRP"), findings of fact and a statement of overriding considerations for the annexation and development of the Tracy Costco Depot Annex project, which consists of approximately 104.46 acres located at 16000 West Schulte Road, (B) approves a Development Review Permit for the Property for construction of two industrial warehouse buildings totaling approximately 1,736,724 square feet, provided that the Development Review Permit will not be effective until the first day following the effective date of San Joaquin County Local Agency Formation Commission's ("LAFCo") approval of the annexation of the Property to the City, and (C) authorizes the City Manager to submit a petition to LAFCo to annex that certain 104.46 acres located at 16000 West Schulte Road bearing Assessor's Parcel Number 209-230-02 (the "Property") to the City of Tracy; and 2. Introduce an ordinance approving the pre-zoning of that certain 104.46-acre property located at 16000 West Schulte Road bearing Assessor's Parcel Number 209-230-02 ("property") to light industrial (M-1); and determining that the actions authorized by this ordinance were adequately evaluated by that certain Environmental Impact Report certified by the City Council on March 4, 2025, in full compliance with the California Environmental Quality Act ("CEQA").

Mayor Opens Public Hearing

Genevieve Federighi, Associate Planner provided the staff report.
Elise Laws, Consultant – Senior Planner with De Novo Planning Group provided information regarding the Environmental Impact Report.

Karin Schnaider, Assistant City Manager clarified that in the fiscal section, staff is recommending that the property is not detached from the Tracy Rural Fire District, the income difference for property taxes is over \$600,000 that would go to the County if this practice was not followed, and those funds should stay with Tracy Rural Fire District.

Andrew Shen, Interim City Attorney noted that an amended version of the resolution is on the dais and is ready for Council approval.

Christine Lasley, Costco Real Estate Manager shared some of the contributions that Costco has made to the Tracy Community in their partnership over the last 30 years and highlighted that this new project will bring in over 400 construction jobs and over 250 careers.

Council comments and questions.

Liz Sutton, representative from the Sheet Metal Workers Local 104, urged that Council approve this project and highlighted the agreement with Costco that will be allowing the contractors employ apprentices which in turn will allow those individuals at an opportunity at a career.

Manuel Zapata, the political and public relations representative from the Sheet Metal Workers Local 104, urged that Council adopt this project and that the agreement that the hiring priority is a local workforce and that in turn it positively impact the local economy and shared that this project aligns with the City's General Plan.

Eric Parfrey, Sierra Club representative shared that they sent a letter expressing gratitude to Costco for entering into a settlement agreement and agreeing to accelerate the transition to electric heavy-duty trucks and hopes that this project sets a standard that will be applied as standard practices as to what the City will be approving in future when it comes to big projects and warehouses.

Kevin Carmichael, representative from San Joaquin Residents for Responsible Development, shared that the applicant will be implementing additional environmental measures that go above and beyond the mitigation items that were addressed in the agreement and these measures provide additional safeguards to the community regarding air quality, public health, reduction of fire hazards and the resolution of community concerns and prior objections.

Mayor Closed Public Comment

ACTION: Motion was made by Mayor Arriola and seconded by Council Member Nygard to adopt a Resolution that 1. certifying an Environmental Impact Report ("EIR"), adopting findings and a statement of overriding considerations, and adopting a Mitigation Monitoring And Reporting Plan ("MMRP") for the annexation and development of industrial buildings on a 104.46 acre property located at 16000 West Schulte Road bearing Assessor's Parcel Number 209-230-02 ("Property"), all in accordance with the requirements of the California Environmental Quality Act ("CEQA"); and 2. approving a development review permit for that certain 104.46-acre property located at 16000 West Schulte Road bearing Assessor's Parcel Number 209-230-02 ("the property") to take effect on the first day

following the effective date of the San Joaquin County Local Agency Formation Commission's ("LAFCo's") approval of the annexation of the property to the City Of Tracy ("City"); and approving the submittal of a petition to the San Joaquin County Local Agency Formation Commission ("LAFCo") for the annexation of the property to the City of Tracy ("City") without detachment from the Tracy Rural Fire District. Roll call found Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie and Mayor Arriola in favor; passed and so ordered.

Necy Lopez, Acting City Clerk read the title of proposed Ordinance.

ACTION: Motion was made by Council Member Bedolla and seconded by Mayor Pro Tem Abercrombie to waive full reading of text and introduce proposed ordinance approving the pre-zoning of that certain 104.46-acre property located at 16000 West Schulte Road bearing Assessor's Parcel Number 209-230-02 ("property") to light industrial (M-1); and determining that the actions authorized by this ordinance were adequately evaluated by that certain Environmental Impact Report certified by the City Council on March 4, 2025, in full compliance with the California Environmental Quality Act ("CEQA"). Roll call found Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie and Mayor Arriola in favor; passed and so ordered.

- 3.B. Planning Commission and Staff recommend that the City Council conduct a public hearing, and upon its conclusion, take the following actions: 1. Introduce an ordinance approving a Zoning Text Amendment, Application Number ZA22-0004, removing Tracy Municipal Code (TMC) Section 10.08.800, "Service Station" definition, adding TMC Section 10.08.175, "Car Wash" definition, add TMC Section 10.08.375, "Fuel Station" definition, and amending TMC Section 10.08.1080, Permitted Uses, Use Group No. 44, removing and replacing "Automobile Service Stations" with "Car Washes" and "Fuel Stations;" 2. Adopt a resolution: (a) granting a Conditional Use Permit to allow a car wash to be located at 4600 S. Corral Hollow Road, Application Number CUP24-0006; and (b) approving a Development Review Permit for construction of a car wash facility and related site improvements located at 4600 S. Corral Hollow Road, Application Number D22-0044.

Mayor Opens Public Hearing

Genevieve Federighi, Associate Planner provided the staff report.

Council comments and questions.

There was no public comment.

Mayor Closed Public Comment

Necy Lopez, Acting City Clerk read the title of proposed Ordinance.

ACTION: Motion was made by Council Member Bedolla and seconded by Mayor Pro Tem Abercrombie to waive full reading of text and introduce proposed ordinance approving a zoning text amendment, Application Number ZA22-0004, to remove Tracy Municipal Code (TMC) Section 10.08.800, "Service Station" definition, add TMC Section 10.08.175, "Car Wash" definition, add TMC Section 10.08.375, "Fuel Station" definition, and amend TMC Section 10.08.1080, permitted uses, use group No. 44, to remove and replace "Automobile Service Stations" with "Car Washes" and "Fuel Stations". Roll call found Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie and Mayor Arriola in favor; passed and so ordered.

ACTION: Motion was made by Council Member Bedolla and seconded by Mayor Pro Tem Abercrombie to Motion to adopt a Resolution (A) granting a Conditional Use Permit to allow a car wash to be located at 4600 S. Corral Hollow Road, Application Number CUP24-0006; and (B) approving a Development Review Permit for construction of a car wash facility and related site improvements located at 4600 S. Corral Hollow Road, Application Number D22-0044. Roll call found Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie and Mayor Arriola in favor; passed and so ordered.

3.C. Discuss interim solutions for Animal Services to address capacity and kennel space, and upon conclusion of such discussion, by motion, direct staff to proceed with specific solution(s).

Brittany Pasquale, Animal Services Supervisor, provided the staff report.

Council comments and questions.

Julie Selner from Tracy Animal Rescue expressed appreciation to the Animal Shelter staff and stated that unfortunately staff is impacted with meeting the growing needs of the City, there needs to be more outreach.

Denise from Tracy Dog Girls expressed concerns regarding free adoptions, shared that these pets can end up back in the shelter or as bait dogs for those that fight dogs, rehoming dogs for free would not be good practice.

Conrad Levoit asked about a dog that was adopted after being in the shelter for over 400 days and asked why and how that process took place, congratulated staff on that dog getting adopted.

Council discussion continued.

ACTION: Motion was made by Mayor Arriola and seconded by Council Member Nygard to incorporate option A, amended option B that would reduce adoption fees, option C increasing outreach and education and enhanced partnering with non-profit organizations.

Friendly amendment to motion was made by Mayor Arriola to include option C regarding incentives. Seconded by Council Member Nygard. Roll call found Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie and Mayor Arriola in favor; passed and so ordered.

4. ITEMS FROM THE AUDIENCE – Conrad Levoit shared a poem and asked if Council could present his son with a certificate of recognition for his enlistment in the United States Army and requested that Council acknowledge those that have enlisted in the Armed Forces.
5. STAFF ITEMS – Midori Lichtwardt, City Manager shared:
 - State of the City will be held on March 25, 2025 at 9:00 a.m. at the Grand Theatre as we reflect on our City progress and what is next
 - Student Government Day registration closes tomorrow (3/5/2025) it is an all-day event that gives High School students that live or attend school in Tracy the opportunity to get an insider look at how at your local government, learn about our departments, participate in a mock Council Meeting and meet City Leaders
 - There is a vacancy on the Environmental Sustainability Commission – seeking a passionate youth representative, this role will help shape policies that will protect and enhance air, water, and land. This recruitment closes on Friday, March 28, 2025, at 5:00 p.m. and those that are interested can do so by visiting: <https://www.cityoftracy.org/government/boards-and-commissions/environmental-sustainability-committee>
 - There are several vacancies on the Youth Advisory Commission, this recruitment closes on April 18, 2025, and those that are interested in applying can do so by visiting: <https://www.cityoftracy.org/government/boards-and-commissions/youth-advisory-commission>

Reminder that PG&E will be holding an open forum tomorrow, March 5, 2025, starting at 6:00 p.m. at the Tracy Hills Welcome Center located at 2230 Criseldo Mina Ave. in the Tracy Hills Community.

6. COUNCIL ITEMS – Council Member Nygard wished Conrad Levoit's son well in his enlistment in the Army and attended the following:
 - Advisory Water Commission on February 19, 2025, and participated in several presentations including one from a non-profit called River Partners, <https://riverpartners.org/>
 - AVA Energy and encouraged community to visit <https://avaenergy.org/> to see what incentives are available regarding lowering energy costs
 - San Joaquin Partnership on February 20, 2025
 - Stockton Chamber of Commerce REXPO recycling Event that is scheduled for March 12, 2025, for more information visit <https://stocktonchamber.org/>
 - Attended ribbon cutting for first ZERO emissions Taco Bell located on International Parkway
 - Acknowledged public comments that were received and looks forward to the expansion and openings of City amenities
 - Will be attending the NLC Congressional Conference from March 8-12, 2025 in Washington D.C.
 - Announced that Tracy Earth Project will be sponsoring Earth Day on April 26, 2025, <https://www.tracyearthproject.org/>.

Council Member Evans thanked Mr. Levoit and his son, requested to add a policy that during the presentations portion of a Regular Council Meeting, presentations be expanded to those individuals that enlist in the Armed Forces, seconded by Mayor Pro Tem Abercrombie, and attended the Tracy Police Department crab feed and the Youth Art Awards reception that was held at Menchie's.

Mayor Pro Tem Abercrombie thanked Mr. Levoit and his son, attended the Babe Ruth opening day ceremonies, Menchie's Art Show, THAC meeting, Tracy Police Department Crab Feed, and a Special Meeting of the JPA. Requested that the policy regarding the naming of the parks be brought back to Council, Council Member Evans seconded.

Mayor Arriola shared highlights from his Mayor's Report including his attendance at the San Joaquin County Rail Commission Meeting and adopted CEQA Addendum & Approved "Stockton Diamond Grade Separation Project" and attended the SJCOG Meeting on February 27, 2025 and learned about the introduction to "I-205 Managed Lanes" Project which features the potential to "Tolling Lanes" as concept, discussion of managed lanes "Addition" versus "Conversion" alternatives, along with potential following timelines:

- June 2026 -- Circulate draft environmental docs
- June 2027 -- Complete documents
- 2032/2034 -- Open to traffic

Safe Travel to all those attending the National League of Cities Conference, congratulated Mr. Levoit and his son, and wished everyone a Happy St. Patrick's Day.

7. ADJOURNMENT – Time: 9:32 p.m.

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

The above agenda was posted at the Tracy City Hall on February 27, 2025. The above are action minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk

TRACY CITY COUNCIL - SPECIAL MEETING MINUTES

March 18, 2025, 5:00 p.m.

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

1. Mayor Arriola called the meeting to order at 5:03 p.m.
2. There were no actions taken pursuant to AB 2449.
3. Roll Call and Declaration of Conflicts – Council Members Evans, Nygard, Mayor Pro Tem Abercrombie, and Mayor Arriola present. Council Member Bedolla was absent from roll call. Council Member Bedolla arrived at 5:04 p.m.
4. Items from the audience – There was no public comment.
5. DISCUSSION ITEMS
 - 5.A. By motion, (1) Establish interview protocols to fill two vacancies on the Measure V Residents' Oversight Committee; (2) Conduct interviews of seven applicants for two vacancies; and (3) Upon conclusion of the interviews, appoint two applicants to fill two vacancies and establish an eligibility list, if appropriate

Necy Lopez, Acting City Clerk provided the staff report.

Mayor Arriola announced a conflict and recused himself.

Mayor Pro Tem Abercrombie announced the following selection: Mohammad Ibrahimi and Gerald Jeffs to serve on the Measure V Residents' Oversight Committee, the term will begin upon appointment and end on February 28, 2027.

ACTION: Motion was made by Council Member Evans and seconded by Council Member Nygard to appoint Mohammad Ibrahimi and Gerald Jeffs to serve on the Measure V Residents' Oversight Committee, the term will begin upon appointment and end on February 28, 2027. Roll call found Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie in favor; passed and so ordered. Mayor Arriola was absent from roll call.

ACTION: Motion was made by Council Member Evans and seconded by Council Member Nygard to add Nihad Jabbar, Ametrius Sidney, and Thomas Huffman to the eligibility list for the Measure V Residents' Oversight Committee. Roll call found Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie in favor; passed and so ordered. Mayor Arriola was absent from roll call.

There were no Council items.

Adjournment Time: 6:21 p.m.

ACTION: Motion to adjourn was made by Council Member Bedolla and seconded by Council Member Evans. Roll call found Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie in favor; passed and so ordered. Mayor Arriola was absent from roll call.

The above agenda was posted at the Tracy City Hall on March 13, 2025. The above are action minutes. A recording is available at the office of the City Clerk.

ATTEST:

Mayor

City Clerk

March 18, 2025, 7:00 p.m.

City Hall, 333 Civic Center Plaza, Tracy

Web Site: www.cityoftracy.org

Mayor Arriola called the meeting to order at 7:00 p.m.

There were no actions taken pursuant to AB 2449.

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

Mayor Arriola led the Pledge of Allegiance.

Deacon Jack Ryan, St. Bernard's Catholic Church offered the invocation.

Police Chief Sekou Millington swears in Lateral Officers Zaccray Baker and Richard Francis; Lt. Miguel Contreras (Promoted to Captain), Sgt. Daniel Garcia (Promoted to Lieutenant), Corporal Matt Grijalva (Promoted to Sergeant), Detective Andrew Glover (Promoted to Corporal).

Mayor Arriola presents Women's History Month Proclamation to Council Member Dotty Nygard.

Mayor Arriola presents Proclamation for Transgender Day of Visibility & Collaborative Opportunities to Cris Bunnell from San Joaquin Pride Center.

Mayor Arriola presents Certificates of Recognition to Jiraeh Faiaipau, Jasmine Lund, and Noah Porter for their participation in the 2025 California Interscholastic Federation Wrestling State Championship.

1. CONSENT CALENDAR – Motion was made by Mayor Pro Tem Abercrombie and seconded by Council Member Nygard to adopt the Consent Calendar. Roll call found all in favor; passed and so ordered.

- 1.A. Staff recommends that the City Council adopt a resolution (1) accepting public improvements for the following, each by separate resolution:

- Tracy Hills Phase 1A, Tract 3890, Village 4A Public Improvements and Parkway Landscaping, - Resolution 2025-052
- Tracy Hills Phase 1A, Tract 3946, Village 4B Public Improvements and Parkway Landscaping, Resolution 2025-053
- Tracy Hills Phase 1A, Tract 3947, Village 4C Public Improvements and Parkway Landscaping, Resolution 2025-054
- Tracy Hills Phase 1A, Tract 3953, Village 6A Public Improvements and Parkway Landscaping, Resolution 2025-055

as complete, and assume responsibility for the future maintenance and repairs, (2) authorizing the City Engineer to release the Developer furnished bonds in accordance with the Subdivision Improvement Agreements, and (3) authorizing the City Clerk to file Notices of Completion for all accepted public improvements with the San Joaquin County Recorder's Office.

- 1.B. Staff recommends that the City Council adopt a Resolution: 1) Approving the purchase of one Toro GM5900 ride-on mower from Turf Star Western utilizing a competitively bid Sourcewell Cooperative Agreement in the amount of \$154,530 for the Parks Department 2) Declaring the existing mower as surplus and approving its disposition pursuant to Tracy Municipal Code Section 2.20.310. – Resolution 2025-056
- 1.C. Staff recommends that the City Council adopt a resolution (1) making a determination that compliance with standard procurement procedures is not in the best interests of the City and disposing these requirements for the rental of a wheel loader for the wastewater treatment plant; and (2) ratifying Purchase Order 2500509 for such services and authorize a payment in the amount of \$50,948 – Resolution 2025-057
- 1.D. Staff recommends that the City Council adopt a resolution (1) accepting the construction improvements for Pavement Rehabilitation Project Fiscal Year 2020/2021, Lincoln and Lowell, Capital Improvement Project 73178, (2) authorizing the City Clerk to file the Notice of Completion with the San Joaquin County Recorder's Office, (3) authorizing the City Engineer to release the improvement security and retention payment in accordance with the Project Contract and Tracy Municipal Code Section 12.36.080, and (4) authorizing the Finance Department to close the Project. – Resolution 2025-058
- 1.E. Staff recommends that the City Council receive the 2024 Annual Progress Report for the General Plan and Housing Element.
- 1.F. Staff recommends that the City Council adopt a resolution: (1) accepting the San Joaquin County Regional Active Transportation Program (ATP) grant in the amount of \$1,712,000, (2) authorizing the Assistant City Manager: (A) to execute and submit a claim for Cycle Two Measure K Bicycle, Pedestrian and Safe Routes to School Non-Competitive Program funds in the amount of \$399,060.41, (B) to execute and submit all future claims for Measure K Bicycle, Pedestrian and Safe Routes to School Non-Competitive Program funds, (3) appropriating the entire funds received from Measure K (Fund 242) to East Schulte Safety and Multimodal Community Corridor – MacArthur Phase Project, Capital Improvement Project 73202, for a total project amount of \$2,111,060.41, and (4) authorizing the City Manager to execute the ATP grant related documents to effectuate the grant. – Resolution 2025-059
- 1.G. Staff recommends that the City Council adopt a resolution (1) accepting the public improvements for Ellis Dog Park, constructed by Woodside 05N LP, and assuming all future operations and maintenance, (2) authorizing the City Clerk to file the Notice of Completion for Ellis Dog Park with the San Joaquin County Recorder's Office, (3) authorizing the City Engineer to release the Ellis Dog Park improvement security in accordance with the terms of the Park Improvement and Refund Agreement, and (4) authorizing the City Clerk to accept a grant deed from the owner of the Park Site and file with the San Joaquin County Recorder's Office. – Resolution 2025-060

- 1.H. Staff recommends that the City Council adopt an Ordinance 1) approving the pre-zoning of that certain 104.46-acre property located at 16000 West Schulte Road bearing Assessor's Parcel Number 209-230-02 ("Property") to light Industrial (M-1); and 2) determining that the actions authorized by this Ordinance were adequately evaluated by that certain Environmental Impact Report certified by the City Council on March 4, 2025, in full compliance with the California Environmental Quality Act ("CEQA"). – Ordinance 1353
- 1.I Staff recommends that the City Council adopt an Ordinance approving a zoning text amendment, Application Number ZA22-0004, to remove Tracy Municipal Code (TMC) Section 10.08.800, Service Station definition, add TMC Section 10.08.175, Car Wash Definition, add TMC Section 10.08.375, Fuel Station definition, and amend TMC Section 10.08.1080, permitted uses, use group No. 44, to remove and replace Automobile Service Stations with Car Washes and Fuel Stations. – Ordinance 1354
- 1.J Staff recommends that the City Council adopt a resolution (1) approving Amendment No. 2 to the Professional Services Agreement with Kimley-Horn and Associates, Inc. to amend the scope for the Citywide Roadway, Transportation, and Bikeways Master Plan Update, Capital Improvement Projects 73173 and 78171, increasing the compensation by an additional \$346,520, for a total contract amount of \$1,095,005, and (2) authorizing an appropriation of \$201,639 from the Program Management Fund (F391) to CIP 73173. - Resolution 2025-061
2. ITEMS FROM THE AUDIENCE – Robert Tanner shared the importance of proper disposal of unfinished or expired medication and utilizing the medical disposal bin that is located in the Police Department.

William Logan expressed concerns regarding an accident on the corner of Taft and 10th street and shared that he was almost struck in that same intersection the prior week, the signage should be clearly displayed, and it should be a sign that should state "cars in either direction do not stop" hopes that this simple fix could potentially save folks from harm.

Community Member supported the comments provided by Mr. Logan, she is a resident on that street that has had multiple vehicles damaged due to individuals speeding and shared that since the beginning of the year there have already been four accidents and is concerned about the children and families that live in that area.

Community Member shared that this intersection has had over sixteen to twenty accidents, including her vehicles being damaged due to drivers and excessive speeding and requested that maybe speeding should be monitored by police and seems that these incidents are more frequent and getting worse.

Member of Tracy Dog Girls and Community Member shared that volunteers have logged over 200 hours of work in caring for and capturing stray dogs, concerned that the data that they have does not align with the shelter data , shelter response times and requested help from the City.

Tracy Hills Community Members shared that PG&E held a town hall meeting, the work continues, expressed frustration regarding the designation that Tracy Hills has on the fire maps as low-fire zones, lack of compassion from PG&E. They would like for Council to work with the developer and PG&E so that the power lines can be placed underground and provide a timeline.

Janel Borg expressed her concerns regarding animal related issues and if viable solutions are not found that contributes to the problem, shared personal account of a stray diseased cat that found its way into her garage and the issues that she faced in communicating with the animal shelter and requested that Council hold a Special Meeting that addresses the animal issues throughout the City.

3. REGULAR AGENDA

3.A. Staff recommends that the City Council receive an informational report regarding the annual report of the Transportation Advisory Commission

Maurice Francis, Transportation Commission Vice Chair, provided the staff report.

Council comments and questions.

ACTION: Motion was made by Mayor Pro Tem Abercrombie and seconded by Council Member Evans to accept the annual report of the Transportation Advisory Commission. Roll call found Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie and Mayor Arriola in favor; passed and so ordered.

3.B. Staff recommends that the City Council receive an information report and provide direction regarding vacant commercial buildings.

Forrest Ebbs, Director of Community and Economic Development provided the staff report.

Council comments and questions.

Robert Tanner asked if this included the warehouses and Yellow Freight by I205 and referenced empty large retail spaces such as the old JC Penny building and the Save Mart building and is in favor of action items one and two, and instead of a 30-to-60-day vacant building registration, allow for a 90-day period instead so that building owners have the ability to acquire new tenants, regarding fees; the City can charge a fee based on square footage but recommends a flat fee, and requested that the mall be exempt from these conditions.

Forrest Ebbs, Director of Community and Economic Development clarified that this item is focused on retail that is located within the City Limits.

Pat Howell expressed the same concerns as the previous speaker, referenced the Save Mart building and if the Council can look to Save Mart not allowing the building to be used/leased.

Community Member shared that building owners be held accountable for the buildings sitting empty for a long period of time and referenced the Save Mart building.

Council questions and discussion continued.

Mayor Arriola summarized Council consensus as follows:

- Mayor Arriola in support of items 1-5
- Council Member Nygard in support of items 1, 2, and 4
- Council Member Evans in support of items 1-5
- Mayor Pro Tem Abercrombie in support of items 4 and 5
- Council Member Bedolla in support of items 4 and 5

ACTION: Motion was made by Council Member Evans and seconded by Mayor Arriola to accept the report and provide direction as just noted by Mayor Arriola regarding vacant commercial buildings. Roll call found Council Members Bedolla, Evans, Nygard, Mayor Pro Tem Abercrombie and Mayor Arriola in favor; passed and so ordered.

4. ITEMS FROM THE AUDIENCE – Sara Wood, a volunteer at the animal shelter, provided statistical information regarding the animals that are not spayed or neutered, neonatal kits for kittens and the education required to bottle feed kittens, would like expansion on the Teen Ambassador Program, identified staffing shortages, requested additional funding for shelter expansion and additional staff.
5. STAFF ITEMS – Midori Lichtwardt shared:
 - The State of the City is going on next week, on March 25, 2025, from 9 am to noon at the Grand Theatre. This year's event is hosted by the City of Tracy, Mayor Dan Arriola will be speaking, if you would like to reserve your tickets, they are free but they are doing a head count to ensure seat availability, there is a QR code on the main website for the City.
 - Updates on the Corral Hollow Sewer Upgrade, there will be some night work and some closures on North of Eleventh St. intersection to Fieldview Dr. intersection from Sunday, 3/30 to Thursday, 4/3, for ongoing updates and timelines of construction, please visit:
<https://www.cityoftracy.org/Home/Components/News/News/753/78>
 - Applications are now open for the 2025 Tracy Mayor's Summer Youth Internship, this paid opportunity is open to 9th-12th grade students living or attending school in Tracy. Gain hands-on experience, develop leadership skills, and make an impact in your community this summer. Apply at
<https://www.governmentjobs.com/careers/tracyca>
 - The Tracy Homelessness Advisory Committee for March 20, 2025, has been cancelled.
6. COUNCIL ITEMS – Mayor Pro Tem Abercrombie attended the JPA meeting, requested that Council bring back an item regarding the radio upgrade for the Fire District that the JPA already approved, seconded by Council Member Evans.

Mayor Pro Tem Abercrombie also requested that Council consider bringing an item for the dog park to be named after Duke, a Tracy Police Department K-9 that was killed in the line of duty, Council Member Bedolla seconded.

Council Member Evans attended the Artist Recognition event at TCS Insurance for the unveiling of Tracy's newest mural, would like to bring more art of this nature to Tracy, asked if this is an item that is done through the Art Commission, if not, would like Council to have a discussion, shared that this will increase visitors to Tracy. Mayor Arriola seconded.

Council Member Nygard announced that any women who are interested in entering skilled work with building trades can go online and visit <https://valleybuild.net/>, attended the National League of Cities Conference in Washington DC, attended the Chamber Mixer at Sutter Tracy Hospital, requested a Council discussion on warehouse growth for a possible ordinance and address space, land use and how warehouse complexes are developed, would like the model that Costco developed be put into practice. Council Member Bedolla seconded. Mayor Arriola asked if this was for a sustainability ordinance, Council Member Nygard confirmed, and Council Member Bedolla seconded.

Mayor Arriola shared that the State of the City event will be next week, March 25, 2025, will be hosting the Mayor's Youth Town Hall and is looking forward to the discussion and engagement with the youths. Attended National League of Cities Conference and shared some highlights of the sessions that Council Member Nygard, Arturo Sanchez, Assistant City Manager and he participated in. Requested that Council discuss a potential partnership with Tracy Connects, a program that was started by former Mayor Nancy Young. Council Member Nygard supported.

Mayor Arriola requested to bring back to Council a Youth Entertainment Initiative that would be an Economic Development Policy that would incentivize businesses specifically that provide activities for young people to do in our City. Mayor Pro Tem Abercrombie supported.

Mayor Pro Tem Abercrombie, commended staff on Student Government Day where three Council Members attended and shared that the students expressed that they enjoyed it and that it was a success for it being the first year and is looking forward to that continuing.

Midori Lichtwardt, City Manager clarified that the warehouse ordinance request that Council Member Nygard and Council Member Bedolla seconded, and shared that this item was brought up previously by former Mayor Pro Tem Davis and Council Member Bedolla, wanted to let Council know that staff has been working on something regarding this, since it is not a new ask, the expected timeline is sometime around June.

Karin Schnaider, Assistant City Manager elaborated on the steps that staff has taken in the last year and anticipates that by June or July they will know where the State stands on Bill Number AB98 that was passed on November 2024.

7. ADJOURNMENT – Time: 9:18 p.m.

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

The above agenda was posted at the Tracy City Hall on March 13, 2025. The above are action minutes. A recording is available at the office of the City Clerk

Mayor

ATTEST:

City Clerk

Agenda Item 1.B

RECOMMENDATION

Staff recommend that the City Council adopt a resolution approving the execution of a General Services Agreement with Telstar Instruments, Inc., a California corporation, to replace and program the Programmable Logic Controller (PLC) for the Final Effluent Pump Station at the City of Tracy Wastewater Treatment Plant in a not-to-exceed amount of \$157,401 and a term ending on December 31, 2025.

EXECUTIVE SUMMARY

This agenda item seeks adoption of a resolution by the City Council approving a General Service Agreement (GSA) with Telstar Instruments, Inc. to replace and program the Programmable Logic Controller (PLC) for the Final Effluent Pump Station at the City of Tracy Wastewater Treatment Plant (WWTP) for the not-to-exceed amount of \$157,401. The final effluent pump station conveys fully treated wastewater (final effluent) through the outfall pipeline to the Old River. The pumps for this process are all operated and controlled by automation through the PLCs. The existing PLCs are outdated and need to be upgraded to provide reliability and efficiency. Staff requests that City Council approve the GSA with Telstar Instruments, Inc. to provide these necessary services

BACKGROUND AND LEGISLATIVE HISTORY

The City of Tracy (City) treats 10.5 million gallons per day (MGD) of residential and industrial wastewater at its Wastewater Treatment Plant, located at 3900 Holly Drive, Tracy, CA 95034. The function of the final effluent pump station is to deliver fully treated wastewater (final effluent) to its final discharge destination, the Old River, which is approximately 4.5 miles from WWTP. All effluent pumps are operated and controlled by automatic controllers utilizing the PLCs. The current PLC model is aging and obsolete resulting in multiple reliability issues. The recommended GSA is for replacement and programming of a new PLC model to ensure reliable and accurate readings for effective pump control. This increases the efficiency of the treated wastewater delivery to its final discharge destination in compliance with the discharge permit from the State.

ANALYSIS

On December 6, 2024, in accordance with the TMC 2.20.180, the City issued a Notice Inviting Bids (NIB) to perform services to replace and program the Programmable Logic Controller (PLC) for the Final Effluent Pump Station at the City of Tracy Wastewater Treatment Plant. Two (2) bid proposals were received on January 15, 2025.

Vendor	Price
Aspect Engineering Group	\$115,534.46
Telstar Instruments	\$157,401.00

After evaluating the bid proposals, staff determined that the proposal from Aspect Engineering Group did not include all the tasks detailed in the scope of work. Staff attempted to contact

Aspect Engineering Group for clarification of their bid, but the bidder did not respond and was therefore found to be unresponsive. The proposal from Telstar Instruments, Inc. (Contractor) was found to be responsive and to be the best fit for the City's needs for these services. The Contractor is qualified and experienced and has provided satisfactory services to both the Water and Wastewater Facilities in the past.

Staff negotiated and reached terms for an agreement with the Contractor with the term of agreement beginning on the date of execution of this agreement and shall terminate on December 31, 2025, once the City confirms that all services were performed to the City's satisfaction or earlier by termination pursuant to Section 6 of this agreement.

CEQA DETERMINATION

The approval of the proposers in this request or the execution of this contract with the Contractor will not result in a physical change in the environment and therefore is not considered as a project defined by Section 21065 of the Public Resources Code. The approval of this contract and completion of this work is also exempt from CEQA review under CEQA Guidelines Section 15301 as repairs to an existing facility.

STRATEGIC PLAN

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

FISCAL IMPACT

The cost of the services provided by the Contractor is not to exceed \$157,401 for the entire task and will be accounted for in the FY24/25 adopted annual operations and maintenance budget of the Wastewater Fund (521). The Contractor has been used by both the Water and Wastewater Treatment Plants for many years. The total amount spent with the Contractor since September 2015 is \$746,440 as shown below.

2024	\$	146,818	2020	\$	2,914	2017	\$	104,488
2023	\$	194,001	2019	\$	120,265	2016	\$	71,276
2022	\$	8,063	2018	\$	73,897	2015	\$	24,718

ACTION REQUESTED OF THE CITY COUNCIL

Adopt a resolution approving the execution of a General Services Agreement with Telstar Instruments, Inc., a California corporation, to replace and program the Programmable Logic Controller (PLC) for the Final Effluent Pump Station at the City of Tracy Wastewater Treatment Plant in a not-to-exceed amount of \$157,401 and a term ending on December 31, 2025.

Prepared by: Aloke Vaid, Wastewater Operations Superintendent

Reviewed by: Stephanie Reyna-Hiestand, Assistant Director of Utilities
Gordon MacKay, Interim Director of Public Works
Sara Castro, Director of Finance
Andrew Shen, Interim City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

A - GSA with Telstar Instruments, Inc.

City of Tracy – General Services Agreement with Telstar Instruments, Inc.

CITY OF TRACY GENERAL SERVICES AGREEMENT

This General Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and TelStar Instruments, Inc. a California corporation (**Contractor**). City and Contractor are referred to individually as “Party” and collectively as “Parties.”

Recitals

A. City desires to retain Contractor to perform services to replace and program the Programmable Logic Controller (PLC) for the Final Effluent Pump Station at the Wastewater Treatment Plant; and

B. On December 5, 2024, the City issued a Notice Inviting Bids (NIB) for the Final Effluent Programmable Logic Controller (PLC) Replacement and Programming Services (**Project**).

C. On January 6, 2025, two (2) bid proposals were submitted, however, only one bid was deemed responsive and responsible. City has determined that Contractor possesses the skills, experience and certification required to provide the services pursuant to Tracy Municipal Code (TMC) 2.20.180.

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

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

Now therefore, the Parties mutually agree as follows:

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

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

2.1 Term. The term of this Agreement shall commence on the date this agreement is executed and terminate on December 31, 2025, or once the City confirms that all services were performed to the City’s satisfaction, unless terminated in accordance with Section 6.

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

3.1 Not to Exceed Amount. Contractor's total compensation under this Agreement shall not exceed \$157,401 (One Hundred Fifty-Seven Four Hundred One Dollars). Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.1 Rates. These prevailing wage rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to perform the services described herein. The schedule of per diem wages

is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the City harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker, or any other third party.

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

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

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

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

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

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

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

To City:

City of Tracy
Attn: Assistant Director of Utilities
3900 Holly Drive
Tracy, CA 95034

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

To Contractor:

Telstar Instruments, Inc.
Attn: Mickie Gardiner
4017 Vista Park Court
Sacramento, CA 95834

14. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

City of Tracy

Telstar Instruments, Inc.

By: Dan Arriola
Title: Mayor

Signed by:


By: Kyle Johnsen
Title: Vice President/Officer

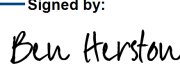
Date: _____

Date: 3/5/2025 | 4:20 PM PST

Attest:

Federal Employer Tax ID No. 94-2785168

Necy Lopez, Interim City Clerk

Signed by:


By: Ben Herston
Title: Treasurer/Officer

Approved as to form:

Date: 3/5/2025 | 4:26 PM PST

Andrew Shen, Interim City Attorney

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

EXHIBIT A - Scope of Work

Tasks to be Performed:

1. Project Management and Engineering

- a. Conduct onsite visits for RTU40 panel design, I/O verification, and process control confirmation for the Final Effluent Pump Station design.
- b. Perform onsite assessment for electrical design, RTU backplane, and field I/O rewiring.
- c. Prepare PLC replacement panel drawing and submit for approval.
- d. Furnish one (1) newly designed RTU40 control panel (backplane).
- e. Perform PLC backplane factory acceptance test.

2. Replacement of Existing PLC:

- a. Remove the existing Tesco L2000 PLC, currently known as RTU40.
- b. Replace the existing Tesco L2000 RTU40 backplane with a Schneider Electric M340 CPU and I/O cards.
- c. Install and wire a new M340 backplane into the existing cabinet.
- d. Wire the new PLC and related equipment and I/O cards in the existing cabinet.

3. PLC Programming:

- a. Program PLC40 to mimic all functions of RTU40, including controls for the four effluent pumps and the 3W pump.
- b. Add a new automatic diversion function to redirect plant flow to Pond 5 when high-high pH, high-high chlorine, or high-high turbidity alarms are activated. This function will include a disabled feature.
- c. Perform PLC control strategy factory acceptance Test.

4. SCADA Integration:

- a. Integrate PLC40 into the plant existing Wonderware SCADA system.
- b. Update existing SCADA screens to work with the new PLC.
- c. Develop and add new graphics for all the new electronic equipment associated with this project.
- d. Ensure compatibility with the existing Hach WIMS report generator to maintain NPDES reporting functionality.

5. Plant Outage Management:

- a. Develop a plan and schedule for any expected disruptions to plant operations.
- b. Ensure that outages do not exceed 12 hours per occurrence, with Final Effluent Pumps available for manual operation 24/7.
- c. Coordinate with the City to schedule shutdowns, ensuring no single shutdown exceeds 8 hours. Multiple shutdowns may be arranged if necessary.

6. Startup Functional Testing and Training:

- a. Conduct startup and functional control testing for the existing RTU40 final effluent control functionality.
- b. Provide RTU-SCADA programming backups and as-built final effluent pump control strategy.
- c. Provide 4 hours of PLC- SCADA operation training as required.

7. As-Built Documentation:

- a. Provide the City with as-built drawings for all work performed, including BOM and I/O drawings for the RTU40 panel.
- b. Supply a comprehensive list of passwords and IP addresses for the installed equipment.

8. Warranty and Maintenance:

- a. Provide a warranty for all parts and labor for five (5) years.
- b. Perform annual routine maintenance of the PLC, verification, and testing of all installed equipment during the annual visit.

9. Site Cleanup:

- a. Clean up the job site upon completion of work.
- b. Either retain old parts and garbage or present them to the city for disposal.

Project Deliverables:

1. Project schedule and biweekly project updates.
2. New M340 RTU with I/O card, built on a new backplane, and installed in the field.
3. RTU40 panel drawings (BOM) and new I/O drawings.
4. RTU-SCADA programming backups and as-built final effluent pump control strategy.

Project Deadlines:

1. All specified work will be completed by **September 30, 2025**.
2. The City may grant time extensions for parts backordered for more than thirty (30) days, provided the Contractor submit a written request within two (2) business days of discovering the issue.

Project Coordination:

1. Coordinate with and yield priority to other construction activities underway during this project

Personnel performing work:

1. Project Manager: Suresh Patil
2. Electrical: James Akers
3. Lead Programmer: Brett Stickler
4. Field Engineer/Technician: Jared Jolley
5. Panel Building: Telstar Panel Shop
6. SCADA Integration Specialist: Suresh Patil and Brett Stickler

Classification	Hours	Assigned Personnel	Percentage
Supervision (Project Manager)	32	Suresh Patil	7
Engineering Sr & Draftsman	88	Jared Jolley	18
Electrical & Apprentice	40	James Akers	8
PLC Programming	160	Brett Stickler	33
SCADA Programming	96	Brett Stickler & Suresh Patil	20
Panel Building	72	Telstar UL 508 Panel Shop	15

EXHIBIT B - Compensation

Contractor's total compensation under this Agreement shall not exceed \$157,401 (One Hundred Fifty-Seven Four Hundred One Dollars). Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

APPROVING THE EXECUTION OF A GENERAL SERVICES AGREEMENT WITH TELSTAR INSTRUMENTS, INC., A CALIFORNIA CORPORATION, TO REPLACE AND PROGRAM THE PROGRAMMABLE LOGIC CONTROLLER (PLC) FOR THE FINAL EFFLUENT PUMP STATION AT THE CITY OF TRACY WASTEWATER TREATMENT PLANT IN A NOT-TO-EXCEED AMOUNT OF \$157,401 AND A TERM ENDING ON DECEMBER 31, 2025.

WHEREAS, City of Tracy (City) treats 10.5 MGD of residential and industrial wastewater at its Wastewater Treatment Plant, located at 3900 Holly Drive, Tracy, CA 95034; and

WHEREAS, all effluent pumps are operated and controlled by automatic controllers featuring Programmable Logic Controllers (PLCs); and

WHEREAS, the final effluent pump station conveys fully treated wastewater (final effluent) through the outfall pipeline to the Old River; and

WHEREAS, the current PLC model is aging and obsolete and is creating multiple reliability issues; and

WHEREAS, this necessary service will enable the replacement and programming of a new PLC model to ensure reliable reading, which also increases the effectiveness and efficiency of the treated wastewater delivery to its final discharge destination and in compliance with its discharge permit from the State; and

WHEREAS, on December 6, 2024, staff followed established procedures, in accordance with Tracy Municipal Code, Section 2.20.180, and issued a Notice Inviting Bids for this service; and

WHEREAS, prior to the deadline, the City received two (2) bids, one of which was from Telstar Instruments, Inc. (Contractor); and

WHEREAS, Contractor was the only responsive and qualified bidder and has the expertise and experience required to provide the necessary and desired services, as the other bidder's bid was not responsive because it did not include all of the tasks in the scope of work in the Notice Inviting Bids; and

WHEREAS, staff is requesting that the City Council authorize the execution of the General Agreement with the Contractor, in the form attached as Exhibit 1, for the total amount not-to-exceed amount of \$157,401 and a term commencing upon the execution of this Agreement and terminating on December 31, 2025; and

WHEREAS, the cost of services provided by Contractor will be accounted for in the adopted FY24/25 annual operations and maintenance budget of the Wastewater Fund (521); and

WHEREAS, the proposed contract is for replacing and programming the Programmable Logic Controller (PLC) for the Final Effluent Pump Station and approval of it will not result in a physical change in the environment; therefore, this action is not considered as a project as defined by Section 21065 of the Public Resources Code; and

NOW, THEREFORE, be it resolved as follows:

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

FURTHER RESOLVED: That the City Council of the City of Tracy, hereby approves the General Services Agreement with Telstar Instruments, Inc., a California corporation, attached as Exhibit 1, to replace and program the Programmable Logic Controller (PLC) for the Final Effluent Pump Station at the City of Tracy Wastewater Treatment Plant in a not-to-exceed amount of \$157,401 and a term ending on December 31, 2025; and be it

FURTHER RESOLVED: That the City Council finds that the actions taken herein are not considered as a Project as defined by Section 21065 of the Public Resource Code and are exempt from CEQA (California Environmental Quality Act) review and are also exempt from CEQA review under CEQA Guidelines Section 15301 as repairs to an existing facility.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 1st day of April, 2025, by the following vote:

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

DAN ARRIOLA
Mayor of the City of Tracy, California

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

Exhibit 1: GSA with Telstar Instruments, Inc.

City of Tracy – General Services Agreement with Telstar Instruments, Inc.

CITY OF TRACY GENERAL SERVICES AGREEMENT

This General Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and TelStar Instruments, Inc. a California corporation (**Contractor**). City and Contractor are referred to individually as “Party” and collectively as “Parties.”

Recitals

A. City desires to retain Contractor to perform services to replace and program the Programmable Logic Controller (PLC) for the Final Effluent Pump Station at the Wastewater Treatment Plant; and

B. On December 5, 2024, the City issued a Notice Inviting Bids (NIB) for the Final Effluent Programmable Logic Controller (PLC) Replacement and Programming Services (**Project**).

C. On January 6, 2025, two (2) bid proposals were submitted, however, only one bid was deemed responsive and responsible. City has determined that Contractor possesses the skills, experience and certification required to provide the services pursuant to Tracy Municipal Code (TMC) 2.20.180.

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

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

Now therefore, the Parties mutually agree as follows:

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

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

2.1 Term. The term of this Agreement shall commence on the date this agreement is executed and terminate on December 31, 2025, or once the City confirms that all services were performed to the City’s satisfaction, unless terminated in accordance with Section 6.

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

3.1 Not to Exceed Amount. Contractor's total compensation under this Agreement shall not exceed \$157,401 (One Hundred Fifty-Seven Four Hundred One Dollars). Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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8.1 Rates. These prevailing wage rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to perform the services described herein. The schedule of per diem wages

is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the City harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker, or any other third party.

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

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

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

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

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

To City:

City of Tracy
Attn: Assistant Director of Utilities
3900 Holly Drive
Tracy, CA 95034

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

To Contractor:

Telstar Instruments, Inc.
Attn: Mickie Gardiner
4017 Vista Park Court
Sacramento, CA 95834

14. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

City of Tracy – General Services Agreement with Telstar Instruments, Inc.

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

City of Tracy

By: Dan Arriola
Title: Mayor

Date: _____

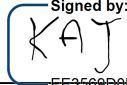
Attest:

Necy Lopez, Interim City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

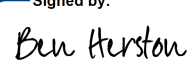
Telstar Instruments, Inc.

Signed by:


By: Kyle Johnsen
Title: Vice President/Officer

Date: 3/5/2025 | 4:20 PM PST

Federal Employer Tax ID No. 94-2785168

Signed by:


By: Ben Herston
Title: Treasurer/Officer

Date: 3/5/2025 | 4:26 PM PST

Exhibits:

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

EXHIBIT A - Scope of Work

Tasks to be Performed:

1. Project Management and Engineering

- a. Conduct onsite visits for RTU40 panel design, I/O verification, and process control confirmation for the Final Effluent Pump Station design.
- b. Perform onsite assessment for electrical design, RTU backplane, and field I/O rewiring.
- c. Prepare PLC replacement panel drawing and submit for approval.
- d. Furnish one (1) newly designed RTU40 control panel (backplane).
- e. Perform PLC backplane factory acceptance test.

2. Replacement of Existing PLC:

- a. Remove the existing Tesco L2000 PLC, currently known as RTU40.
- b. Replace the existing Tesco L2000 RTU40 backplane with a Schneider Electric M340 CPU and I/O cards.
- c. Install and wire a new M340 backplane into the existing cabinet.
- d. Wire the new PLC and related equipment and I/O cards in the existing cabinet.

3. PLC Programming:

- a. Program PLC40 to mimic all functions of RTU40, including controls for the four effluent pumps and the 3W pump.
- b. Add a new automatic diversion function to redirect plant flow to Pond 5 when high-high pH, high-high chlorine, or high-high turbidity alarms are activated. This function will include a disabled feature.
- c. Perform PLC control strategy factory acceptance Test.

4. SCADA Integration:

- a. Integrate PLC40 into the plant existing Wonderware SCADA system.
- b. Update existing SCADA screens to work with the new PLC.
- c. Develop and add new graphics for all the new electronic equipment associated with this project.
- d. Ensure compatibility with the existing Hach WIMS report generator to maintain NPDES reporting functionality.

5. Plant Outage Management:

- a. Develop a plan and schedule for any expected disruptions to plant operations.
- b. Ensure that outages do not exceed 12 hours per occurrence, with Final Effluent Pumps available for manual operation 24/7.
- c. Coordinate with the City to schedule shutdowns, ensuring no single shutdown exceeds 8 hours. Multiple shutdowns may be arranged if necessary.

6. Startup Functional Testing and Training:

- a. Conduct startup and functional control testing for the existing RTU40 final effluent control functionality.
- b. Provide RTU-SCADA programming backups and as-built final effluent pump control strategy.
- c. Provide 4 hours of PLC- SCADA operation training as required.

7. As-Built Documentation:

- a. Provide the City with as-built drawings for all work performed, including BOM and I/O drawings for the RTU40 panel.
- b. Supply a comprehensive list of passwords and IP addresses for the installed equipment.

8. Warranty and Maintenance:

- a. Provide a warranty for all parts and labor for five (5) years.
- b. Perform annual routine maintenance of the PLC, verification, and testing of all installed equipment during the annual visit.

9. Site Cleanup:

- a. Clean up the job site upon completion of work.
- b. Either retain old parts and garbage or present them to the city for disposal.

Project Deliverables:

1. Project schedule and biweekly project updates.
2. New M340 RTU with I/O card, built on a new backplane, and installed in the field.
3. RTU40 panel drawings (BOM) and new I/O drawings.
4. RTU-SCADA programming backups and as-built final effluent pump control strategy.

Project Deadlines:

1. All specified work will be completed by **September 30, 2025**.
2. The City may grant time extensions for parts backordered for more than thirty (30) days, provided the Contractor submit a written request within two (2) business days of discovering the issue.

Project Coordination:

1. Coordinate with and yield priority to other construction activities underway during this project

Personnel performing work:

1. Project Manager: Suresh Patil
2. Electrical: James Akers
3. Lead Programmer: Brett Stickler
4. Field Engineer/Technician: Jared Jolley
5. Panel Building: Telstar Panel Shop
6. SCADA Integration Specialist: Suresh Patil and Brett Stickler

Classification	Hours	Assigned Personnel	Percentage
Supervision (Project Manager)	32	Suresh Patil	7
Engineering Sr & Draftsman	88	Jared Jolley	18
Electrical & Apprentice	40	James Akers	8
PLC Programming	160	Brett Stickler	33
SCADA Programming	96	Brett Stickler & Suresh Patil	20
Panel Building	72	Telstar UL 508 Panel Shop	15

EXHIBIT B - Compensation

Contractor's total compensation under this Agreement shall not exceed \$157,401 (One Hundred Fifty-Seven Four Hundred One Dollars). Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

Agenda Item 1.C

RECOMMENDATION

Staff recommend that City Council adopt a resolution approving the execution of a General Services Agreement with Valentine Corporation for the replacement of the Sedimentation Basin Sludge Removal Rakes at the John Jones Water Treatment Plant with a term ending on December 31, 2025, and a total not-to-exceed amount of \$242,369.

EXECUTIVE SUMMARY

This agenda item seeks adoption of a resolution by the City Council approving the execution of a General Services Agreement (GSA) with Valentine Corporation (Contractor) for replacement of the sludge removal rakes at the John Jones Water Treatment Plant (JJWTP). The recommended GSA is for a term ending on December 31, 2025, with a total not-to-exceed amount of \$242,369 from the FY24/25 Operations and Maintenance Budget (Fund 511). This item is necessary as the existing sludge rakes are over 17 years old and have far exceeded their useful life. This GSA will remove the existing sludge rakes and replace them with new wear material, per specifications, while following all applicable rules and regulations.

BACKGROUND AND LEGISLATIVE HISTORY

The JJWTP has the capacity to treat up to thirty (30) million gallons a day (MGD) of water. During the water treatment process the water flows through two clarifiers, each rated at 15MGD. In 2007, a new sedimentation basin was added to this clarifying process which included sludge rakes. The clarifying process settles the impurities in the water into sludge at the bottom of the basin. The sludge is then collected, by the sludge rakes, and transported to a sump where it is then pumped out. The rakes have annually been maintained and repaired but are now far beyond their useful life and are no longer effective. Replacement is required.

If the rakes are not replaced, the sedimentation basin will not operate as designed. Sludge will build up in the basin, reducing the total volume causing the failure of the treatment process and limiting our water treatment capacity. If this occurs, potential penalties could be levied for non-compliance with our drinking water permit.

ANALYSIS

On December 9, 2024, in accordance with Tracy Municipal Code 2.20.180, the City released a Notice of Inviting Bids (NIB) for the replacement of the JJWTP Sludge Rakes. On January 13, 2025, staff received one proposal from Valentine Corporation, with a bid amount of \$242,369. The contractor has good references and has satisfactorily completed similar work for the City. Their bid price is considered to be reasonable. Staff is recommending award of this project to Valentine Corporation, as a responsive and responsible bidder.

FISCAL IMPACT

The Water Treatment Plant Sedimentation Basin Sludge Rake Replacement project is a routine

maintenance task. There are sufficient funds available in the Water Plant Operations & Maintenance Budget (Fund 511) to fund this project at the not-to-exceed amount of \$242,369.

CEQA DETERMINATION

The project is for the removal and replacement of Sedimentation Basin Sludge Rake at the John Jones Water Treatment Plant and approval of it will not result in the physical change in the environment, therefore this action is not considered as a project defined by Section 21065 of the Public Resources Code. The approval of this contract and completion of this work is also exempt from CEQA review under CEQA Guidelines Section 15301 as repairs to an existing facility.

STRATEGIC PLAN

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

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommend that City Council adopt a resolution approving the execution of a General Services Agreement with Valentine Corporation for the replacement of the Sedimentation Basin Sludge Removal Rakes at the John Jones Water Treatment Plant with a term ending on December 31, 2025, and a total not-to-exceed amount of \$242,369.

Prepared by: Lea Emmons, Water Operations Superintendent

Reviewed by: Stephanie Reyna-Hiestand, Assistant Director of Utilities
Gordon MacKay, Interim Public Works
Director Sara Castro, Director of Finance
Andrew Shen, Interim City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

A: GSA – Valentine Corporation

City of Tracy – General Services Agreement with Valentine Corporation

CITY OF TRACY GENERAL SERVICES AGREEMENT

This General Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and Valentine Corporation, a California corporation (**Contractor**). City and Contractor are referred to individually as "Party" and collectively as "Parties."

Recitals

A. City desires to retain Contractor to provide the services and materials required to remove and replace the existing stainless steel rake assemblies in the two Sedimentation Basins at the John Jones Water Treatment Plant; and

B. On December 9, 2024, the City issued a Notice Inviting Bids (NIB) for the John Jones Water Treatment Plant Sedimentation Basin Rake Replacement (**Project**). On January 13, 2025, the City received one (1) bid. After reviewing the bid, the City has determined that Contractor possesses the skills, experience and certification required to provide the services in pursuant of TMC 2.20.180.

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

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

Now therefore, the Parties mutually agree as follows:

1. **Scope of Work.** Contractor shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Contractor's Authorized Representative: Jeff Drier, Project Manager. Contractor shall not replace its Authorized Representative, nor shall Contractor replace any of the personnel listed in Exhibit "A," nor shall Contractor use or replace any subcontractors or subconsultants, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor may result in the termination of this Agreement.

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

2.1 Term. The term of this Agreement shall begin on the date this agreement is executed and terminate on December 31, 2025, once the City confirms that all services were performed to the City's satisfaction or earlier by termination pursuant to Section 6 of this Agreement ("Term").

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

3.1 Not to Exceed Amount. Contractor's total compensation under this Agreement shall not exceed \$242,369 (two hundred forty-two thousand three hundred sixty-nine dollars). Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To City:

City of Tracy
Attn: Assistant Director of Utilities
3900 Holly Drive
Tracy, CA 95034

To Contractor:

Valentine Corporation
Attn: Jeff Drier, Project Manager
111 Pelican Way
San Rafael, CA 94901

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

14. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

City of Tracy – General Services Agreement with Valentine Corporation

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

City of Tracy

By: Dan Arriola
Title: Mayor

Date: _____

Attest:

Necy Lopez, Interim City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

Valentine Corporation, a California Corporation

Signed by:
Robert O. Valentine Jr.

By: Robert O. Valentine
Title: President

Date: 3/5/2025 | 2:15 PM PST

Federal Employer Tax ID No. 94-1580884

Signed by:
Madeline Valentine

By: Madeline Valentine
Title: Secretary

Date: 3/5/2025 | 2:53 PM PST

Exhibits:

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

Attachments:

- A OEM Plans and Welding Diagrams
- B Installation Manual

EXHIBIT A - Scope of Work

The scope of work generally includes removal, disposal, and replacement of the existing rake assemblies from Sedimentation Basins No. 1 & No. 2 at the John Jones Water Treatment Plant (JJWTP) in Tracy, CA (Project Site). Work shall be completed in accordance with the OEM Plans and welding diagrams attached as Appendix A and the installation manual attached as Appendix B.

The CITY will arrange for a third-party inspection of welding work. The CITY will be responsible for reviewing the completed work and determining if it has been satisfactorily completed. Work shall meet the American Society of Mechanical Engineers (ASME), American Welding Society (AWS) Standards, and per the OEM plans and details.

The Contractor shall supply all materials, tools, machinery, safety plan, supplies, transportation, and staff to conduct work. Contractor shall also supply all signage, cones, and other necessary equipment needed to create a safe work zone. All work within the JJWTP must be coordinated with the Water Operation Superintendent. Contractor shall provide a portable toilet for their employees and subcontractors use. No City restrooms will be made available other than for City staff.

The Water Operation Superintendent will coordinate with the Contractor to arrange for site access and information about JJWTP activities that may impact the Contractor work schedule.

List of Personnel

Name	Title	Numbers of Hours Work on Project	Type of Work on Project
Jeff Drier	Project Manager	40 hours	Project Management
Harold Mossman	Superintendent	12 hours	General Superintendent
Charles Custom (Lic # 1008475 / DIR #100032537)	Welder	120 hours	Welding (Subcontractor)
TBD	Field Foreman	240 hours	Project Foreman

EXHIBIT B - Compensation

Contractor's total compensation under this Agreement shall not exceed \$242,369 (two hundred forty-two thousand three hundred sixty-nine dollars). Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

BID ITEM NO	ITEM DESCRIPTION	QUANTITY	TOTAL PRICE
1	MOBILIZATION	Lump Sum	\$ 17,769.00
2	HANDLE OWER FURNISH SED BASIN ASSEMBLIES	Lump Sum	\$ 3,600.00
3	BASIN ACCESS & WORK PLATFORMS	Lump Sum	\$ 30,000.00
4	BASIN ONE - DEMOLITION	Lump Sum	\$ 16,000.00
5	BASIN ONE - INSTALL NEW SLUDGE SCRAPER ASSEMBLY	Lump Sum	\$ 77,000.00
6	BASIN TWO - DEMOLITION	Lump Sum	\$ 16,000.00
7	BASIN TWO - INSTALL NEW SLUDGE SCRAPER ASSEMBLY	Lump Sum	\$ 77,000.00
8	START-UP & COMMISSIONING OF NEW EQUIPMENT	Lump Sum	\$ 5,000.00
TOTAL			\$ 242,369.00

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

APPROVING THE EXECUTION OF A GENERAL SERVICES AGREEMENT WITH VALENTINE CORPORATION FOR THE REPLACEMENT OF THE SEDIMENTATION BASIN SLUDGE REMOVAL RAKES AT THE JOHN JONES WATER TREATMENT PLANT WITH A TERM ENDING ON DECEMBER 31, 2025, AND A TOTAL NOT-TO-EXCEED AMOUNT OF \$242,369.

WHEREAS, the John Jones Water Treatment Plant (JJWTP) has the capacity to treat up to 30 million gallons a day (MGD) of water which flows through two clarifiers, each rated at 15 MGD; and

WHEREAS, a new sedimentation basin was added to this clarifying process in 2007, which installed the sludge rake as part of that system; and

WHEREAS, the rakes have been annually maintained and repaired and are now far beyond their useful life providing no efficiency; and

WHEREAS, on December 9, 2024, in accordance with the Tracy Municipal Code 2.20.180, the City released a Notice of Inviting Bids for the replacement of the JJWTP Sludge Rakes; and

WHEREAS, prior to the deadline, staff received only one proposal from Valentine Corporation (Contractor) with a bid amount of \$242,369; and

WHEREAS, staff conducted a formal review of the proposal and found that Contractor has good references, has done similar work for the City previously, and conducted themselves in a satisfactory manner; and

WHEREAS, staff is requesting that the City Council authorize the execution of the General Services Agreement with Contractor, in the form attached as Exhibit 1, with the term ending on December 31, 2025, and a total not-to-exceed amount of \$242,369; and

WHEREAS, the cost of services provided by the Contractor will be accounted for the adopted annual operations and maintenance budget of the Water Fund (511); and

WHEREAS, the proposed contract is for the removal and replacement of Sedimentation Basin Sludge Rake at the John Jones Water Treatment Plant and approval of it will not result in any physical change in the environment, therefore this action is not considered as a project defined by Section 21065 of the Public Resources Code, and further this action is also exempt from CEQA review under CEQA Guidelines Section 15301 as repairs to an existing facility; and

NOW, THEREFORE, be it resolved as follows:

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

FURTHER RESOLVED: That the City Council of the City of Tracy, hereby approves the General Services Agreement with Valentine Corporation, attached as Exhibit 1, with the term ending on December 31, 2025, and a total not-to-exceed amount of \$242,369; and be it

FURTHER RESOLVED: That the City Council finds the actions taken herein are not considered as a Project as defined by Section 21065 of the Public Resource Code and are exempt from CEQA (California Environment Quality Act) review and are also exempt from CEQA review under CEQA Guidelines Section 15301 as repairs to an existing facility.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 1st day of April, 2025, by the following vote:

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

DAN ARRIOLA
Mayor of the City of Tracy, California

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

Exhibit 1: GSA - Valentine Corporation

City of Tracy – General Services Agreement with Valentine Corporation

CITY OF TRACY GENERAL SERVICES AGREEMENT

This General Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and Valentine Corporation, a California corporation (**Contractor**). City and Contractor are referred to individually as "Party" and collectively as "Parties."

Recitals

A. City desires to retain Contractor to provide the services and materials required to remove and replace the existing stainless steel rake assemblies in the two Sedimentation Basins at the John Jones Water Treatment Plant; and

B. On December 9, 2024, the City issued a Notice Inviting Bids (NIB) for the John Jones Water Treatment Plant Sedimentation Basin Rake Replacement (**Project**). On January 13, 2025, the City received one (1) bid. After reviewing the bid, the City has determined that Contractor possesses the skills, experience and certification required to provide the services in pursuant of TMC 2.20.180.

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

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

Now therefore, the Parties mutually agree as follows:

1. **Scope of Work.** Contractor shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Contractor's Authorized Representative: Jeff Drier, Project Manager. Contractor shall not replace its Authorized Representative, nor shall Contractor replace any of the personnel listed in Exhibit "A," nor shall Contractor use or replace any subcontractors or subconsultants, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor may result in the termination of this Agreement.

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

2.1 Term. The term of this Agreement shall begin on the date this agreement is executed and terminate on December 31, 2025, once the City confirms that all services were performed to the City's satisfaction or earlier by termination pursuant to Section 6 of this Agreement ("Term").

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

3.1 Not to Exceed Amount. Contractor's total compensation under this Agreement shall not exceed \$242,369 (two hundred forty-two thousand three hundred sixty-nine dollars). Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To City:

City of Tracy
Attn: Assistant Director of Utilities
3900 Holly Drive
Tracy, CA 95034

To Contractor:

Valentine Corporation
Attn: Jeff Drier, Project Manager
111 Pelican Way
San Rafael, CA 94901

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

14. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

City of Tracy – General Services Agreement with Valentine Corporation

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

City of Tracy

By: Dan Arriola
Title: Mayor

Date: _____

Attest:

Necy Lopez, Interim City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

Valentine Corporation, a California Corporation

Signed by:
Robert O. Valentine Jr.

By: Robert O. Valentine
Title: President

Date: 3/5/2025 | 2:15 PM PST

Federal Employer Tax ID No. 94-1580884

Signed by:
Madeline Valentine

By: Madeline Valentine
Title: Secretary

Date: 3/5/2025 | 2:53 PM PST

Exhibits:

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

Attachments:

- A OEM Plans and Welding Diagrams
- B Installation Manual

EXHIBIT A - Scope of Work

The scope of work generally includes removal, disposal, and replacement of the existing rake assemblies from Sedimentation Basins No. 1 & No. 2 at the John Jones Water Treatment Plant (JJWTP) in Tracy, CA (Project Site). Work shall be completed in accordance with the OEM Plans and welding diagrams attached as Appendix A and the installation manual attached as Appendix B.

The CITY will arrange for a third-party inspection of welding work. The CITY will be responsible for reviewing the completed work and determining if it has been satisfactorily completed. Work shall meet the American Society of Mechanical Engineers (ASME), American Welding Society (AWS) Standards, and per the OEM plans and details.

The Contractor shall supply all materials, tools, machinery, safety plan, supplies, transportation, and staff to conduct work. Contractor shall also supply all signage, cones, and other necessary equipment needed to create a safe work zone. All work within the JJWTP must be coordinated with the Water Operation Superintendent. Contractor shall provide a portable toilet for their employees and subcontractors use. No City restrooms will be made available other than for City staff.

The Water Operation Superintendent will coordinate with the Contractor to arrange for site access and information about JJWTP activities that may impact the Contractor work schedule.

List of Personnel

Name	Title	Numbers of Hours Work on Project	Type of Work on Project
Jeff Drier	Project Manager	40 hours	Project Management
Harold Mossman	Superintendent	12 hours	General Superintendent
Charles Custom (Lic # 1008475 / DIR #100032537)	Welder	120 hours	Welding (Subcontractor)
TBD	Field Foreman	240 hours	Project Foreman

EXHIBIT B - Compensation

Contractor's total compensation under this Agreement shall not exceed \$242,369 (two hundred forty-two thousand three hundred sixty-nine dollars). Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

BID ITEM NO	ITEM DESCRIPTION	QUANTITY	TOTAL PRICE
1	MOBILIZATION	Lump Sum	\$ 17,769.00
2	HANDLE OWER FURNISH SED BASIN ASSEMBLIES	Lump Sum	\$ 3,600.00
3	BASIN ACCESS & WORK PLATFORMS	Lump Sum	\$ 30,000.00
4	BASIN ONE - DEMOLITION	Lump Sum	\$ 16,000.00
5	BASIN ONE - INSTALL NEW SLUDGE SCRAPER ASSEMBLY	Lump Sum	\$ 77,000.00
6	BASIN TWO - DEMOLITION	Lump Sum	\$ 16,000.00
7	BASIN TWO - INSTALL NEW SLUDGE SCRAPER ASSEMBLY	Lump Sum	\$ 77,000.00
8	START-UP & COMMISSIONING OF NEW EQUIPMENT	Lump Sum	\$ 5,000.00
TOTAL			\$ 242,369.00

April 1, 2025

Agenda Item 1.D

RECOMMENDATION

Staff recommends that City Council adopt a Resolution:

1) determining that compliance with the Formal Contract Procedure is not in the best interest of the City and dispose such requirements for the replacement of certain underdrains at the John Jones Water Treatment Plant for the Capital Improvement Project (CIP) 75126 pursuant to Tracy Municipal Code Section 2.20.180(b)(4); and

2) authorizing the execution of Amendment No. 1 to the General Services Agreement with Calgon Carbon, a Delaware Corporation for Capital Improvement Project No. 75126 Filter Media Replacement at the John Jones Water Treatment Plant, for a total not-to-exceed amount of \$2,651,806 and make it effective retroactively from February 1, 2025.

EXECUTIVE SUMMARY

This agenda item seeks adoption of a resolution by the City Council for two items related to CIP No. 75126 Filter Media Replacement at the John Jones Water Treatment Plant (JJWTP) approved by Resolution No. 2024-199 on November 19, 2024. The first request is to determine that compliance with the Formal Contract Procedure under Tracy Municipal Code (T.M.C) 2.20.180(b)(4) is not in the best interest of the City due to the necessity to provide reliable and uninterrupted service to the City's public water system. The JJWTP is currently not in operation to allow for maintenance that is typically undertaken in the months of December to February each year. During this maintenance process significant failures in the underdrains for the large filters have been discovered. The time necessary to conduct the formal contract procedure for the necessary repairs and come back to Council would postpone the JJWTP from coming back online in time to meet the increased demands on the water system during the summer months. Calgon Carbon is also already completing other work on the same equipment and proceeding through the standard bidding process risks having two different contractors working on the same pieces of equipment at the same time, which would be detrimental to ensuring the filter system is offline for as short a period as possible and that the equipment functions as designed in an integrated, seamless manner.

The second request is to authorize the execution of Amendment No. 1 to the General Services Agreement (GSA) with Calgon Carbon Corporation, to conduct the additional work necessary to replace three of the six underdrains. The consultant determined that Filters 4 – 6 would need to be replaced before they could be utilized in this calendar year. If the City is not able to make these repairs, the treatment plant's capacity would be reduced by 50 percent. As Calgon Carbon is currently approved to provide the necessary work to replace the filter media in those filters, staff is requesting that Council approve the additional necessary replacement of the underdrains increasing the approved not-to-exceed (NTE) from \$1,206,478 to \$2,651,806. Staff is also recommending that Council make this amount retroactive to February 1, 2025.

BACKGROUND AND LEGISLATIVE HISTORY

Each year, the JJWTP shuts down to conduct routine and necessary maintenance and replacement of parts and equipment. This shut down generally occurs from sometime in late November to early March depending on the City's water demand. The six filters at the JJWTP are part of the treatment process providing removal of constituents in the water to meet Federal, State and Local drinking water standards. The filters contain granular activated carbon media to conduct this process. The water percolates through this media and is collected in underdrains at the bottom of the filters. The media must be replaced every three to five years to ensure proper removal and comply with drinking water standards. On November 19, 2024, after conducting the formal RFP process, City Council approved Resolution 2024-199 authorizing a General Services Agreement with Calgon Carbon Corporation to perform this filter media replacement under CIP 75126.

Staff identified that filter five (5) appeared to have an issue and asked the contractor to start their investigation and work at that location. In December the contractor removed the old media from filter five (5) and encountered large chunks of grout. This grout is used to hold the underdrains, which sit in channels to keep the sand and filter media out of the finish water, in place. It was subsequently discovered that the underdrain for filter five (5) had failed, and that sand and media were in the channel. The contractor discovered that the two adjacent filters had similar defects, and it was concluded that filters four, five and six (4, 5, and 6) could not be operated without replacing the underdrains. Filters one to three (1 – 3) are in better condition and have been put back into operation, but their underdrains will need to be replaced in the next shutdown cycle.

ANALYSIS

Due to the limited available time to complete the project before the plant had to be back online for spring/summer water demand, staff determined that it would not be cost-effective nor efficient to request bids on this project. Time and limited workspace were two of the factors considered. As previously stated, the plant is generally shut down for a limited time to conduct maintenance before the increase in demand in the spring. The process for a formal procurement process would delay that startup by several months. Also, with the limited work space inside the filters, it was not desirable or practical to have two separate contractors working in the same limited space, on the same systems, with equipment and manpower. Staff therefore recommend that Council determine that compliance with the formal procurement process is not in the best interest of the City for this repair work.

If approved, authorizing the execution of Amendment No. 1 will ensure the uninterrupted operations of the John Jones Water Treatment Plant (JJWTP) and its ability to meet peak summer demands from its potable water customers. The amendment will repair three of the malfunctioning underdrains discovered during the initial media replacement project. While all six (6) of the filters were found to have degradation, only three of the six filters will have the underdrains replaced during this plant shut down cycle. The remaining three filter underdrains will need to be replaced during the next plant shutdown, November 2025 to February 2026. Staff will bring back a separate Council request later in the year for that replacement.

Resolution 2024-199 approved a not-to-exceed amount of \$1,206,478 to replace the filter media (not including sand) in all six filters with a term ending on February 28, 2026. Amendment No. 1 would add an additional task to demolition, prepare, and install three new

underdrains in filters four to six (4 – 6) at a cost of \$1,445,328, retroactive to February 1, 2025. The underdrains would be the same brand, type and style (Xylem) using the 2008 Engineered Drawings for the facilities. Further, the City would approve of the use of a subcontractor to perform the necessary skilled work that the contractor is unable to perform at their cost and included in the bid price. The new total not-to-exceed request is \$2,651,806 and would come from the FY24/25 Water Treatment Plant Operations and Maintenance budget (Water Fund 511).

The JJWTP has the capacity to treat up to thirty (30) million gallons a day (mgd) of water when all six filters are operating. If the requested actions are not approved, only half of the filters would be operational, and capacity would be limited to 15 MGD. This limitation could result in violations from the State for non-compliance with its permit. Further, the City would have to depend on other water sources (groundwater) to fulfill higher demands which typically results in customer complaints for odor and taste.

CEQA DETERMINATION

The project is for the removal and replacement of filter underdrains in three of the six filters at the John Jones Water Treatment Plant and approval of it will not result in the physical change in the environment, therefore this action is not considered as a project defined by Section 21065 of the Public Resources Code. The approval of this contract and completion of this work is also exempt from CEQA review under CEQA Guidelines Section 15301 as repairs to an existing facility.

STRATEGIC PLAN

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

FISCAL IMPACT

The Water Treatment Plant Media Filter Replacement Project, CIP 75126, is an approved Capital Improvement Project with an approved agreement with Calgon Carbon under Resolution 2024-199 for not-to-exceed amount of \$1,206,478. This project would increase the not-to-exceed to \$2,651,806 retroactive to February 1, 2025. The additional task in the amount of \$1,445,328 is available in the Project budget as follows:

Funding Source	Budget	Expensed/ Committed	Balance
513 - Water Capital	\$ 3,539,830	\$ 2,094,502	\$ 1,445,328
Current Budget	\$ 3,539,830	\$ 2,094,502	\$ 1,445,328

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that City Council adopt a Resolution:

- 1) determining that compliance with the Formal Contract Procedure is not in the best interest of the City and dispose such requirements for the replacement of certain underdrains at the John Jones Water Treatment Plant or the Capital Improvement Project (CIP) 75126 pursuant to Tracy Municipal Code Section 2.20.180(b)(4); and
- 2) authorizing the execution of Amendment No. 1 to the General Services Agreement with Calgon Carbon, a Delaware Corporation for Capital Improvement Project No. 75126 Filter Media Replacement at the John Jones Water Treatment Plant, for a total not-to-exceed amount of \$2,651,806 and make it effective retroactively from February 1, 2025.

Prepared by: Stephanie Reyna-Hiestand, Assistant Director of Utilities

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

Approved by: Midori Lichtwardt, City Manager

Attachments:

A – Amendment No. 1 to the General Service Agreement for John Jones Water Treatment Plant Filter Media Replacement CIP 75126

B – Resolution 2024-199

Amendment No. 1
General Services Agreement – Calgon Carbon, A Delaware Corporation

This Amendment No. 1 (**Amendment**) to the General Services Agreement entered between the City of Tracy, a municipal corporation (**City**), and Calgon Carbon, a Delaware Corporation (**Contractor**) dated November 19, 2024 (**Agreement**). City and Contractor are referred to individually as “**Party**” and collectively as “**Parties**.”

Recitals

- A.** The City and Contractor entered into a General Service Agreement for CIP 75126 Filter Media Replacement at the John Jones Water Treatment Plant (JJWTP), which was executed pursuant to the authority granted in Resolution No. 2024-199, approved by the Tracy City Council on November 19, 2024.
- B.** The Parties seek to amend the Agreement as set forth in this Amendment.
- C.** During the initial approved scope of work under this Agreement, it was discovered that the filter underdrains in all six filters were no longer performing to regulatory standards due to multiple failures of their underdrains. These underdrains are vital in the treatment process as they are the barrier in keeping the sand and media from entering the system. The result of this finding requires that three of the six filters (4,5, and 6) must replace the underdrains with the same type, brand, and style as was approved per the 2008 Engineered Drawings (“Underdrains”).
- D.** The Contractor will subcontract with Valentine Corporation (“Valentine”) to provide the Underdrains.
- E.** Valentine is further subcontracting with Xylem Water Solutions Zelienople, LLC (“Xylem”) for the provision of the Underdrains.
- F.** Parties hereby intend and agree that this Amendment shall be effective retroactively as of February 1, 2025.
- G.** This Amendment is approved pursuant to Resolution 2025 - _____ adopted by the Tracy City Council on April 1, 2025.

Now therefore, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Terms of Amendment

A. Section 3, Compensation

Subsection 3.1 of Section 3 is hereby amended to read as follows: “Contractor’s total compensation under this Agreement shall not exceed \$1,206,478 by January 31, 2025. Effective February 1, 2025, Contractor’s total compensation under this Agreement shall not exceed \$2,651,806. Contractor’s billing rates shall cover all costs and expenses for Contractor’s performance of this Agreement. No work shall be

performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval."

- B. "Exhibit A" is hereby modified to include the additional task for demolition, preparation, and replacement of the Underdrains, as approved by the City. City approves Contractor's use of Valentine (and Valentine's use of Xylem), at their expense, to perform the necessary repairs. Valentine and Xylem each must maintain professional liability insurance as specified in Section 2.1.
- C. "Exhibit B" is hereby modified to include the costs associated with the additional task in the amount of \$1,445,328 for a total not-to-exceed proposal amount of \$2,651,806.

- 2. **Insurance.** Valentine and Xylem (Subcontractors) shall throughout the duration of this Agreement, maintain insurance to cover Subcontractors, their agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

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

- 3. **Effect.** The Parties hereto ratify the Agreement and, except as expressly modified by this Amendment, all provisions of the Agreement will remain unchanged and in full force and effect.
- 4. **Entire Agreement.** This Amendment represents the entire agreement and understanding of the Parties and shall supersede any prior agreement—written or oral—between the Parties. This Amendment will not be valid and enforceable until executed by all the Parties hereto. This Amendment may not be modified or altered except through a subsequent writing signed by both Parties.
- 5. **Severability.** If any term of this Amendment is held invalid by a court of competent jurisdiction, this Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in effect.
- 5. **Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter and to execute this Amendment. This Amendment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. This Amendment may be executed in one or more counterparts. All counterparts so executed shall constitute one contract, binding on all Parties, even though all Parties are not signatory to the same counterpart.

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

City of Tracy, a Municipal corporation

By: _____
Dan Arriola

Title: Mayor, City of Tracy

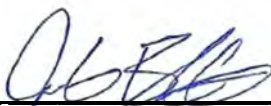
Date: _____

Approved as to form.

By: _____
Andrew Shen, City Attorney

Attest:

By: _____
Necy Lopez, Acting City Clerk

By: _____
Jacob Blake

Title: DWS Project Manager

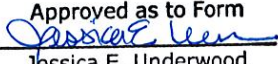
Date: 03/10/2025

Federal Tax Employer ID No. 250530110

By: _____
Jeremy J. Jones

Title: DWS Project Manager

Date: 03/10/2025

Approved as to Form

Jessica E. Underwood
Associate General Counsel

Calgon Carbon, a Delaware Corporation

EXHIBIT A – SCOPE OF WORK

The scope of work is hereby modified to include the following task item.

Additional Task – Demolition, Preparation, and Replacement of Underdrains in Filters, 4, 5, and 6:

- Remove and properly dispose of the existing underdrains in Filters 4, 5, and 6
 - o Disposal shall be approved by Water Operations Superintendent
- Prepare the filters for installation of new underdrains.
 - o Ensure all filters are free of debris and demolition material.
- Install new underdrains in Filters 4, 5, and 6 per manufacturer's recommendations and instructions.
 - o Underdrains shall be consistent with the 2008 Engineered Drawings as no new Engineering is required. (Xylem is approved for replacement.)

EXHIBIT B – COMPENSATION

The compensation is hereby modified to include the additional work as described in Exhibit B – Additional Task.

Approved Total NTE – RESOLUTION No. 2024-199 -	\$1,206,478

Additional Task:

Underdrain replacement – parts and labor =	\$1,395,100

Replacement sand for filters 4 – 6 (tax included) =	<u>\$ 50,228</u>

Total NTE as modified =	\$2,651,806

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. 2024-199

-
- 1) APPROVING THE EXECUTION OF A GENERAL SERVICES AGREEMENT WITH CALGON CARBON, A DELAWARE CORPORATION, FOR CAPITAL IMPROVEMENT PROJECT NO. 75126, FOR REMOVAL AND REPLACEMENT OF GRANULAR ACTIVATED CARBON FOR THE JOHN JONES WATER TREATMENT PLANT FOR A SIXTEEN-MONTH TERM IN A TOTAL NOT-TO-EXCEED AMOUNT OF \$1,206,478; AND
- 2) REJECTING CARBON ACTIVATED CORPORATION'S BID AS NON-RESPONSIVE

WHEREAS, the JJWTP has the capacity to treat up to thirty (30) million gallons a day (mgd) of water and a part of the water treatment process, the water flows through six (6) filters containing media; and

WHEREAS, the media in these filters must be refurbished or replaced on a regular cycle to ensure the City is meeting water quality standards and providing the output required to fulfill City demand; and

WHEREAS, the City needs to engage the services of qualified and experienced contractors to provide the labor and materials required to remove and replace this filter media in order to meet water quality standards; and

WHEREAS, Capital Improvement Project (CIP) 75126 was initially funded to remove and replace three (3) of the six (6) filters for an estimated \$692,006; and

WHEREAS, due to the visible signs of wear, in the fall of 2023, a technical study was performed on the filter media under a Master Professional Services Agreement with Carollo Engineers, to determine if there was an issue with the media along with possible cause and solution; and

WHEREAS, per the results of the technical study, it was identified that the media in all six (6) filters was beyond useful life; and

WHEREAS, on August 14, 2024, staff followed established procedures, in accordance with Tracy Municipal Code 2.20.180, and issued a Notice Inviting Bids (NIB) for this service on all six (6) filters; and

WHEREAS, prior to the deadline, the City received two (2) proposals of which the review committee determined that only Calgon Carbon (Calgon) met all required specifications in the NIB and was responsive; and

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

WHEREAS, the second bidder, Carbon Activated Corporation's proposal did not meet the required specification in the NIB and is considered non-responsive; and

WHEREAS, staff negotiated a General Service Agreement (GSA) with Calgon for removal of all current filter media in six (6) filters and replace it with new domestically produced and sourced granular activated carbon (GAC), per specifications, while obeying all rules and regulations of local, State, and Federal regulation at the JJWTP for a sixteen month term and a total not to exceed amount of \$1,206,478; and

WHEREAS, on October 22, 2024, staff requested the Finance Committee to recommend to City Council an appropriation of an additional \$514,472 to be allocated for the Water Reserve Fund (511) to CIP 75126 to provide the services for all six (6) filters in the First Quarter Budget update; and

WHEREAS, the Finance Committee is requesting the City Council to adopt a resolution amending the City's Operating and Capital Budget for the Fiscal Year ending June 30, 2025 augmenting the existing budget to provide funds needed for this project in a separate agenda item presented at the Council Meeting today; and

WHEREAS, staff acknowledges that adoption of this Resolution approving the execution of the GSA is contingent upon City's Council adoption of the former Resolution allowing allocation of required funds to this CIP; and

WHEREAS, in this item staff is requesting that City Council authorize the execution of a General Services Agreement with Calgon, in the form attached as Exhibit 1, for a sixteen-month term with a total not-to-exceed amount of \$1,206,478 to provide the services required to meet water quality standards; and

WHEREAS, the cost of the services provided by Calgon will be accounted for in CIP 75126; and

WHEREAS, the proposed contract is for the removal and replacement of filter media at the John Jones Water Treatment Plant and approval of it will not result in the physical change in the environment, therefore this action is not considered as a project defined by Section 21065 of the Public Resources Code; and

NOW, THEREFORE, be it resolved as follows:

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

FURTHER RESOLVED: That the City Council of the City of Tracy, hereby approves the General Services Agreement with Calgon Carbon, a Delaware Corporation, as attached as Exhibit 1, for Capital Improvement Project No. 75126 for a one year and four-month term in a not-to-exceed amount of \$1,206,478, except that such approval is subject to the City Council's

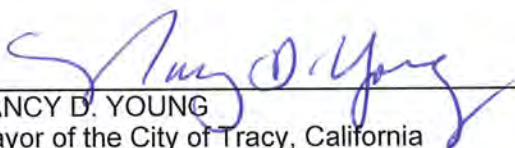
approval of an updated Operating and Capital Budget for the Fiscal Year ending June 30, 2025, per Resolution 2024-199; and be it

FURTHER RESOLVED: That the City Council of the City of Tracy, hereby rejects Carbon Activated Corporation's bid as non-responsive; and be it

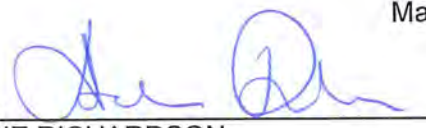
FURTHER RESOLVED: That the City Council finds that the actions taken herein are not considered as a Project as defined by Section 21065 of the Public Resource Code and are exempt from the requirements of CEQA (California Environment Quality Act).

The foregoing Resolution 2024-199 was adopted by the Tracy City Council on November 19, 2024, by the following vote:

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



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

EXHIBIT 1: General Services Agreement with Calgon Carbon

CITY OF TRACY
GENERAL SERVICES AGREEMENT WITH
John Jones Water Treatment Plant Filter Media Replacement CIP 75126

This General Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and Calgon Carbon, a Delaware Corporation (**Contractor**). City and Contractor are referred to individually as “Party” and collectively as “Parties.”

Recitals

A. City desires to retain Contractor to perform media filter replacement services at the John Jones Water Treatment Plant as further described in Exhibit A.

B. On August 14, 2024, the City issued a Notice Inviting Bids (NIB) for John Jones Water Treatment Plant Filter Media Replacement CIP 75126 (**Project**) pursuant to Tracy Municipal Code 2.20.180. On September 5, 2024, Contractor submitted its proposal for the Project to the City. City has determined that Contractor possesses the skills, experience, and certifications required to provide the services.

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

D. This Agreement is being executed pursuant to Resolution No. 2024-____ approved by Tracy City Council on November 19, 2024.

Now therefore, the Parties mutually agree as follows:

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

1.1 Non-Exclusive Agreement. The City reserves the right to contract with other consultants providing the same or similar scope of services described above during the term of this Agreement. The City further reserves the right to assign work, at its sole discretion, to contractors other than Contractor based on the City’s budget, experience, and skills of the contractors based on the City’s specific needs.

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

2.1 Term. The term of this Agreement shall begin on November 19, 2024, and end on February 28, 2026, unless terminated in accordance with Section 6.

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

3.1 Not to Exceed Amount. Contractor’s total compensation under this Agreement shall not exceed \$1,206,478 total. Contractor’s billing rates shall cover all costs and expenses for Contractor’s performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City’s prior written approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 Labor Code Compliance. Contractor is aware of the requirements of Chapter 1 of Part 7 of Division 2 of the California Labor Code and applicable regulations which require the payment of prevailing wage rates (§1771, §1774, and §1775); employment of apprentices (§1777.5), certified

payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on “public works” and “maintenance” projects. The services being performed under this Agreement are part of a “public works” or “maintenance” project, as defined in the Prevailing Wage Laws, Contractor agrees to fully comply with such Prevailing Wage Laws.

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

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

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

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

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

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

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

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

To City:

Director of Public Works
520 S. Tracy Blvd
Tracy, CA 95376
publicworks@cityoftracy.org

To Contractor:

Calgon Carbon
Attn: Jeremy Jones
3000 GSK Drive
Moon Township, PA 15108

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

14. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

City of Tracy – General Services Agreement with Calgon Carbon Corporation

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

City of Tracy

By: Nancy D. Young

Title: Mayor

Date: _____

Attest:

Adrienne Richardson, City Clerk

Approved as to form:

Bijal M. Patel, City Attorney

Contractor

Calgon Carbon, a Delaware Corporation

Signed by:

Jacob Blake

By: Jacob Blake

Title: DWS Project Manager

Date: 10/3/2024 | 2:03 PM PDT

Federal Employer Tax ID No. 250530110

DocuSigned by:

Jeremy J. Jones

By: Jeremy J. Jones

Title: DWS Project Manager

Date: 10/3/2024 | 1:39 PM PDT

Exhibits:

- A Scope of Work, including personnel and time of performance
- B Compensation

EXHIBIT A - Scope of Work

The scope of work generally includes removal, disposal, and replacement of the existing Granular Activated Carbon (GAC) filter media from filters 1, 2, 3, 4, 5, and 6 at John Jones Water Treatment Plant in Tracy, CA (Project Site) with new GAC. The Contractor shall perform all work in accordance with the following the following requirements.

PART 1 GENERAL

1.01 SUMMARY

- A. Section Includes:
 - 1. CONTRACTOR shall be responsible for removing GAC from existing filters and properly disposing of the material.
 - 2. CONTRACTOR shall provide CITY time to inspect, backwash, and disinfect the underlying sand for each the filters as specified herein.
 - 3. CONTRACTOR shall provide, transport, and deliver the filter GAC media at a location within the Project Site approved by the CITY.
 - 4. CONTRACTOR shall install the GAC media over the existing sand layer in Filters 1, 2, 3, 4, 5, and 6.
- B. Filter Media Quantity:
 - 1. Filter Dimensions:
 - a. Existing Filters No. 1, 2, 3, 4, 5, and 6: 640 square feet (each filter).
 - 2. CONTRACTOR shall provide sufficient media such that after placement, soaking, backwashing, and leveling, the final depth of the media is . The new GAC will be placed over 12-inches of the existing filter sand bed. Existing filter sand layer shall be left in place undisturbed when CONTRACTOR removes the existing GAC.

1.02 REFERENCES

- A. American Water Works Association (AWWA):
 - 1. AWWA B 100-16 Granular Filter Material, including any addenda.
 - 2. AWWA B 604-18 Granular Activated Carbon, including any addenda.
- B. NSF International:
 - 1. NSF/ANSI 61-2023: Drinking Water System Components.
- C. American Society for Testing and Materials (ASTM):
 - 1. ASTM C123 Standard Test Method for Lightweight Particles in Aggregate.
 - 2. ASTM E 11 Standard Specification for Woven Wire Test Sieve Cloth and Test Sieves.
 - 3. ASTM D 2854 Standard Test Method for Apparent Density of Activated Carbon.
 - 4. ASTM D 3174 Standard Test Method for Ash in the Analysis Sample of Coal and Coke from Coal.
 - 5. ASTM D 3175 Standard Test Method for Volatile Matter in the Analysis Sample of Coal and Coke.
 - 6. ASTM D 4607 Standard Test Method for Determination of Iodine Number of Activated Carbon.
- D. Food Chemical Codex: Fourteenth Edition, including any supplements.

1.03 SUBMITTALS

- A. Submit in accordance with the industry standards and listed requirements.
- B. Submit qualifications of the independent testing laboratory(ies) for approval.
- C. Complete GAC Analysis
 - 1. Sieve analysis (particle size distribution), effective size, and uniformity coefficient.
 - 2. Moisture (AWWA B 604).
 - 3. Apparent density (AWWA B 604 or ASTM D 2854).
 - 4. Iodine number (ASTM D 4607).
 - 5. Abrasion resistance (AWWA B 604 - RO-Tap method).
 - 6. Water extractables test (per Food Chemical Codex).
 - 7. Ash content (ASTM D 3174).
- D. GAC Submittals:
 - 1. Manufactured GAC Testing and Samples.
 - a. Purpose: To demonstrate that media produced during the manufacturing process is consistent with contract requirements.
 - 1) It is anticipated that there may be a reasonable variation in the effective size and uniformity coefficient between different media lots produced during the manufacturing process for the Project.
 - 2) CITY may reject any or all individual lots produced during the manufacturing process that do not meet the requirements of the specification. Rejected lots will not be shipped to the Project site without additional remanufacturing or reprocessing and subsequent approval of test results by the CITY.
 - b. Schedule:
 - 1) GAC samples and test result approval is required not less than 14 days prior to shipping of the media from the point of manufacture.
 - 2) Separate submittals for individual production lots are required for large media quantities involving production runs over an extended duration. It is anticipated that individual lot test results will be submitted to the CITY as soon as they are available during the production of the GAC.
 - c. Requirement:
 - 1) Certified test results of Complete GAC Analysis (1.03.C), from an approved Independent Media Testing Laboratory (1.03.B) employed by the CONTRACTOR.
 - 2) Sample collection and frequency for individual production lots shall be in accordance with AWWA B 100. All test results shall be identified by traceable production lot and bag identification.
 - 3) Manufactured GAC Samples:
 - a) Submit one sample of each production lot.
 - b) Shipped in durable, non-glass containers of not less than 1/2 cubic foot, clearly labeled with Project name, GAC source, effective size, uniformity coefficient, and apparent density.
 - c) CITY reserves the right to retest (at CITY's expense) the samples to confirm that the samples reasonably match certified test results submitted.

2. Delivered Media Testing.
 - a. Purpose: To demonstrate that GAC delivered to the Project site matches the Manufactured GAC.
 - 1) Media shall be sampled and tested for effective size, uniformity coefficient, and GAC apparent density by the approved independent laboratory employed by the CONTRACTOR.
 - 2) Although variation may be acceptable, the CITY reserves the right to use the test results to direct the CONTRACTOR to install individual bags or lots in different filters to provide the best possible media compatibility matches at no additional cost to the CITY.
 - 3) The CITY reserves the right to test the GAC received at the Project site at the CITY'S expense.
 - 4) GAC that does not comply with the specified requirements, certified test results, or acceptance criteria may be rejected at the sole discretion of the CITY and shall be replaced with approved GAC at no additional cost to the CITY. The rejected media shall be removed from the project site and appropriately disposed of by the CONTRACTOR at no additional cost to the CITY.
 - 5) If the delivered GAC is rejected by the CITY, an independent laboratory, acceptable to the CITY, may be employed by the CONTRACTOR to sample and test disputed material. For material that is not in compliance with the specified requirements, the CONTRACTOR shall bear the cost of testing the delivered media and any retesting required by the CITY to demonstrate compliance. Otherwise, the CITY is responsible for costs of testing the delivered media.
 - b. Schedule: After delivery to the Project site and before installation.
 - c. Requirement:
 - 1) Sample collection in accordance with AWWA B 100.
 - 2) Test results provided by the independent lab, acceptable to the CITY.
3. Installed GAC Testing.
 - a. Purpose: To document the characteristics of the installed GAC in each filter for the use of the CITY in tracking changes in GAC characteristics over time. It is understood that the effective size and uniformity coefficient of the installed GAC, after placement, soaking, and backwashing, may differ from values prior to installation. Therefore, acceptance of GAC will be based upon the results of the Delivered GAC testing, not Installed GAC testing.
 - b. Schedule:
 - 1) GAC shall be sampled after complete installation, soaking, and backwashing of all GAC to the required depth.
 - c. Requirement:
 - 1) Collect media samples using a clean trowel or sampling tube to provide a sample from the entire filter depth.
 - 2) Store samples in clean clear plastic bags, securely sealed and labeled with location, and collection date using indelible marker.
 - 3) Provide test results of the GAC effective size, uniformity coefficient and specific gravity for each sample. ASTM C 123 will be used to separate the sand from the GAC in each sample.
 - 4) Sampling Locations:
 - a) Collect one sample from each quarter quadrant and combine the four samples to make one composite sample per each filter cell. Each filter has two cells.

- b) Sampling and testing is the responsibility of the CONTRACTOR using a laboratory approved by the CITY.
- E. CONTRACTOR's written certification of the following:
 - 1. Volumes of existing GAC removed from each filter cell.
 - 2. Proposed disposal site for existing GAC (subject to approval by CITY).
 - 3. Vertical measurement from the top of the concrete filter box wall and the top of the sand layer remaining after existing GAC removal and bed leveling, measured at least two locations along each filter cell wall.
 - 4. Disinfection procedures and results.
 - 5. Volume, dry weight, and thickness of GAC media installed in each filter cell.
- F. Digital photographs to document the following conditions:
 - 1. Immediately prior to commencement of existing GAC removal.
 - 2. During existing GAC removal.
 - 3. After existing GAC removal and before CITY inspection, cleaning, and, backwashing of the underlying sand for each filter cell.
 - 4. After CITY in-filter activities and before CONTRACTOR installation of GAC.
 - 5. During installation of GAC media.
 - 6. After completion of GAC media installation in each filter cell, including visual indication of achievement of specified top-of-GAC media elevation after backwashing and topping off of media.
 - 7. After final cleanup.
- G. Existing GAC disposal plan for approval by CITY.
- H. Certificates: Submit proper documentation showing ANSI/NSF-61 certification of all supplied GAC.
- I. GAC installation instructions from the GAC supplier including approved mixing plan, washing requirements and procedures.
- J. Filter GAC Mixing Plan: Based upon GAC testing information, CONTRACTOR shall develop and provide a mixing plan designating the number of the bags and the order in which the bags should be used to fill each filter cell in order to obtain GAC physical characteristics and depth that conform to this specification. Testing data and calculations used to develop the mixing plan shall be provided to the CITY before installing the GAC.
- K. Submit GAC head loss curves.

1.04 QUALITY ASSURANCE

- A. All testing of filter media shall be performed by an CITY-approved independent testing laboratory employed by the Supplier.
- B. All sampling and testing shall be performed in accordance with the requirements of AWWA B 604 except as modified and supplemented herein. Approved samples shall meet the requirements of AWWA B 604, including all addenda.
- C. CONTRACTOR shall not place GAC in the filter cells before the CITY has approved the delivered media (1.03.E.2). Any media placed in the filter without the CITY's acceptance

shall be subject to rejection, removal, and replacement by the CONTRACTOR at no cost to the CITY.

- D. Determination of particle size distribution:
1. Determine particle size distribution by screening through standard inspection grade or calibration grade sieves, Tyler fourth root of two series or equivalent U.S. series.
 - a. Sieve dimensions shall conform to ASTM E11 Table 1.
 - b. Sieves are to be certified ASTM E11 Standard Calibration Grade or Inspection Grade. The certified values for the average aperture sizes are to be utilized in performing the sieve analysis.
 2. Determine percent sizes from a plot, on semilog or probability paper, of the percentages of the material passing each sieve against the rated opening of the sieve or the equivalent diameter of the grains.
 3. Define percent size as the size of the theoretical opening of a sieve through which that percentage of the filter media, by weight, will pass. For example, if the size distribution of the filter media particles is such that 10 percent of the sample is finer than 0.50 millimeters, the filter media shall be said to have a 10 percent size of 0.50 millimeters.
 4. Define uniformity coefficient as the ratio of the 60 percent size to the 10 percent size of the filter media.

1.05 PRODUCT DELIVERY AND STORAGE

- A. Packaging:
1. Filter GAC shall be packaged in 1/2 ton ultraviolet-resistant polyethylene bags (super sacks with bottom pour spout) on pallets. Each bag of material shall be clearly marked with the following information: effective size, uniformity coefficient, source, date of bagging, individual bag number, and lot identifier.
- B. Place or store all filter media only in designated staging areas within the site and approved by the CITY. Polyethylene bags shall be placed on pallets supplied by the CONTRACTOR.
- C. All filter media at the jobsite shall be stored off the ground, protected from weather, and covered with a suitable membrane by the CONTRACTOR to prevent contamination of the media from windblown debris and soil. All filter media is subject to gradation and retesting at the CITY's direction if visual evidence of contamination is observed or suspected.
- D. Placement of filter media in the filters shall comply in all respects with AWWA B 604, except as modified or supplemented herein.

PART 2 PRODUCTS

2.01 FILTER GRANULAR ACTIVATED CARBON (GAC)

- A. Quality:
1. Carbon shall be based on bituminous coal. Carbons based on wood, lignite, subbituminous, peat, or coconut shall not be permitted. Product shall be virgin GAC.
 2. Manufacturing process shall include re-agglomeration. Carbon shall be manufactured in the United States by a supplier with a minimum of 5 years experience. Product shall have 5 years history in water treatment.
 3. Extruded or pelletized carbon shall not be accepted.

4. Carbon shall be thoroughly washed, screened, and free of clay, loam, dust, dirt, organic matter, and other foreign material.
5. GAC shall conform to AWWA B604 in addition to the modifications listed herein. GAC shall also conform to Food Chemical Codex when tested under the conditions outlined in the Food Chemical Codex.
6. Controlled activation shall produce a material having a high internal surface area with optimum pore size for the effective adsorption of a broad range of high and low molecular weight organic material. Carbon shall have a minimum iodine number of 900 milligrams/gram.
7. Carbon shall be composed of hard, durable grains with an abrasion resistance of no less than 75 by the RO-tap method.
8. Maximum moisture content of the as-packed GAC shall be 2 percent.
9. Maximum Total Ash: 8 percent.

B. Size:

1. GAC shall meet the following requirements:
 - a. Effective (10 percent) size (mm): 1.3 to 1.5.
 - b. Uniformity Coefficient: Less than 1.4.
 - c. Larger than No. 8: No more than 15 percent.
 - d. Smaller than No. 16: No more than 5 percent.
2. The particle size distribution shall be determined as indicated in 1.04.D of this Specification Section.

C. Depth: 48-inches final.

2.02 ACCEPTABLE SUPPLIERS

A. Filter GAC:

1. Calgon Carbon Corporation a Kuraray Company
3000 GSK Drive,
Moon Township, PA 15108
412-787-6700
2. Jacobi
432 McCormick Blvd.
Columbus, OH 43213
714-292-6198
3. Norit Activated Carbon
3200 University Ave
Marhsall, TX 75670
903-923-1000
4. Xylem + Evoqua
251 W. Channel Road
Benicia, CA 94510
916-730-2384
5. No substitution allowed.

PART 3 EXECUTION

3.01 GAC REMOVAL

- A. Prior to initiating removal of the existing GAC, plant staff will drain Filters 1, 2, 3, 4, 5, and 6, as far as possible while maintaining the remaining filters in operation.
- B. CONTRACTOR will remove existing GAC layer from Filter 1, 2, 3, 4, 5, and 6, while minimizing disturbance of the underlying sand layer. The existing GAC layer is approximately 48 inches deep (underlying sand layer is approximately 12 inches deep). Do not remove sand underlying existing GAC layer.
- C. Do not stand or walk directly on any layer of the existing filter media. Workers entering the filter boxes shall walk on clean plywood mats that will sustain their weight without displacing the filter media. Minimum dimensions of the plywood mats shall be two feet by two feet by 1/2 thick.
- D. Properly dispose of existing GAC at a facility approved by CITY.
- E. Mark the walls of each filter at a level 60 inches above the filter cap to indicate the target level of the top of the GAC media after GAC placement, backwashing, scraping, and topping-off activities.
- F. Clean up any spills that occurred during the removal of the existing GAC.

3.02 CITY INSPECTION

- A. CONTRACTOR shall provide the CITY ten (10) business days to inspect, backwash, and disinfect each filter once the existing GAC has been removed.
- B. CITY will verify that the contractor has removed the appropriate amount of media, leaving only 12 inches of sand in each filter. CONTRACTOR may only proceed with installation upon CITY approval.

3.03 GAC PLACEMENT

- A. GAC must be added to the filters from the top of the filter. There is no existing piping or equipment to handle filter media at the site. All equipment required to transfer GAC into the filters must be supplied by the CONTRACTOR. Personnel shall not enter filter cells during GAC media installation.
- B. CONTRACTOR shall provide all labor and materials necessary to deliver and install the GAC media. \
- C. CONTRACTOR shall be careful in placing the media to avoid damaging the filter troughs, filter underdrain system, or any equipment and piping in the filter units.
- D. CONTRACTOR shall prevent contamination during transporting and placing the filter media. Any filter media which has become contaminated, either before or after placement in the filters, shall be removed and replaced with new or washed and cleaned material in a manner approved by the CITY.

- E. Workers shall not stand or walk directly on filter media. The workers shall walk on plywood mats that will sustain their weight without displacing the material (minimum dimensions 2 feet by 2 feet by 1/2 inch thickness).
- F. The filter may be flooded with water to use as a leveling gauge for each layer of material.
- G. GAC Washing:
 - 1. Plant staff shall operate all filter backwash controls when washing the new GAC media installed in the filter basin.
 - 2. CONTRACTOR is responsible for coordinating the scheduling of filter media washing through the CITY with plant operations. Plant operations shall govern scheduling the use of the backwash system and volume of washwater produced. CONTRACTOR is responsible for this coordination to avoid delays to the schedule.
 - 3. GAC washing will be allowed as determined by the CITY so as not to interrupt operation of the plant. At no time shall the plant's Backwash Equalization Basins overflow from the media washing operations. Filter media washing shall be terminated before reaching a liquid level that would affect plant operations regardless of the status of the media washing operation.
 - 4. Ensure that water from the media washing operation is directed to the Backwash Equalization Basins.
- H. Method of placement of the media shall be submitted to the CITY for approval.
- I. Filter GAC:
 - 1. GAC shall be placed in a manner so as not to disturb the filter sand.
 - 2. Placement of GAC and backwashing shall be as specified in AWWA B 604, except as modified and supplemented herein. The finished depth for GAC at the end of placement, soaking, backwashing, and leveling operations shall be as specified in this Section.
 - 3. Prior to placing GAC in filters, plant staff will flood the filters to approximately one third of the GAC volume.
 - 4. GAC must be carefully placed in the filters from just above the water surface to prevent damage to the GAC and to limit the dust resulting from the transfer process. Release of airborne GAC dust must be mitigated.
 - 5. Perform placement, soaking, backwashing, and leveling of GAC media in each filter in accordance with AWWA B604, Sections C.1.3. Plant staff will operate all filter controls and valves during backwashing. Backwashing rates and durations will be determined by the CITY.
 - 6. Following completion of placement, soaking, backwashing, and leveling of GAC media in each filter, CITY shall verify the surface of the GAC is free of contaminated material and the depth of media is as specified (within a range of -1/4" to +1/2"). If there are any contaminated material on the surface of the GAC, it should be removed and replaced with virgin GAC.
 - 7. Clean up any spills that occurred during the addition of GAC to the filters.
 - 8. Upon approved completion, collect and test representative installed GAC sample from the filter in accordance with Paragraph 1.03.E.3 of this Specification. Test results shall be submitted to the CITY.

3.04 CLEANING

- A. Filter Structure Cleaning: Once installed media testing samples have been collected, remove all debris and media from all backwash drain conduits, troughs, pipelines, and structures.

PART 4 TIMELINE

- A. Work is anticipated to start upon issuance of Notice to Proceed. Filters No. 1-3 must be fully functional for operation by March 1, 2025. If additional funding is approved for Filters No. 4-6, staff will issue a second Notice to Proceed with a deadline to be completed by.

PART 5 BOND

- A. A performance and payment bonds, for 100% of the maximum Contract Price, and a warranty bond for 10% of the maximum Contract Price will be required after execution of the contract, but before a Notice to Proceed will be issued for each phase of the project.

EXHIBIT B – Compensation

Total for Filters No. 1-3:	\$603,239
Total for Filters No. 4-6:	\$603,239
Grand Total:	\$1,206,478

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

-
- 1) **DETERMINING THAT COMPLIANCE WITH THE FORMAL CONTRACT PROCEDURE IS NOT IN THE BEST INTEREST OF THE CITY AND DISPOSE SUCH REQUIREMENTS FOR THE REPLACEMENT OF CERTAIN UNDERDRAINS AT THE JOHN JONES WATER TREATMENT PLANT FOR THE CAPITAL IMPROVEMENT PROJECT (CIP) 75126 PURSUANT TO TRACY MUNICIPAL CODE 2.20.180(B)(4); AND**
 - 2) **AUTHORIZING THE EXECUTION OF AMENDMENT NO. 1 TO THE GENERAL SERVICES AGREEMENT WITH CALGON CARBON, A DELAWARE CORPORATION FOR CAPITAL IMPROVEMENT PROJECT NO. 75126 FILTER MEDIA REPLACEMENT AT THE JOHN JONES WATER TREATMENT PLANT, FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$2,651,806 AND MAKE IT EFFECTIVE RETROACTIVELY FEBRUARY 1, 2025.**

WHEREAS, the John Jones Water Treatment Plant (JJWTP) has the capacity to treat up to 30 million gallons a day (MGD) of water which flows through six filters, three on each side rated at 15 MGD; and

WHEREAS, the JJWTP shuts down the plant each year from approximately late November to early March to conduct routine and necessary maintenance and replacement of parts and equipment; and

WHEREAS, on November 19, 2024, under Resolution 2024-199, City Council awarded Calgon Carbon Corporation the contract for CIP 75126 to perform the filter media replacement at the JJWTP for a not-to-exceed amount of \$1,206,475 with a term ending on February 28, 2026; and

WHEREAS, during the initial inspection and preparation of the filters, it was identified that three of the six filters (Filters 4, 5, and 6) could not be put back into production due to severe defects in the underdrains; and

WHEREAS, the underdrains are a vital part of the treatment process acting as a barrier and filtering out sand and media in the finish water; and

WHEREAS, due to constraints on time to restart the plant and limited workspace it was determined that it is not in the City's best interest to comply with the formal contract procedure; and

WHEREAS, the contractor provided a proposal on February 19, 2025, as an additional task to replace the underdrains in filters 4-6 with the same type, brand (Xylem), and style as the 2008 Engineered Drawings at a cost of \$1,445,328; and

WHEREAS, there are no additional appropriations as the additional task comes from the 24/25 Water Treatment Plant Operations and Maintenance budget (Fund 511); and

NOW, THEREFORE, be it resolved as follows:

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

FURTHER RESOLVED: That the City Council of the City of Tracy, hereby determines that compliance with the Formal Contract Procedure for this project is not in the best interest of the City for these general services, the cost of which equal or exceed Fifty-Thousand and no/100ths (\$50,000) dollars under Tracy Municipal Code 2.20.180(b)(4) because Calgon Carbon is already completing other work at the City's Water Treatment Plant, including work on the underdrains and filter system, and bidding this work, requiring additional time and potentially resulting in two different contractors working on the same pieces of equipment at the same time, would be detrimental to ensuring the filter system is offline for as short a period as possible and that the equipment functions as designed in an integrated, seamless manner with uninterrupted, reliable water service; and be it

FURTHER RESOLVED: That the City Council authorizes the execution of Amendment No. 1 to the General Services Agreement with Calgon Carbon, a Delaware Corporation for Capital Improvement Project No. 75126 Filter Media Replacement at the John Jones Water Treatment Plant, for a total not-to-exceed amount of \$2,651,806; and be it

FURTHER RESOLVED: That the City Council authorizes the retroactive effective date for the total not-to-exceed amount of \$2,651,806 to February 1, 2025; and be it

FURTHER RESOLVED: That the City Council finds the actions taken herein are not considered as a Project as defined by Section 21065 of the Public Resource Code and are exempt from CEQA (California Environment Quality Act) review and are also exempt from CEQA review under CEQA Guidelines Section 15301 as repairs to an existing facility.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on 1st day of April, 2025, by the following vote:

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

DAN ARRIOLA
Mayor of the City of Tracy, California

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

Agenda Item 1.E

RECOMMENDATION

Staff recommend that the City Council adopt a resolution:

(1) Awarding a construction contract to Mozingo Construction, Inc. of Oakdale, California, in the amount of \$7,048,372 for construction of the Recycled Water Expansion Project – Pipelines, Capital Improvement Project 74168 (Project);

(2) Authorizing the City Manager to approve change orders up to the contingency amount of \$704,837; and (3) Authorizing a Not-to-Exceed Construction Budget of \$ 7,903,209.

EXECUTIVE SUMMARY

This agenda item seeks adoption of a Resolution by the City Council approving the construction of the Recycled Water Expansion Project - Pipelines, Capital Improvement Project (CIP) 74168 (Project). Staff recommends the City Council award a Construction Contract (Contract) (Attachment A) to Mozingo Construction Inc., of Oakdale, California (Contractor) for a contract price of \$7,048,372; authorize the City Manager to approve change orders for up to \$704,837; approve an additional estimated City overhead, permit fees, materials testing, and similar costs budget of \$150,000; and authorize a total not-to-exceed budget of \$7,903,209 for construction of this Project. The Contractor is the lowest responsive and responsible bidder selected from the bids submitted in response to the request for competitive bids advertised on November 29, 2024. Staff were recently successful in resolving long-standing right of way issues with the Union Pacific Railroad. The Project is funded in part by a state Department of Water Resources grant, for which the deadline to complete the Project is presently February 2026. Staff continues to engage with the City's Legislators, Lobbyist, and Department of Water Resources staff regarding possible extension of that deadline to reduce the risk of not meeting the Project completion deadline if there are construction delays. Staff recommends approval of the construction contract for the Project.

BACKGROUND AND LEGISLATIVE HISTORY

The Recycled Water Expansion Project, CIP 74168, is an approved 2012 Water Master Plan Capital Improvement Project that consists of two projects: the extension of the existing recycled water distribution system in Lammers Road and the construction of the Zone B recycled water pump station. A grant for both projects from the Department of Water Resources, in the amount of \$20,000,000, was accepted by the City pursuant to Resolution 2022-050. Notice-Inviting-Bids for construction work for the pipeline extension and the pump station were advertised separately.

The recycled water distribution system extension project includes installation of 6,805 linear feet of pipe, consisting of two parallel thirty (30) inch non-potable water mains in Lammers Road. The Project is primarily in unincorporated Tracy, in the San Joaquin County (County) jurisdictional authority (Attachment B). The County encroachment permit will require that traffic be maintained on S. Lammers Road throughout construction. The pipeline alignment also requires a subsurface "jack and bore" crossing, through the Union Pacific Railroad (UPRR) right of way, east of the UPRR crossing at Western Pacific and Lammers. A UPRR encroachment permit was recently approved in March 2025, after nearly 18 months and five design submittals. Staff appreciates the recent ROW approval for the project by UPRR.

The delay in right of way approval has created a shorter construction period for completion of the projects before the deadline stipulated by the grant.

The pipeline extension will run from the termination point of the existing recycled water system, just north of the Byron Bethany Irrigation District (BBID) canal at W. Schulte & Lammers Road, to Valpico Road. Once completed, it will provide recycled water to the Tracy Lakes Master Planned Community development and the future Zone C recycled water pump station. Construction work is anticipated to begin in May of 2025, depending on the availability of pipe materials, and will continue through the end of January 2026.

Staff prepared the plans, specifications, and bid documents for the construction of the pipeline Project and advertised for competitive bids on November 29, 2024. The pipeline installation work was separated into a base bid and two additive bid items. The base bid was for construction of the pipeline in Lammers Road north of Valpico Road. Additive Bid Item No. 1 was for construction through the UPRR right of way and Additive Bid Item No. 2 was for the construction south of Valpico Road.

Seven bids were received and publicly opened on January 9, 2025, at 2:00 p.m. with the following results:

<u>Contractor</u>	<u>City</u>	<u>Base Bid Amount</u>
Mozingo Construction, Inc.	Oakdale	\$ 4,799,177
ARB, Inc.	Lake Forest	\$ 4,973,946
Mountain Cascade, Inc.	Livermore	\$ 5,019,774
KJ Woods Construction, Inc.	South San Francisco	\$ 5,878,000
Ranger Pipelines, Inc.	San Francisco	\$ 6,503,258
Garney Pacific, Inc.	Tracy	\$ 6,908,062
Cratus, Inc.	San Francisco	\$ 6,960,664

ANALYSIS

The lowest bidder, Mozingo Construction, Inc., of Oakdale, California, is responsive and responsible. The base bid amount was used for determination of the lowest bidder. The bidder has the appropriate contractor's license in active standing with the State of California and has completed similar projects. Staff request the City Council approve a contract for the base bid, the recycled water pipeline in Lammers Road north of Valpico Road, and the additive bid item No.1, the additional recycled water pipeline through the UPRR right of way, for a contract price of \$7,048,372.

Staff are also seeking City Council authorization of a contingency amount of \$704,837, representing ten (10) percent of the Construction Contract Cost. Tracy Municipal Code Section 2.20.090(b) authorizes the City Manager to approve change orders up to the contingency amount approved by City Council.

The total estimated construction cost of this Project, including the contract amount, includes a 10% construction contract contingency which staff are recommending the City Manager be authorized to implement, as needed. City costs related to staff time, construction management and inspection, encroachment permits, design support, and all soft costs related to the construction contract, if awarded to the Contractor, include the following:

Construction Base Bid	\$ 4,799,177
Alternate Bid Item 1	\$ 2,249,195
Contingency (10%)	\$ 704,837
Staff time, permit fees, materials testing, etc.	\$ 150,000
Total Project Budget	\$ 7,903,209

- Costs for consultant construction management and design support services for the recycled water pipeline construction were previously encumbered and are included in the project expenses shown below.

West Yost Associates, Inc. (Consultant) will be providing construction management services for the project, under a Professional Services Agreement approved pursuant to Resolution 2024-026, approved by City Council on March 5, 2024. The Consultant will provide on-going public outreach information throughout construction and provide updates about traffic controls, temporary road closures, and construction progress that will be coordinated with the City's Public Information Officer, posted on social media, and coordinated with the City's Engineering, Transit, Operations, and Police Departments, Tracy Unified School District, San Joaquin County Public Works and with the South San Joaquin County Fire Authority.

FISCAL IMPACT

The Project is a Master Plan improvement funded by development impact fees. Under the adopted Water Master Plan Update, the project is eligible for \$18,475,878 in recycled water impact fees. The available impact fees in the TIMP Recycled Water fund of \$4,624,528 have been allocated to the Project. A grant for the Project, from the Department of Water Resources, in the amount of \$20,000,000, was accepted by the City pursuant to Resolution 2022-050. The proposed construction contract requires the contractor to complete the project by the February 2026 grant deadline.

Construction work is anticipated to begin in May of 2025 and will continue through the end of February 2026. There is a risk, if there are insurmountable construction delays preventing completion by the deadline, of that grant funding not being provided. Staff continues to engage with the City's Legislators, Lobbyist, and Department of Water Resources staff regarding possible extension of that deadline to reduce the risk of not meeting the Project completion deadline should there be extensive construction delays.

The Recycled Water Expansion Project, CIP 74168, has an approved budget of \$24,624,528 and a current available balance of \$17,703,569. The Project is a Master Plan improvement fully funded by development impact fees and grant funding. There are sufficient funds in the CIP to award the construction contract as follows:

Funding Source	Budget	Expense	Balance
368 - TIMP Recycled Water	\$ 4,624,528	\$ 1,612,998	\$ 3,011,530
525 – Wastewater Grants	\$ 20,000,000	\$ 5,307,961	\$ 14,692,039
Totals	\$ 24,624,528	\$ 6,920,959	\$ 17,703,569

When additional impact fee funding becomes available, the recycled water main pipelines will be extended south on Lammers, to serve the future Tracy Hills Recycled Water system and recycled water exchange pipeline will discharge of dechlorinated recycled water to the Delta Mendota Canal, as part of a water exchange program with the State, that will allow the City to bank water for future water supply needs.

PUBLIC OUTREACH/ INTEREST

Public Outreach will include notifications to residents, public safety department, schools, transit and impacted businesses, when the construction schedule is determined, and will address timing of construction work and possible road closures.

Prior to the start of construction, Public Outreach about the construction timeline will be distributed by mail to impacted residents on Lammers Road, the homeowners' associations of Redbridge and Ellis, and posted on social media with updates throughout the project.

COORDINATION

The Utilities Division of the Public Works Department has coordinated with San Joaquin County Public Works, Union Pacific Railroad, the Byron Bethany Irrigation District, City Transit, Operations, and Police Departments, Tracy Unified School District and the South San Joaquin County Fire Authority. Staff also continues to engage with the City's Legislators, Lobbyist, and Department of Water Resources staff regarding possible extension of the grant deadline.

CEQA DETERMINATION

The Initial Study and California Environmental Quality Act (CEQA) Negative Declaration for the Project was adopted by City Council pursuant to Resolution 2017-020 and subsequently staff filed a Notice of Determination with San Joaquin County.

STRATEGIC PLAN

This agenda item supports the City of Tracy's Quality of Life Strategic Priority.

ACTION REQUESTED OF THE CITY COUNCIL

Adopt a resolution:

- (1) Awarding a construction contract to Mozingo Construction, Inc. of Oakdale, California, in the amount of \$7,048,372 for construction of the Recycled Water Expansion Project – Pipelines, Capital Improvement Project 74168 (Project);
- (2) Authorizing the City Manager to approve change orders up to the contingency amount of \$704,837; and
- (3) Authorizing a Not-to-Exceed Construction Budget of \$7,903,209.

Prepared by: Ilene Macintire, Senior Civil Engineer

Reviewed by: Gordon MacKay, Interim Public Works Director
Stephanie Reyna-Hiestand, Assistant Director of Utilities
Sara Castro, Director of Finance
Andrew Shen, Interim City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

A – Construction Contract
B- Location Map

Contract

This public works contract ("Contract") is entered into by and between the City of Tracy ("City") and Mozingo Construction, Inc. ("Contractor") for work on the TRACY RECYCLED WATER SYSTEM EXPANSION PROJECT - PIPELINE, CIP 74168 ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On April 1, 2025, City authorized award of this Contract _____ to Contractor for the amount of Contractor's bid.

2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following (subject to the order of precedence in Section 3.2 of the General Conditions):
 - 2.1 Notice Inviting Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment, Performance and Warranty Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Drawings and Specifications;
 - 2.10 Change Orders and Contract amendments, if any;
 - 2.11 Notice of Award;
 - 2.12 Notice to Proceed; and
 - 2.13 The following: No Other Documents.

3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor Seven million forty eight thousand three hundred seventy two Dollars (\$ 7,048,372) (the "Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.

5. **Time for Completion.** Contractor will complete the Work for the Project within three hundred sixty-four (364) Contract days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.

6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$2,000.00 for each calendar day of unexcused delay in completion, and the Contract Price will be reduced accordingly.

7. Labor Code Compliance.

7.1 General. This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance. Contractor shall comply with all other applicable federal, state, and local laws, regulations and policies pertaining to labor standards insofar as those laws, regulations and policies apply to the performance of this Contract, including any applicable City employment requirements, including but not limited to, the City's Local Hiring Policy (attached as Exhibit 1 to this Contract).

7.2 Prevailing Wages. This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.

7.3 DIR Registration. City will not enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code section 1725.5, subject to limited legal exceptions.

8. Workers' Compensation Certification. Under Labor Code section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. Conflicts of Interest. Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or policy or in violation of any California law, including under Government Code section 1090 et seq. and under the Political Reform Act as set forth in Government Code section 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

10. Independent Contractor. Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.

11. Notice. Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

City:

Public Works Department, Utilities Division
Attn: Stephanie Reyna-Hiestand, Assistant Director of Utilities
Address: 3900 Holly Road
City/State/Zip: Tracy, CA 95376
Email: CIP74168@cityoftracy.org
Copy to: Necy Lopez, Acting City Clerk

Contractor:Name: Mozingo Construction, Inc.Address: 751 Wakefield CtCity/State/Zip: Oakdale, CA 95361Phone: 209-848-0160Attn: Jeff GrahamEmail: jgraham@mozingoconstruction.comCopy to: sbaker@mozingoconstruction.com**12. General Provisions.**

- 12.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.
- 12.2 Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of San Joaquin County, and no other place.
- 12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in effect.
- 12.6 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, at least two signatures are required pursuant to California Corporation Code section 313: (1) one from an officer on the operations side of the corporation (such as president, vice president, chief operating officer, etc.); and (2) one from the finance side of the corporation (such as the chief financial officer, treasurer, etc.) or from the corporate secretary. Alternatively, if only one signature will be obtained from a corporation, attach the corporate resolution authorizing that individual to bind the corporation to contracts.

[Signatures are on the following page.]

The parties agree to this Contract as witnessed by the signatures below:

CITY: City of Tracy

Approved as to form:

s/ _____

s/ _____

Dan Arriola, Mayor

Andrew Shen, Interim City Attorney

Date: _____

Date: _____

Attest:

s/ _____, City Clerk
Necy Lopez, Acting City Clerk

Date: _____

CONTRACTOR: Mozingo Contruction, Inc.
Business Name

s/ _____

Seal:

Name/Title [print]

Date: _____

Second Signature (See Section 12.6):

s/ _____

Name/Title [print]

Date: _____

Contractor's California License Number(s) and Expiration Date(s)

END OF CONTRACT

TRACY RECYCLED WATER SYSTEM EXPANSION PROJECT – PIPELINE, CIP 74168

LOCATION MAP



City of Tracy

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

-
- (1) **AWARDING A CONSTRUCTION CONTRACT TO MOZINGO CONSTRUCTION, INC., OF OAKDALE, CALIFORNIA, IN THE AMOUNT OF \$7,048,372 FOR THE CONSTRUCTION OF THE RECYCLED WATER EXPANSION PROJECT – PIPELINES, CAPITAL IMPROVEMENT PROJECT 74168;**
- (2) **AUTHORIZING THE CITY MANAGER TO APPROVE CONSTRUCTION CONTRACT CHANGE ORDERS UP TO THE CONTINGENCY AMOUNT OF \$704,837, PURSUANT TO TRACY MUNICIPAL CODE SECTION 2.20.090(b); AND**
- (3) **AUTHORIZING A NOT-TO-EXCEED CONSTRUCTION BUDGET OF \$7,903,209.**

WHEREAS, the Recycled Water Expansion Project, is an approved Capital Improvement Project (CIP) identified in the 2012 Water Master Plan and is eligible for impact fee funding of \$18,475,878, under the adopted Water Master Plan Update; and

WHEREAS; the City accepted a grant from the Department of Water Resources in the amount of \$20,000,000 pursuant to Resolution 2022-050; and

WHEREAS, the available recycled water impact fees of \$4,624,528 have been allocated to the CIP; and

WHEREAS, on November 29, 2024, staff prepared the plans, specifications, and bid documents for the Recycled Water Expansion Project - Pipelines, Capital Improvement Project (CIP) 74168, for competitive bids; and

WHEREAS, the bid documents included three (3) schedules: Base Bid, Additive Bid Item No. 1 (ABI-1) for pipeline work in the UPRR right of way, and Additive Bid Item No. 2 (ABI-2) for pipeline work south of Valpico; and

WHEREAS, bids were received and publicly opened on January 9, 2025, at 2:00 p.m., and resulted in the following base bids:

Mozingo Construction, Inc.	\$ 4,799,177
ARB, Inc.	\$ 4,973,946
Mountain Cascade, Inc.	\$ 5,019,774
KJ Woods Construction, Inc.	\$ 5,878,000
Ranger Pipelines, Inc.	\$ 6,503,258
Garney Pacific, Inc.	\$ 6,908,062
Cratus, Inc.	\$ 6,960,664 ; and

WHEREAS, the Base Bid amount was used to determine the lowest bidder; and

WHEREAS, Mozingo Construction, Inc. is responsive and responsible, has the appropriate contractor's license in active standing with the State of California and has completed similar projects; and

WHEREAS, the Project will be funded by CIP 74168, which has a current available budget of \$17,703,569, that includes a combination of funds from recycled water impact fees and grant funding; and

WHEREAS, adequate funding is available in the project to fund the construction of the Base Bid and Additive Bid Item No. 1. The not-to-exceed construction budget is \$7,903,209, including the contract amount of \$7,048,372 for Mozingo Construction, Inc., including the Base Bid and Additive Bid Item-1 schedules, the contingency of \$704,837 and an additional estimated City overhead, permit fees, materials testing, etc., of \$150,000; and

WHEREAS, the total project cost amount has been previously appropriated and fully funded pursuant to City Council's approval of the Recycled Water Expansion Project - Pipelines, Capital Improvement Project (CIP) 74168, which is an approved project in the City's Capital Improvement Plan; sufficient funds are available in the CIP for the current project budget; and

NOW, THEREFORE, be it resolved as follows:

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

FURTHER RESOLVED: The Initial Study and California Environmental Quality Act (CEQA) Negative Declaration for the Project was adopted by City Council pursuant to Resolution 2017-020 and subsequently a Notice of Determination was filed with San Joaquin County; and be it

FURTHER RESOLVED: That the City Council hereby awards a construction contract to Mozingo Construction, Inc., of Oakdale, California in the amount of \$7,048,372 for the Recycled Water Expansion Project - Pipelines, Capital Improvement Project (CIP) 74168; and be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Manager to approve construction contract change orders up to the contingency amount of \$704,837, if needed, pursuant to Tracy Municipal Code Section 2.20.090(b); and be it

FURTHER RESOLVED: That the City Council hereby authorizes the not-to-exceed construction budget of \$7,903,209.

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the
1st day of April, 2025, by the following vote:

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

DAN ARRIOLA
Mayor of the City of Tracy, California

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

Agenda Item 1.F

RECOMMENDATION

Staff recommends that the City Council adopt a resolution (1) accepting public improvements as complete for the Tracy Desalination Plant constructed by Combined Solar Technologies, Inc., (2) authorizing the City Engineer to release bonds for the public improvements in accordance with the Tracy Municipal Code Section 12.36.080, and (3) authorizing the City Clerk to file the Notice of Completion for improvements with the San Joaquin County Recorder's Office.

EXECUTIVE SUMMARY

Combined Solar Technologies, Inc. (Developer), has completed public improvements for Tracy Desalination Plant in accordance with project plans and specifications. Public improvements include improvements along the Arbor Road frontage of the Tracy Desalination Plant and the Heirloom Carbon Technologies, Inc. facility. Staff recommends City Council accept the improvements as completed, allow the City Clerk to file the Notice of Completion, and authorize the City Engineer to release the Developer's bonds.

BACKGROUND AND LEGISLATIVE HISTORY

On June 26, 2019, Developer's Development Review Application D19-0003 was approved by City Manager for development of a 550,000 gallon per day desalination plant on a five-acre site located at 9251 West Arbor Avenue (Assessor's Parcel Number 212-160-11), as shown on Attachment A, subject to conditions of approval.

On May 1, 2021, by Resolution No. 2021-075, City Council approved the Mitigated Negative Declaration for the Tracy Desalination and Green Energy Project, prepared in accordance with the requirements of the California Environmental Quality Act (CEQA) and the CEQA Guidelines.

On December 14, 2022, by a Determination of the Development Services Director for Application D22-0039, an Addendum to the Mitigated Negative Declaration for the Tracy Desalination and Green Energy Project, prepared consistent with the requirements of CEQA Guidelines Section 15162 and 15164, was approved allowing the Heirloom Carbon Technologies project to proceed.

On May 26, 2021, the City Engineer signed offsite improvement plans entitled "Offsite Improvement Plans Tracy Desalination Plant", prepared by Siegfried and containing 27 sheets, on behalf of Developer. The offsite improvements are generally located on Holly Drive north of Arbor Road as shown on Attachment A. Public improvements include installation of curb, gutter, sidewalk, street lighting, irrigation and landscaping along the Holly Drive frontage. The offsite improvements support the Tracy Desalination Plant and the Heirloom Carbon Technologies site, which is owned in fee by the City of Tracy and leased to Developer.

An Offsite Improvement Agreement was worked on and delayed for administrative reasons by the City. The Developer started and completed the public improvements during that time. Because the public improvements are completed according to the approved plans and

specifications, Staff recommends accepting the improvements without executing the Offsite Improvement Agreements.

Developer furnished cash bonds to ensure completion of public improvements in the following amounts:

<u>Bond Type</u>	<u>Amount</u>
Performance	\$ 193,974
Labor and Material	\$ 193,974
Warranty	\$ 19,397

ANALYSIS

Developer has completed all work required to be done in accordance with approved plans and specifications and has requested acceptance of the public improvements. The City Engineer has inspected the completed work and confirmed that the improvements conform to the approved plans and specifications. Notice of Completion should be filed by the City Clerk, to be recorded at San Joaquin County Recorder's Office.

A cash bond was provided by Developer to assure completion of public improvements in the amount of \$193,974. Since Developer is also required to provide a one-year Warranty Bond in the amount of 10% of construction cost, \$19,377 of the cash bond should be retained by the City for a period of one year from the date of this acceptance.

The amount of \$174,577 (Performance Bond less Warranty Bond) should be released 30 days after the recordation of Notice of Completion, in accordance with Civil Code §9356. The balance of \$19,377 may be released one year after City acceptance of improvements and warranty work is completed.

All lands on which this project was constructed are owned by the City in fee title. No additional land dedications were required.

FISCAL IMPACT

All improvements were completed by the Developer in accordance with the approved plans and specifications and there is no fiscal impact associated with the requested actions.

The estimated cost of the public improvements is as follows:

<u>Cost Breakdown</u>	
Roadway Improvements	\$ 53,506
Sanitary Sewer	\$ 13,143
Street Lighting	\$ 19,800
Landscaping	\$ 107,525
Total	\$ 193,974

PUBLIC OUTREACH / INTEREST

Not applicable

COORDINATION

Project construction activities were coordinated with City of Tracy Public Works Department.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DETERMINATION

An analysis of the public improvements showed that there would be no significant on-site or off-site impacts as a result of this project which were not already evaluated in the Mitigated Negative Declaration for the Tracy Desalination and Green Energy Project, as amended for the Heirloom Carbon Technologies project, as traffic, air quality, land use and other potential cumulative impacts had already been considered within the original environmental documentation. No new evidence of potentially significant effects had been identified for the public improvements, and therefore, no further environmental review was needed prior to Developer's commencement of construction.

STRATEGIC PLAN

This agenda item is consistent with the Council approved Economic Development Strategy to ensure physical infrastructure necessary for development.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution (1) accepting public improvements as complete for the Tracy Desalination Plant constructed by Combined Solar Technologies, Inc., (2) authorizing the City Engineer to release bonds for the public improvements in accordance with the Tracy Municipal Code Section 12.36.080, and (3) authorizing the City Clerk to file the Notice of Completion for improvements with the San Joaquin County Recorder's Office.

Prepared by: Miguel Hernandez, Construction Project Manager

Reviewed by: Sara Castro, Finance Director
Andrew Shen, Interim City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS:

Attachment A - Location Map

LOCATION MAP

PROJECT ADDRESS: 20500 S. HOLLY DRIVE, TRACY CA 95304



CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

- 1. ACCEPTING PUBLIC IMPROVEMENTS AS COMPLETE FOR THE TRACY DESALINATION PLANT, CONSTRUCTED BY COMBINED SOLAR TECHNOLOGIES, INC;**
- 2. AUTHORIZING THE CITY ENGINEER TO RELEASE BONDS FOR THE PUBLIC IMPROVEMENTS IN ACCORDANCE WITH THE TRACY MUNICIPAL CODE SECTION 12.36.080; AND**
- 3. AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION FOR IMPROVEMENTS WITH THE SAN JOAQUIN COUNTY RECORDER'S OFFICE.**

WHEREAS, Combined Solar Technologies, Inc. (Developer), has completed public improvements for the Tracy Desalination Plant (Improvements) in accordance with approved plans; and

WHEREAS, on June 26, 2019, City Manager approved Development Review Application D19-0003 for development of the Tracy Desalination Plant, a 550,000 gallon per day desalination plant on a five-acre site located at 9251 West Arbor Avenue (Assessor's Parcel Number 212-160-11), subject to conditions of approval; and

WHEREAS, on May 1, 2021, by Resolution No. 2021-075, City Council approved the Mitigated Negative Declaration for the Tracy Desalination and Green Energy Project, prepared in accordance with the requirements of the California Environmental Quality Act (CEQA) and the CEQA Guidelines; and

WHEREAS, On December 14, 2022, by a Determination of the Development Services Director for Application D22-0039, an Addendum to the Mitigated Negative Declaration for the Tracy Desalination and Green Energy Project, prepared consistent with the requirements of CEQA Guidelines Section 15162 and 15164, was approved allowing the Heirloom Carbon Technologies project to proceed; and

WHEREAS, on May 26, 2021, the City Engineer signed offsite improvement plans entitled "Offsite Improvement Plans Tracy Desalination Plant", prepared by Siegfried and containing 27 sheets, on behalf of Developer, for construction of Improvements. Improvements include installation of curb, gutter, sidewalk, street lighting, irrigation and landscaping along the Holly Drive frontage of both the Tracy Desalination Plant and Heirloom Carbon Technologies project; and

WHEREAS, the estimated cost of Improvements is as follows:

Roadway Improvements	\$ 53,506
Sanitary Sewer	\$ 13,143
Street Lighting	\$ 19,800
Landscaping	\$ 107,525
Total	\$ 193,974; and

WHEREAS, unfortunately, the City did not enter into a standard Offsite Improvement Agreement with the Developer in accordance with the Tracy Municipal Code and staff is ensuring such oversight does not occur again; and

WHEREAS, the City Engineer has inspected the Improvements and found them to be completed in accordance with the approved plans and staff recommends accepting the Improvements notwithstanding the lack of the Offsite Improvement Agreement; and

WHEREAS, the Developer provided cash bonds for Improvements as follows:

<u>Bond Type</u>	<u>Amount</u>
Performance	\$ 193,974
Labor and Material	\$ 193,974
Warranty	\$ 19,397; and

WHEREAS, Faithful Performance Bonds may be released upon acceptance of improvements by the City; Labor and Material Bonds may be released 30 days after the recordation of the Notice of Completion as the statute of limitations period expires in accordance with Civil Code §9356; Warranty Bond may be released one year after City acceptance of improvements and warranty work is completed; and

WHEREAS, an analysis of the public improvements showed that there would be no significant on-site or off-site impacts as a result of the Improvements which were not already evaluated in the Mitigated Negative Declaration for the Tracy Desalination and Green Energy Project, as amended for the Heirloom Carbon Technologies project, as traffic, air quality, land use and other potential cumulative impacts had already been considered within the original environmental documentation. No new evidence of potentially significant effects had been identified for the Improvements, and therefore, no further environmental review was needed prior to Developer's commencement of construction; now, therefore, be it

RESOLVED: That the City Council hereby accepts the Improvements for the Tracy Desalination Plant in accordance with approved plans; and be it

FURTHER RESOLVED: That the City Council authorizes the City Engineer to release Developer bonds in accordance with Tracy Municipal Code section 12.36.080; and be it

FURTHER RESOLVED: That the City Council hereby determines that this action does not raise any new unforeseen physical impacts not previously analyzed in the Mitigated Negative Declaration for the Tracy Desalination and Green Energy Project, as amended for the Heirloom Carbon Technologies project; no new evidence of potentially significant effects had

been identified for the Improvements, and therefore no further environmental review was needed prior to Developer's commencement of construction of the Improvements; and be it

FURTHER RESOLVED: That City Council authorize the City Clerk to file Notice of Completion with San Joaquin County Recorder's Office.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 1st day of April 2025, by the following vote:

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

DAN ARRIOLA
Mayor of the City of Tracy, California

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

Agenda Item 1.G

RECOMMENDATION

Staff recommends that the City Council adopt a resolution:

(1) making a determination that strict compliance with the standard bidding process is not in the best interests of the City pursuant to Tracy Municipal Code 2.20.180(b)(4) and dispensing such requirements for actions herein; and

(2) approving a License Agreement with Magnet Forensics, LLC for the renewal and maintenance of the Tracy Police Department's Axiom and GrayKey digital forensic technology for a 12-month term not to exceed \$63,830.

EXECUTIVE SUMMARY

This agenda item seeks adoption of a resolution by the City Council determining that strict compliance with the bidding process is not in the best interest of the City for the renewal and maintenance of the Tracy Police Department's (TPD) Axiom and GrayKey digital forensic technology, pursuant to Tracy Municipal Code 2.20.180(b)(4) and dispensing such requirements. The agenda items also seeks approval of a License Agreement with Magnet Forensics, LLC for the renewal and maintenance of this forensic software.

BACKGROUND AND LEGISLATIVE HISTORY

The TPD Investigations Unit has been utilizing GrayKey since 2018. GrayKey along with the Axiom bundle provides premier digital forensics software for Apple IOS devices. After a search warrant is obtained by investigators from a judge, GrayKey can gain access to mobile devices. Often during complex and high priority investigations time is of utmost importance. With GrayKey and the Axiom bundle, TPD can gain access to evidentiary IOS devices that we would be unable to access without GrayKey. This prevents destruction of evidence or loss of digital evidence. TPD uses GrayKey for all Apple IOS devices during investigations.

ANALYSIS

GrayKey technology essentially copies all the data accessible on the mobile device. The data on the phone is then provided to the investigator in a readable and easy to use report so they can process the phone and look for any evidence pertaining to their case. These cases include sexual assaults, narcotics cases including Fentanyl deaths, violent crime incidents and homicides. The Tracy Police Department Investigations Unit has been utilizing GrayKey since 2018. The staff has completed a due diligence review process and confirmed that Magnet Forensics is still the exclusive supplier who can meet the City's requirements, particularly ensuring seamless service and integration into the City's existing software systems.

TPD desires to retain GrayKey because it is the premier digital forensics software for

Apple IOS devices. Without GrayKey, investigations would be hindered by not having access to digital evidence on Apple IOS devices. Apple IOS devices are popular, and investigators routinely come across the devices during their investigations.

As Magnet Forensics, LLC is the exclusive provider for Digital Forensic Software and Hardware for Apple IOS devices, an exception to the procurement procedure requiring a procurement process can be made pursuant to Tracy Municipal Code 2.20.180(b)(4), when, in the determination of the City Council, compliance with the procedure is not in the best interest of the City for those commodities, equipment or general services the costs of which equal or exceed Fifty Thousand and no/100ths (\$50,000.00) Dollars.

FISCAL IMPACT

TPD has utilized GrayKey since 2018, with annual contracts as follows:

2018: \$15,030
2019: \$30,000
2021: \$42,666
2022: \$45,995
2023: \$45,995
2024: \$54,390
Total: \$234,076

The cost of this agreement is not to exceed \$63,830 for a 12-month term and will be funded through the Police Department's operational budget and includes:

Axiom Advanced Bundle: \$6,720
GrayKey License Premier Bundle: \$57,110

PUBLIC OUTREACH/ INTEREST

This is a routine operational item for the Police Department. No public outreach or interest was sought.

COORDINATION

This is a routine operational item for the Police Department. No coordination is needed.

CEQA DETERMINATION

The proposed action is not a "project" under the California Environmental Quality Act. Pursuant to CEQA Guidelines Section 15061(b)(3), there is no possibility that this action will have an effect on the physical environment.

STRATEGIC PLAN

This agenda item relates to Council's Strategic Priorities for Public Safety, specifically to continue to strengthen community safety through crime prevention reduction activities and continuing to enhance and implement the use of technology to generate evidence-based intelligence to enhance enforcement efforts.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution:

- 1) determining that strict compliance with the bidding process is not in the best interest of the City pursuant to Tracy Municipal Code 2.20.180(b)(4) and dispensing such requirements for actions herein; and
- 2) approving a License Agreement with Magnet Forensics, LLC for the renewal and maintenance of the police department's Axiom and GrayKey digital forensic technology for a 12-month term not to exceed \$63,830.

Prepared by: Luis Mejia, Captain

Reviewed by: Beth Lyons-McCarthy, Support Operations Manager
Sekou Millington, Chief of Police
Sara Castro, Finance Director
Karin Schnaider, Assistant City Manager
Andrew Shen, Interim City Attorney

Approved by: Midori Lichtwardt, City Manager

Attachments

Attachment A: Magnet Forensics, LLC End User License Agreement

Q-357370 - USD 57,110.00



Quotation

Address:
Magnet Forensics, LLC
931 Monroe Drive NE
Suite A102-340
Atlanta, Georgia 30308
United States

Phone: 519-342-0195
E-Mail: sales@magnetforensics.com

Quote #: Q-357370-1
Issue Date: 12 Feb, 2025
Expires On: 27 May, 2025

Bill To
Brian Cockey
Tracy Police Department
1000 Civic Center Dr
Tracy, California 95376
United States
(209) 831-6602
brian.cockey@tracypd.com

Ship To
Brian Cockey
Tracy Police Department
1000 Civic Center Dr
Tracy, California 95376
United States
(209) 831-6602
brian.cockey@tracypd.com

End User
Brian Cockey
Tracy Police Department
1000 Civic Center Dr
Tracy California 95376
United States
(209) 831-6602
brian.cockey@tracypd.com

PREPARED BY	PHONE	EMAIL	PAYMENT TERM
Stephen Murray		stephen.murray@magnetforensics.com	Net 30

ITEM #	PRODUCT NAME	SMS DATES	UNIT SELLING PRICE	QTY	EXTENDED PRICE
GKL-ONF-PR-B	GrayKey License - Premier Bundle	28 May, 2025 to 27 May, 2026	USD 57,110.00	1	USD 57,110.00

Serial Numbers:
65a120f2d4812612
82c21ff2d4912115

Sub-Total USD 57,110.00
Taxes USD 0.00
Grand Total USD 57,110.00

Prices subject to change upon quote expiry. Accurate sales tax will be calculated at the time of invoicing when applicable. If your company is tax exempt, please provide appropriate support with your signed quote. Hardware may be subject to additional fees related to delivery, import and export.

Terms & Conditions

Unless you have an existing written agreement with Magnet Forensics for the products and/or services listed in this quotation, by: (a) signing below, (b) submitting an Order to Magnet Forensics referencing this quotation, or (c) making payment for the products and/or related services listed in this quotation, you agree to the terms and conditions at <http://magnetforensics.com/legal/> applicable to such products and/or services listed in this quotation to the exclusion of any differing or additional terms which may be found on your purchase order or similar document. By signing, you certify that you have the authority to bind your organization.

Q-357370 - USD 57,110.00

Magnet Forensics may adjust the software term start and/or end date, without increasing the total software license price, based on the date Magnet Forensics activates the software and provided that the total software license term length does not change.

Signature: _____

Date: ____/____/____

Name (Print): _____

Title: _____

Please sign and email to Stephen Murray at stephen.murray@magnetforensics.com

DocuSigned by:

Peter Vreeswyk

000C1D460BF34DB...

Peter Vreeswyk
Chief Financial Officer
Magnet Forensics, LLC

07-Mar-2025

Signed by:

Adam Belsher

C25EE1230BA447Z...

Adam Belsher
Chief Executive Officer
Magnet Forensics, LLC

07-Mar-2025

DS

Reviewed by Legal
Josh Abraham



Q-376266 - USD 6,720.00

Quotation

Address:
Magnet Forensics, LLC
931 Monroe Drive NE
Suite A102-340
Atlanta, Georgia 30308
United States

Phone: 519-342-0195
E-Mail: sales@magnetforensics.com

Quote #: Q-376266-1
Issue Date: 14 Jan, 2025
Expires On: 2 Apr, 2025

Bill To
Brian Cockey
Tracy Police Department
1000 Civic Center Dr
Tracy, California 95376
United States
(209) 831-6602
brian.cockey@tracypd.com

Ship To
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End User
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(209) 831-6602
brian.cockey@tracypd.com

PREPARED BY	PHONE	EMAIL	PAYMENT TERM
Stephen Murray		stephen.murray@magnetforensics.com	Net 30

ITEM #	PRODUCT NAME	SMS DATES	UNIT SELLING PRICE	QTY	EXTENDED PRICE
6AXB200	Magnet AXIOM Advanced Bundle		USD 0.00	1	USD 0.00
6AX210	Magnet AXIOM Advanced	3 Apr, 2025 to 2 Apr, 2026	USD 6,720.00	1	USD 6,720.00
5F000	Free Shipping		USD 0.00	1	USD 0.00

Sub-Total USD 6,720.00
Taxes USD 0.00
Grand Total USD 6,720.00

Prices subject to change upon quote expiry. Accurate sales tax will be calculated at the time of invoicing when applicable. If your company is tax exempt, please provide appropriate support with your signed quote. Hardware may be subject to additional fees related to delivery, import and export.

Terms & Conditions

Unless you have an existing written agreement with Magnet Forensics for the products and/or services listed in this quotation, by: (a) signing below, (b) submitting an Order to Magnet Forensics referencing this quotation, or (c) making payment for the products and/or related services listed in this quotation, you agree to the terms and conditions at <http://magnetforensics.com/legal/> applicable to such products and/or services listed in this quotation to the exclusion of any differing or additional terms which may be found on your purchase order or similar document. By signing, you certify that you have the authority to bind your organization.

Q-376266 - USD 6,720.00

Magnet Forensics may adjust the software term start and/or end date, without increasing the total software license price, based on the date Magnet Forensics activates the software and provided that the total software license term length does not change.

Signature: _____

Date: ____/____/____

Name (Print): _____

Title: _____

Please sign and email to Stephen Murray at stephen.murray@magnetforensics.com

DocuSigned by:

Peter Vreeswyk

000C1D460BF34DB
Peter Vreeswyk
Chief Financial Officer
Magnet Forensics, LLC
07-Mar-2025

Signed by:

Adam Belsher

C25EE1230BA447Z
Adam Belsher
Chief Executive Officer
Magnet Forensics, LLC
07-Mar-2025

DS

Reviewed by Legal
Josh Abraham



END USER LICENSE AGREEMENT

This End User License Agreement (the “**Agreement**”) is a legal agreement between You (the party who signs this Agreement) and Magnet Forensics respecting Your use of the accompanying Software and is effective as of the date of last signature (the “**Effective Date**”).

1 Definitions

- 1.1 “**Confidential Information**” means any information regardless of form or medium, whether tangible or intangible, including any copies or fixations made thereof that is disclosed by discloser, or to which the recipient is provided access by discloser, that is proprietary or confidential to discloser or its affiliated companies, including, without limitation, information that specifies, concerns or is related to discloser’s intellectual property, Software, Documentation, Product, trade secrets, business operations, finances, customers, technical know-how, prototypes, designs, processes, products, services, or the development, testing or commercial exploitation of any of the foregoing that is either specifically identified as confidential prior to or at the time of its disclosure or that would reasonably be considered by a person knowledgeable in the industry to be proprietary or confidential in nature because of legends or other markings on the information, the circumstances of disclosure or the nature of the information itself. **Confidential Information includes, without limitation, (i) information concerning the methods of use, internal components, features, functions and solutions of GrayKey and VeraKey Products, information found on the Magnet Forensics support website, and (ii) any copies, photographs, or other reproductions of the foregoing, whether or not marked as “confidential” or “proprietary.”**
- 1.2 “**Documentation**” means the electronic, printed or other form of documents that accompany delivery of the Product that provides information about installation, operation, and use of the Product.
- 1.3 “**Hardware**” means the physical components, devices, or equipment provided to you by Magnet Forensics used for the operation of the Software.
- 1.4 “**License Term**” means the time period identified in Your Quotation or if no such period is identified in Your Quotation then for one (1) year commencing on the date the Software is available to You.
- 1.5 “**Magnet Forensics**” has the meaning set out in Section 12.1.
- 1.6 “**Magnet Software**” means the proprietary software of Magnet Forensics.
- 1.7 “**Perpetual License**” means a license purchased with a perpetual License Term as identified in a Quotation.
- 1.8 “**Product**” means the Magnet Forensics supplied products identified in the Quotation, which may include, Hardware, Software, and Support Services.
- 1.9 “**Quotation**” means the quotation provided to You by Magnet Forensics or a Magnet Forensics authorised reseller outlining the terms, conditions, and pricing details for the licensing of Magnet Hardware, Software, and Support Services.
- 1.10 “**Software**” means the Magnet Software and Third Party Software.
- 1.11 “**Support Services**” means the support services included in the Term License or separately purchased as part of the Perpetual License as indicated on Your Quotation and, in each case, described further in Section 4.1.
- 1.12 “**Term License**” means a license purchased with a non-perpetual License Term as identified in a Quotation.
- 1.13 “**Third Party Software**” means the copyrighted, patented or otherwise legally protected software of third parties (including open-source code components) incorporated into the Software.
- 1.14 “**User**” means a single user who uses the Software as permitted by this Agreement or is otherwise provided access to the Software by You.



END USER LICENSE AGREEMENT

- 1.15 “You”, and “Your” means the entity that purchases the license for Software pursuant to this Agreement.

2 License Grant

- 2.1 License. The licensed rights to the Software granted to You by Magnet Forensics are as set out in Schedule A (Licensed Rights), Schedule B, and Schedule C to this Agreement, as applicable.

3 Fees, Taxes, and Delivery

- 3.1 Fees. You agree to pay Magnet Forensics all applicable fees identified in the Quotation within thirty (30) days from date of the invoice. Magnet Forensics shall invoice You upon the earlier of: (a) You issuing a purchase order to Magnet Forensics that relates to the Quotation; (b) Your signing the Quotation; and (c) Your written indication, by email or otherwise, of Your approval of the Quotation. If You fail to pay any amount under this Agreement that is due and payable, and such failure remains unremedied for a period of thirty (30) days following written notice of default by Magnet Forensics, in addition to any other rights and remedies available to Magnet Forensics, Magnet Forensics shall be entitled to charge interest on all outstanding amounts at the lesser of 1.5% per month or the maximum rate permitted by law.
- 3.2 Taxes. You are responsible for all taxes relating to Software and services identified in a Quotation (excluding any taxes based on the income of Magnet Forensics). Unless otherwise indicated, all amounts payable by You under this Agreement are exclusive of any tax, duty, levy, or similar government charge. If You are required to withhold any taxes from payments owed under this Agreement, the amount of payment due shall automatically be increased to offset such tax, so that the amount actually remitted to Magnet Forensics shall equal the amount invoiced or otherwise due.
- 3.3 Delivery. Software will be provided by electronic means. Title and risk of loss to tangible products such as Hardware pass to you upon delivery, which occurs when Magnet Forensics places them with a carrier for shipment to you, freight prepaid.

4 Support Services

- 4.1 Support Services. Details of support packages can be found at www.magnetforensics.com/legal/.
- 4.2 Magnet Forensics does not require Your personal data to provide Support Services. If, however, as part of an incident resolution, You wish to provide Magnet Forensics with Your data or information (i.e. video footage, screen shots, case file data), You are solely responsible and liable in connection with the provision of such data to Magnet Forensics, including, without limitation, ensuring that the collection, processing and transfer of such data is in compliance with all applicable laws. Any data You choose to provide to Magnet Forensics in connection with the licensing and/or support of the Software shall be processed and stored in accordance with the confidentiality provisions of this Agreement and the Magnet Forensics Privacy Policy available at <https://www.magnetforensics.com/legal/>.

5 Intellectual Property Rights

- 5.1 License Only. Except for the limited license set forth herein, You do not acquire any intellectual property rights to the Product or Documentation under this Agreement, including, without limitation, any right, title or interest in and to patents, copyrights, trademarks, trade names, industrial designs, Magnet Forensics Confidential Information, or trade secrets, whether registered or unregistered. The Software is licensed and not sold. Any rights not expressly granted under this Agreement are reserved by Magnet Forensics.



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- 5.2 Feedback. Magnet Forensics shall own all feedback, comments, suggestions, ideas, and concepts that You provide or identify during Your use of the Product and Support Services, and all associated intellectual property rights (collectively the **"Feedback"**). You hereby assign to Magnet Forensics all of Your right, title and interest in Your Feedback. For certainty, Feedback shall not include any of Your data, Confidential Information, or intellectual property.

6 Confidentiality

- 6.1 Maintenance of Confidential Information. Subject to applicable law, each party agrees to: (a) keep confidential all Confidential Information disclosed by the other party; (b) only use, reproduce and disclose the Confidential Information to facilitate the use of the Software (in Your case) or support and develop the Software (in Magnet Forensics' case); and (c) protect the Confidential Information from unauthorized use, reproduction or disclosure in the same manner it protects the confidentiality of similar information of its own, but not less than a reasonable degree of care.
- 6.2 A disclosure of Confidential Information that is legally compelled to be disclosed pursuant to a subpoena, summons, order or other judicial or governmental process shall not be considered a breach of this Agreement; provided that You promptly notify Magnet Forensics in writing, if notification is permitted by law, and use commercially reasonable efforts to assist Magnet Forensics, at Magnet Forensics' expense, in opposing such disclosure or obtaining a protective order or other reliable assurance preventing or limiting such disclosure and/or ensuring that confidential treatment will be accorded to any Confidential Information that is disclosed. Such disclosure does not remove the Confidential Information so disclosed from the protection of this Agreement. No further disclosure beyond the scope of such order is allowed.

7 Warranties, Exclusions, Disclaimer

- 7.1 Software Warranty. While Your Support Services are active, Magnet Forensics warrants that the Software shall materially conform to the Documentation. If the Software does not materially conform to the Documentation, and you give Magnet Forensics notice while Your Support Services are active, Magnet Forensics will, at its option, attempt to correct, repair, or replace the Software at no additional cost to You. If Magnet Forensics is unable to correct the Software to conform with the warranty stated herein within thirty (30) days, then upon Your request, Magnet Forensics shall, as your sole and exclusive remedy, refund You: (a) a prorated amount of any unused prepaid license fees if You purchased a Term License; or (b) a prorated amount of any unused prepaid Support Services fees if You purchased a Perpetual License.
- 7.2 Viruses, Licenses, Support Services. Magnet Forensics (a) has implemented testing practices consistent with industry standards designed to protect against viruses that may impede the Software; (b) includes fully paid-up licenses to any and all Third Party Software incorporated into the Software; and (c) will perform all Support Services in a good and workmanlike manner consistent with industry standards.
- 7.3 EXCLUSIONS. THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE THE EXCLUSIVE WARRANTIES MADE BY MAGNET FORENSICS TO YOU REGARDING THE PRODUCT, AND YOUR SOLE AND EXCLUSIVE REMEDY RESPECTING ANY DEFECTS, NON-CONFORMITIES OR PROBLEMS WITH THE PRODUCT. EXCEPT AS SET FORTH IN SECTION 7.1 AND 7.2, MAGNET FORENSICS DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY, ACCURACY, RELIABILITY, NON-INFRINGEMENT, OR ANY OTHER WARRANTY OR CONDITION ARISING BY STATUTE, CUSTOM OR USAGE OF TRADE RELATED TO THE PRODUCT PROVIDED HEREUNDER. To the maximum extent permitted by law, any implied warranties or conditions relating to the Software that cannot be



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excluded as set out above are limited to thirty (30) days from the date that the Software is delivered to You.

8 Limitation of Liability

- 8.1 NOTWITHSTANDING ANY OTHER SECTION OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY WHETHER IN AN ACTION IN CONTRACT, TORT, PRODUCT LIABILITY, STRICT LIABILITY, STATUTE, LAW, EQUITY, OR OTHERWISE ARISING FROM OR RELATED TO THIS AGREEMENT OR ANY ORDER FOR (A) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES; (B) LOSS OF PROFITS OR REVENUE (OTHER THAN IN AN ACTION BY MAGNET FORENSICS TO RECOVER PAYMENT OF A PRICE OWED); OR (C) LOSS OF TIME, OPPORTUNITY OR ANY DAMAGES RELATING TO THE CORRUPTION OF DATA, LOSS OF THE USE OF DEVICES OR ANY PORTION THEREOF, AND DAMAGES CAUSED BY YOUR FILES, CONNECTED DEVICES, OR DATA COLLECTED BY YOU, EVEN IF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (OTHER THAN IN AN ACTION BY MAGNET FORENSICS TO RECOVER PAYMENT OF A PRICE OWED) WILL NOT EXCEED THE AMOUNT PAID BY YOU FOR THE PRODUCT IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM GIVING RISE TO SUCH DAMAGES.
- 8.2 SECTION 8.1 SHALL NOT APPLY TO EITHER PARTY'S LIABILITY IN RELATION TO: (A) INDEMNIFICATION OBLIGATIONS OF EITHER PARTY UNDER SECTION 9 (INDEMNIFICATION) UNDER THIS AGREEMENT; (B) MISAPPROPRIATION OR INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY; (C) BREACHES OF CONFIDENTIALITY UNDER SECTION 6; AND (D) YOUR PAYMENT OBLIGATIONS TO MAGNET FORENSICS, PROVIDED, HOWEVER, THAT MAGNET FORENSICS' CUMULATIVE LIABILITY UNDER SECTION 9.2 RELATING TO THIRD PARTY SOFTWARE SHALL IN NO EVENT EXCEED THE LESSER OF: THREE TIMES (3X) THE AMOUNT PAID BY YOU FOR THE SOFTWARE IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM GIVING RISE TO SUCH DAMAGES AND ONE MILLION USD (\$1,000,000.00 USD).

9 Indemnification

- 9.1 Your Indemnification of Magnet Forensics. You will defend and indemnify Magnet Forensics from and against any third-party claim, cause of action, legal proceeding, cost, award of damages or any other judgment and legal expenses ("Claim") in relation to: (a) any Claim arising from the modification, combination or use of the Software with equipment, software, interfaces, or other materials that are not specifically authorized by Magnet Forensics; and (b) Your collection and use of data resulting from Your use of the Software and any actions You take as a result thereof; and (c) unauthorized use of the Product.
- 9.2 Magnet Forensics Indemnity. Magnet Forensics will defend You from and against any suit brought against you by a third party to the extent the suit alleges that your use of a Product infringes a valid patent in Canada or the United States (an "IP Claim"). Magnet will also pay the damages, costs, and attorneys' fees that are awarded against you in a final, non-appealable court judgment for the IP Claim, or required to be paid by you in a settlement of an IP Claim that Magnet has agreed to in writing. You agree to (i) give prompt notice of the IP Claim to Magnet Forensics; (ii) grant sole control of the defense and settlement of the IP Claim to Magnet Forensics; and (iii) provide reasonable cooperation to Magnet Forensics and, at Magnet Forensics' request and expense, assistance in the defense or settlement of the IP Claim ("Your Indemnification Obligations") and Magnet Forensics shall not be liable to the extent an IP Claim, or portion thereof, is attributable to Your breach of Your Indemnification Obligations. In the event of an IP Claim, Magnet Forensics may, at its option and expense: (a) obtain for You the right to continue to use the Product; (b) substitute a substantially equivalent non-infringing product; (c) modify the Product to make it non-infringing; or if (a), (b), and (c) are not commercially feasible, then (d) terminate Your license and require that You no longer access and use the Product. If Your license is terminated, You must return or destroy the Product and within 30 days of receipt of all of the Product or certification of destruction thereof, Magnet



END USER LICENSE AGREEMENT

Forensics shall refund You x) a prorated amount of any unused prepaid license fees if You purchased a Term License; or y) a prorated amount of any unused prepaid Support Services fees if You purchased a Perpetual License. The indemnity obligations under this clause do not extend to Claims arising from or relating to: (aa) any modification to the Product or use in combination with any equipment, software, data or any other materials not authorized by Magnet Forensics where the infringement would not have occurred but for such activity; (bb) use of the Product by You in a manner contrary to the terms of this Agreement where the infringement would not have occurred but for such use; (cc) the continued use of the infringing Product after Magnet Forensics has provided substantially equivalent non-infringing software, a non-infringing modification of the Product, or terminated Your license in accordance with this Agreement; or (dd) custom Product developed at Your request while utilizing Your specifications. NOTWITHSTANDING ANY TERMS TO THE CONTRARY IN THIS AGREEMENT, THE PROVISIONS OF THIS CLAUSE STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF MAGNET FORENSICS AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY ACTUAL OR ALLEGED MISAPPROPRIATION, VIOLATION AND/OR INFRINGEMENT OF ANY PROPRIETARY AND/OR INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

- 9.3 Mutual General Indemnity. Each party will defend and hold harmless the other from and against any Claim arising from any of the following: (a) gross negligence, willful misconduct, fraudulent misrepresentation and fraud by a party; (b) bodily injury or death caused by a party; and (c) breach of confidentiality obligations.

10 Term and Termination

- 10.1 Term of Agreement. This Agreement shall survive for one (1) year after the termination or expiry of Your License Term.
- 10.2 Termination for Convenience. You may terminate this Agreement and Your license for Software at any time upon written notice to Magnet Forensics but You will not be entitled to any refund.
- 10.3 Termination for Breach. Either party may terminate this Agreement and any License Term immediately upon notice to the other if: (a) the other party materially breaches a material term or condition of this Agreement which breach remains unremedied for thirty (30) days following written notice thereof by the other party, or immediately if such breach is not capable of remedy; (b) the other party becomes involved in any legal proceeding concerning its solvency, commences liquidation proceedings, has a receiver or administrator appointed for any of its assets, ceases or threatens to cease operations, or otherwise has a serious and reasonable doubt arise respecting its solvency; or (c) if Magnet Forensics determines in its sole discretion that licensing the Product to You would violate applicable laws. If Your License Term is terminated due to breach by Magnet Forensics under (a) above, where Magnet Forensics is the relevant party under (b) above, or by Magnet Forensics in accordance with (c) above, Magnet Forensics shall refund You: (i) a prorated amount of any unused prepaid License fees if You purchased a Term License; or (ii) a prorated amount of any unused prepaid Support Services fees if You purchased a Perpetual License.
- 10.4 Termination/Expiry Obligation. Upon termination or expiry of this Agreement, and, if earlier, termination or expiry of a Term License, free trial or any Beta Period, You shall immediately cease all use and access of the Software and destroy or permanently delete all copies of the Software in Your possession along with any Documentation delivered to You or derivative works made therefrom.
- 10.5 Request for Information for Compliance. Upon request of Magnet Forensics, You agree to provide reasonable information on a timely basis to confirm Your compliance with the license rights and restrictions to the Product. Your failure to comply with this Section 10.5 will be deemed to be a material breach of this Agreement.



END USER LICENSE AGREEMENT

11 Compliance with Export Laws and Ethical Conduct

- 11.1 You shall not export any Product, Documentation, or Confidential Information unless You comply with all applicable international trade laws ("ITR"). Further, You warrant (a) You are not now and have never been on any Restricted Party List or any sanctions list in the countries in which You conduct business; and (b) You understand and abide by ITR laws administered by the country in which You conducts business. You agree not to engage in any action in any way that would cause Magnet Forensics to violate ITR laws of the country in which it conducts business, including providing Magnet Forensics Product, Documentation, or Confidential Information to any person in any country subject to comprehensive sanctions by the U.S., Canada, the UK, EU, the EU member state and Singapore or any person on a Restricted Party List. You agree to indemnify Magnet Forensics to the extent Your actions or inactions have caused Magnet Forensics to violate ITR laws and the ITR of the country in which it conducts business. You agree to maintain a sanctions compliance policy and controls to ensure compliance with the applicable economic sanctions and upon request provide a Magnet Forensics with a copy of such policy.
- 11.2 If the Software is being licensed by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then, as a commercial item, the Government's rights in the Software will be only as set forth: (a) in this Agreement; or (b) as provided in FAR 12.212 (Computer Software) and (for Department of Defense use or disclosure) DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation), whichever set of rights provided in (a) or (b) are the more restrictive.
- 11.3 Throughout Your use of the Product, You agree to comply with the Magnet Forensics Business Code of Conduct found at <https://www.magnetforensics.com/legal>. Failure to comply with the Business Code of Conduct may result in the suspension or termination of access to the Software, as outlined in this Agreement.

12 Magnet Forensics Entity, Governing Law

- 12.1 "Magnet Forensics" means:
- a) Where Your "Bill To" address identified on the Quotation is in Canada, Magnet Forensics Inc., with an office at 2220 University Avenue East, Suite 300, Waterloo, Ontario, Canada N2K 0A8.
 - b) Where Your "Bill To" address identified on the Quotation is in France, Magnet Forensics SAS, with an office at c/o WeWork 33 Rue La Fayette Paris, France 75009.
 - c) Where Your "Bill To" address identified on the Quotation is in Germany, Magnet Forensics GmbH, with a registered office at c/o Eversheds Sutherland (Services) GmbH, Brienner Strabe 12, 80333 Munich, Germany.
 - d) Where Your "Bill To" address identified on the Quotation is anywhere other than in Canada, France, and Germany, Magnet Forensics, LLC, with an office at c/o Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.
- 12.2 Governing Law. This Agreement is governed by and construed under, excluding any body of law governing conflicts of laws, the laws of: (a) England, where Your "Bill To" address identified on the Quotation is in Europe, Greenland or the UK; (b) Ontario, Canada, where Your "Bill To" address identified on the Quotation is in Canada, or (c) Delaware, U.S., where Your "Bill To" address identified on the Quotation is anywhere else. You irrevocably waive any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law. You also waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement. You agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.



END USER LICENSE AGREEMENT

13 General Provisions

- 13.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, promises, assurances, warranties, representations, and understandings relating to the subject matter hereof. Your additional or different terms and conditions, whether on Your purchase order or otherwise, shall not apply.
- 13.2 Force Majeure. Neither party shall be deemed to be in default of this Agreement for failure to fulfill its obligations due to causes beyond its reasonable control. This provision shall not be construed as excusing any payment obligations.
- 13.3 Waiver. No waiver by either party of a breach or omission by the other party under this Agreement shall be binding on the waiving party unless it is expressly made in writing and signed by the waiving party. Any waiver by a party of a particular breach or omission by the other party shall not affect or impair the rights of the waiving party in respect of any subsequent breach or omission of the same or different kind.
- 13.4 Notices. Any notices, reports or other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered by hand or sent by registered mail, courier, facsimile or electronic mail. For notices to You, Magnet Forensics shall send such notice to Your "Bill To" Address. For notice to Magnet Forensics, You shall send such notice to Attn: Legal Department, Magnet Forensics, with an office at 300 Colonial Center Pkwy, Suite 130, Roswell, GA 30076, United States.
- 13.5 Assignment. You shall not assign or transfer this Agreement (including, without limitation, by operation of law, merger, reorganization, or as a result of an acquisition or change of control) without the prior written consent of Magnet Forensics, which consent will not be unreasonably withheld, conditioned or delayed. This Agreement shall be binding upon the parties hereto and their respective lawful successors and permitted assigns. Any purported assignment in violation of this Section 13.5 shall be null and void.
- 13.6 Survival. Section 6 (Confidentiality), Section 8 (Limitation of Liability), Section 9 (Indemnification), and any other provision of this Agreement which by its nature would survive the termination or expiration of this Agreement shall do so.
- 13.7 Electronic Execution. The parties agree to the use of electronic communication in order to enter into this Agreement, Quotations, purchase orders and any other notices or records. You hereby waive any rights or requirements under any laws in any jurisdiction which require an original, non-electronic signature or delivery or retention of non-electronic records, to the extent permitted under applicable law.
- 13.8 Invalidity. If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement shall continue in full force and effect.

END OF AGREEMENT



END USER
LICENSE AGREEMENT

IN WITNESS WHEREOF, the parties executed this Agreement.

MAGNET FORENSICS

TRACY POLICE DEPARTMENT

DocuSigned by:
Peter Vreeswyk
900C7D460B534D98

Per: _____
Name: Peter Vreeswyk
Title: CFO
Date: 07-Mar-2025

Signed by:
Adam Belsher
255FF1600214471

Per: _____
Name: Adam Belsher
Title: CEO
Date: 07-Mar-2025

Per: _____
Name: _____
Title: _____
Date: _____
Address: _____

DS

Reviewed by Legal
Josh Abraham



END USER LICENSE AGREEMENT

Schedule A – Licensed Rights for All Products

1 Definitions.

- 1.1 **“Case License”** means the Software is subject to a license fee that is based on granting access to the Software for a single source (i.e. single hard drive or image file).
- 1.2 **“CLS License” or “LLS License”** means the Software is subject to a license fee that is calculated based on the number of concurrent usage virtual license Keys identified in the Quotation as available at any one time to be downloaded by Users. CLS (Cloud License Server) virtual license Keys are hosted in an online, cloud-based environment whereas LLS (Local License Server) virtual license Keys are hosted on Your premises.
- 1.3 **“Dongle”** means a USB device provisioned with the Software.
- 1.4 **“Dongle License”** means the Software is subject to a license fee that is calculated per Dongle.
- 1.5 **“Enterprise License”** means the Software is subject to a license fee that is calculated based on a maximum number of Software installs and/or concurrent Users as set out in the Quotation.
- 1.6 **“Instance”** means a copy of the Software that a User is authorized to use. The maximum number of Instances per User are stated in the Quotation.
- 1.7 **“Key”** means the license key provided to You by Magnet Forensics to permit access to and use of the Software to a User.
- 1.8 **“Machine”** means each hardware machine or hardware unit on which the Software is used.
- 1.9 **“Machine License”** means the Software is subject to a license fee that is calculated per Machine.

2 License Grant. Magnet Forensics hereby grants to You a limited, non-exclusive, revocable, non-transferable, non-sublicensable license to use the Software on Your internal business networks for the number of Users, installs, and/or Instances and License Term indicated in Your Quotation in accordance with the terms set forth in this Agreement and the Documentation. Your license only permits you to possess and use the Software in object code form. For certainty: (a) academic licenses are granted for academic, non-commercial use only; (b) licenses for Magnet AUTOMATE products are licensed on a per ‘control node’ and ‘agent node’ basis; (c) Machine Licenses are solely permitted for use of the Software on the Machine on which such Software is first installed and by the original User; and (d) Dongle Licenses are for use on Machines only (and not for use in cloud or other virtual environments), and cannot be shared between individual Users. For further certainty: (i) Enterprise Licenses, CLS Licenses and LLS Licenses allow for concurrent Users of the Software as indicated in Your Quotation; and (ii) a unique key code is issued for a Case License tied to the original single source, with requirements for additional single sources requiring an add-on purchase. It is Your responsibility to fully comply with all applicable laws in using and handling the Software and any additional third-party license terms applicable to Third Party Software.

3 Restrictions. You shall not and shall ensure that Users shall not:

- 3.1 copy, reproduce, or modify the Product or any part thereof, including, but not limited to, combining with other software or hardware other than as authorized by Magnet Forensics in writing;
- 3.2 enhance, improve, alter, create derivative works, reverse engineer, disassemble, deconstruct, impair, translate, decrypt, reverse compile or convert into human readable form the Software or any part thereof;
- 3.3 distribute, lend, assign, license, sublicense, lease, pledge, rent, transfer, sell or otherwise provide access to the Software, in whole or in part, to any third party;
- 3.4 use any Product on a time sharing, service bureau, application services provider (ASP), rental or other similar basis;



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- 3.5 remove, deface, cover or otherwise obscure any proprietary rights notice or identification on the Software;
- 3.6 circumvent or disable copyright protection mechanisms or license management mechanisms;
- 3.7 photograph or record any of the Product's components, whether internal, external or as digitally displayed;
- 3.8 use the Product to provide services to third parties (including technical or training services), or otherwise publicly display or market the Software, for the purposes of Your commercial gain;
- 3.9 use the Product in conjunction with other software or hardware, except as authorized in writing by Magnet Forensics;
- 3.10 use the Product in any unlawful manner or to violate any rights of a third party; or
- 3.11 authorise, permit or otherwise acquiesce in any other party engaging in any of the activities set forth in 3.1 – 3.10 above, or attempting to do so.

For the purposes of this provision "copy" and "reproduce" shall not include: (A) making additional copies of the Software for Your own use, as long as only one copy may be used at any one time in accordance with the Documentation; or (B) making one back-up copy of the Software.

- 4 Restrictions Applicable to Consultant Licenses.** Notwithstanding Section 3.8, if Your license is identified in a Quotation as a "consultant license", You may use the Software in relation to Your provision of forensic analysis services to a third party for commercial gain, subject to Your compliance with all other terms of this Agreement and the payment of all applicable fees, provided that the following additional restrictions shall apply:

- 4.1 You shall be solely responsible for Your services, including any use or operation of the Software (both separately or in combination with any other software), to provide such services, and, as Magnet Forensics expressly disclaims all liability for any claims, losses or damages relating to Your services, You agree to indemnify Magnet Forensics against all such claims, losses and damages;
- 4.2 You shall not permit Your customers to use the Software (with the exception of using the Portable Case functionality);
- 4.3 You shall not use the Software to provide digital forensics training to third parties (including instructions on how to use the Software), unless You have first obtained Magnet Forensics' express written permission;
- 4.4 You shall not, whether in an agreement for Your services or otherwise, in any way modify, negate or override any terms and conditions of the protections afforded to Magnet Forensics under this Agreement;
- 4.5 You shall not engage in deceptive, misleading, illegal or unethical practices that might reasonably be detrimental to Magnet Forensics or its products or services;
- 4.6 You shall not make any representations, warranties or guarantees about Magnet Forensics or its products and services except as expressly set out in this Agreement; and
- 4.7 where You wish to publicize, market or otherwise promote the use of the Software in Your services, You must do so in a manner consistent with Magnet Forensics' External Marketing Policy (located at https://www.magnetforensics.com/wp-content/uploads/2022/11/MagnetForensics_BrandGuidelines.pdf) and any other marketing and trademark requirements set out by Magnet Forensics from time to time. Any use of Magnet Forensics' Trademarks shall remain unchanged and give legal notice of such trademark status.



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- 5 Beta Software.** If You have requested use of or have access to Software or features that are identified by Magnet Forensics as pre-commercial, preview release, evaluation, pilot, "alpha", or "beta" software ("Beta Software"), the license rights set out above with respect to Your use of such Beta Software apply only to the extent necessary to enable You and the Users to test and provide Feedback to Magnet Forensics regarding the Beta Software. You acknowledge and agree that Magnet Forensics may terminate Your use of Beta Software at any time and may include technical measures in the Beta Software that renders it inoperable and You agree that You will not circumvent such technical measures. You further acknowledge and agree that the Beta Software is provided "AS IS" with none of the representations, warranties, or indemnities provided in the Agreement. In consideration of the grant of license for the Beta Software, You agree that You will provide Magnet Forensics with Feedback on Beta Software as Magnet Forensics reasonably requests without any compensation.
- 6 Trial Licenses.** If Your License is indicated as a Trial License on the Quotation ("Trial License"), the license rights set out above with respect to Your use of such Trial License apply only for the time period authorised by Magnet Forensics ("Trial Period") and solely to the extent necessary to enable You and the Users to test the Product in order to identify if the Product is suitable for purchase from Magnet Forensics. Additionally, the Product underlying the Trial License or delivered to you as a Free Tool is provided "AS IS" with none of the representations, warranties or indemnities provided in the Agreement. Notwithstanding the Trial Period, Magnet Forensics may terminate Your Trial License at any time and require that You cease using the Software.



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Schedule B – Additional VeraKey Terms and Conditions

1 Definitions.

- 1.1 **“Authorized Country”** means a country in which Magnet Forensics has authorized use of the VeraKey as set out in the Documentation.
- 1.2 **“Authorized User(s)”** means employees who are authorized by You to access or use the Product and Software. You agree to limit the number of Authorized Users to those employees who perform extractions in the normal course of their employment.
- 1.3 **“Authorized Device”** means mobile devices (a) owned and controlled by you; (b) if you are retained to perform an Investigation by a third party, owned by such third party; or (c) owned by an individual that has expressly, voluntarily, and specifically authorized you in writing, without coercion or threat of reprisal, to perform an Extraction of their mobile device.
- 1.4 **“Extraction”** means the use of the Product to extract data from an Authorized Device.

2 License Restrictions. If You are licensing the VeraKey Product, as identified in Your Quotation, You agree to the following additional restrictions in addition to the license rights and restrictions set out in Schedule A of this Agreement:

- 2.1 You may only use the VeraKey Product in an Authorized Country for Extractions on Authorized Devices in aid of an official investigation of corporate malfeasance including (a) fraud, (b) bribery, (c) theft, (d) antitrust violation, (e) sabotage, (f) breach of confidentiality obligations, (g) securities violation, (h) IP infringement or misappropriation of intellectual property, (i) as part of or in response to an official government investigation or request for product of documentation (FDA, SEC, FTC, OSHA, etc.), (j) as part of a legally compelled production of documents by a court of competent jurisdiction, (k) in defense of a criminal charge filed in a court of competent jurisdiction, where such investigation is made in response to an official complaint supported by reasonable evidence (each, an “Investigation”) and for no other purpose (“Authorized Extraction(s)"). You agree not to use the Product to screen, audit, spot-check, or otherwise discover instances of corporate malfeasance or violation of corporate policy. Prior to performing an Extraction, Magnet Forensics may require that you or your Authorized User(s) certify that the contemplated Extraction meets the above definition of an Authorized Extraction. You warrant that any certification materials submitted as part of Your Authorized Extraction certification responsibilities are true and correct in all material respects.
- 2.2 To the extent legally practicable, Authorized Devices must remain in Your possession and control until after the software agent employed by the Product has been successfully uninstalled from such Authorized Devices.
- 2.3 Only Authorized Users who have obtained any necessary consents and approvals are permitted to access and use the Product or Software in connection with any Extractions. You shall notify Magnet Forensics in writing the name and user information associated with each Authorized User, and within thirty (30) calendar days following a change of an Authorized User's employment status such that the Authorized User ceases to be authorized by You to access or use the Product and Software either through ceasing to be employed by You or a change in his or her position within the Your organization such that he or she is no longer authorized to access or use the Product and Software.
- 2.4 You agree to designate an employee with senior management and oversight responsibilities within your organization to act as Your “Primary Authorized User.” The Primary Authorized User will be notified each time an extraction is performed on the device and shall supervise use and security of the Product and Software. You agree to require the Primary Authorized User, as part of their employment obligations, to monitor the use of and ensure the security of the Product. The Primary Authorized User is not permitted to perform Extractions. You shall notify Magnet Forensics in writing the name and user information associated with the Primary Authorized User, and within thirty (30)



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calendar days following a change of the Primary Authorized User's employment status such that the Primary Authorized User ceases to be tasked by the Licensee to oversee the use and security of the Product and Software.

- 2.5 You will conduct, at your expense, background checks on your employees (including but not limited to Authorized Users) and those of your agents and subcontractors who will have access (whether physical, remote, or otherwise) to Magnet Products or Software. You will not permit your employees, agents, or subcontractors (including the personnel of any of its agents or subcontractors) that have been convicted of a felony crime or has agreed to or entered into a pretrial diversion or similar program in connection with a felony crime to have access to: (a) Magnet Forensics Confidential Information; (b) the secure environment in which the Product is stored; (c) the Product, the Software, or any associated materials.
- 2.6 You covenant and agree to keep the Product in a physically secure environment at all times, and to take all necessary precautions to restrict use of the Product to Authorized Users. You acknowledge and agree that for the Product to function properly in online mode, the Product must be connected to the Internet.
- 2.7 Magnet Forensics may use third-party monitoring tools to ensure that You comply with the foregoing restrictions. You acknowledge that Your use of the Product may be subject to additional terms and conditions as set by the third-party responsible for such tools.

3 Warranty Disclaimer. Notwithstanding Section 7.1 of the Agreement, You acknowledge and agree that the Software is provided AS-IS and without any warranty of any kind. Further, You acknowledge that all case stakeholders are aware of and understand the associated risk that the Authorized Device may become damaged and/or Authorized Device data may be unrecoverable when used with the Product or Software, in particular for Authorized Devices (a) with aftermarket repairs or hardware and nonstandard software builds; (b) that boot loop or are otherwise unable to boot normally; (c) that have preexisting damage, defects, or faults that may or may not be detectable; or (d) with software, software builds, states, or usage profiles not identified on the applicable support matrix. You further understand that not all permutations of Authorized Device software, software builds, states, and usage profiles have been tested by Magnet Forensics. Before utilizing the Product and Software on an Authorized Devices under any of the above conditions, please consult Magnet Forensics through the customer support portal. You release Magnet Forensics from all liability associated with damage to a mobile device or corruption of mobile device data resulting from the use of the Software or the Product.

4 Violations of License Restrictions.

- 4.1 Section 8.1 of the Agreement (Limitation of Liability) shall not apply to damages arising from Your violation(s) of Schedule A - Section 3 and this Schedule B.
- 4.2 In addition to the termination rights set out in Section 10 of the Agreement (Termination), Magnet Forensics may terminate this Agreement and suspend Your License, at its sole discretion and option, without notice and without refund or reimbursement if You violate any material term or condition of this Agreement.

5 Heightened Confidentiality Obligations. The VeraKey Product, along with its associated Documentation, are sensitive technologies whose Confidential Information requires the highest duty of care. You, Your employees, Your agents who require access in order to perform hereunder, and all final users of the VeraKey Product (collectively, "Receiving Party") shall not disclose, use, sell, transmit, inform or make available to any entity, person or body any of the Confidential Information nor shall it copy, photograph, or otherwise reproduce any Confidential Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information and Magnet Forensics' rights therein,



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at all times exercising the highest duty of care. Receiving Party agrees to restrict access to VeraKey Confidential Information to those Authorized Users who require access in order to perform hereunder, and, except as otherwise provided, the Receiving Party shall not make Confidential Information available to any other person or entity without the prior written consent of Magnet Forensics. Further, Receiving Party acknowledges and agrees that due to the unique nature of the VeraKey Products, there can be no adequate remedy at law for any breach of its obligations under this Section 5 related to such Products, that any such breach will cause irreparable and continuing damage to Magnet Forensics and, therefore, that upon any such breach or any threat thereof, Magnet Forensics shall be entitled to whatever remedies it might have by law and equity, including injunctive relief, a decree for specific performance, and all other relief as may be proper (including money damages, if appropriate). The Receiving Party further acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope.

- 6 Excess Use of Licenses.** If You use the Product in excess of the license quantities or levels stated in Your Quote, Magnet Forensics reserves the right to invoice You for such excess use based on the then current list price of the minimum add-on package required to bring Your use into compliance and you agree to pay such invoice in accordance with Section 3 of the Agreement.



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Schedule C – Additional GrayKey Terms and Conditions

1 Definitions.

- 1.2 “**Authorized Location**” means the authorized physical locations specified in the Quotation or that Licensee has otherwise registered with Magnet Forensics and that Magnet Forensics has approved in writing.
- 1.3 “**Authorized User(s)**” means collectively, employees, agents or contractors who are authorized by You to access or use the Product and Software.
- 1.4 “**Device**” means a mobile device.
- 1.5 “**Extraction**” means the use of the Product to extract data from a Device.

2 License Restrictions. If You are licensing the GrayKey Product, as identified in Your Quotation, You agree to the following additional restrictions in addition to the license rights and restrictions set out in Schedule A of this Agreement:

- 2.1 Only Authorized Users who have obtained any necessary consents and approvals are permitted to access and use the Product or Software in connection with any Extractions. You shall notify Magnet Forensics in writing the name and user information associated with each Authorized User, and within thirty (30) calendar days following a change of an Authorized User’s employment status such that the Authorized User ceases to be authorized by You to access or use the Product and Software either through ceasing to be employed by You or a change in his or her position within the Your organization such that he or she is no longer authorized to access or use the Product and Software.
- 2.2 To the extent legally practicable, Devices must remain in Your possession and control until after the software agent employed by the Product has been successfully uninstalled from such Devices.
- 2.3 If Your use of the Product is restricted to the Authorized Location identified in Your Quotation, You covenant and agree to keep the Product in a physically secure environment within the Authorized Location at all times, and to take all necessary precautions to restrict use of the Product to Authorized Users. You acknowledge and agree that for the Product to function properly in online mode, the Product must be connected to the Internet.
- 2.4 Magnet Forensics may use third-party monitoring tools to ensure that You are in compliance with the foregoing restrictions. You acknowledge that Your use of the Product may be subject to additional terms and conditions as set by the third-party responsible for such tools.

3 Warranty Disclaimer. Notwithstanding Section 7.1 of the Agreement, You acknowledge and agree that the Software is provided AS-IS and without any warranty of any kind. Further, You acknowledge that all case stakeholders are aware of and understand the associated risk that a Device may become damaged and/or Device data may be unrecoverable when used with the Product or Software, in particular for Devices (a) with aftermarket repairs or hardware and nonstandard software builds; (b) that boot loop or are otherwise unable to boot normally; (c) that have preexisting damage, defects, or faults that may or may not be detectable; or (d) with software, software builds, states, or usage profiles not identified on the applicable support matrix. You further understand that not all permutations of Device software, software builds, states, and usage profiles have been tested by Magnet Forensics. Before utilizing the Product and Software on a Devices under any of the above conditions, please consult Magnet Forensics through the customer support portal. You release Magnet Forensics from all liability associated with damage to a mobile device or corruption of mobile device data resulting from the use of the Software or the Product.



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4 Violations of License Restrictions.

- 4.1 Section 8.1 of the Agreement (Limitation of Liability) shall not apply to damages arising from Your violation(s) of Schedule A - Section 3 and this Schedule C.
- 4.2 In addition to the termination rights set out in Section 10 of the Agreement (Termination), Magnet Forensics may terminate this Agreement and suspend Your License, at its sole discretion and option, without notice and without refund or reimbursement if You violate any material term or condition of this Agreement.

- 5 **Heightened Confidentiality Obligations.** The GrayKey Product, along with its associated Documentation, are sensitive technologies whose Confidential Information requires the highest duty of care. You, Your employees, Your agents who require access in order to perform hereunder, and all final users of the GrayKey Products (collectively, "Receiving Party") shall not disclose, use, sell, transmit, inform or make available to any entity, person or body any of the Confidential Information nor shall it copy, photograph, or otherwise reproduce any Confidential Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information and Magnet Forensics' rights therein, at all times exercising the highest duty of care. Receiving Party agrees to restrict access to GrayKey Confidential Information to those Authorized Users who require access in order to perform hereunder, and, except as otherwise provided, the Receiving Party shall not make Confidential Information available to any other person or entity without the prior written consent of Magnet Forensics. Further, Receiving Party acknowledges and agrees that due to the unique nature of the GrayKey Products, there can be no adequate remedy at law for any breach of its obligations under this Section 5 related to such Products, that any such breach will cause irreparable and continuing damage to Magnet Forensics and, therefore, that upon any such breach or any threat thereof, Magnet Forensics shall be entitled to whatever remedies it might have by law and equity, including injunctive relief, a decree for specific performance, and all other relief as may be proper (including money damages, if appropriate). The Receiving Party further acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope.

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

(1) MAKING A DETERMINATION THAT STRICT COMPLIANCE WITH THE BIDDING PROCESS IS NOT IN THE BEST INTEREST OF THE CITY PURSUANT TO TRACY MUNICIPAL CODE 2.20.180(B)(4) AND DISPENSING SUCH REQUIREMENTS FOR ACTIONS HEREIN; AND

(2) APPROVING A LICENSE AGREEMENT WITH MAGNET FORENSICS, LLC FOR THE RENEWAL AND MAINTENANCE OF THE POLICE DEPARTMENT'S AXIOM AND GRAY KEY DIGITAL FORENSIC TECHNOLOGY FOR A 12-MONTH TERM NOT TO EXCEED \$63,830.

WHEREAS, the Tracy Police Department Investigations Unit has been utilizing GrayKey since 2018; and

WHEREAS, the GrayKey and Axiom bundle provides premier digital forensics software for Apple IOS devices which assists with complex and high priority investigations where time is of utmost importance; and

WHEREAS, with GrayKey and the Axiom bundle, TPD can gain access to evidentiary IOS devices preventing the destruction of evidence or loss of digital evidence; and

WHEREAS, the staff has done due diligence and confirmed that Magnet Forensics is still the exclusive supplier who can meet the City's requirements; and

WHEREAS, Tracy Municipal Code Section 2.20.180(b)(4) authorizes the City Council to approve an exception to the contracting procedure for agreements where the City Council finds compliance is not in the best interest of the City for the subject services, as Magnet Forensics can ensure seamless service and integration with the City's existing GrayKey and Axiom software services, without interruption or adverse impact to the City's public safety services; and

WHEREAS, the City seeks to enter into a 12-month agreement with Magnet Forensics, LLC for a total cost not to exceed \$63,830 to be funded through TPD's operating budget; and

WHEREAS, pursuant to the agreement with Magnet Forensics, LLC is attached hereto as Exhibit 1, Magnet Forensics, LLC will provide the renewal and maintenance of the Department's Axiom and GrayKey Digital Forensic Technology; and

WHEREAS, as per Magnet Forensics, LLC requirements, the City is using the agreement template provided by the Magnet Forensics, which agreement has a heading of "End User License Agreement"; and

NOW, THEREFORE, be it resolved as follows:

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

RESOLVED: That City Council does hereby approve an Agreement with Magnet Forensics, LLC attached hereto as Exhibit 1, for the renewal and maintenance of the Department's Axiom and GrayKey Digital Forensic Technology, for a term of 12-months and for a total not-to-exceed amount of \$63,830; and be it further

RESOLVED: That City Council finds that the proposed action is not a "project" under the California Environmental Quality Act (CEQA) and that pursuant to CEQA Guidelines Section 15061(b)(3), there is no possibility that this action will have an effect on the physical environment.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on April 1, 2025 by the following vote:

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

DAN ARRIOLA
Mayor of the City of Tracy, California

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

EXHIBITS:

(1) End User License Agreement with Magnet Forensics, LLC.

Q-357370 - USD 57,110.00



Quotation

Address:
Magnet Forensics, LLC
931 Monroe Drive NE
Suite A102-340
Atlanta, Georgia 30308
United States

Phone: 519-342-0195
E-Mail: sales@magnetforensics.com

Quote #: Q-357370-1
Issue Date: 12 Feb, 2025
Expires On: 27 May, 2025

Bill To
Brian Cockey
Tracy Police Department
1000 Civic Center Dr
Tracy, California 95376
United States
(209) 831-6602
brian.cockey@tracypd.com

Ship To
Brian Cockey
Tracy Police Department
1000 Civic Center Dr
Tracy, California 95376
United States
(209) 831-6602
brian.cockey@tracypd.com

End User
Brian Cockey
Tracy Police Department
1000 Civic Center Dr
Tracy California 95376
United States
(209) 831-6602
brian.cockey@tracypd.com

PREPARED BY	PHONE	EMAIL	PAYMENT TERM
Stephen Murray		stephen.murray@magnetforensics.com	Net 30

ITEM #	PRODUCT NAME	SMS DATES	UNIT SELLING PRICE	QTY	EXTENDED PRICE
GKL-ONF-PR-B	GrayKey License - Premier Bundle	28 May, 2025 to 27 May, 2026	USD 57,110.00	1	USD 57,110.00

Serial Numbers:
65a120f2d4812612
82c21ff2d4912115

Sub-Total USD 57,110.00
Taxes USD 0.00
Grand Total USD 57,110.00

Prices subject to change upon quote expiry. Accurate sales tax will be calculated at the time of invoicing when applicable. If your company is tax exempt, please provide appropriate support with your signed quote. Hardware may be subject to additional fees related to delivery, import and export.

Terms & Conditions

Unless you have an existing written agreement with Magnet Forensics for the products and/or services listed in this quotation, by: (a) signing below, (b) submitting an Order to Magnet Forensics referencing this quotation, or (c) making payment for the products and/or related services listed in this quotation, you agree to the terms and conditions at <http://magnetforensics.com/legal/> applicable to such products and/or services listed in this quotation to the exclusion of any differing or additional terms which may be found on your purchase order or similar document. By signing, you certify that you have the authority to bind your organization.

Q-357370 - USD 57,110.00

Magnet Forensics may adjust the software term start and/or end date, without increasing the total software license price, based on the date Magnet Forensics activates the software and provided that the total software license term length does not change.

Signature: _____

Date: ____/____/____

Name (Print): _____

Title: _____

Please sign and email to Stephen Murray at stephen.murray@magnetforensics.com

DocuSigned by:

Peter Vreeswyk

000C1D460BF34DB...

Peter Vreeswyk
Chief Financial Officer
Magnet Forensics, LLC

07-Mar-2025

Signed by:

Adam Belsher

C25EE1230BA447Z...

Adam Belsher
Chief Executive Officer
Magnet Forensics, LLC

07-Mar-2025

DS

Reviewed by Legal
Josh Abraham

Q-376266 - USD 6,720.00



Quotation

Address:
Magnet Forensics, LLC
931 Monroe Drive NE
Suite A102-340
Atlanta, Georgia 30308
United States

Phone: 519-342-0195
E-Mail: sales@magnetforensics.com

Quote #: Q-376266-1
Issue Date: 14 Jan, 2025
Expires On: 2 Apr, 2025

Bill To
Brian Cockey
Tracy Police Department
1000 Civic Center Dr
Tracy, California 95376
United States
(209) 831-6602
brian.cockey@tracypd.com

Ship To
Brian Cockey
Tracy Police Department
1000 Civic Center Dr
Tracy, California 95376
United States
(209) 831-6602
brian.cockey@tracypd.com

End User
Brian Cockey
Tracy Police Department
1000 Civic Center Dr
Tracy California 95376
United States
(209) 831-6602
brian.cockey@tracypd.com

PREPARED BY	PHONE	EMAIL	PAYMENT TERM
Stephen Murray		stephen.murray@magnetforensics.com	Net 30

ITEM #	PRODUCT NAME	SMS DATES	UNIT SELLING PRICE	QTY	EXTENDED PRICE
6AXB200	Magnet AXIOM Advanced Bundle		USD 0.00	1	USD 0.00
6AX210	Magnet AXIOM Advanced	3 Apr, 2025 to 2 Apr, 2026	USD 6,720.00	1	USD 6,720.00
5F000	Free Shipping		USD 0.00	1	USD 0.00

Sub-Total USD 6,720.00
Taxes USD 0.00
Grand Total USD 6,720.00

Prices subject to change upon quote expiry. Accurate sales tax will be calculated at the time of invoicing when applicable. If your company is tax exempt, please provide appropriate support with your signed quote. Hardware may be subject to additional fees related to delivery, import and export.

Terms & Conditions

Unless you have an existing written agreement with Magnet Forensics for the products and/or services listed in this quotation, by: (a) signing below, (b) submitting an Order to Magnet Forensics referencing this quotation, or (c) making payment for the products and/or related services listed in this quotation, you agree to the terms and conditions at <http://magnetforensics.com/legal/> applicable to such products and/or services listed in this quotation to the exclusion of any differing or additional terms which may be found on your purchase order or similar document. By signing, you certify that you have the authority to bind your organization.

Q-376266 - USD 6,720.00

Magnet Forensics may adjust the software term start and/or end date, without increasing the total software license price, based on the date Magnet Forensics activates the software and provided that the total software license term length does not change.

Signature: _____

Date: ____/____/____

Name (Print): _____

Title: _____

Please sign and email to Stephen Murray at stephen.murray@magnetforensics.com

DocuSigned by:

Peter Vreeswyk

000C1D460BF34DB
Peter Vreeswyk
Chief Financial Officer
Magnet Forensics, LLC
07-Mar-2025

Signed by:

Adam Belsher

C25EE1230BA447Z
Adam Belsher
Chief Executive Officer
Magnet Forensics, LLC
07-Mar-2025

DS

Reviewed by Legal
Josh Abraham



END USER LICENSE AGREEMENT

This End User License Agreement (the “**Agreement**”) is a legal agreement between You (the party who signs this Agreement) and Magnet Forensics respecting Your use of the accompanying Software and is effective as of the date of last signature (the “**Effective Date**”).

1 Definitions

- 1.1 “**Confidential Information**” means any information regardless of form or medium, whether tangible or intangible, including any copies or fixations made thereof that is disclosed by discloser, or to which the recipient is provided access by discloser, that is proprietary or confidential to discloser or its affiliated companies, including, without limitation, information that specifies, concerns or is related to discloser’s intellectual property, Software, Documentation, Product, trade secrets, business operations, finances, customers, technical know-how, prototypes, designs, processes, products, services, or the development, testing or commercial exploitation of any of the foregoing that is either specifically identified as confidential prior to or at the time of its disclosure or that would reasonably be considered by a person knowledgeable in the industry to be proprietary or confidential in nature because of legends or other markings on the information, the circumstances of disclosure or the nature of the information itself. **Confidential Information includes, without limitation, (i) information concerning the methods of use, internal components, features, functions and solutions of GrayKey and VeraKey Products, information found on the Magnet Forensics support website, and (ii) any copies, photographs, or other reproductions of the foregoing, whether or not marked as “confidential” or “proprietary.”**
- 1.2 “**Documentation**” means the electronic, printed or other form of documents that accompany delivery of the Product that provides information about installation, operation, and use of the Product.
- 1.3 “**Hardware**” means the physical components, devices, or equipment provided to you by Magnet Forensics used for the operation of the Software.
- 1.4 “**License Term**” means the time period identified in Your Quotation or if no such period is identified in Your Quotation then for one (1) year commencing on the date the Software is available to You.
- 1.5 “**Magnet Forensics**” has the meaning set out in Section 12.1.
- 1.6 “**Magnet Software**” means the proprietary software of Magnet Forensics.
- 1.7 “**Perpetual License**” means a license purchased with a perpetual License Term as identified in a Quotation.
- 1.8 “**Product**” means the Magnet Forensics supplied products identified in the Quotation, which may include, Hardware, Software, and Support Services.
- 1.9 “**Quotation**” means the quotation provided to You by Magnet Forensics or a Magnet Forensics authorised reseller outlining the terms, conditions, and pricing details for the licensing of Magnet Hardware, Software, and Support Services.
- 1.10 “**Software**” means the Magnet Software and Third Party Software.
- 1.11 “**Support Services**” means the support services included in the Term License or separately purchased as part of the Perpetual License as indicated on Your Quotation and, in each case, described further in Section 4.1.
- 1.12 “**Term License**” means a license purchased with a non-perpetual License Term as identified in a Quotation.
- 1.13 “**Third Party Software**” means the copyrighted, patented or otherwise legally protected software of third parties (including open-source code components) incorporated into the Software.
- 1.14 “**User**” means a single user who uses the Software as permitted by this Agreement or is otherwise provided access to the Software by You.



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- 1.15 “You”, and “Your” means the entity that purchases the license for Software pursuant to this Agreement.

2 License Grant

- 2.1 License. The licensed rights to the Software granted to You by Magnet Forensics are as set out in Schedule A (Licensed Rights), Schedule B, and Schedule C to this Agreement, as applicable.

3 Fees, Taxes, and Delivery

- 3.1 Fees. You agree to pay Magnet Forensics all applicable fees identified in the Quotation within thirty (30) days from date of the invoice. Magnet Forensics shall invoice You upon the earlier of: (a) You issuing a purchase order to Magnet Forensics that relates to the Quotation; (b) Your signing the Quotation; and (c) Your written indication, by email or otherwise, of Your approval of the Quotation. If You fail to pay any amount under this Agreement that is due and payable, and such failure remains unremedied for a period of thirty (30) days following written notice of default by Magnet Forensics, in addition to any other rights and remedies available to Magnet Forensics, Magnet Forensics shall be entitled to charge interest on all outstanding amounts at the lesser of 1.5% per month or the maximum rate permitted by law.
- 3.2 Taxes. You are responsible for all taxes relating to Software and services identified in a Quotation (excluding any taxes based on the income of Magnet Forensics). Unless otherwise indicated, all amounts payable by You under this Agreement are exclusive of any tax, duty, levy, or similar government charge. If You are required to withhold any taxes from payments owed under this Agreement, the amount of payment due shall automatically be increased to offset such tax, so that the amount actually remitted to Magnet Forensics shall equal the amount invoiced or otherwise due.
- 3.3 Delivery. Software will be provided by electronic means. Title and risk of loss to tangible products such as Hardware pass to you upon delivery, which occurs when Magnet Forensics places them with a carrier for shipment to you, freight prepaid.

4 Support Services

- 4.1 Support Services. Details of support packages can be found at www.magnetforensics.com/legal/.
- 4.2 Magnet Forensics does not require Your personal data to provide Support Services. If, however, as part of an incident resolution, You wish to provide Magnet Forensics with Your data or information (i.e. video footage, screen shots, case file data), You are solely responsible and liable in connection with the provision of such data to Magnet Forensics, including, without limitation, ensuring that the collection, processing and transfer of such data is in compliance with all applicable laws. Any data You choose to provide to Magnet Forensics in connection with the licensing and/or support of the Software shall be processed and stored in accordance with the confidentiality provisions of this Agreement and the Magnet Forensics Privacy Policy available at <https://www.magnetforensics.com/legal/>.

5 Intellectual Property Rights

- 5.1 License Only. Except for the limited license set forth herein, You do not acquire any intellectual property rights to the Product or Documentation under this Agreement, including, without limitation, any right, title or interest in and to patents, copyrights, trademarks, trade names, industrial designs, Magnet Forensics Confidential Information, or trade secrets, whether registered or unregistered. The Software is licensed and not sold. Any rights not expressly granted under this Agreement are reserved by Magnet Forensics.



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- 5.2 Feedback. Magnet Forensics shall own all feedback, comments, suggestions, ideas, and concepts that You provide or identify during Your use of the Product and Support Services, and all associated intellectual property rights (collectively the “**Feedback**”). You hereby assign to Magnet Forensics all of Your right, title and interest in Your Feedback. For certainty, Feedback shall not include any of Your data, Confidential Information, or intellectual property.

6 Confidentiality

- 6.1 Maintenance of Confidential Information. Subject to applicable law, each party agrees to: (a) keep confidential all Confidential Information disclosed by the other party; (b) only use, reproduce and disclose the Confidential Information to facilitate the use of the Software (in Your case) or support and develop the Software (in Magnet Forensics’ case); and (c) protect the Confidential Information from unauthorized use, reproduction or disclosure in the same manner it protects the confidentiality of similar information of its own, but not less than a reasonable degree of care.
- 6.2 A disclosure of Confidential Information that is legally compelled to be disclosed pursuant to a subpoena, summons, order or other judicial or governmental process shall not be considered a breach of this Agreement; provided that You promptly notify Magnet Forensics in writing, if notification is permitted by law, and use commercially reasonable efforts to assist Magnet Forensics, at Magnet Forensics’ expense, in opposing such disclosure or obtaining a protective order or other reliable assurance preventing or limiting such disclosure and/or ensuring that confidential treatment will be accorded to any Confidential Information that is disclosed. Such disclosure does not remove the Confidential Information so disclosed from the protection of this Agreement. No further disclosure beyond the scope of such order is allowed.

7 Warranties, Exclusions, Disclaimer

- 7.1 Software Warranty. While Your Support Services are active, Magnet Forensics warrants that the Software shall materially conform to the Documentation. If the Software does not materially conform to the Documentation, and you give Magnet Forensics notice while Your Support Services are active, Magnet Forensics will, at its option, attempt to correct, repair, or replace the Software at no additional cost to You. If Magnet Forensics is unable to correct the Software to conform with the warranty stated herein within thirty (30) days, then upon Your request, Magnet Forensics shall, as your sole and exclusive remedy, refund You: (a) a prorated amount of any unused prepaid license fees if You purchased a Term License; or (b) a prorated amount of any unused prepaid Support Services fees if You purchased a Perpetual License.
- 7.2 Viruses, Licenses, Support Services. Magnet Forensics (a) has implemented testing practices consistent with industry standards designed to protect against viruses that may impede the Software; (b) includes fully paid-up licenses to any and all Third Party Software incorporated into the Software; and (c) will perform all Support Services in a good and workmanlike manner consistent with industry standards.
- 7.3 EXCLUSIONS. THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE THE EXCLUSIVE WARRANTIES MADE BY MAGNET FORENSICS TO YOU REGARDING THE PRODUCT, AND YOUR SOLE AND EXCLUSIVE REMEDY RESPECTING ANY DEFECTS, NON-CONFORMITIES OR PROBLEMS WITH THE PRODUCT. EXCEPT AS SET FORTH IN SECTION 7.1 AND 7.2, MAGNET FORENSICS DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY, ACCURACY, RELIABILITY, NON-INFRINGEMENT, OR ANY OTHER WARRANTY OR CONDITION ARISING BY STATUTE, CUSTOM OR USAGE OF TRADE RELATED TO THE PRODUCT PROVIDED HEREUNDER. To the maximum extent permitted by law, any implied warranties or conditions relating to the Software that cannot be



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excluded as set out above are limited to thirty (30) days from the date that the Software is delivered to You.

8 Limitation of Liability

- 8.1 NOTWITHSTANDING ANY OTHER SECTION OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY WHETHER IN AN ACTION IN CONTRACT, TORT, PRODUCT LIABILITY, STRICT LIABILITY, STATUTE, LAW, EQUITY, OR OTHERWISE ARISING FROM OR RELATED TO THIS AGREEMENT OR ANY ORDER FOR (A) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES; (B) LOSS OF PROFITS OR REVENUE (OTHER THAN IN AN ACTION BY MAGNET FORENSICS TO RECOVER PAYMENT OF A PRICE OWED); OR (C) LOSS OF TIME, OPPORTUNITY OR ANY DAMAGES RELATING TO THE CORRUPTION OF DATA, LOSS OF THE USE OF DEVICES OR ANY PORTION THEREOF, AND DAMAGES CAUSED BY YOUR FILES, CONNECTED DEVICES, OR DATA COLLECTED BY YOU, EVEN IF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (OTHER THAN IN AN ACTION BY MAGNET FORENSICS TO RECOVER PAYMENT OF A PRICE OWED) WILL NOT EXCEED THE AMOUNT PAID BY YOU FOR THE PRODUCT IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM GIVING RISE TO SUCH DAMAGES.
- 8.2 SECTION 8.1 SHALL NOT APPLY TO EITHER PARTY'S LIABILITY IN RELATION TO: (A) INDEMNIFICATION OBLIGATIONS OF EITHER PARTY UNDER SECTION 9 (INDEMNIFICATION) UNDER THIS AGREEMENT; (B) MISAPPROPRIATION OR INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY; (C) BREACHES OF CONFIDENTIALITY UNDER SECTION 6; AND (D) YOUR PAYMENT OBLIGATIONS TO MAGNET FORENSICS, PROVIDED, HOWEVER, THAT MAGNET FORENSICS' CUMULATIVE LIABILITY UNDER SECTION 9.2 RELATING TO THIRD PARTY SOFTWARE SHALL IN NO EVENT EXCEED THE LESSER OF: THREE TIMES (3X) THE AMOUNT PAID BY YOU FOR THE SOFTWARE IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM GIVING RISE TO SUCH DAMAGES AND ONE MILLION USD (\$1,000,000.00 USD).

9 Indemnification

- 9.1 Your Indemnification of Magnet Forensics. You will defend and indemnify Magnet Forensics from and against any third-party claim, cause of action, legal proceeding, cost, award of damages or any other judgment and legal expenses ("Claim") in relation to: (a) any Claim arising from the modification, combination or use of the Software with equipment, software, interfaces, or other materials that are not specifically authorized by Magnet Forensics; and (b) Your collection and use of data resulting from Your use of the Software and any actions You take as a result thereof; and (c) unauthorized use of the Product.
- 9.2 Magnet Forensics Indemnity. Magnet Forensics will defend You from and against any suit brought against you by a third party to the extent the suit alleges that your use of a Product infringes a valid patent in Canada or the United States (an "IP Claim"). Magnet will also pay the damages, costs, and attorneys' fees that are awarded against you in a final, non-appealable court judgment for the IP Claim, or required to be paid by you in a settlement of an IP Claim that Magnet has agreed to in writing. You agree to (i) give prompt notice of the IP Claim to Magnet Forensics; (ii) grant sole control of the defense and settlement of the IP Claim to Magnet Forensics; and (iii) provide reasonable cooperation to Magnet Forensics and, at Magnet Forensics' request and expense, assistance in the defense or settlement of the IP Claim ("Your Indemnification Obligations") and Magnet Forensics shall not be liable to the extent an IP Claim, or portion thereof, is attributable to Your breach of Your Indemnification Obligations. In the event of an IP Claim, Magnet Forensics may, at its option and expense: (a) obtain for You the right to continue to use the Product; (b) substitute a substantially equivalent non-infringing product; (c) modify the Product to make it non-infringing; or if (a), (b), and (c) are not commercially feasible, then (d) terminate Your license and require that You no longer access and use the Product. If Your license is terminated, You must return or destroy the Product and within 30 days of receipt of all of the Product or certification of destruction thereof, Magnet



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Forensics shall refund You x) a prorated amount of any unused prepaid license fees if You purchased a Term License; or y) a prorated amount of any unused prepaid Support Services fees if You purchased a Perpetual License. The indemnity obligations under this clause do not extend to Claims arising from or relating to: (aa) any modification to the Product or use in combination with any equipment, software, data or any other materials not authorized by Magnet Forensics where the infringement would not have occurred but for such activity; (bb) use of the Product by You in a manner contrary to the terms of this Agreement where the infringement would not have occurred but for such use; (cc) the continued use of the infringing Product after Magnet Forensics has provided substantially equivalent non-infringing software, a non-infringing modification of the Product, or terminated Your license in accordance with this Agreement; or (dd) custom Product developed at Your request while utilizing Your specifications. NOTWITHSTANDING ANY TERMS TO THE CONTRARY IN THIS AGREEMENT, THE PROVISIONS OF THIS CLAUSE STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF MAGNET FORENSICS AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY ACTUAL OR ALLEGED MISAPPROPRIATION, VIOLATION AND/OR INFRINGEMENT OF ANY PROPRIETARY AND/OR INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

- 9.3 Mutual General Indemnity. Each party will defend and hold harmless the other from and against any Claim arising from any of the following: (a) gross negligence, willful misconduct, fraudulent misrepresentation and fraud by a party; (b) bodily injury or death caused by a party; and (c) breach of confidentiality obligations.

10 Term and Termination

- 10.1 Term of Agreement. This Agreement shall survive for one (1) year after the termination or expiry of Your License Term.
- 10.2 Termination for Convenience. You may terminate this Agreement and Your license for Software at any time upon written notice to Magnet Forensics but You will not be entitled to any refund.
- 10.3 Termination for Breach. Either party may terminate this Agreement and any License Term immediately upon notice to the other if: (a) the other party materially breaches a material term or condition of this Agreement which breach remains unremedied for thirty (30) days following written notice thereof by the other party, or immediately if such breach is not capable of remedy; (b) the other party becomes involved in any legal proceeding concerning its solvency, commences liquidation proceedings, has a receiver or administrator appointed for any of its assets, ceases or threatens to cease operations, or otherwise has a serious and reasonable doubt arise respecting its solvency; or (c) if Magnet Forensics determines in its sole discretion that licensing the Product to You would violate applicable laws. If Your License Term is terminated due to breach by Magnet Forensics under (a) above, where Magnet Forensics is the relevant party under (b) above, or by Magnet Forensics in accordance with (c) above, Magnet Forensics shall refund You: (i) a prorated amount of any unused prepaid License fees if You purchased a Term License; or (ii) a prorated amount of any unused prepaid Support Services fees if You purchased a Perpetual License.
- 10.4 Termination/Expiry Obligation. Upon termination or expiry of this Agreement, and, if earlier, termination or expiry of a Term License, free trial or any Beta Period, You shall immediately cease all use and access of the Software and destroy or permanently delete all copies of the Software in Your possession along with any Documentation delivered to You or derivative works made therefrom.
- 10.5 Request for Information for Compliance. Upon request of Magnet Forensics, You agree to provide reasonable information on a timely basis to confirm Your compliance with the license rights and restrictions to the Product. Your failure to comply with this Section 10.5 will be deemed to be a material breach of this Agreement.



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11 Compliance with Export Laws and Ethical Conduct

- 11.1 You shall not export any Product, Documentation, or Confidential Information unless You comply with all applicable international trade laws ("ITR"). Further, You warrant (a) You are not now and have never been on any Restricted Party List or any sanctions list in the countries in which You conduct business; and (b) You understand and abide by ITR laws administered by the country in which You conducts business. You agree not to engage in any action in any way that would cause Magnet Forensics to violate ITR laws of the country in which it conducts business, including providing Magnet Forensics Product, Documentation, or Confidential Information to any person in any country subject to comprehensive sanctions by the U.S., Canada, the UK, EU, the EU member state and Singapore or any person on a Restricted Party List. You agree to indemnify Magnet Forensics to the extent Your actions or inactions have caused Magnet Forensics to violate ITR laws and the ITR of the country in which it conducts business. You agree to maintain a sanctions compliance policy and controls to ensure compliance with the applicable economic sanctions and upon request provide a Magnet Forensics with a copy of such policy.
- 11.2 If the Software is being licensed by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then, as a commercial item, the Government's rights in the Software will be only as set forth: (a) in this Agreement; or (b) as provided in FAR 12.212 (Computer Software) and (for Department of Defense use or disclosure) DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation), whichever set of rights provided in (a) or (b) are the more restrictive.
- 11.3 Throughout Your use of the Product, You agree to comply with the Magnet Forensics Business Code of Conduct found at <https://www.magnetforensics.com/legal>. Failure to comply with the Business Code of Conduct may result in the suspension or termination of access to the Software, as outlined in this Agreement.

12 Magnet Forensics Entity, Governing Law

- 12.1 "Magnet Forensics" means:
- a) Where Your "Bill To" address identified on the Quotation is in Canada, Magnet Forensics Inc., with an office at 2220 University Avenue East, Suite 300, Waterloo, Ontario, Canada N2K 0A8.
 - b) Where Your "Bill To" address identified on the Quotation is in France, Magnet Forensics SAS, with an office at c/o WeWork 33 Rue La Fayette Paris, France 75009.
 - c) Where Your "Bill To" address identified on the Quotation is in Germany, Magnet Forensics GmbH, with a registered office at c/o Eversheds Sutherland (Services) GmbH, Brienner Strabe 12, 80333 Munich, Germany.
 - d) Where Your "Bill To" address identified on the Quotation is anywhere other than in Canada, France, and Germany, Magnet Forensics, LLC, with an office at c/o Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.
- 12.2 Governing Law. This Agreement is governed by and construed under, excluding any body of law governing conflicts of laws, the laws of: (a) England, where Your "Bill To" address identified on the Quotation is in Europe, Greenland or the UK; (b) Ontario, Canada, where Your "Bill To" address identified on the Quotation is in Canada, or (c) Delaware, U.S., where Your "Bill To" address identified on the Quotation is anywhere else. You irrevocably waive any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law. You also waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement. You agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.



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13 General Provisions

- 13.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, promises, assurances, warranties, representations, and understandings relating to the subject matter hereof. Your additional or different terms and conditions, whether on Your purchase order or otherwise, shall not apply.
- 13.2 Force Majeure. Neither party shall be deemed to be in default of this Agreement for failure to fulfill its obligations due to causes beyond its reasonable control. This provision shall not be construed as excusing any payment obligations.
- 13.3 Waiver. No waiver by either party of a breach or omission by the other party under this Agreement shall be binding on the waiving party unless it is expressly made in writing and signed by the waiving party. Any waiver by a party of a particular breach or omission by the other party shall not affect or impair the rights of the waiving party in respect of any subsequent breach or omission of the same or different kind.
- 13.4 Notices. Any notices, reports or other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered by hand or sent by registered mail, courier, facsimile or electronic mail. For notices to You, Magnet Forensics shall send such notice to Your "Bill To" Address. For notice to Magnet Forensics, You shall send such notice to Attn: Legal Department, Magnet Forensics, with an office at 300 Colonial Center Pkwy, Suite 130, Roswell, GA 30076, United States.
- 13.5 Assignment. You shall not assign or transfer this Agreement (including, without limitation, by operation of law, merger, reorganization, or as a result of an acquisition or change of control) without the prior written consent of Magnet Forensics, which consent will not be unreasonably withheld, conditioned or delayed. This Agreement shall be binding upon the parties hereto and their respective lawful successors and permitted assigns. Any purported assignment in violation of this Section 13.5 shall be null and void.
- 13.6 Survival. Section 6 (Confidentiality), Section 8 (Limitation of Liability), Section 9 (Indemnification), and any other provision of this Agreement which by its nature would survive the termination or expiration of this Agreement shall do so.
- 13.7 Electronic Execution. The parties agree to the use of electronic communication in order to enter into this Agreement, Quotations, purchase orders and any other notices or records. You hereby waive any rights or requirements under any laws in any jurisdiction which require an original, non-electronic signature or delivery or retention of non-electronic records, to the extent permitted under applicable law.
- 13.8 Invalidity. If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement shall continue in full force and effect.

END OF AGREEMENT



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IN WITNESS WHEREOF, the parties executed this Agreement.

MAGNET FORENSICS

TRACY POLICE DEPARTMENT

DocuSigned by:

Peter Vreeswyk

Per:

Name:

Peter Vreeswyk

Title:

CFO

Date:

07-Mar-2025

Signed by:

Adam Belsher

Per:

Name:

Adam Belsher

Title:

CEO

Date:

07-Mar-2025

Per:

Name:

Title:

Date:

Address:

DS

Reviewed by Legal
Josh Abraham



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Schedule A – Licensed Rights for All Products

1 Definitions.

- 1.1 **“Case License”** means the Software is subject to a license fee that is based on granting access to the Software for a single source (i.e. single hard drive or image file).
- 1.2 **“CLS License” or “LLS License”** means the Software is subject to a license fee that is calculated based on the number of concurrent usage virtual license Keys identified in the Quotation as available at any one time to be downloaded by Users. CLS (Cloud License Server) virtual license Keys are hosted in an online, cloud-based environment whereas LLS (Local License Server) virtual license Keys are hosted on Your premises.
- 1.3 **“Dongle”** means a USB device provisioned with the Software.
- 1.4 **“Dongle License”** means the Software is subject to a license fee that is calculated per Dongle.
- 1.5 **“Enterprise License”** means the Software is subject to a license fee that is calculated based on a maximum number of Software installs and/or concurrent Users as set out in the Quotation.
- 1.6 **“Instance”** means a copy of the Software that a User is authorized to use. The maximum number of Instances per User are stated in the Quotation.
- 1.7 **“Key”** means the license key provided to You by Magnet Forensics to permit access to and use of the Software to a User.
- 1.8 **“Machine”** means each hardware machine or hardware unit on which the Software is used.
- 1.9 **“Machine License”** means the Software is subject to a license fee that is calculated per Machine.

2 License Grant. Magnet Forensics hereby grants to You a limited, non-exclusive, revocable, non-transferable, non-sublicensable license to use the Software on Your internal business networks for the number of Users, installs, and/or Instances and License Term indicated in Your Quotation in accordance with the terms set forth in this Agreement and the Documentation. Your license only permits you to possess and use the Software in object code form. For certainty: (a) academic licenses are granted for academic, non-commercial use only; (b) licenses for Magnet AUTOMATE products are licensed on a per ‘control node’ and ‘agent node’ basis; (c) Machine Licenses are solely permitted for use of the Software on the Machine on which such Software is first installed and by the original User; and (d) Dongle Licenses are for use on Machines only (and not for use in cloud or other virtual environments), and cannot be shared between individual Users. For further certainty: (i) Enterprise Licenses, CLS Licenses and LLS Licenses allow for concurrent Users of the Software as indicated in Your Quotation; and (ii) a unique key code is issued for a Case License tied to the original single source, with requirements for additional single sources requiring an add-on purchase. It is Your responsibility to fully comply with all applicable laws in using and handling the Software and any additional third-party license terms applicable to Third Party Software.

3 Restrictions. You shall not and shall ensure that Users shall not:

- 3.1 copy, reproduce, or modify the Product or any part thereof, including, but not limited to, combining with other software or hardware other than as authorized by Magnet Forensics in writing;
- 3.2 enhance, improve, alter, create derivative works, reverse engineer, disassemble, deconstruct, impair, translate, decrypt, reverse compile or convert into human readable form the Software or any part thereof;
- 3.3 distribute, lend, assign, license, sublicense, lease, pledge, rent, transfer, sell or otherwise provide access to the Software, in whole or in part, to any third party;
- 3.4 use any Product on a time sharing, service bureau, application services provider (ASP), rental or other similar basis;



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- 3.5 remove, deface, cover or otherwise obscure any proprietary rights notice or identification on the Software;
- 3.6 circumvent or disable copyright protection mechanisms or license management mechanisms;
- 3.7 photograph or record any of the Product's components, whether internal, external or as digitally displayed;
- 3.8 use the Product to provide services to third parties (including technical or training services), or otherwise publicly display or market the Software, for the purposes of Your commercial gain;
- 3.9 use the Product in conjunction with other software or hardware, except as authorized in writing by Magnet Forensics;
- 3.10 use the Product in any unlawful manner or to violate any rights of a third party; or
- 3.11 authorise, permit or otherwise acquiesce in any other party engaging in any of the activities set forth in 3.1 – 3.10 above, or attempting to do so.

For the purposes of this provision "copy" and "reproduce" shall not include: (A) making additional copies of the Software for Your own use, as long as only one copy may be used at any one time in accordance with the Documentation; or (B) making one back-up copy of the Software.

- 4 Restrictions Applicable to Consultant Licenses.** Notwithstanding Section 3.8, if Your license is identified in a Quotation as a "consultant license", You may use the Software in relation to Your provision of forensic analysis services to a third party for commercial gain, subject to Your compliance with all other terms of this Agreement and the payment of all applicable fees, provided that the following additional restrictions shall apply:

- 4.1 You shall be solely responsible for Your services, including any use or operation of the Software (both separately or in combination with any other software), to provide such services, and, as Magnet Forensics expressly disclaims all liability for any claims, losses or damages relating to Your services, You agree to indemnify Magnet Forensics against all such claims, losses and damages;
- 4.2 You shall not permit Your customers to use the Software (with the exception of using the Portable Case functionality);
- 4.3 You shall not use the Software to provide digital forensics training to third parties (including instructions on how to use the Software), unless You have first obtained Magnet Forensics' express written permission;
- 4.4 You shall not, whether in an agreement for Your services or otherwise, in any way modify, negate or override any terms and conditions of the protections afforded to Magnet Forensics under this Agreement;
- 4.5 You shall not engage in deceptive, misleading, illegal or unethical practices that might reasonably be detrimental to Magnet Forensics or its products or services;
- 4.6 You shall not make any representations, warranties or guarantees about Magnet Forensics or its products and services except as expressly set out in this Agreement; and
- 4.7 where You wish to publicize, market or otherwise promote the use of the Software in Your services, You must do so in a manner consistent with Magnet Forensics' External Marketing Policy (located at https://www.magnetforensics.com/wp-content/uploads/2022/11/MagnetForensics_BrandGuidelines.pdf) and any other marketing and trademark requirements set out by Magnet Forensics from time to time. Any use of Magnet Forensics' Trademarks shall remain unchanged and give legal notice of such trademark status.



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- 5 Beta Software.** If You have requested use of or have access to Software or features that are identified by Magnet Forensics as pre-commercial, preview release, evaluation, pilot, "alpha", or "beta" software ("Beta Software"), the license rights set out above with respect to Your use of such Beta Software apply only to the extent necessary to enable You and the Users to test and provide Feedback to Magnet Forensics regarding the Beta Software. You acknowledge and agree that Magnet Forensics may terminate Your use of Beta Software at any time and may include technical measures in the Beta Software that renders it inoperable and You agree that You will not circumvent such technical measures. You further acknowledge and agree that the Beta Software is provided "AS IS" with none of the representations, warranties, or indemnities provided in the Agreement. In consideration of the grant of license for the Beta Software, You agree that You will provide Magnet Forensics with Feedback on Beta Software as Magnet Forensics reasonably requests without any compensation.
- 6 Trial Licenses.** If Your License is indicated as a Trial License on the Quotation ("Trial License"), the license rights set out above with respect to Your use of such Trial License apply only for the time period authorised by Magnet Forensics ("Trial Period") and solely to the extent necessary to enable You and the Users to test the Product in order to identify if the Product is suitable for purchase from Magnet Forensics. Additionally, the Product underlying the Trial License or delivered to you as a Free Tool is provided "AS IS" with none of the representations, warranties or indemnities provided in the Agreement. Notwithstanding the Trial Period, Magnet Forensics may terminate Your Trial License at any time and require that You cease using the Software.



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Schedule B – Additional VeraKey Terms and Conditions

1 Definitions.

- 1.1 **“Authorized Country”** means a country in which Magnet Forensics has authorized use of the VeraKey as set out in the Documentation.
- 1.2 **“Authorized User(s)”** means employees who are authorized by You to access or use the Product and Software. You agree to limit the number of Authorized Users to those employees who perform extractions in the normal course of their employment.
- 1.3 **“Authorized Device”** means mobile devices (a) owned and controlled by you; (b) if you are retained to perform an Investigation by a third party, owned by such third party; or (c) owned by an individual that has expressly, voluntarily, and specifically authorized you in writing, without coercion or threat of reprisal, to perform an Extraction of their mobile device.
- 1.4 **“Extraction”** means the use of the Product to extract data from an Authorized Device.

2 License Restrictions. If You are licensing the VeraKey Product, as identified in Your Quotation, You agree to the following additional restrictions in addition to the license rights and restrictions set out in Schedule A of this Agreement:

- 2.1 You may only use the VeraKey Product in an Authorized Country for Extractions on Authorized Devices in aid of an official investigation of corporate malfeasance including (a) fraud, (b) bribery, (c) theft, (d) antitrust violation, (e) sabotage, (f) breach of confidentiality obligations, (g) securities violation, (h) IP infringement or misappropriation of intellectual property, (i) as part of or in response to an official government investigation or request for product of documentation (FDA, SEC, FTC, OSHA, etc.), (j) as part of a legally compelled production of documents by a court of competent jurisdiction, (k) in defense of a criminal charge filed in a court of competent jurisdiction, where such investigation is made in response to an official complaint supported by reasonable evidence (each, an “Investigation”) and for no other purpose (“Authorized Extraction(s)"). You agree not to use the Product to screen, audit, spot-check, or otherwise discover instances of corporate malfeasance or violation of corporate policy. Prior to performing an Extraction, Magnet Forensics may require that you or your Authorized User(s) certify that the contemplated Extraction meets the above definition of an Authorized Extraction. You warrant that any certification materials submitted as part of Your Authorized Extraction certification responsibilities are true and correct in all material respects.
- 2.2 To the extent legally practicable, Authorized Devices must remain in Your possession and control until after the software agent employed by the Product has been successfully uninstalled from such Authorized Devices.
- 2.3 Only Authorized Users who have obtained any necessary consents and approvals are permitted to access and use the Product or Software in connection with any Extractions. You shall notify Magnet Forensics in writing the name and user information associated with each Authorized User, and within thirty (30) calendar days following a change of an Authorized User's employment status such that the Authorized User ceases to be authorized by You to access or use the Product and Software either through ceasing to be employed by You or a change in his or her position within the Your organization such that he or she is no longer authorized to access or use the Product and Software.
- 2.4 You agree to designate an employee with senior management and oversight responsibilities within your organization to act as Your “Primary Authorized User.” The Primary Authorized User will be notified each time an extraction is performed on the device and shall supervise use and security of the Product and Software. You agree to require the Primary Authorized User, as part of their employment obligations, to monitor the use of and ensure the security of the Product. The Primary Authorized User is not permitted to perform Extractions. You shall notify Magnet Forensics in writing the name and user information associated with the Primary Authorized User, and within thirty (30)



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calendar days following a change of the Primary Authorized User's employment status such that the Primary Authorized User ceases to be tasked by the Licensee to oversee the use and security of the Product and Software.

- 2.5 You will conduct, at your expense, background checks on your employees (including but not limited to Authorized Users) and those of your agents and subcontractors who will have access (whether physical, remote, or otherwise) to Magnet Products or Software. You will not permit your employees, agents, or subcontractors (including the personnel of any of its agents or subcontractors) that have been convicted of a felony crime or has agreed to or entered into a pretrial diversion or similar program in connection with a felony crime to have access to: (a) Magnet Forensics Confidential Information; (b) the secure environment in which the Product is stored; (c) the Product, the Software, or any associated materials.
- 2.6 You covenant and agree to keep the Product in a physically secure environment at all times, and to take all necessary precautions to restrict use of the Product to Authorized Users. You acknowledge and agree that for the Product to function properly in online mode, the Product must be connected to the Internet.
- 2.7 Magnet Forensics may use third-party monitoring tools to ensure that You comply with the foregoing restrictions. You acknowledge that Your use of the Product may be subject to additional terms and conditions as set by the third-party responsible for such tools.

3 Warranty Disclaimer. Notwithstanding Section 7.1 of the Agreement, You acknowledge and agree that the Software is provided AS-IS and without any warranty of any kind. Further, You acknowledge that all case stakeholders are aware of and understand the associated risk that the Authorized Device may become damaged and/or Authorized Device data may be unrecoverable when used with the Product or Software, in particular for Authorized Devices (a) with aftermarket repairs or hardware and nonstandard software builds; (b) that boot loop or are otherwise unable to boot normally; (c) that have preexisting damage, defects, or faults that may or may not be detectable; or (d) with software, software builds, states, or usage profiles not identified on the applicable support matrix. You further understand that not all permutations of Authorized Device software, software builds, states, and usage profiles have been tested by Magnet Forensics. Before utilizing the Product and Software on an Authorized Devices under any of the above conditions, please consult Magnet Forensics through the customer support portal. You release Magnet Forensics from all liability associated with damage to a mobile device or corruption of mobile device data resulting from the use of the Software or the Product.

4 Violations of License Restrictions.

- 4.1 Section 8.1 of the Agreement (Limitation of Liability) shall not apply to damages arising from Your violation(s) of Schedule A - Section 3 and this Schedule B.
- 4.2 In addition to the termination rights set out in Section 10 of the Agreement (Termination), Magnet Forensics may terminate this Agreement and suspend Your License, at its sole discretion and option, without notice and without refund or reimbursement if You violate any material term or condition of this Agreement.

5 Heightened Confidentiality Obligations. The VeraKey Product, along with its associated Documentation, are sensitive technologies whose Confidential Information requires the highest duty of care. You, Your employees, Your agents who require access in order to perform hereunder, and all final users of the VeraKey Product (collectively, "Receiving Party") shall not disclose, use, sell, transmit, inform or make available to any entity, person or body any of the Confidential Information nor shall it copy, photograph, or otherwise reproduce any Confidential Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information and Magnet Forensics' rights therein,



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at all times exercising the highest duty of care. Receiving Party agrees to restrict access to VeraKey Confidential Information to those Authorized Users who require access in order to perform hereunder, and, except as otherwise provided, the Receiving Party shall not make Confidential Information available to any other person or entity without the prior written consent of Magnet Forensics. Further, Receiving Party acknowledges and agrees that due to the unique nature of the VeraKey Products, there can be no adequate remedy at law for any breach of its obligations under this Section 5 related to such Products, that any such breach will cause irreparable and continuing damage to Magnet Forensics and, therefore, that upon any such breach or any threat thereof, Magnet Forensics shall be entitled to whatever remedies it might have by law and equity, including injunctive relief, a decree for specific performance, and all other relief as may be proper (including money damages, if appropriate). The Receiving Party further acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope.

- 6 Excess Use of Licenses.** If You use the Product in excess of the license quantities or levels stated in Your Quote, Magnet Forensics reserves the right to invoice You for such excess use based on the then current list price of the minimum add-on package required to bring Your use into compliance and you agree to pay such invoice in accordance with Section 3 of the Agreement.



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Schedule C – Additional GrayKey Terms and Conditions

1 Definitions.

- 1.2 “**Authorized Location**” means the authorized physical locations specified in the Quotation or that Licensee has otherwise registered with Magnet Forensics and that Magnet Forensics has approved in writing.
- 1.3 “**Authorized User(s)**” means collectively, employees, agents or contractors who are authorized by You to access or use the Product and Software.
- 1.4 “**Device**” means a mobile device.
- 1.5 “**Extraction**” means the use of the Product to extract data from a Device.

2 License Restrictions. If You are licensing the GrayKey Product, as identified in Your Quotation, You agree to the following additional restrictions in addition to the license rights and restrictions set out in Schedule A of this Agreement:

- 2.1 Only Authorized Users who have obtained any necessary consents and approvals are permitted to access and use the Product or Software in connection with any Extractions. You shall notify Magnet Forensics in writing the name and user information associated with each Authorized User, and within thirty (30) calendar days following a change of an Authorized User’s employment status such that the Authorized User ceases to be authorized by You to access or use the Product and Software either through ceasing to be employed by You or a change in his or her position within the Your organization such that he or she is no longer authorized to access or use the Product and Software.
- 2.2 To the extent legally practicable, Devices must remain in Your possession and control until after the software agent employed by the Product has been successfully uninstalled from such Devices.
- 2.3 If Your use of the Product is restricted to the Authorized Location identified in Your Quotation, You covenant and agree to keep the Product in a physically secure environment within the Authorized Location at all times, and to take all necessary precautions to restrict use of the Product to Authorized Users. You acknowledge and agree that for the Product to function properly in online mode, the Product must be connected to the Internet.
- 2.4 Magnet Forensics may use third-party monitoring tools to ensure that You are in compliance with the foregoing restrictions. You acknowledge that Your use of the Product may be subject to additional terms and conditions as set by the third-party responsible for such tools.

3 Warranty Disclaimer. Notwithstanding Section 7.1 of the Agreement, You acknowledge and agree that the Software is provided AS-IS and without any warranty of any kind. Further, You acknowledge that all case stakeholders are aware of and understand the associated risk that a Device may become damaged and/or Device data may be unrecoverable when used with the Product or Software, in particular for Devices (a) with aftermarket repairs or hardware and nonstandard software builds; (b) that boot loop or are otherwise unable to boot normally; (c) that have preexisting damage, defects, or faults that may or may not be detectable; or (d) with software, software builds, states, or usage profiles not identified on the applicable support matrix. You further understand that not all permutations of Device software, software builds, states, and usage profiles have been tested by Magnet Forensics. Before utilizing the Product and Software on a Devices under any of the above conditions, please consult Magnet Forensics through the customer support portal. You release Magnet Forensics from all liability associated with damage to a mobile device or corruption of mobile device data resulting from the use of the Software or the Product.



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4 Violations of License Restrictions.

- 4.1 Section 8.1 of the Agreement (Limitation of Liability) shall not apply to damages arising from Your violation(s) of Schedule A - Section 3 and this Schedule C.
- 4.2 In addition to the termination rights set out in Section 10 of the Agreement (Termination), Magnet Forensics may terminate this Agreement and suspend Your License, at its sole discretion and option, without notice and without refund or reimbursement if You violate any material term or condition of this Agreement.

- 5 Heightened Confidentiality Obligations.** The GrayKey Product, along with its associated Documentation, are sensitive technologies whose Confidential Information requires the highest duty of care. You, Your employees, Your agents who require access in order to perform hereunder, and all final users of the GrayKey Products (collectively, "Receiving Party") shall not disclose, use, sell, transmit, inform or make available to any entity, person or body any of the Confidential Information nor shall it copy, photograph, or otherwise reproduce any Confidential Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information and Magnet Forensics' rights therein, at all times exercising the highest duty of care. Receiving Party agrees to restrict access to GrayKey Confidential Information to those Authorized Users who require access in order to perform hereunder, and, except as otherwise provided, the Receiving Party shall not make Confidential Information available to any other person or entity without the prior written consent of Magnet Forensics. Further, Receiving Party acknowledges and agrees that due to the unique nature of the GrayKey Products, there can be no adequate remedy at law for any breach of its obligations under this Section 5 related to such Products, that any such breach will cause irreparable and continuing damage to Magnet Forensics and, therefore, that upon any such breach or any threat thereof, Magnet Forensics shall be entitled to whatever remedies it might have by law and equity, including injunctive relief, a decree for specific performance, and all other relief as may be proper (including money damages, if appropriate). The Receiving Party further acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope.

April 1, 2025

Agenda Item 1.H

RECOMMENDATION

Staff recommends that the City Council adopt a resolution, (1) accepting public improvements for Tracy Hills Village 7B, Tract 3956, as complete and assume responsibility for the future maintenance and repairs, (2) authorizing the City Engineer to release the Subdivider furnished bonds in accordance with the Subdivision Improvement Agreement, and Subsequent First Amendment, and (3) authorizing the City Clerk to file a Notice of Completion with the San Joaquin County Recorder's Office.

EXECUTIVE SUMMARY

Meritage Homes of California, Inc., a California Corporation (Subdivider), has completed public improvements for Tracy Hills Village 7B, Tract 3956, containing 91 single-family residential lots, in accordance with the Subdivision Improvement Agreement, project plans, and specifications. Staff recommends City Council accept the improvements as complete, authorize City Clerk to file a Notice of Completion, and authorize the City Engineer to release the Subdivider's bonds.

BACKGROUND AND LEGISLATIVE HISTORY

On April 5, 2016, by Resolution No. 2016-062, City Council certified the Tracy Hills Specific Plan Final Subsequent Environmental Impact Report (Final SEIR) and adopted findings of fact, a statement of overriding considerations, and a mitigation monitoring program for the Tracy Hills Specific Plan Project (Application Numbers GPA10-0001, SPA13-0001, ZA13-0001, DA13-0001, TSM13-0005, and TSM16-0001).

On April 5, 2016, by Resolution No. 2016-066, City Council approved a Small-Lot Vesting Tentative Map for Tracy Hills Phase 1A, Application No. TSM13-0005, subject to Conditions of Approval, and found it to be in compliance with the Final SEIR.

On April 16, 2019, by Resolution No. 2019-073, City Council approved the Subdivision Improvement Agreement (Agreement) and Final Subdivision Map for Tracy Hills Village 7B, Tract 3956, a subdivision consisting of 91 single-family residential lots. This subdivision is generally located west of Corral Hollow Road and north of Tracy Hills Drive as shown in Attachment A. The Agreement required the Subdivider to perform the Scope of Work defined in the following plan sets:

"Improvement Plans Village 7B – Tract 3956 – Tracy Hills Phase 1A," consisting of 13 sheets, prepared by Ruggeri-Jensen-Azar

"Joint Trench, Integral Communities, LLC, Tracy Hills-Village 7B-Tract 3956", consisting of six sheets, prepared by Giacalone Design Services, Inc.

"Public Street Lighting, Integral Communities, LLC Tracy Hills-Village 7B-Tract 3956," consisting of four sheets, prepared by Giacalone Design Services, Inc.

On July 7, 2020, by Resolution No. 2020-114, City Council approved the Subsequent First Amendment to the Subdivision Improvement Agreement for Tract 3956, Tracy Hills Village 7B

(First Amendment), requiring Subdivider to perform the Additional Work defined in the following plan set:

“Tracy Hills Village 7B – Tracy, California, Landscape Improvement Plans,” consisting of 10 sheets, prepared by KLA.

The estimated cost of the public improvements is as follows:

Cost Breakdown

Roadway Improvements	\$	511,610
Water	\$	219,395
Storm Drainage	\$	81,565
Sanitary Sewer	\$	184,993
Street Lighting	\$	95,700
Landscaping	\$	211,950
Total	\$	1,305,213

Dedicated Land Value	\$	314,000

Bonds were provided by Subdivider as required by the Agreement and First Amendment in amounts as follows:

<u>Bond Type</u>	<u>Agreement</u>	<u>First Amendment</u>
Faithful Performance	\$ 1,082,675	\$ 211,950
Labor and Material	\$ 1,082,675	\$ 211,950
Warranty	\$ 108,267	\$ 21,195
Monumentation	\$ 18,125	\$ 0

Faithful Performance Bonds may be released upon acceptance of improvements by the City. Labor and Material Bonds may be released six months after the recordation of the Notice of Completion as the statute of limitations period expires in accordance with Tracy Municipal Code and Civil Code §9356. Warranty bond may be released one year after City acceptance of improvements and warranty work is completed.

Monumentation Bond may be released upon the City's receipt of a letter from the project surveyor stating full payment has been received for the installation of monumentation, per Government Code Section 66496. The City is now in receipt of said letter.

A total of 3.14 acres has been dedicated as public right-of-way on the Final Map for Tracy Hills Village 7B, Tract 3956, and accepted by the City Clerk, subject to satisfactory completion of the improvements. The land value is estimated at \$314,000. Filing of the Notice of Completion by the City Clerk will finalize acceptance of public right-of-way per Tracy Municipal Code 12.36.110.

The Subdivider has completed all work required to be done in accordance with the Agreement and First Amendment and has requested acceptance of the public improvements. The City

Engineer has inspected the completed work and confirmed that the improvements conform to the Agreement, First Amendment, and City specifications and plans. Notice of Completion should now be filed by the City Clerk, to be recorded at San Joaquin County Recorder's Office. The project carries a one-year Warranty Bond for all public improvements.

FISCAL IMPACT

All improvements were completed by the Subdivider in accordance with the Subdivision Improvement Agreement and there is no fiscal impact. Maintenance will be covered under the Tracy Hills Community Facilities District.

COORDINATION

Project construction activities were coordinated with the City of Tracy's Public Works Department.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DETERMINATION

This project is in compliance with the Final SEIR certified by City Council and no additional study is required.

STRATEGIC PLAN

This agenda item is consistent with the Council approved Economic Development Strategy to ensure physical infrastructure necessary for development.

ACTION REQUESTED OF THE CITY COUNCIL

That the City Council, by resolution, (1) accept public improvements for Tracy Hills Village 7B, Tract 3956 as complete, and assume responsibility for the future maintenance and repairs, (2) authorize the City Engineer to release the Subdivider furnished bonds in accordance with the Subdivision Improvement Agreement and subsequent First Amendment, and (3) authorize the City Clerk to file a Notice of Completion with the San Joaquin County Recorder's Office.

Prepared by: Miguel Hernandez, Construction Manager

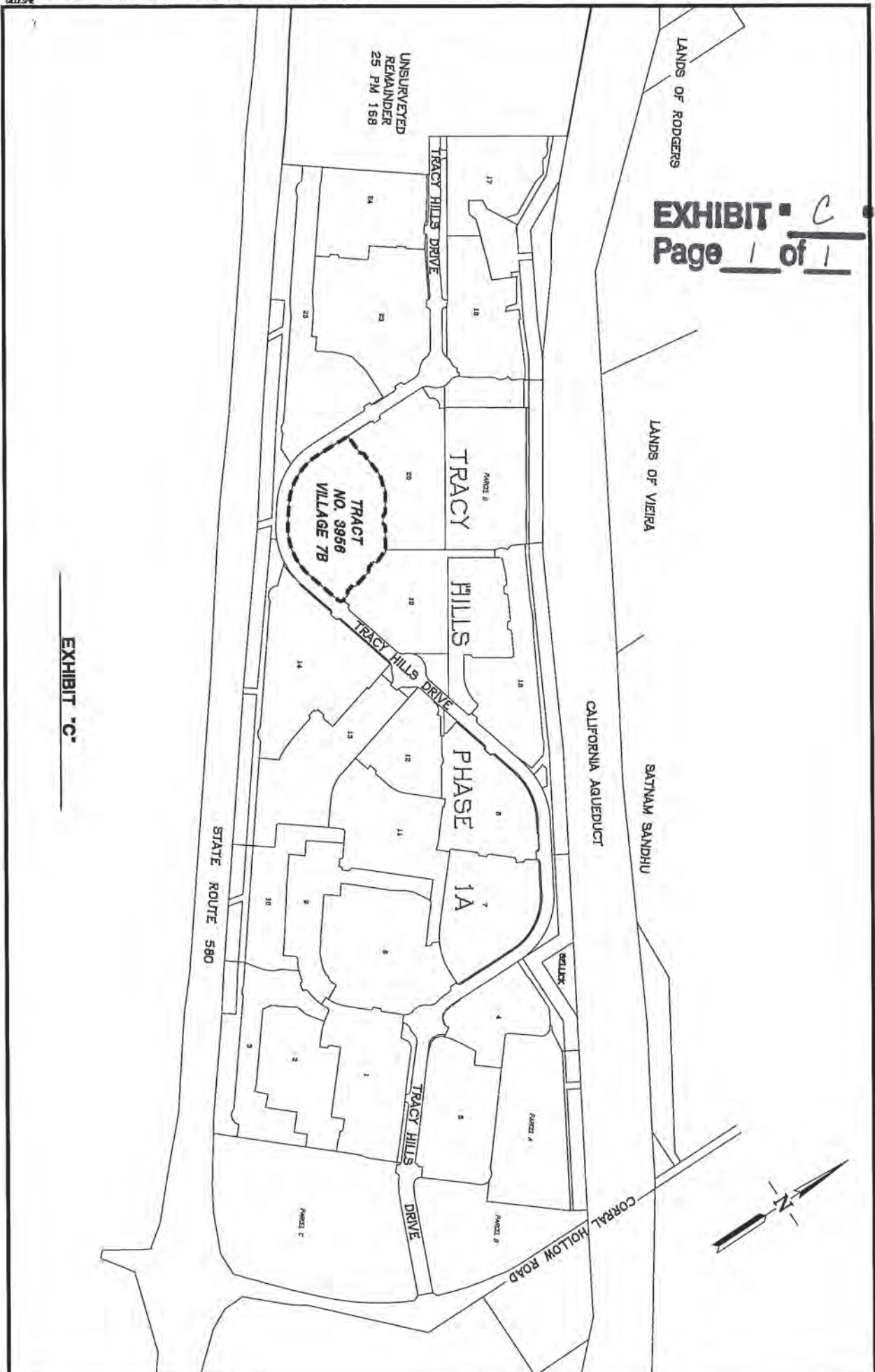
Reviewed by: Sharat Bandugula, Acting City Engineer
Sara Castro, Finance Director
Matthew Summers, Interim Assistant City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A – Location of Project

EXHIBIT -C-



CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2025-_____

(1) ACCEPTING PUBLIC IMPROVEMENTS FOR TRACY HILLS VILLAGE 7B, TRACT 3956, AS COMPLETE AND ASSUME RESPONSIBILITY FOR THE FUTURE MAINTENANCE AND REPAIRS, (2) AUTHORIZING THE CITY ENGINEER TO RELEASE THE SUBDIVIDER FURNISHED BONDS IN ACCORDANCE WITH THE SUBDIVISION IMPROVEMENT AGREEMENT, AND SUBSEQUENT FIRST AMENDMENT, AND (3) AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE SAN JOAQUIN COUNTY RECORDER'S OFFICE.

WHEREAS, on April 5, 2016, by Resolution No. 2016-062, City Council certified the Tracy Hills Specific Plan Final Subsequent Environmental Impact Report (Final SEIR) and adopted findings of fact, a statement of overriding considerations, and a mitigation monitoring program for the Tracy Hills Specific Plan Project (Application Numbers GPA10-0001, SPA13-0001, ZA13-0001, DA13-0001, TSM13-0005, and TSM16-0001); and

WHEREAS, on April 5, 2016, by No. Resolution 2016-066, City Council approved a Small-Lot Vesting Tentative Map for Tracy Hills Phase 1A, Application No. TSM13-0005, subject to Conditions of Approval, and found it to be in compliance with the Final SEIR; and

WHEREAS, on April 16, 2019, City Council approved a Subdivision Improvement Agreement (Agreement) by Resolution No. 2019-073 with Meritage Homes of California, Inc., a California Corporation (Subdivider), for the construction of public improvements within Tracy Hills Village 7B, Tract 3956, consisting of 91 single-family residential lots; and

WHEREAS, on July 7, 2020, City Council approved the subsequent First Amendment to the Subdivision Improvement Agreement (First Amendment) by Resolution No. 2020-114 with Subdivider for the construction of public landscaping improvements within Tracy Hills Village 7B, Tract 3956; and

WHEREAS, the City Engineer has inspected the completed work and recommends acceptance of all the improvements completed in accordance with the Agreement and First Amendment; and

WHEREAS, Subdivider furnished Performance, Payment, and Warranty Bonds assuring completion of the work. The estimated cost of the improvements is as follows:

Cost Breakdown

Roadway Improvements	\$	511,610
Water	\$	219,395
Storm Drainage	\$	81,565
Sanitary Sewer	\$	184,993
Street Lighting	\$	95,700
Landscaping	\$	211,950
Total	\$	1,305,213; and

WHEREAS, 3.14 acres, valued at \$314,000, was dedicated as public right-of-way on the Final Map for Tracy Hills Village 7B, Tract 3956 and accepted by the City Clerk subject to satisfactory completion of improvements; and

WHEREAS, the acceptance of these public improvements for Tracy Hills Village 7B, Tract 3956 by the City is consistent with the certified Tracy Hills Specific Plan Final Subsequent Environmental Impact Report, approved by City Council Resolution No. 2016-062 and no further review is required under the California Environmental Quality Act; now, therefore, be it

RESOLVED: That City Council of the City of Tracy hereby accepts the improvements for Tracy Hills Village 7B, Tract 3956 as complete in accordance with the Agreement and First Amendment and assumes responsibility for their future maintenance and repair; and be it

FURTHER RESOLVED: That the City Council authorizes the City Engineer to release the Developer bonds in accordance with the terms of the Agreement and applicable law; and be it

FURTHER RESOLVED: That the City Council authorizes the City Clerk to file a Notice Of Completion with San Joaquin County Recorder's Office for the improvements for Tracy Hills Village 7B, Tract 3956.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 1st day of April 2025 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:

DAN ARRIOLA
Mayor of the City of Tracy, California

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

April 1, 2025

Agenda Item 1.I

RECOMMENDATION

Staff recommends that the City Council adopt a resolution (1) accepting public improvements for Tracy Hills Village 7A, Tract 3955, as complete, and assume responsibility for the future maintenance and operations, (2) authorizing the City Engineer to release the Subdivider furnished bonds in accordance with the Subdivision Improvement Agreement, and (3) authorizing the City Clerk to file a Notice of Completion with the San Joaquin County Recorder's Office.

EXECUTIVE SUMMARY

Meritage Homes of California, Inc., a California Corporation (Subdivider), has completed public improvements for Tracy Hills Village 7A, Tract 3955, containing 91 single-family residential lots, in accordance with the Subdivision Improvement Agreement, project plans, and specifications. Staff recommends City Council accept the improvements as completed, authorize City Clerk to file a Notice of Completion with the San Joaquin County Recorder's Office, and authorize the City Engineer to release the Subdivider's bonds.

BACKGROUND AND LEGISLATIVE HISTORY

On April 5, 2016, by Resolution 2016-062, City Council certified the Tracy Hills Specific Plan Final Subsequent Environmental Impact Report (Final SEIR) and adopted findings of fact, a statement of overriding considerations, and a mitigation monitoring program for the Tracy Hills Specific Plan Project (Application Numbers GPA 10-0001, SPA 13-0001, ZA 13-0001, DA 13-0001, TSM 13-0005, and TSM 16-0001).

On April 5, 2016, by Resolution 2016-066, City Council approved a Small-Lot Vesting Tentative Map for Tracy Hills Phase 1A, Application No. TSM 13-0005, subject to Conditions of Approval, and found it to be in compliance with the Final SEIR.

On July 17, 2018, by Resolution 2018-136, City Council approved an Improvement and Inspection Agreement for Tract 3955, Tracy Village 7A, allowing Subdivider to proceed with construction of public improvements prior to final approval of plans and specifications.

On September 4, 2018, by Resolution 2018-176, City Council approved the Subdivision Improvement Agreement (SIA) and Final Subdivision Map for Tracy Hills Village 7A, Tract 3955, a subdivision consisting of 91 single-family residential lots. This subdivision is generally located west of Corral Hollow Road and north of Tracy Hills Drive as shown in Attachment "A". The SIA required Subdivider to perform the Scope of Work defined in the following plan sets:

"Improvement Plans Village 7A – Tract 3955 – Tracy Hills Phase 1A", consisting of 19 sheets, prepared by Ruggeri-Jensen-Azar.

"Joint Trench, Integral Communities, LLC, Tracy Hills-Village 7A-Tract 3955", consisting of seven sheets, prepared by Giacalone Design Services, Inc.

“Public Street Lighting, Integral Communities, LLC Tracy Hills-Village 7A-Tract 3955”, consisting of five sheets, prepared by Giacalone Design Services, Inc.

On February 19, 2019, by Resolution 2019-025, City Council approved the First Amendment to the SIA for Tract 3955, Tracy Hills Village 7A (First Amendment), requiring Subdivider to perform the Additional Work defined in the following plan sets:

“Tracy Hills Landscape Improvement Plans – Neighborhood 7A – Tract 3955 Phase 1A”, consisting of 30 sheets, prepared by FORMA.

Structural details, consisting of two sheets, prepared by Harris and Sloan.

Electrical Plans, consisting of two sheets, prepared by Candela Engineering.

Subdivider has completed all the work required to be done in accordance with the Agreement and First Amendment and has requested acceptance of the subdivision's public improvements. The City Engineer has inspected the completed work and confirmed that the improvements conform to the SIA, First Amendment, and City plans and specifications. The estimated cost of the public improvements is as follows:

Cost Breakdown

Roadway Improvements	\$	694,128
Water	\$	393,014
Storm Drainage	\$	311,964
Sanitary Sewer	\$	374,000
Street Lighting	\$	135,300
Landscaping	\$	561,681
Total	\$	2,470,087

Dedicated Land Value	\$	649,000

Bonds were provided by Subdivider as required by the Agreement and First Amendment in amounts as follows:

<u>Bond Type</u>	<u>Agreement</u>	<u>First Amendment</u>
Faithful Performance	\$ 2,415,048	\$ 561,681
Labor and Material	\$ 2,415,048	\$ 561,681
Warranty	\$ 241,505	\$ 56,168
Monumentation	\$ 33,875	\$ -

Faithful Performance Bonds may be released upon acceptance of improvements by the City. Labor and Material Bonds may be released six months after the recordation of the Notice of Completion as the statute of limitations period expires in accordance with Tracy Municipal Code and Civil Code §9356.

Warranty Bond may be released one year after City acceptance of improvements and warranty work is completed.

Monumentation Bond may be released upon City receipt of a letter from the project surveyor stating full payment has been received for the installation of monumentation, per Government Code Section 66496. City is now in receipt of said letter.

A total of 6.49 acres has been dedicated as public right-of-way on the Final Map for Tracy Hills Village 7A, Tract 3955, and accepted by the City Clerk, subject to satisfactory completion of the improvements. The land value is estimated at \$649,000. Filing of Notice of Completion by the City Clerk will finalize acceptance of public right-of-way per Tracy Municipal Code 12.36.110.

A 3.61-acre park site (also known as Neighborhood Park 2) was also dedicated to the City on the Tracy Hills Village 7A, Tract 3955 Final Map, subject to completion of improvements. Park improvements were accepted by the City Manager pursuant to Urgency Ordinance No. 1285, on September 30, 2021.

Subdivider has completed all work required to be done in accordance with the SIA and First Amendment and has requested acceptance of the public improvements. The City Engineer has inspected the completed work and confirmed that the improvements conform to the SIA, First Amendment, and City specifications and plans. Notice of Completion should now be filed by the City Clerk, to be recorded at the San Joaquin County Recorder's Office. The project carries a one-year Warranty Bond for all public improvements.

FISCAL IMPACT

All improvements were completed by the Subdivider in accordance with the SIA and there is no fiscal impact from this item. Maintenance of public improvements will be funded by the already established Tracy Hills Community Facilities District.

COORDINATION

Project construction activities were coordinated with the City of Tracy Public Works Department.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DETERMINATION

This project is in compliance with the Final SEIR certified by City Council and no additional study is required.

STRATEGIC PLAN

This agenda item is consistent with the Council approved Economic Development Strategy to ensure physical infrastructure necessary for development.

ACTION REQUESTED OF THE CITY COUNCIL

That the City Council, by resolution, (1) accept public improvements for Tracy Hills Village 7A, Tract 3955, as complete, and assume responsibility for the future maintenance and operations, (2) authorize the City Engineer to release the Subdivider furnished bonds in accordance with the

Subdivision Improvement Agreement, and (3) authorize the City Clerk to file a Notice of Completion with the San Joaquin County Recorder's Office.

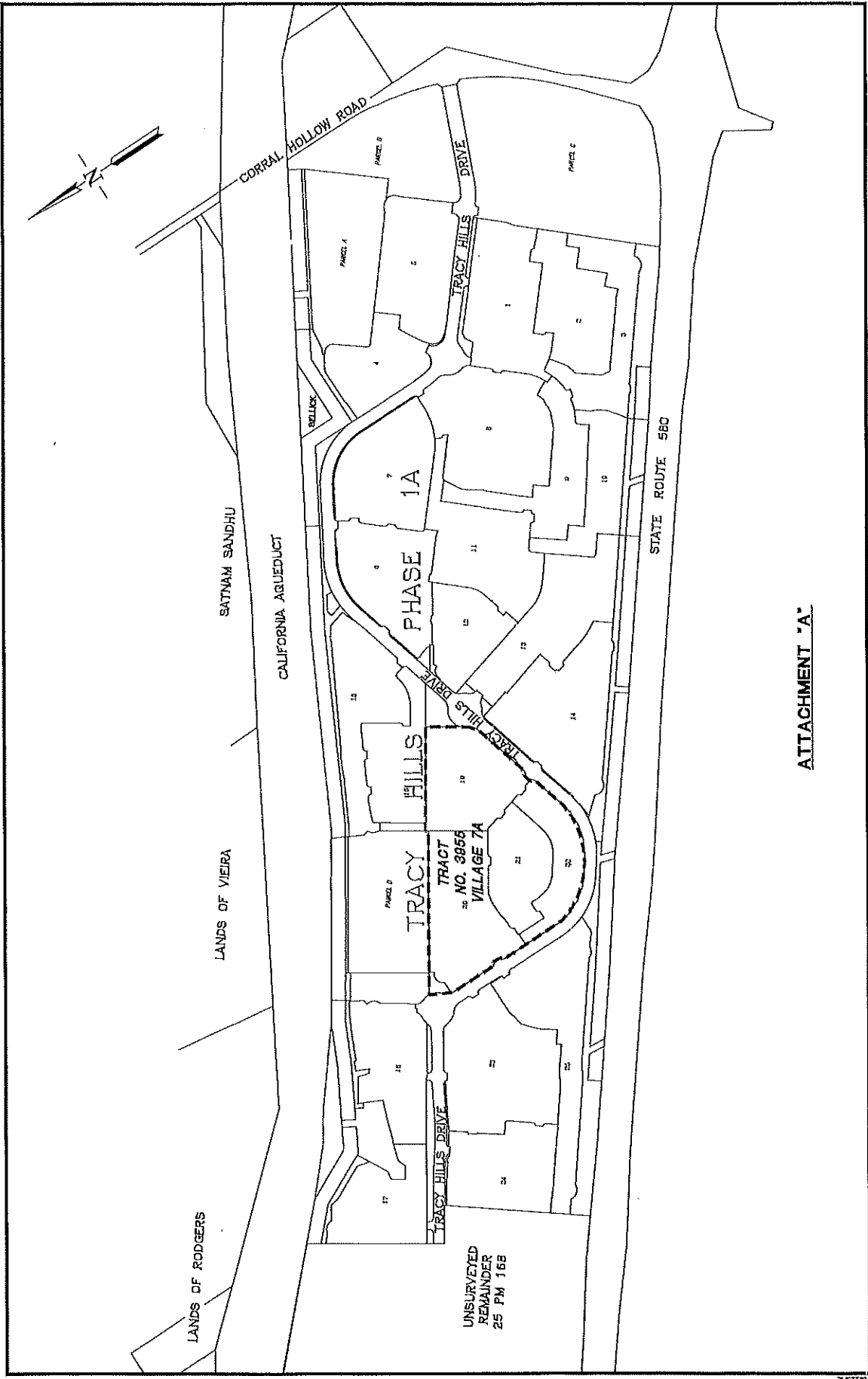
Prepared by: Miguel Hernandez, Construction Project Manager

Reviewed by: Sara Castro, Finance Director
Kamalpreet Gill, Deputy City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS:

Attachment A – Location of Project



CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2025-____

(1) ACCEPTING PUBLIC IMPROVEMENTS FOR TRACY HILLS VILLAGE 7A, TRACT 3955, AS COMPLETE, AND ASSUME RESPONSIBILITY FOR THE FUTURE MAINTENANCE AND OPERATIONS, (2) AUTHORIZING THE CITY ENGINEER TO RELEASE THE SUBDIVIDER FURNISHED BONDS IN ACCORDANCE WITH THE SUBDIVISION IMPROVEMENT AGREEMENT, AND (3) AUTHORIZING THE CITY CLERK TO FILE A NOTICE OF COMPLETION WITH THE SAN JOAQUIN COUNTY RECORDER'S OFFICE.

WHEREAS, on September 4, 2018, City Council approved a Subdivision Improvement Agreement (SIA) by Resolution No. 2018-176 with Meritage Homes of California, Inc., a California Corporation (Subdivider) for the construction of public improvements within Tracy Hills Village 7A, Tract 3955, consisting of 91 single-family residential lots; and

WHEREAS, on February 19, 2019, City Council approved the First Amendment to the Subdivision Improvement Agreement (First Amendment) by Resolution No. 2019-025 with Subdivider for the construction of public landscaping improvements within Tracy Hills Village 7A, Tract 3955; and

WHEREAS, the City Engineer has inspected the completed work and recommends acceptance of all the improvements completed in accordance with the SIA and First Amendment; and

WHEREAS, Subdivider furnished Performance, Payment, and Warranty Bonds assuring completion of the work. The estimated cost of the improvements is as follows:

Cost Breakdown

Roadway Improvements	\$	694,128
Water	\$	393,014
Storm Drainage	\$	311,964
Sanitary Sewer	\$	374,000
Street Lighting	\$	135,300
Landscaping	\$	561,681
Total	\$	2,470,087

; and

WHEREAS, a total of 6.49 acres, valued at \$649,000, was dedicated as public right-of-way on the Final Map for Tracy Hills Village 7, Tract 3955, and accepted by the City Clerk subject to satisfactory completion of improvements; and

WHEREAS, the acceptance of these public improvements for Tracy Hills Village 7A, Tract 3955 by the City is consistent with the certified Tracy Hills Specific Plan Final Subsequent

Environmental Impact Report, approved by City Council Resolution 2016-062 and no further review is required under the California Environmental Quality Act, now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby accepts the improvements for Tracy Hills Village 7A, Tract 3955, as complete in accordance with the SIA and First Amendment and assumes responsibility for their future maintenance and operations; and be it

FURTHER RESOLVED: That the City Council authorizes the City Engineer to release the Developer bonds in accordance with the terms of the SIA and applicable law; and be it

FURTHER RESOLVED: That City Council authorizes the City Clerk to file a Notice of Completion with the San Joaquin County Recorder's Office for the improvements for Tracy Hills Village 7A, Tract 3955.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 1st day of April 2025 by the following vote:

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

DAN ARRIOLA
Mayor of the City of Tracy, California

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

Agenda Item 1.J

RECOMMENDATION

Staff recommends that the City Council approve amendment no. 2 to the professional services agreement with The Pun Group, LLP to add cannabis revenue auditing services.

EXECUTIVE SUMMARY

The City is required to have an annual audit of the City's financial records by a licensed accounting firm. The City typically contracts for auditors for a period of 3 to 5 years with an option to extend the contract. In January 2021, Council approved a Professional Service Agreement with The Pun Group for Professional Auditing Services for an initial term of three years. In August 2024, Amendment 1 was approved under City Manager Authority utilizing the option to extend for an additional three years. As the base agreement already exists, staff is recommending a second amendment to the agreement to reflect the additional scope of work for Cannabis Revenue Auditing Services.

BACKGROUND

The financial records of the City are required to be audited each year by a public accounting firm. In addition to the audit of City accounts, many grants and federal assistance programs also require a specific audit of these revenues and expenses. The Pun Group, a Certified Public Accounting (CPA) firm is used to complete the City's audits. This contract has been extended under City Manager authority.

In October, Finance staff completed an informal request proposal for Cannabis Revenue Auditing Services to Conduct an annual Revenue Audit to validate the accuracy of the sales reported to the City by cannabis businesses during the review period. Staff received two qualified proposals. The proposal from The Pun Group (Attachment A) has been evaluated by the Finance Department in terms of the firm's experience, abilities, quality of proposal and price.

ANALYSIS

Staff selected the proposal of The Pun Group. This firm has excellent qualifications and their understanding of the scope of the audit was the best fit. This proposal for the additional scope of work for Cannabis Revenue Auditing Services is proposed for \$26,000 per year, for two years totaling \$52,000. The Pun Group has provided audit services for the City's annual external audit since 2021 under an initial three-year contract in the amount of \$295,330. In August 2024, the City Manager approved amendment number 1 in the amount of \$313,407 to extend the services for another three years. With the addition of cannabis revenue auditing services, staff recommends contract amendment number 2 in the amount of \$52,000 bringing the total overall contracted amount to \$660,737. (Attachment B)

FISCAL IMPACT

The fee for additional services proposed by The Pun Group for the Cannabis Revenue Audits is \$26,000 per fiscal year for a two-year total of \$52,000. The total amount for the amended Agreement will not exceed \$660,737 (Attachment B). This is a general fund expense and audit fees are included in the current budget. Receipts from the City's 6% Cannabis Tax (TMC 6.40.050) offset the expense incurred for auditing services.

The Pun Group	Date	Amount
Original contract	January 2021	\$295,330
Amendment No.1	August 2024	\$313,407
Amendment No.2	April 2025	\$ 52,000
Total		\$660,737

STRATEGIC PLAN

This agenda item addresses Goal 3 of the Governance Strategy to ensure continued fiscal sustainability.

ACTION REQUESTED OF CITY COUNCIL

Staff recommends that the City Council approve, by resolution, an Amendment to the Professional Services Agreement with The Pun Group, LLP to include Cannabis Revenue Audit Services for the remainder of the three-year extended term at a cost of \$52,000 with a total not to exceed amount of \$660,737.

Prepared by: Sara Castro, Director of Finance

Reviewed by: Karin Schnaider, Assistant City Manager
Matthew Summers, Interim Assistant City Attorney

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

- Attachment A: The Pun Group Proposal
- Attachment B: Amendment to the Professional Services Agreement (Amend. 2)
- Attachment C: Original Professional Services Agreement
- Attachment D: Amendment to the Professional Services Agreement (Amend. 1)

CITY OF TRACY

Submitted By:

Andrew M. Roth, CPA

Engagement Partner

2121 N. California Blvd., Suite 290
Walnut Creek, CA 94596

(858) 242-5102 | andrew.roth@pungroup.com

November 5, 2024

PROPOSAL

Cannabis Revenue Audit Services



Image Credits: John L./Yelp.com





Kenneth H. Pun, CPA, CGMA
Founder & Managing Partner

WHY CHOOSE THE PUN GROUP LLP?

“ The Pun Group’s most valuable asset is our people, they and their deep experience drive our every interaction with clients. ”

- Big firm expertise, small firm values
- Personal attention meets technical expertise
- A unique firm culture
- Innovation embraced
- Achievable plans to move your organization forward

The Pun Group LLP is recognized for its professionalism, integrity and for providing clients with practical solutions unique to their circumstances and issues. You will receive a superior level of service and a quality audit.

Thank You!

Thank you for allowing us to submit our qualifications to provide you with Cannabis Revenue Audit Services.

The Pun Group LLP
Certified Public Accountants and Business Advisors

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**For the 4th consecutive year,
The Pun Group has been honored with the
"Best of Accounting" Award.**



The Pun Group ^{LLP} is proud to have won 2024's Best of Accounting® award from ClearlyRated for consistently delivering exceptional service to its clients for the fourth consecutive year.

Winners of such awards have proven to be industry leaders in service quality based entirely on ratings provided by their clients. On average, clients of 2024 Best of Accounting winners are 70% more likely to be satisfied than those who work with non-winning firms.

"I am pleased to introduce the 2024 Best of Accounting winners alongside their validated service ratings on ClearlyRated.com," said ClearlyRated's CEO, Eric Gregg. "These firms have demonstrated a remarkable commitment to delivering amazing experiences despite another year of upheaval and macroeconomic uncertainty. Hats off to these service leaders - it's truly an honor to recognize and celebrate their achievements."

The Pun Group ^{LLP} received satisfaction scores of 9 or 10 out of 10 from 94.1% of their clients, significantly higher than the industry's average of 50%.

Our firm excelled in five key areas: Responsiveness, Quality, Value, Needs Understanding, and Proactive Approach.

About ClearlyRated

Rooted in satisfaction research for professional service firms, ClearlyRated utilizes a Net Promoter® Score survey program to help professional service firms measure their service experience, build an online reputation, and differentiate on service quality.

For the 2nd consecutive year, INSIDE Public Accounting has recognized The Pun Group as one of the Top 500 Firms and one of the fastest-growing firms.



"Excellent customer service and staff and partners are expert in their fields."

Lani H.

State and Local Government Client



"The Firm has consistently exceeded our expectations as client."

Clint O.

State and Local Government Client



"We started using Pun Group when the pandemic first started two years ago so had a little apprehension about doing everything remotely with a new firm. But the audit went very well and was completed on time without problem."

Kevin W.

State and Local Government Client



"An excellent partner and amazing service."

Jim T.

Private Sector Client





November 5, 2024

City of Tracy
Sara Castro, Director of Finance
333 Civic Center Plaza
Tracy, CA 95376

Re: RFP for Cannabis Revenue Audit Services

Dear Sara Castro:

Please allow us to introduce our Firm and share our qualifications and proposed services plan for the City of Tracy (the "City") according to your Request for Proposals for Cannabis Revenue Audit Services.

The Pun Group ^{LLP} (the "Firm") has the knowledge and experience necessary to become the City's next public accounting firm and the work plan to ensure a smooth process.

This letter is an acknowledgment of the Firm's understanding of the work to be performed. We are offering our commitment to deliver all of the required work, complete the audit, and issue the necessary auditor's reports within the periods outlined by the City. No subcontractors will be utilized for this engagement.

The Pun Group continues to be the right choice for the City of Tracy because:

We Understand the Demographics and Your Needs. The Pun Group is reputable for its governmental practice. We have been selected to provide services such as compliance audit services, cannabis regulatory compliance inspections, tax audits, and implementation of tax collection and tax audit policies and procedures to several municipalities such as the City of Stockton, City of Salinas, City of San Bernardino, and the City of Chula Vista.



Recognized Leader in the Governmental Industry. We are a small national Firm with licenses in the States of California, Arizona, and Nevada and a proven leader in professional services to the government sector. All key engagement team professionals are licensed to practice as Certified Public Accountants and meet the Continuing Professional Education requirements under US GAO's Government Auditing Standards to perform the proposed audits. The partners and all employees proposed to perform the requested services do not have a record of substandard audit work nor have any outstanding claim of substandard practice or unsatisfactory performance pending with the State Board of Accountancy or other professional organizations. In addition, we are members of the national AICPA Audit Quality Center.

We strongly believe that part of our success is credited to our professionals' participation in various industry-leading organizations. Such affiliations are critical to addressing emerging accounting and auditing issues within the industry environment.



You'll Work with a Team that Embraces Innovation and Continuous Improvement. Our Firm is committed to continuous improvement as it relates to service delivery. We embrace innovation and identify areas of technological enhancements in our audit and project management approaches. For example:

Secure Data File Transfer System. In order to improve audit efficiency, workflow management software plays an essential role between your organization and our engagement team. We employ a secure data file transfer system called Suralink. Suralink's dynamic request list is integrated with our secure file hosting system for seamless document-request coordination, including the upload of large-size files. It means all our requests are in one place, updated in real-time, and accessible by everyone working on the engagement. Not only makes the operation more cost-efficient, but it also enables you and your team to spend your time getting the job done, not reconciling a messy list of outstanding items. In addition, Suralink's dashboard allows you to visualize the process of document-request fulfillment.

AI Auditor. The Pun Group leverages the technology and research tools required to provide excellent services to its clients. With the usage of Artificial Intelligence (AI) technology, the Firm is capable of issuing all reports requested faster than other audit firms without exposing the City to unnecessary risks.

Remote Auditing Capability. Remote working arrangements have suddenly become the "new normal" in these trying times. Our Firm has deployed top-notch technology and fully transitioned to "remote auditing," offering our clients the quality services they deserve while being fully "remote" or operating in a "hybrid" schedule. "On-site" audits are still the Firm's preferred method, and we'll continue to offer and promote those as well.



Knowledge is Shared with You. As part of our pledge to keep you updated on new technical accounting and financial issues, we implemented our 2023 *Virtual* Government Accounting Conference, which qualifies for up to 15 hours of CPE – nearly double what other firms offer. These online sessions are free of charge and part of the service package provided to you. More details and dates can be found on the "*Client Training Webinars*" topic under this proposal.

The Pun Group is proud of its inclusive values and is an avid promoter of equality and diversity. In addition, the Firm is an equal-opportunity employer and complies with all federal and state hiring requirements. We're proud of supporting affirmative-action philosophies and work hard to provide opportunities for self-enhancement to members of disadvantaged groups.

This proposal is a firm and irrevocable offer valid for one hundred twenty (120) days following the closing date for the receipt of all proposals.

Finally, we would like to emphasize one additional point: **We want to keep your trust and your business!** We are confident that the energetic and experienced team we have assembled is the right one for the City.

Our commitment to serving the City of Tracy cannot be adequately conveyed in a letter, and I look forward to continuing the discussion with you. I'm assigned as your primary contact for contract negotiations and stand steadfast to serve as your engagement/lead partner. I'm also authorized to legally bind the Firm. Should you have any questions or wish to discuss this proposal, please do not hesitate to contact me at (858) 242-5102 or by email at andrew.roth@pungroup.cpa.

Sincerely,

Andrew M. Roth, CPA | Partner | The Pun Group LLP
2121 North California Boulevard, Suite 290, Walnut Creek, CA 94596

Understanding and Approach to the Scope of Work

Scope of Work, Audit Approach, and Methodology

The City of Tracy is requesting the Firm to perform Cannabis Revenue Audit Services. The Firm will provide the requested services by:

- Obtaining an understanding of the City's request
- Utilizing our experience and background in cannabis audit services
- Obtaining an understanding of the City's cannabis tax ordinance and other industry regulations

In addition, the Firm will:

- Conduct an annual Revenue Audit to validate the accuracy of the sales reported to the City during the review period. The Revenue audit tasks could include, but are not limited to:
 - o Review of point-of-sale reports, bank statements, profit and loss statements, and inventory purchases to determine if unrecorded sales might have taken place.
 - o Review of Sales taxes reported to CDTFA.
- Issue Audit Notification letters, as approved by the City, to each cannabis business.
- Provide a draft audit report to the cannabis business, allowing them sufficient time to respond or appeal in accordance with the City ordinance. The firm will review any documentation submitted by the business to dispute the findings and will adjust the tax or fee assessment as necessary before issuing the final report to the City.
- Issue the Final Audit report and include the methodology used to conduct the revenue audit and audit findings.
- Coordinate with the City at the time of each audit.

Approach to Work

In order to deliver the services requested by the City of Tracy, the Firm will perform the following steps:

Cannabis Business Gross Receipts and Square Footage Taxes	• Evaluate consistency between gross receipts and other information reported on financial statements to what was reported to the California Department of Tax and Fee Administration for sales and use tax, cannabis excise tax, and/or cultivation tax. • Evaluate consistency between gross receipts reported on financial statements to gross receipts reported to the City. • Verify the cultivation canopy as compared to the maximum canopy reported on the business license application. Cultivation canopy is measured by the aggregate area of vegetative growth of live marijuana plants on the premises, including the area occupied by vertically and horizontally stacked canopies, in compliance with City's Code. This will be calculated by measuring the distance of all cultivation canopies in square feet.
Collection and Audit of any Cannabis Tax	• Ensure each cannabis facility is complying with applicable portions of the City's Code and is submitting the true amount of gross receipts and tax.

**Collection and
Audit of any
Cannabis Tax
(Continued)**

- Review business license tax returns submitted by the business and collected by the City and compare to each business's records for the time period identified by the City to determine the accuracy and timeliness of gross receipts returns filed with the City:
 - a. Trace and verify the gross receipts reported on the quarterly gross receipts returns prepared by the business to gross receipts recorded in the business's accounting records to verify that these were in accordance with the City's regulations;
 - b. Verify compliance with City's Code.
 - c. Verify the reasonableness of reported revenues of the cannabis businesses by performing additional procedures necessary to reach a conclusion.
- Following the completion of a business license tax audit of each cannabis facility, we will issue all reports to the City in accordance with applicable standards from generally accepted auditing standards (GAAS).
- The report for each cannabis business license tax audit will include the following information:
 - a. The overall conclusion of whether or not the cannabis business paid all required business license taxes and fees for the time period specified.
 - b. Any exceptions, errors, or areas of noncompliance were identified as a result of the procedures performed. This includes any significant deficiency in the design or operation of the internal control structure, including but not limited to the following areas: cash handling, inventory control, point of sale systems, and any other areas that the auditor deems necessary for purposes of accurately reporting business license taxes due to the City.
 - c. Express an opinion regarding the taxes remitted to the City by the cannabis business, or state that an opinion cannot be expressed in the auditor's report. If the Firm concludes, it cannot express an overall opinion. The engagement team will state the reasons, therefore, in the auditor's report.
- Examine records and documentation that demonstrate that all cannabis goods have been obtained from, and are provided to, other licensed cannabis businesses and that details all the revenues and expenses, and assets and liabilities of the business.
- Examine books of account, invoices, copies of orders and sales, shipping instructions, bills of lading, weigh bills, bank statements, including canceled checks and deposit slips, and all other records necessary to show all transactions of the cannabis business.

Methodology and Segmentation of Engagement

Cannabis Tax Audit

Once an audit date has been confirmed with the Licensee, a pre-audit list of documentation we will need in order to perform our audit will be provided to the Licensee prior to the audit date. Firm dues dates for all documentation will be communicated through the letter.

Below is an example of what documents we will need in order to perform the business license audit:

- Copy of business license.
- Download from the Licensee P.O.S or other ERP for all sales transactions for the period under audit.
- Obtain a copy of the business license tax remittance under audit.
- Detailed general ledger for the period under audit for sales and purchase transactions.
- Obtain federal and state tax returns.
- Obtain sales tax returns.
- Cash / safe log or bank statements for the period under audit.

We will conduct an interview with the Licensee to obtain an understanding of their internal controls over cash receipts, revenue, sales, purchases, or other identified significant transaction classes to determine what processes and procedures are in place to properly identify and record those transactions. Suppose inadequate controls are not in place; additional procedures or testing samples may be needed.

Our Firm will also use MindBridge AI Auditor to perform financial analysis of 100% of sales and purchase transactions, with zero scriptings, meaning we can provide greater assurance than ever before. With Ai Auditor, cumbersome CAAT tools are a thing of the past, and with them goes the associated risk of missing errors or fraud that may lurk in financial data. The AI platform is stacked with traditional tests based on domain expertise and business rules. The analysis is also greatly enhanced. Statistical methods like regression and Benford's Law are applied, as are numerous machine learning algorithms and AI seeded with knowledge from the domain expertise of some of the world's top CPAs.

We will then calculate the cost of goods sold and evaluate whether the amount is reported accurately to the tax returns and other reports.

In addition, we will:

- Compare sales data from the general ledger or P.O.S. to the sales tax returns and investigate any significant variances.
- Test sales, purchase, and cash log / safe transactions on a sample basis and obtain the necessary supporting documents related to the transaction to determine the accuracy and whether identified controls are being followed.
- For cultivation facilities, compare the total maximum canopy as indicated on the business license application with the auditor-measured maximum canopy.

Tasks and Deliverables

- Initial meeting with the City' dedicated team to determine the competition schedule of the audits of business licenses and finalize the report template.
- We request the City to initially communicate to all licensees that audits will be performed by a third-party auditor within an agreed-upon timeframe.
- Our project team will reach out to licensees to confirm onsite audit dates.
- Our project team will also facilitate and assist licensees in gaining access to the secured Suralink portal and walkthrough pre-audit request items to Licensee.
- Engagement team to review all the uploaded documentation prior to the onsite audit and run a detailed general ledger on the MindBridge Ai Auditor software. Also, our team will detail our audit work plan and make sample selections based on the risk analysis identified through the system.
- Based on the analysis performed and sample selection, our audit team will perform a site visit and obtain audit evidence in order to complete our audit task.
- After completion of the audit task, a draft custom-tailored report and presented to the City for review.
- Upon completion and approval from City officials, we will obtain Management Representation Letter from the Licensee and finalize the report.

Other Specific Tasks

All specific tasks that we will require are clearly communicated and agreed upon at the initial meeting with the City. We request the City staff to formally communicate a clear timeframe and completion schedule with the Licensee, and the audit task will be completed by the Firm. Our firm's responsibility is to communicate with the City on the progress and any challenges identified timely.

Our project team will obtain copies of all business license tax remittances for licensees for the period under audit and will perform testing surrounding the completeness of the sales transactions to report any differences between our audit and the tax remittances.

All findings will be communicated to the City and the Licensee upon the completion of our analysis.

Full-Time Government Auditors

As full-time government auditors, we understand that governmental entities do not operate independently but in an increasingly complex web of local, state, and federal relationships. We know how these relationships work, what they mean at the local level, and how every public organization's focus on resource management is critical to success.

Also, while many accounting Firms can provide services, not all can build an excellent working relationships with their clients. The Pun Group LLP prides itself on developing lasting, personal relationships with our clients. Our hands-on partner involvement and low personnel turnover are crucial tools to our success and are highly beneficial to the City.

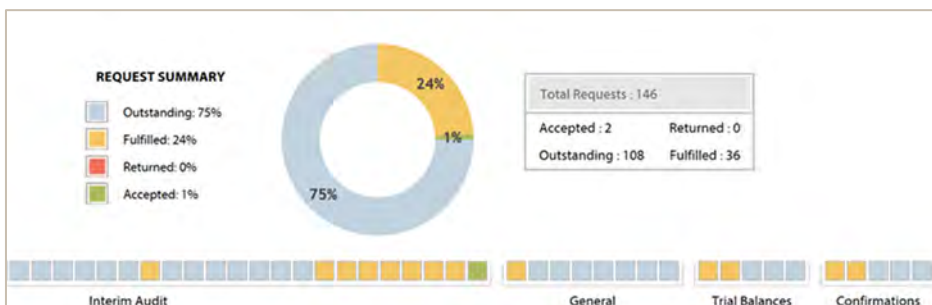
Local Office's Information Technology (IT) Audit Capabilities

The Pun Group LLP continues our efforts to invest in our IT system to enhance our security further and promote audit efficiency.

Top security for your data is the key to our success. When we have your data virtualized, our Firm takes all the preventive steps to avoid putting your information at risk. Our In-House IT administrator maintains our server to ensure our IT environment is continuously updated with the latest security fixes. Through VPN and Microsoft Remote Desktop, our In-House network administrator can lock down files and system access from a single point, limiting the ability of remote sites to take data from our server.

Access to systems from anywhere and anytime. With more mobility being the norm rather than the exception, our engagement team needs robust access to the engagement files when they are working in your office. Accounting and Auditing Software applications are installed in our "Private" server and can be securely accessed through VPN and Microsoft Remote Desktop. The Firm uses CCH ProSystem fx® Engagement for audit documentation, which allows real-time synchronization of the work papers and instant collaboration quality control review.

Secure Data File Transfer System. In order to improve audit efficiency, workflow management software plays an essential role between your organization and our engagement team. We employ a secure data file transfer system called *Suralink*. *Suralink*'s dynamic request list is integrated with our secure file-hosting system for seamless document-request coordination. It means all our requests are in one place, updated in real-time, and accessible by everyone working on the engagement. As a client, you no longer have to manually maintain a spreadsheet amongst several people, only to repeat the process in a day or two. Not only makes the operation more cost-efficient, but it also enables you and your team to spend your time getting the job done, not reconciling a messy list of outstanding items. The *Suralink* dashboard, as shown below, allows you to visualize the process of document-request fulfillment.



BIG FIRM EXPERTISE. SMALL FIRM VALUES.

Our professional backgrounds at major national firms showed us how to solve complicated business and accounting challenges, but the sense of personal connection was missing.

We launched The Pun Group because we believe every client deserves to work with experienced business advisors and CPAs who have the time – and take the time – to create an authentic connection. Every client is our top priority!



A UNIQUE CULTURE.

"Personalization" is not just a buzzword – it's part of our firm's culture. We take a personal approach to everything we do. We collaborate with our clients, so they're always part of the process. We listen to our staff to make sure they have the right support and resources to do a great job. Getting to know others and discovering how we can serve them better is not just a sign of good business practices; it's a sign of good people.



INNOVATION EMBRACED.

New ideas keep you ahead of the game. From leveraging the value of emerging technologies to further refining trusted processes, we adopt proven solutions to meet your needs.



WHERE YOU GO, WE GO. WHERE YOU GROW, WE GROW.

Our success is defined by how you achieve yours. Partner with accomplished accounting and financial professionals who are laser-focused on taking your business to the next level.

Experience

About the Firm

Established in 2012, The Pun Group, LLP stands as a limited liability partnership comprising a team of sixty dedicated professionals who specialize in providing auditing, accounting, and advisory services. Our firm, which includes Certified Public Accountants and Business Advisors, has garnered recognition as one of the foremost accounting entities in Orange County, as acknowledged by the Orange County Business Journal. Additionally, we proudly secure a place among the CalCPA Top 150 firms.

Our distinction within the industry lies in the fusion of hands-on experience and pragmatic knowledge demonstrated by our audit professionals. This combination sets our firm apart. We possess a profound grasp of prevailing regulations and issues bolstered by our technical acumen. Furthermore, our commitment to diligence, integrity, and collaborative teamwork is evident in every engagement we undertake, thus contributing to our clients' success.

The Partners' Group is a distinguished assembly comprising notable professionals such as Kenneth Pun, Frances Kuo, Coley Delaney, Andrew Roth, John Georger Jr., Jim Fritzsche, and Sophia Kuo. We specialize in providing auditing, accounting, and advisory services to numerous governmental entities across the United States. With a collective experience of over two centuries, we have established ourselves as a trusted business ally and have gained recognition as industry leaders in a rapidly expanding market. Our dedication to the field is evident through our work with nearly 100 government and not-for-profit audit clients, demonstrating our unwavering passion and unparalleled municipal experience.

Moreover, our practices adhere to professional standards embraced nationwide within the United States of America, including the rigorous criteria outlined in the *Government Auditing Standards* issued by the Comptroller General of the United States.

The Firm's headquarters are located in Orange County, California, with five branches in San Diego, Walnut Creek, Sacramento (California), Las Vegas (Nevada), and Phoenix (Arizona).

Our *Walnut Creek office*, located at 2121 North California Blvd., Suite 290, Walnut Creek, CA 94596, will perform the requested services for the City. However, we may assign additional staff from our other offices to the engagement at no extra cost to the City. No subcontractors will be used in this engagement.

Global Capabilities

The Pun Group, LLP is an independent member of Allinial Global, an association of over 100 independent accounting and consulting firms. Based in North America, Allinial Global offers international support by connecting its member firms to providers and global networks of accounting firms worldwide.

OUR FIRM AT A GLANCE



65 full-time auditing, accounting, tax and advisory professionals



One of the fastest growing firms serving California, Nevada and Arizona



Client retention rate: 90 – 95%



6 offices across 3 states



OUR AFFILIATIONS



Our Services

Our partners and seasoned professionals are always available, guiding clients through their periods of rapid growth as well as difficult times. We are able to do that by offering a portfolio of accounting services that are as diverse as the jurisdictions and entities themselves. The Pun Group LLP has successfully provided professional auditing, accounting, financial reporting, and management advisory/consulting services to a broad spectrum of governmental entities.



ASSURANCE

- Financial statements audits
- Compliance audits
- Performance audits
- Internal audits
- Service organization controls audits



ADVISORY

- Operational reviews/risk advisory services
- Forensic investigation
- Financial condition analysis
- Organizational structure review
- Cash flow analysis
- Debt restructuring consultation
- Litigation restructuring consultation



OTHER SERVICES

- Assistance with the preparation and review of the Annual Comprehensive Financial Report
- Government property lease excise tax compliance review
- Sub-recipient monitoring
- Implementation of new GASB pronouncements
- Audit readiness services
- Contract Finance Director/Accountant services

Cannabis Compliance Services

Many cities have authorized commercial cannabis to operate within their local jurisdiction. Compliance issues are common in California's newly regulated cannabis industry, which is no surprise given the complexity of the state's regulatory landscape.



The Pun Group LLP has developed a platform to guide government agencies and commercial enterprises through the new and challenging steps in this emerging market. We have partnered with *Simplifya*, which has developed a cloud-based government agency/licensee compliance solution. *Simplifya*, headquartered in Denver, Colorado, and at the forefront since legalization in Colorado, has been an industry leader in commercial cannabis compliance since 2016. This new software allows government agencies to monitor their licensees at every stage of the approval process, from initial licensing to renewal and continuing disclosure requirements. Your communities demand that these new cannabis businesses operate based on the ordinances that you have passed. We can help ensure businesses are working in compliance, and when they are not, your team receives an immediate notification.

The Pun Group LLP has proven itself as a leader in the assurance and advisory field in the government arena. With the addition of *Simplifya* to our service offering, we have strengthened our position as a leading firm to help with your compliance needs and in unconventional areas as they emerge.

Who We Are

The engagement team was carefully selected to provide the City with all the services needed to complete the audit successfully. Your assigned Engagement and Technical Partners will be personally involved in the project, leading a team that has significant experience in *governmental auditing*. You can be confident that our broad experience and technical capabilities will allow us to provide technical support, interpret findings, and offer practical solutions to any issues that may arise.

Because of the "familiarity threat" under the professional audit and independence standards that may exist in long-term relationships with audit firms, the Firm is committed and has sufficient resources to rotate engagement partners, managers, and or supervisors assigned to the City' audit with personnel with similar or higher qualifications and experience in order to overcome this threat.

If the Firm changes key personnel, we will provide the City with a written notification. **Engagement partners, managers, and specialists will only be changed with the express prior written permission from the City.** Audit personnel may be replaced only by those with similar or better qualifications and experience.

About the Team Assigned to the Project

The engagement team was carefully selected to provide the City with all the services needed to complete the scope of services successfully. They are fully qualified to perform financial accounting services for the City, and their extensive experience will be critical to the process. You can be confident that our broad experience and technical capabilities will allow us to provide technical support, interpret findings, and offer practical solutions to any issues that may arise.

The Pun Group Engagement Team



Andrew M. Roth, CPA | Engagement/Lead Partner

Andrew Roth holds the position of Partner within the organization and will act as the primary liaison for your team. He possesses an Advanced Certification in Single Audits bestowed by the AICPA (American Institute of Certified Public Accountants). With an extensive decade-long tenure in the realms of government and not-for-profit sectors, Andrew boasts a diverse range of proficiencies.

Mr. Roth will actively serve as the Engagement/Lead Partner, overseeing the Engagement Team, developing the audit plan, reviewing fieldwork for quality, approving final reports, and communicating with the Finance Department. He will also be responsible for the timely delivery of all services to the City.



Masood Yousufzai | Revenue Analyst

Masood Yousufzai, a Manager within the Firm, brings over six years of experience in governmental accounting, with a strong focus on financial reporting, forecasting, and fiscal data analysis. In his role as a Revenue Analyst, he collaborates closely with Mr. Siris, working on key aspects such as ledgers, journals, and comprehensive financial reports.

Mr. Yousufzai's expertise in policy development, particularly concerning tax remittance and the City's tax collection capabilities, positions him to provide essential support to the Engagement Manager. He plays a crucial role in planning and executing detailed audit procedures, identifying potential risks unique to the cannabis industry, and ensuring that all audit activities adhere to the highest standards and regulatory requirements. His contributions are vital to delivering precise and insightful analyses that support the City's compliance and financial objectives.



Christopher Quezada | Senior Auditor

Christopher is a Senior Auditor within the Firm. He will secure the effective implementation of the services approach while assisting in the timely delivery of the requested services.

Mr. Quezada will serve as the primary point of contact for your team and will work to ensure the services are conducted within the deadlines and will provide updates on our team's progress to the partners and you.



Zeeshan Siddiqui | Advisory Associate

Zeeshan Siddiqui, an Advisory Associate, supports the audit process for City staff, Mr. Roth, and Mr. Yousufzai by assisting in planning, risk identification, and compliance. His expertise helps ensure accurate and thorough audit reports that meet the City's regulatory needs.

He will ensure timely task completion and maintain clear communication between the engagement team and the City.

Continuing Education and Professional Development

Because of our commitment to providing the highest quality of services to the City, we provide our professionals with technical training to ensure our people stay current on topics within the industry sectors and better equip themselves to serve our clients.

All professionals are required to obtain continuing education that exceeds the requirements of the American Institute of Certified Public Accountants (AICPA) and, where applicable, *Government Auditing Standards*. Our professionals participate in continuing education programs through the following means:

- Governmental Accounting and Auditing Conference sponsored by AICPA.
- Webinar sponsored by AICPA Government Audit Quality Center.
- Annual Conference sponsored by California Society Municipal Finance Officers.
- Governmental Accounting and Auditing Conference sponsored by CalCPA.
- The Pun Group in-house training on government-specific topics, including but not limited to: GASB updates, Government Auditing Standards Revision, Fraud in State and Local Governments, COSO Internal Control-Integrated Framework, Audit of State and Local Governments, Single Audit, and Mindbridge AI Auditors™.



In 2023, our government professionals received an average of 52 hours of continuing professional education, compared with the 40 hours of accounting industry requirement.

By expanding our knowledge through these seminars/conferences, we can provide the right solutions to our clients.

Staff Continuity

The Pun Group ^{LLP} is committed to maintaining staff continuity throughout audit engagements, and we can assure you that the partners assigned to this audit will be involved throughout the entire contract term.

While we cannot guarantee that our staff-level members will stay with the Firm, we encourage loyalty by paying competitive wages, offering opportunities for promotion, using state-of-the-art equipment, and providing excellent working conditions. Also, we offer benefits, including retirement plans, medical plans, profit-sharing programs, and continuing education.

Quality-Control System

Our Firm meticulously monitors the quality and contents of our reports. The Pun Group ^{LLP} is 100% committed to providing only the highest grade of work possible for our clients and for those who rely on our audits. The Firm strives to exceed professional industry standards because of the continuing respect for our clients and our emphasis on creating long-lasting relationships. The Pun Group ^{LLP} works exclusively with those who share the same moral integrity and values.

Our quality-control system has been crafted with excellence in mind. It not only meets AICPA standards but also matches our own elevated standards, which include following various professional development activities.

Engagement Team Resumes

The City of Tracy deserve experienced professionals who work as a team. The Pun Group ^{LLP} will provide qualified professionals to perform the audit. No subcontractors will be utilized to perform the requested services. Resumes for key engagement team members are presented as follows:



Andrew M. Roth

CPA

**Engagement/
Lead Partner**



EMAIL

andrew.roth@pungroup.cpa



WEBSITE

www.pungroup.cpa

Expertise:



CITIES



COUNTIES



TRANSPORTATION
AGENCIES



ENTERPRISE
OPERATIONS



HIGHER
EDUCATION



NOT-FOR-PROFIT

Licensed to Practice in:
California
Arizona

EXPERIENCE

Andrew Roth holds the position of Partner at The Pun Group, LLP, bringing to the table a wealth of experience spanning over twelve years in the governmental and not-for-profit sectors. His expertise encompasses a wide array of domains including financial audit and reporting adhering to both governmental and financial accounting standards. Andrew possesses adept skills in assessing internal controls following the principles outlined in the Committee of Sponsoring Organizations of the Treadway Commission (COSO) Integrated Framework. He is also well-versed in conducting Single Audits within the framework of Uniform Guidance, overseeing the subrecipient monitoring process for Federal Grants, managing corporate financial reporting, leveraging data analytics, and navigating through matters of exempt taxation.

His client portfolio is diverse, comprising moderate to large municipalities encompassing cities and counties, municipal transportation districts, water districts, municipal electric utilities, and not-for-profit organizations driven by a mission to build communities. Andrew effectively oversees governmental agency clients with federal grant expenditures ranging from \$100 million to \$750 million annually.

In his various engagements, Andrew has taken charge of leading service delivery. This has entailed active involvement in planning processes, implementing audit work plans, supervising multiple audit teams, and providing regular team updates on shifts in compliance testing requirements for Single Audits. He has been instrumental in preparing essential deliverables, including Annual Comprehensive Financial Reports, Single Audits, Compliance Reports, Data Collection Forms, and presentations to City Councils and Boards. Additionally, he has contributed his expertise as a guest speaker, covering topics related to Federal grants such as updates to Yellow Book Standards, Compliance Auditing, and changes in Uniform Guidance Procurement Requirements.

EDUCATION

San Diego State University
B.A. Degree – Accounting



LEADERSHIP & AFFILIATIONS

- Member, American Institute of Certified Public Accountants (AICPA)
- Member, California Society of Certified Public Accountants (CalCPA)

RELEVANT EXPERIENCE

- City of Redlands
- City of Fresno
- City of San Bernardino
- San Bernardino County
- County of Imperial
- City of Calexico
- City of Shafter
- City of National City

CONTINUING PROFESSIONAL EDUCATION

Various courses offered by the Firm online through Thompson Reuters, AICPA, and CalCPA Education Foundation, including:

- Governmental and Nonprofit Annual Update
- Government Auditing Standards
- GASB Basic Financial Statements for State and Local Governments
- Single Audits: Uniform Guidance (formerly OMB Circular A-133)
- Financial Accounting Standards Board Annual Updates
- Statement on Standards for Accounting and Review Services Updates

Has met/exceeded the current CPE educational requirements to perform audits of governmental agencies.



Masood Yousufzai

Revenue Analyst



EMAIL

masood.yousufzai@pungroup.com



WEBSITE

www.pungroup.cpa

Expertise:



CITIES



TRANSPORTATION
AGENCIES



ENTERPRISE
OPERATIONS



NOT-FOR-PROFIT



CANNABIS AUDIT
& COMPLIANCE

EXPERIENCE

Masood Yousufzai is a Supervisor at The Pun Group ^{LLP} with more than six years of experience in providing accounting and audit services, internal control and risk evaluation, and business consulting to privately held and public companies with clients in a variety of industries, including large not-for-profits entities, insurance carriers, manufacturing and distribution, and government entities. Mr. Yousufzai worked as an Internal Audit and Special Projects Manager prior to joining the Firm.

Masood has been responsible for managing, planning, and performing financial and regulatory external and internal audits and for developing and conducting internal control procedures and risk assessment evaluations. He has evaluated key processes within companies to determine areas of operating inefficiencies or potential internal control weaknesses and developed findings into recommended courses of action and into report comments and recommendations for resolution.

Mr. Yousufzai has provided accounting support services to local not-for-profits and governments, including financial statement analysis and preparation.

EDUCATION

California State University Bakersfield

B.A. Political Science

California State University Northridge

M.P.A. Degree – Public Administration

University of California Irvine

Applied Accounting Program

LEADERSHIP & AFFILIATIONS

- Member, California Society of Certified Public Accountants (CalCPA)

RELEVANT EXPERIENCE

- City of Bell
- City of Desert Hot Springs
- City of Seal Beach
- City of Corona
- City of Perris
- City of Gardena
- City of Palm Springs
- City of Phoenix (Subrecipient Monitoring)
- City of San Jose (Subrecipient Monitoring)
- South Bay Cities Council of Governments

CONTINUING PROFESSIONAL EDUCATION

Various courses are offered by the Firm online through Thompson Reuters, AICPA, and CalCPA Education Foundation, including:

- Governmental and Nonprofit Annual Update
- Government Auditing Standards
- GASB Basic Financial Statements for State and Local Governments
- Single Audits: Uniform Guidance (formerly OMB Circular A-133)
- Financial Accounting Standards Board Annual Updates
- Statement on Standards for Accounting and Review Services Updates

Has met/exceeded the current CPE educational requirements to perform audits of governmental agencies.



**Christopher
Quezada**

Senior Auditor



EMAIL

christopher.quezada@pungroup.cpa



WEBSITES

www.pungroup.cpa

Expertise:



CITIES



TRANSPORTATION
AGENCIES



CHILD CARE
AGENCIES



ENTERPRISE
OPERATIONS



NOT-FOR-PROFIT



SINGLE AUDIT
COMPLIANCE



CANNABIS AUDIT
& COMPLIANCE

EXPERIENCE

Christopher Quezada is a Senior Auditor at The Pun Group LLP, with over three years of specialized experience in accounting and auditing. He has a strong track record of successfully performing audits and providing attestation services for a wide range of clients, including governmental agencies, nonprofit organizations, and other entities. His expertise spans financial statement audits, compliance reviews, and internal control assessments, making him well-equipped to handle complex audit engagements with precision and efficiency.

Mr. Quezada holds a Bachelor of Science (B.S.) in Business Administration and Accounting from San Diego State University. His combination of technical expertise and strong communication skills ensures a seamless experience for clients throughout the engagement.

EDUCATION

San Diego State University

Bachelor of Science (B.S.),
Business Administration: Accounting

Candidate for the Uniform CPA Exam

LEADERSHIP & AFFILIATIONS

- Member, California Society of Certified Public Accountants (CalCPA)
- Member, American Institute of Certified Public Accountants (AICPA)
- Member, Allinial Global (AG Connect)

RELEVANT EXPERIENCE

- City of Fresno
- County of San Bernardino
- San Diego Metropolitan Transit System
- City of Tracy
- City of San Mateo
- City of Calexico
- City of Napa
- Family Health Centers of San Diego
- Santa Fe Irrigation District
- City of Madera
- City of Redlands
- City of Rohnert Park

CONTINUING PROFESSIONAL EDUCATION

Various courses offered by the Firm, online through Thompson Reuters, AICPA, CalCPA, AG Connect, Education Foundation, including:

- Governmental and Nonprofit Annual Update
- Government Auditing Standards
- GASB Basic Financial Statements for State and Local Governments
- Single Audits: Uniform Guidance (formerly OMB Circular A-133)
- Financial Accounting Standards Board Annual Updates
- Statement on Standards for Accounting and Review Services Updates
- Professional Development

Has met/exceeded the current CPE educational requirements to perform audits of governmental agencies.



Zeeshan Siddiqui

Advisory
Associate



EMAIL

zeeshan.siddiqui@pungroup.cpa



WEBSITE

www.pungroup.cpa

Expertise:



CITIES



GRANT
COMPLIANCE



TRANSPORTATION
AGENCIES



ENTERPRISE
OPERATIONS



NOT-FOR-PROFIT



CANNABIS AUDIT
& COMPLIANCE

EXPERIENCE

Zeeshan Siddiqui serves as an Audit Associate in The Pun Group, LLP's governmental assurance division. Over his tenure at The Pun Group, LLP, Zeeshan has demonstrated his value as a valuable asset during engagements with governmental and not-for-profit entities.

His experience includes conducting audits and providing attestation services for diverse clients across California. These clients encompass not-for-profits, cities, transportation agencies, enterprise operations, and special districts. Zeeshan plays crucial roles in fieldwork, engaging directly with clients and contributing to the advisory sub-recipient monitoring reports.

EDUCATION

Long Beach State University

B.S. Degree – Business Administration, focus in Accountancy

RELEVANT EXPERIENCE

- City of San Jose sub-recipient monitoring
- City of Phoenix sub-recipient monitoring
- City of Gardena
- City of Palm Springs
- City of Tracy
- City of Corona
- City of Stockton
- City of Patterson
- City of Placerville
- City of Desert Hot Springs

CONTINUING PROFESSIONAL EDUCATION

Various courses offered by the Firm, online through Thompson Reuters, AICPA, CalCPA Education Foundation, including:

- Governmental and Nonprofit Annual Update
- Government Auditing Standards
- GASB Basic Financial Statements for State and Local Governments
- Single Audits: Uniform Guidance (formerly OMB Circular A-133)
- Financial Accounting Standards Board Annual Updates
- Statement on Standards for Accounting and Review Services Updates

Has met/exceeded the current CPE educational requirements to perform audits of governmental agencies.

References

The Pun Group ^{LLP} has performed the following examples of some of the engagements with similar requirements as the City of Tracy's proposal. Additional references are available upon request. Please feel free to contact these agencies to learn more about their experiences working with us.

City of Cudahy

5220 Santa Ana Street

Cudahy, CA 90201

Mr. Joshua Calhoun, CPA | Finance Director / City Treasurer

Phone: (323) 773-5143 ext: 225 | Email: jcalhoun@cityofcudahyca.gov

Services Provided: Agreed-upon procedures related to the payment of tax, operators, permit – audit/reporting requirement, and access to records and facilities of all licensed cannabis businesses located within the City for the period of January 1, 2023, through December 31, 2023. Services included:

- Obtain and read the City's Cannabis Business License Tax Ordinance SMC.
- Obtain from licensees all quarterly gross receipts reports submitted to the City for the year ended December 31, 2023.
- Obtain from licensees all cannabis business license tax forms submitted to the City for the year ended December 31, 2023.
- Compare the gross sales obtained from licensees' records to the amounts reported to the City for the year ended December 31, 2023.
- Identify all revenues to be included in the tax calculation and recalculate taxes remitted to the City for the year ending December 31, 2023.
- Determine whether the annual business license tax was calculated correctly and if any additional fees are owed to the City for the year ended December 31, 2023.

City of Salinas

City Hall, 200 Lincoln Avenue

Salinas, CA 93901

Megan Hunter, Director of Community Development Department

Phone: (831) 758-7387 | Email: meganh@ci.salinas.ca.us

Services Provided: Agreed-upon procedures related to the payment of tax, operators, permit – audit/reporting requirement, and access to records and facilities of all licensed cannabis businesses located within the City for the period of January 1, 2020, through December 31, 2020, and January 1, 2021 – December 31, 2021. Services included:

- Obtain and read the City's Cannabis Business License Tax SMC.
- Obtain from licensees all quarterly gross receipts reports submitted to the City for the years ended December 31, 2020, and 2021.
- Obtain from licensees all cannabis business license tax forms submitted to the City for the years ended December 31, 2020, and 2021.
- Compare the gross sales obtained from the Licensee's records to the amounts reported to the City for the years ended December 31, 2020, and 2021.
- Identify all revenues to be included in the tax calculation and recalculate taxes remitted to the City for the years ended December 31, 2020, and 2021.
- Determine whether the annual business license tax was calculated correctly and if any additional fees are owed to the City for the years ended December 31, 2020, and 2021.

City of Stockton

City Hall, 425 N. El Dorado St.

Stockton, CA 95202

Mr. Matt Paulin, CFO

Phone: (209) 937-8460 | Email: Matt.Paulin2@stocktonca.gov

Services Provided: Agreed-upon procedures related to the payment of tax, operators, permit – audit/reporting requirement, and access to records and facilities of all licensed cannabis businesses located within the City for the period of January 1, 2018, through December 31, 2018, January 1, 2019 – December 31, 2019, and January 1, 2020 – December 31, 2020. Services included:

- Obtain and read the City's Cannabis Business License Tax SMC.
- Obtain from licensees all quarterly gross receipts reports submitted to the City for the years ended December 31, 2018, and 2019.
- Obtain from licensees all cannabis business license tax forms submitted to the City for the years ended December 31, 2018, and 2019.
- Compare the gross sales obtained from the Licensee's records to the amounts reported to the City for the years ended December 31, 2018, and 2019.
- Identify all revenues to be included in the tax calculation and recalculate taxes remitted to the City for the years ended December 31, 2018, and 2019.
- Determine whether the annual business license tax was calculated correctly and if any additional fees are owed to the City for the years ended December 31, 2018, and 2019.

Fee Proposal

Certification

We are committed to the performance of a high-quality audit at the most reasonable fee level possible, both initially and throughout the engagement. Also, our partners will provide advice and consultation as needed at no additional cost to the City of Tracy.

Name of Firm: The Pun Group LLP – Certified Public Accountants and Business Advisors
Contact Name: Andrew M. Roth, CPA
Contact Email Address: andrew.roth@pungroup.cpa

Authorization to Represent the Firm

I, the undersigned, certify I am duly authorized to represent The Pun Group LLP and am empowered to submit this bid. In addition, I certify I am authorized to contract with the City of Tracy on behalf of the Firm.



November 5, 2024

Andrew M. Roth, CPA | Partner
The Pun Group LLP

Date

Cost Proposal

Our proposed fees for Cannabis Revenue Audit Services are as follows:

Work to be performed:		Year One
Cannabis Financial Audit Services	Price / Business site	\$ 6,500
Cannabis Financial Audit Process		Included
Optional Services - Report per businesses verifying ownership		Included
Optional Services - Review report provided to the CDTFA		Included
(4 Business sites) Total Price * **		\$ 26,000

*Out-of-pocket travel expenses will be billed separately and are estimated to be 4 weeks of travel for two (2) professionals for onsite work during the initiation and data-gathering phase, attendance at meetings, and attendance at budget hearings.

**Price quoted per Business site. The total amount will depend on the number of Business sites being audited each fiscal year.

Rates for Additional Professional Services

Below are the Firm's hourly billing rates, delineated by staffing levels:

Hourly Billing Rates	
Partner(s)	\$ 300
Director(s)	\$ 250
Senior Manager(s)	\$ 225
Manager(s)	\$ 200
Supervisor(s)	\$ 175
Senior Accountant(s)	\$ 150
Staff Accountant(s)	\$ 125
Clerical	\$ 100

Any supplemental reports, audits, or agreed-upon procedures not covered by this proposal may be added to a written agreement prior to commencing audit work. The Firm and the City will discuss and approve the scope and associated costs of these tasks. Any additional work will be performed at the above-quoted hourly rates.

Manner of Payment

Engagement Team members are required to maintain timesheets detailing the date, number of hours, and work performed for every audit task. The Firm will collect these timesheets and bill the City of Tracy at the rates outlined in the Total All-Inclusive Maximum Price section in four stages: (1) at the conclusion of the planning phase, (2) at the conclusion of the interim phase, (3) at the conclusion of the Year-End phase, (4) and after presentation and acceptance of the final audit reports. Interim billings will cover a period not less than a calendar month. The billing amounts generally break down as follows:

Work Performed	% of Proposal Amount
Planning	10%
Interim	40%
Fieldwork	40%
Presentation and Acceptance of Reports	10%

Let's Get to Work.

Benefits of Choosing The Pun Group LLP

The Pun Group LLP is recognized for its professionalism and integrity and for providing clients with practical solutions unique to their circumstances and issues. Our Firm prides itself on being able to provide personalized client services, and with that sentiment in mind, we have carefully chosen our engagement teams. The Pun Group's primary objective is to give the City of Tracy solutions and directions led by highly experienced and capable partners who can successfully implement the work and produce the results you expect. This philosophy and mindset allow us to provide a superior level of service and a quality audit.

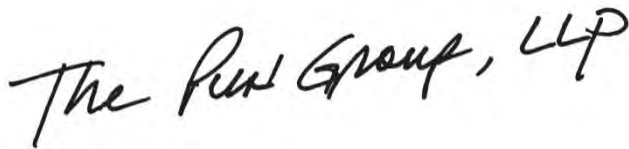
We trust that this proposal has given you the information needed about the Firm, the engagement team members, the overall audit approach, cost-saving measures, and audit fees. We are committed to exceeding your expectations, and we look forward to bringing our experience and expertise to the City of Tracy while providing you with the excellent level of service that you expect and deserve.

Thank You

Thank you for allowing us to submit our qualifications to provide you with Cannabis Revenue Audit Services. Please direct inquiries to:

Andrew M. Roth, CPA
Partner
Email: andrew.roth@pungroup.com
Phone: (858) 242-5102 | Fax: (949) 777-8850

Sincerely,

A handwritten signature in black ink that reads "The Pun Group, LLP". The script is fluid and cursive, with the letters "The" and "Group" being more legible than "Pun".

The Pun Group LLP
Certified Public Accountants and Business Advisors

Appendix A – Firm Current Client List

List of Current Municipal Clients

The Pun Group LLP has performed numerous audits of organizations subject to financial and compliance audits. These audits were performed under auditing standards generally accepted in the United States, Government Auditing Standards, Uniform Guidance (formerly known as OMB Circular A-133), and its Compliance Supplement (when applicable), Office of the State Controller's Minimum Audit Requirements and Reporting Guidelines.

A representative list of our current clients is as follows:

Municipalities	Dates	Financial Audit	Single Audit	GFOA Certificate	Total Hours
City of Adelanto	2021 – Present	Yes	Yes	Yes	700
City of Anderson	2023 – Present	Yes	Yes	N/A	530
City of Arvin	2013 – Present	Yes	Yes	N/A	400
City of Baldwin Park	2022 – Present	Yes	Yes	Yes	700
City of Bell	2018 – Present	Yes	Yes	Yes	520
City of Bradbury	2012 – Present	Yes	N/A	N/A	150
City of Calexico	2007 – Present	Yes	Yes	N/A	750
City of Clovis	2006 – Present	Yes	Yes	Yes	500
City of Coachella	2017 – Present	Yes	Yes	Yes	410
City of Commerce	2023 – Present	Yes	Yes	Yes	570
City of Cottonwood, AZ	2007 – Present	Yes	Yes	Yes	400
City of Corona	2021 – Present	Yes	Yes	Yes	640
City of Cudahy	2023 – Present	Yes	Yes	Yes	500
Town of Corte Madera	2022 – Present	Yes	Yes	N/A	400
Town of Danville	1999 – Present	Yes	Yes	Yes	400
City of Douglas, AZ	2020 – Present	Yes	Yes	Yes	300
City of Desert Hot Springs	2013 – Present	Yes	N/A	N/A	700
City of Encinitas	2024 – Present	Yes	Yes	Yes	600
City of Fresno	2022 – Present	Yes	Yes	Yes	1,450
City of Gardena	2007 – Present	Yes	Yes	Yes	700
City of Gilroy	2020 – Present	Yes	Yes	Yes	640
City of Hercules	2020 – Present	Yes	Yes	Yes	450
City of Indio	2024– Present	Yes	Yes	Yes	708
City of Lake Elsinore	2023 – Present	Yes	Yes	Yes	460
City of Lakewood	2013 – Present	Yes	Yes	Yes	380

Municipalities	Dates	Financial Audit	Single Audit	GFOA Certificate	Total Hours
City of Lynwood	2016 – Present	Yes	Yes	Yes	585
City of Madera	2019 – Present	Yes	Yes	Yes	470
City of Menlo Park	2023 – Present	Yes	Yes	Yes	550
City of Montebello	2022 – Present	Yes	Yes	Yes	600
County of Monterey	2023 – Present	Part of the audit & consulting services pool			TBD
City of Monterey Park	2023 – Present	Yes	Yes	Yes	612
City of Napa	2019 – Present	Yes	Yes	Yes	750
City of National City	2013 – Present	Yes	Yes	Yes	600
City of Newport Beach	2024 – Present	Part of the internal audit consulting services			TBD
City of Palm Springs	2020 – Present	Yes	Yes	Yes	1,000
City of Paramount	2023 – Present	Yes	Yes	Yes	460
City of Patterson	2017 – Present	Yes	Yes	Yes	450
City of Placerville	2008 – Present	Yes	Yes	N/A	400
City of Pleasanton	2024 – Present	Yes	Yes	Yes	700
City of Pinole	2023 – Present	Yes	Yes	Yes	400
City of Redlands	2022 – Present	Yes	Yes	Yes	650
City of Ridgecrest	2009 – Present	Yes	Yes	Yes	300
City of Rohnert Park	2020 – Present	Yes	Yes	Yes	700
City of Salinas	2022 – Present	Yes	Yes	Yes	800
City of San Mateo	2021 – Present	Yes	Yes	Yes	900
City of Santa Clarita	2022 – Present	Yes	Yes	Yes	1,200
City of Santa Cruz	2023 – Present	Yes	Yes	Yes	800
City of Seal Beach	2017 – Present	Yes	Yes	Yes	410
City of Stockton	2012 – Present	Yes	Yes	N/A	3,000
City of Tracy	2021 – Present	Yes	Yes	Yes	960
Town of Tiburon	2022 – Present	Yes	Yes	Yes	452
City of Vernon	2023 – Present	Yes	Yes	Yes	1000
City of Ventura	2024 – Present	Yes	Yes	Yes	960
City of Visalia	2021 – Present	Yes	Yes	Yes	650
Imperial County Transportation Commission	2020 – Present	Yes	Yes	Yes	600
Nevada County Transportation Commission	2021 – Present	Compliance Services	N/A	N/A	450
San Diego Metropolitan Transit System	2005 – Present	Yes	Yes	Yes	1,850

Municipalities	Dates	Financial Audit	Single Audit	GFOA Certificate	Total Hours
Shasta Regional Transportation Agency	2015 – Present	Yes	N/A	N/A	400
Carmel Area Wastewater District	2022 – Present	Yes	Yes	N/A	150
CAWD/PBSCD Wastewater Reclamation Project	2022 – Present	Yes	N/A	N/A	150
Central Basin Water District	2018 – Present	Yes	Yes	N/A	400
Emerald Bay Service District	2024 – Present	Yes	Yes	N/A	225
Helix Water District	2024 – Present	Yes	Yes	Yes	320
Los Angeles County Law Library	2020 – Present	Yes	N/A	N/A	180
Marina Coast Water District	2012 – Present	Yes	N/A	Yes	240
Menlo Park Fire Protection District	2015 – Present	Yes	Yes	Yes	240
NALEO Educational Fund and NALEO	2020 – Present	Yes	N/A	N/A	300
Olivenhain Municipal Water District	2019 – Present	Yes	Yes	Yes	200
Padre Dam Municipal Water District	2020 – Present	Yes	Yes	Yes	250
Rancho Santa Fe Fire Protection District	2015 – Present	Yes	N/A	N/A	120
San Bernardino County Preschool Services Department	2020 – Present	Yes	Yes	N/A	150
San Bernardino County Fire Protection District	2016 – Present	Yes	N/A	N/A	200
San Elijo Joint Powers Authority	2016 – Present	Yes	N/A	N/A	146
Santa Fe Irrigation District	2019 – Present	Yes	N/A	N/A	250
San Mateo County Mosquito & Vector Control District	2024 – Present	Yes	N/A	N/A	220
Sweetwater Authority	2022 – Present	Yes	Yes	Yes	270
South Bay Cities Council of Governments	2020 – Present	Yes	N/A	N/A	100
South Orange County Water Authority	2017 – Present	Yes	Yes	Yes	240
South Bay Regional Public Communications Authority	2015 – Present	Yes	N/A	N/A	100
Southwestern Community College District	2009 – Present	Yes	Yes	N/A	720
Valley Sanitary District	2015 – Present	Yes	N/A	Yes	140
West Valley Mosquito and Vector Control District	2016 – Present	Yes	N/A	N/A	100
Zone 7 Water Agency	2020 – Present	Yes	Yes	Yes	400

Appendix B – Available Training

Strengthen Your Accounting Knowledge: TPG Client Training Webinars

We pride ourselves in leading the governmental auditing profession nationwide and statewide. Members of our team have been assigned to the AICPA and State Government Accounting and Audit committees. Our membership with these two levels of government keeps us current, and such involvement helps our Firm with the constant changes in accounting and auditing standards, laws and regulations, and compliance provisions, which have created an unprecedented complexity in public accounting for state and local governments.

Every year, the Firm hosts a conference to update governmental clients on new technical accounting and financial issues. Since last year, by implementing “Webinars,” we’ve been expanding our horizons and offering our clients 15 hours of Continuing Professional Education (CPE). These sessions are **free of charge** and part of the service package provided to our clients.

CPE courses we offer:



Appendix C – Certificate of Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/27/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Burnham WGB Insurance Solutions CA Insurance License 0F69771 15901 Red Hill Avenue Tustin CA 92780		CONTACT NAME: Sarah Caballero PHONE (A/C, No, Ext): 714-824-8300 E-MAIL: Sarah.Caballero@wgbib.com ADDRESS: Sarah.Caballero@wgbib.com		FAX (A/C, No): 714-573-1770	
INSURED The Pun Group LLP 200 E. Sandpointe Ave., #600 Santa Ana CA 92121		INSURER(S) AFFORDING COVERAGE		NAIC #	
PUN&M-1		INSURER A: National Fire Insurance of Har		20478	
		INSURER B: Valley Forge Insurance Company		20508	
		INSURER C: Great Divide Insurance Company		25224	
		INSURER D: Continental Casualty Company		20443	
		INSURER E:			
		INSURER F:			

COVERAGES		CERTIFICATE NUMBER: 234941955		REVISION NUMBER:		
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:		7013134445	3/1/2024	3/1/2025	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☒ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS NON-OWNED AUTOS ONLY		7013117645	3/1/2024	3/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
D	☒ UMBRELLA LIAB ☒ EXCESS LIAB ☐ OCCUR ☐ CLAIMS-MADE ☒ DED ☒ RETENTION \$ 10,000		7013136468	3/1/2024	3/1/2025	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐ N/A	WC713136289	3/1/2024	3/1/2025	☒ PER STATUTE ☐ OTH-ER No Deductible E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	E&O Retro 12/29/11		CAB2023594	3/1/2024	3/1/2025	3,000,000 agg 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Great Divide Insurance Company AM Best Rating A+ XV

Certificate holder(s) is/are named as additional insured per attached endorsements subject to the terms & conditions of the policy:

General Liability Additional Insured & Waiver of Subrogation # SB146932G

General Liability Primary & Contributory #CNA80103XX

Umbrella Policy follows form for General Liability, Auto Liability and Employers Liability

Auto Primary and Non-Contributory & Waiver of Subrogation #CA00011013

Auto Designated Insured #IL 02 70 07 20

Work Comp waiver of subrogation applies #VVC 00 03 13

CERTIFICATE HOLDER

Proof of Coverage Cert
 XXXXXXXX
 XXXXXXXX XX XXXXXX

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

DA, III

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ACORD 25 (2016/03)

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ORANGE COUNTY ■ SAN DIEGO ■ BAY AREA ■ LAS VEGAS ■ PHOENIX

www.pungroup.com

**Amendment No. 2
To Professional Services Agreement with
The Pun Group, LLP**

This Amendment No. 2 (**Amendment**) to the Professional Services Agreement entered between the City of Tracy, a municipal corporation (**City**), and The Pun Group, LLP, a Limited Liability Partnership (**Consultant**) dated January 19, 2021 (**Agreement**) is entered into as of the date of last signature below. City and Consultant are referred to individually as "**Party**" and collectively as "**Parties**."

Recitals

- A.** The Agreement was executed pursuant to the authority granted in Resolution No. 2021-004, approved by the Tracy City Council on January 19, 2021, which granted the City Manager the authority to execute any extensions and to increase compensation up to the contingency amount should the City agree to exercise its option to extend the term for an additional three years with a not to exceed total amount for the agreement of \$660,737.
- B.** On August 19, 2024, the City Manager approved Amendment No. 1 to the agreement, extending the term of the agreement until January 31, 2027.
- C.** The City desires to add a Cannabis Revenue Audit Service to the original Scope of Work.
- D.** The City desires to increase the not-to-exceed amount to account for the additional audit service.
- E.** The term of the original Agreement expires on January 31, 2027.

Now therefore, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Terms of Amendment.

- A.** Section 3.1 of the Agreement is amended to read as follows:

Consultant's total compensation under this Agreement shall not exceed \$660,737. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City's prior written approval.

- B.** Exhibit B of the Agreement is amended to read as follows:

City of Tracy – Amendment No. _ to Agreement with [Consultant]

Service	2020/21	2021/22	2022/23	2023/24 (Optional)	2024/25 (Optional)	2025/26 (Optional)	Total
City Audit Report W/ Management Letter	\$ 63,000	\$ 64,260	\$ 65,545	\$ 66,856	\$ 68,193	\$ 69,557	\$ 397,411
Preparation CAFR, including compliance with GFOA Award	\$ 2,500	\$ 2,550	\$ 2,601	\$ 2,653	\$ 2,706	\$ 2,760	\$ 15,770
Single Audit and Related Reports - up to 4 major programs (1)	\$ 20,000	\$ 20,400	\$ 20,808	\$ 21,224	\$ 21,649	\$ 22,082	\$ 126,163
Agreed-upon Procedures Applied to Appropriations Limit Schedule (GANN)	\$ 500	\$ 510	\$ 520	\$ 531	\$ 541	\$ 552	\$ 3,154
National Transit Database (NTD) Reporting	\$ 1,500	\$ 1,530	\$ 1,561	\$ 1,592	\$ 1,624	\$ 1,656	\$ 9,463
Preparation of State Controller's Reports:							\$ -
City of Tracy Annual Report of Financial Transactions	\$ 3,000	\$ 3,060	\$ 3,121	\$ 3,184	\$ 3,247	\$ 3,312	\$ 18,924
Tracy Public Financing Authority (TPFA)	\$ 1,500	\$ 1,530	\$ 1,561	\$ 1,592	\$ 1,624	\$ 1,656	\$ 9,463
Tracy Operating Partnership Joint Powers Authority (TOP JPA)	\$ 1,500	\$ 1,530	\$ 1,561	\$ 1,592	\$ 1,624	\$ 1,656	\$ 9,463
City's Transit Operators Financial Transactions Report for General Services	\$ 1,500	\$ 1,530	\$ 1,561	\$ 1,592	\$ 1,624	\$ 1,656	\$ 9,463
City's Transit Operators Financial Transactions Report for Specialized Services	\$ 1,500	\$ 1,530	\$ 1,561	\$ 1,592	\$ 1,624	\$ 1,656	\$ 9,463
City's Cannabis Revenue Audit Services (4 Business sites)	-	-	-	-	\$ 26,000	\$ 26,000	\$ 52,000
Total for Fiscal Year (Not to Exceed)	\$ 96,500	\$ 98,430	\$ 100,400	\$ 102,408	\$ 130,456	\$ 132,543	\$ 660,737

2. **Incorporation by Reference.** This Amendment incorporates by reference all terms set forth in the agreement, unless specifically modified by the Amendment. The terms which are not specifically modified by the Amendment will remain in effect.
3. **Effect.** The Parties hereto ratify the Agreement and, except as expressly modified by this Amendment, all provisions of the Agreement will remain unchanged and in full force and effect.
4. **Entire Agreement.** This Amendment represents the entire agreement and understanding of the Parties and shall supersede any prior agreement, written or oral, between the Parties. This Amendment will not be valid and enforceable until executed by all of the Parties hereto. This Amendment may not be modified or altered except through a subsequent writing signed by both Parties.
5. **Severability.** If any term of this Amendment is held invalid by a court of competent jurisdiction, this Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in effect.
5. **Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter and to execute this Amendment. This Amendment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. This Amendment may be executed in one or more counterparts. All counterparts so executed shall constitute one contract, binding on all Parties, even though all Parties are not signatory to the same counterpart.

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

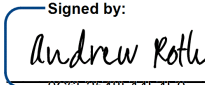
City of Tracy

By: _____
Daniel Arriola

Title: Mayor

Date: _____

Consultant

Signed by:
By: 
UC6E2548E14E4E0...
Andrew Roth, CPA

Title: Partner

Date: 3/4/2025 | 8:40 AM PST

City of Tracy – Amendment No._ to Agreement with [Consultant]

Attest:

By: _____
Necy Lopez, Deputy City Clerk

Approved as to form.

By: _____
Andrew Shen, Interim City Attorney

CITY OF TRACY
PROFESSIONAL SERVICES AGREEMENT WITH
The Pun Group, LLP

This Professional Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and The Pun Group, LLP, a Limited Liability Partnership (**Consultant**). City and Consultant are referred to individually as "Party" and collectively as "Parties."

Recitals

- A.** City desires to retain Consultant to perform professional auditing services (Project); and
- B.** On October 20, 2020, the City issued a Request for Proposals (RFP) for Professional Auditing Services. On November 20, 2020, Consultant submitted its proposal for the Project to the City. City has determined that Consultant possesses the skills, experience and certification required to provide the services.
- C.** After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D.** This Agreement is being executed pursuant to Resolution No. 2021-004 approved by Tracy City Council on January 19, 2021.

Now therefore, the Parties mutually agree as follows:

- 1. Scope of Work.** Consultant shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Consultant's Authorized Representative: Vanessa Burke, CPA CPFO. Consultant shall not replace its Authorized Representative, nor shall Consultant use or replace any subcontractor or subconsultant, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor/subconsultant may result in the termination of this Agreement.
- 2. Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for time extensions to the City in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. City shall grant or deny such requests at its sole discretion.
 - 2.1 Term.** The term of this Agreement shall begin on February 1, 2021 and end on January 31, 2024, unless terminated in accordance with Section 6.
 - 2.1.1 Option to Extend.** This Agreement may be extended for an additional 3 years by the City Manager following a written determination that Consultant has satisfactorily met all the requirements of this Agreement.

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

3.1 Not to Exceed Amount. Consultant's total compensation under this Agreement for the term provided in Section 2.1, above, shall not exceed \$295,329. Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. Effective February 1, 2022, Consultant's billing rates under this agreement may be annually increased in February of each year by 2%, as set forth in Exhibit "B". If the City exercises its option to extend the term of the Agreement in accordance with Section 2.1.1, above, then Consultant's total compensation under this Agreement shall not exceed \$608,737, as further specified in Exhibit "B". No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City's prior written approval.

3.2 Invoices. Consultant shall submit monthly invoice(s) to the City that describe the services performed, including times, dates, and names of persons performing the services.

3.2.1 If Consultant is providing services in response to a development application, separate invoice(s) must be issued for each application and each invoice shall contain the City's designated development application number.

3.2.2 Consultant's failure to submit invoice(s) in accordance with these requirements may result in the City rejecting said invoice(s) and thereby delaying payment to Consultant.

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

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

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

(The 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.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. 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:

Karin Schnaider, Finance Director
333 Civic Center Plaza
Tracy, CA 95376

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

To Consultant:

Vanessa Burke, CPA CPFA, Partner
2121 North California Blvd., Ste. 290
Walnut Creek, CA 94596

13. Miscellaneous.

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

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

13.3 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.

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

13.5 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.

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

13.6.1 Prevailing Wage Laws. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates; employment of apprentices (§ 1777.5), certified payroll records (§1776), hours of labor (§1813 and §1815), debarment of contractors and subcontractors (§1777.1) and the performance of other requirements on "public works" and "maintenance" projects. If the services being performed under this Agreement are part of a "public works" or "maintenance" project, as defined in the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents, harmless from any and all claims, costs, penalties, or interests arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

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

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

13.9 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

13.10 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.

13.11 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.

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

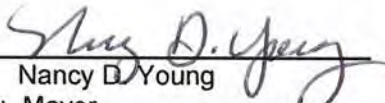
13.13 Entire Agreement. This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by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

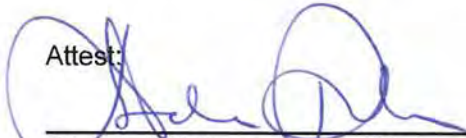
14. Signatures. The individuals executing this Agreement on behalf of Consultant represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Consultant.

[SIGNATURES ON FOLLOWING PAGE]

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

City of Tracy

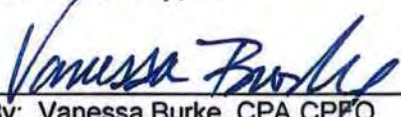

By: Nancy D. Young
Title: Mayor
Date: _____

Attest: 
Adrienne Richardson, City Clerk

Approved as to form:


Leticia Ramirez, City Attorney

The Pun Group, LLP


By: Vanessa Burke, CPA CPFO
Title: Partner
Date: 1/11/21

Federal Employer Tax ID No. 46-4016990

Exhibits:

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

EXHIBIT A - Scope of Work

Comprehensive Annual Financial Report (CAFR) and its component unit financial statements for the City of Tracy to be prepared by the Consultant and be fully compliant with all current Governmental Accounting Standards Board (GASB) pronouncements. The City will submit the CAFR to the Government Finance Officers Association (GFOA) for review in their Certificate of Achievement for Excellence in Financial Reporting program. The City has received this award annually for the past 30 years. The City further desires that the Consultant prepare the annual Cities Financial Transaction report and submits the report to the State Controller's Office.

The Consultant will be required to perform the following tasks:

1. Audit of the Basic Financial Statements and preparation of the Memorandum on Internal Control.
2. Audit of the footnote disclosures of the Successor Agency to the Community Development Agency included in the City's Comprehensive Annual Financial Report.
3. Testing of three programs for compliance with the Single Audit Act and applicable laws and regulations and issuance of the report.
4. Assistance with preparation of the Comprehensive Annual Financial Report.
5. Preparation of the City's Annual Report of Financial Transactions (Controller's Report) and issuance of a compilation report.
6. Preparation of the Tracy Public Financing Authority's (TPFA) Special Districts Financial Transactions Report (Controller's Report) and issuance of a compilation report.
7. Preparation of the Tracy Operating Partnership Joint Powers Authority (TOP JPA)'s Special Districts Financial Transactions Report (Controller's Report) and issuance of a compilation report.
8. Preparation of the City's Transit Operators Financial Transactions Report for General Services (Controller's Report) and issuance of a compilation report.
9. Preparation of the City's Transit Operators Financial Transactions Report for Specialized Service (Controller's Report) and issuance of a compilation report.
10. Perform procedures and issue agreed upon procedures report to comply with Proposition 111 Appropriation Limit increment requirements.
11. Preparation of Web-Ready PDF of CAFR (Bookmarked).
12. Perform procedures and issue agreed upon procedures report to meet the requirements of the Federal Transit Administration (FTA) Financial Data Review as set forth in its applicable National Transit Database (NTD) Uniform System of Accounts (USOA). The procedures were developed by the FTA and the AICPA based on the 2018 NTD Policy Manual for Full Reporters and associated Federal Transit Administration Forms. (NTD Procedures).
13. Audit scope increase contingency.

A. Auditing Standards to be Followed

The audit shall be performed in accordance with:

1. Generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants;
2. The standards applicable to financial audits contained in the most current version of the Generally Accepted Government Auditing Standards (Yellow Book), issued by the Comptroller General of the United States;
3. The provisions of the Single Audit Act as amended in 1996; and
4. The provisions of U. S. Office of Management and Budget (OMB) Circular A-133, Audits of State and Local Governments and Non-Profit Organizations.

B. Time Requirements

Audit planning, documentation of systems of internal control and compliance and transaction testing should be completed during the interim audit stage in May or June of each year. The City closes its book in September and will be ready for audit fieldwork to commence the first week of October each year. The Consultant shall provide all drafts and recommendations for improvements to the Accounting Manager by November 30. The Consultant should be available for any meetings that may be necessary to discuss the draft audit reports. Included in the contract price, is attendance by the Consultant at up to three (3) public meetings to present and discuss its findings and recommendations. Once all issues of discussion are resolved, the completed CAFR, Single Audit report, and other reports shall be delivered to the Accounting Manager. This process will be completed and the final products shall be delivered prior to December 31 of each year.

C. Working Paper Retention

All working papers and reports must be retained at the auditor's expense for a minimum of seven (7) years, unless the firm is notified in writing by the City of Tracy of the need to extend the retention period. The Consultant will be required to make working papers available to the City of Tracy or any government agencies included in the audit of federal grants. In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

D. Irregularities and Illegal Acts

Consultant shall be required to make an immediate written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following parties: City Manager, City Attorney, and the Finance Director.

EXHIBIT B – Compensation

Service	2020/21	2021/22	2022/23	2023/24 (Optional)	2024/25 (Optional)	2025/26 (Optional)	Total
Audit Report w Management Letter	\$ 63,000	\$ 64,260	\$ 65,545	\$ 66,856	\$ 68,193	\$ 69,557	\$ 397,411
Preparation CAFR, Including Compliance w/ GFOA Award	\$ 2,500	\$ 2,550	\$ 2,601	\$ 2,653	\$ 2,706	\$ 2,760	\$ 15,770
Single Audit and Related Reports - up to 4 Major Programs	\$ 20,000	\$ 20,400	\$ 20,808	\$ 21,224	\$ 21,649	\$ 22,082	\$ 126,163
Agreed Upon Procedures Applied to Appropriations Limit Sched (GANN)	\$ 500	\$ 510	\$ 520	\$ 531	\$ 541	\$ 552	\$ 3,154
National Transit Database (NTD) Reporting	\$ 1,500	\$ 1,530	\$ 1,561	\$ 1,592	\$ 1,624	\$ 1,656	\$ 9,463
Preparation of State Controller's Reports:							
City of Tracy Annual Report of Financial Transactions	\$ 3,000	\$ 3,060	\$ 3,121	\$ 3,184	\$ 3,247	\$ 3,312	\$ 18,924
Tracy Public Financing Authority (TPFA)	\$ 1,500	\$ 1,530	\$ 1,561	\$ 1,592	\$ 1,624	\$ 1,656	\$ 9,463
Tracy Operating Partnership Joint Powers Authority (TOP JPA)	\$ 1,500	\$ 1,530	\$ 1,561	\$ 1,592	\$ 1,624	\$ 1,656	\$ 9,463
City Transit Operators Financial Transactions Report - General Svc	\$ 1,500	\$ 1,530	\$ 1,561	\$ 1,592	\$ 1,624	\$ 1,656	\$ 9,463
City Transit Operators Financial Transactions Report - Specialized Svc	\$ 1,500	\$ 1,530	\$ 1,561	\$ 1,592	\$ 1,624	\$ 1,656	\$ 9,463
Total For Fiscal Years (Not to Exceed)	\$ 96,500	\$ 98,430	\$ 100,400	\$ 102,408	\$ 104,456	\$ 106,543	\$ 608,737

Effective February 1, 2022 Consultant's billing rates under this Agreement may be annually increased in February of each year by 2% as reflected above.

**CITY OF TRACY
AMENDMENT NO. 1 TO
PROFESSIONAL SERVICES AGREEMENT WITH
The Pun Group, LLP**

This Amendment No. 1 (**Amendment**) to that certain Professional Services Agreement entered between the City of Tracy, a municipal corporation (**City**), and The Pun Group, LLP, a Limited Liability Partnership (**Consultant**), dated January 19, 2021 (**Agreement**) is entered into as of the last of signature below. City and Consultant are referred to individually as “**Party**” and collectively as “**Parties**.”

Recitals

- A. The Agreement was executed pursuant to the authority granted in Resolution 2021-004, approved by the City Council on January 19, 2021, which granted the City Manager the authority to execute any extensions and to increase compensation up to the contingency amount should the City agree to exercise its option to extend the term for an additional three years with a not to exceed total amount for the Agreement of \$608,737.
- B. The Agreement had an initial term of three years with a not to exceed total compensation of \$295,330 for the three-year term.
- C. The term of the original Agreement expired on January 31, 2024.
- D. This Amendment is retroactive to February 1, 2024.

Now therefore, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

- 1. **Option to Extend.** Pursuant to Section 2.1.1 of the Agreement, the City hereby extends the Term by three additional years and, accordingly, Section 2.1 of the Agreement is hereby modified to reflect that the Term of the Agreement expires on January 31, 2027.
- 2. **Compensation.** Section 3.1 of the Agreement is hereby modified to reflect that Consultant’s total compensation for the additional three-year term, pursuant to Section 2.1, shall not exceed \$313,407.
- 3. **Effect.** The Parties hereto ratify the Agreement and, except as expressly modified by this Amendment, all provisions of the Agreement will remain unchanged and in full force and effect.
- 4. **Entire Agreement.** This Amendment represents the entire agreement and understanding of the Parties and shall supersede any prior agreement—written or oral—between the Parties. This Amendment will not be valid and enforceable until executed by all of the Parties hereto. This Amendment may not be modified or altered except through a subsequent writing signed by both Parties.

City of Tracy – Amendment No. 1 to Agreement with The Pun Group, LLP

5. **Severability.** If any term of this Amendment is held invalid by a court of competent jurisdiction, this Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in effect.
6. **Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter and to execute this Amendment. This Amendment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. This Amendment may be executed in one or more counterparts. All counterparts so executed shall constitute one contract, binding on all Parties, even though all Parties are not signatory to the same counterpart.

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

City of Tracy

The Pun Group, LLP

By:

DocuSigned by:

Midori Lichtwardt

CE9020041242426...

Midori Lichtwardt

Title: City Manager

Date: 8/19/2024 | 7:04 PM PDT

By:

Signed by:

Andrew Roth

0C0E2348F14E4E0...

Andrew Roth, CPA

Title: Partner

Date: 8/14/2024 | 9:28 AM PDT

Attest:

By:

DocuSigned by:

Adrianne Richardson

030300E20FF7F10...

Adrianne Richardson, City Clerk

Approved as to form.

By:

Signed by:

Bijal Patel

301020094700424...

Bijal Patel, City Attorney

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

AUTHORIZING A SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH THE PUN GROUP, LLP TO ADD CANNABIS REVENUE AUDITING SERVICES

WHEREAS, The financial records of the City are audited each year by a public accounting firm and this CPA firm has been selected for a three-year period. With satisfactory performance, this contract has been extended for an additional three-year period under City Manager authority; and

WHEREAS, In October, Finance staff completed an informal request for proposal for Cannabis Revenue Auditing Services to Conduct an annual Revenue Audit to validate the accuracy of the sales reported to the City by cannabis businesses during the review period; and

WHEREAS, Staff received two qualified proposals. The proposal from The Pun Group has been evaluated by the Finance Department in terms of the firm's experience; abilities, quality of proposal and price; and

WHEREAS, The Pun Group has proposed a fee for the FY 2020-21 audit of \$96,500 and for the subsequent two years of \$198,830 for a three-year total of \$295,330. The Amendment approving the option to extend for an additional three years was proposed for a total of \$608,737; and

WHEREAS, This Amendment proposal for the additional scope of work for Cannabis Revenue Auditing Services is proposed for \$52,000 for an overall total of \$660,737; now, therefore be it

RESOLVED: That the City Council of the City of Tracy does hereby approve a second Amendment to the Professional Services Agreement with The Pun Group to perform Cannabis Revenue Auditing Services for a period of two years at a cost of \$52,000 annually and an overall not to exceed amount of \$660,737.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on April 1, 2025, by the following vote:

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

DAN ARRIOLA
Mayor of the City of Tracy, California

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

Agenda Item 1.K

RECOMMENDATION

Staff recommend that the City Council adopt a resolution approving the execution of a General Services Agreement with Carbon Activated Corporation, a California corporation to remove, dispose, and replace the iron sponge media at the City of Tracy Wastewater Treatment Plant for a not-to-exceed amount of \$58,005 and a term ending December 31, 2025.

EXECUTIVE SUMMARY

This agenda item seeks adoption of a resolution by the City Council approving a General Services Agreement (GSA) with Carbon Activated Corporation (Contractor) for the removal, disposal, and replacement of the existing iron sponge media at the City of Tracy Wastewater Treatment Plant (WWTP). The iron sponge media is used to remove hydrogen sulfide (H₂S) from the methane gas generated during the treatment process, and the media must be replaced every four to five years to remain effective. The iron sponge media was last replaced in 2021 and is no longer providing effective removal. The City invited bid proposals to replace the iron sponge media, and this request is for approval to execute the GSA with the selected bidder to provide these services.

BACKGROUND AND LEGISLATIVE HISTORY

The City of Tracy generates methane gas and H₂S as byproducts of anaerobic digestion at the WWTP. The City is permitted by the State to use methane gas as a biogas in its boilers which are used to keep loop water at the desired temperature to allow the plant to operate optimally. H₂S, which is extremely corrosive in even small amounts, is removed from the methane gas by a MARCAB scrubber system. This system utilizes iron sponge media, which is a highly porous, powdered or granular form of iron metal. The media reacts with H₂S to form a stable compound but becomes less effective over time and typically requires replacement every four or five years.

If the media is not replaced on a routine basis trace amounts of H₂S will carry over into the boiler system, which may cause excess build-up in the boilers. This could lead to an increase in maintenance costs and potentially lead to noncompliance with permit requirements. The City has purchased the required iron sponge media but does not have the equipment or experience to perform the replacement task safely. Contracted services are required to remove the old media, replace it with the media on hand, and dispose of the spent media properly.

ANALYSIS

On December 6, 2024, in accordance with the Tracy Municipal Code 2.20.180, the City issued a Notice Inviting Bids for the removal, disposal, and replacement service for the iron sponge media at the City of Tracy Wastewater Treatment Plant and published it on the City's website. A total of two (2) bid proposals were received by the City, prior to the deadline. The proposals were reviewed by an internal committee of Wastewater Maintenance staff. The committee determined that both vendors were qualified, and their rates were:

Vendor Name	Price
Carbon Activated Corporation	\$58,005.00
MPK Solutions	\$134,601.89

Carbon Activated Corporation is a qualified and experienced bidder with the lowest cost of services, has good references, and therefore was selected based on these criteria.

After negotiations between the City and Contractor, the parties reached an agreement for the not-to-exceed amount of \$58,005 with the term beginning on the date as indicated on the Notice to Proceed and ending on December 31, 2025. If approved, the Contractor will perform the services to remove the old iron sponge media, install the City provided iron sponge media, and properly dispose of the spent iron sponge media.

FISCAL IMPACT

All costs for the services provided by the Contractor will be accounted for in the adopted FY24/25 annual operations and maintenance budget of Wastewater Fund (521) in a not-to-exceed amount of \$58,005, and includes the cost of removal, disposal, and replacement services for the iron sponge media provided by the City at the WWTP.

CEQA DETERMINATION

The approval of the bidders in this request or the execution of this contract with Contractor will not result in a physical change in the environment and therefore is not considered as a project as defined by Section 21065 of the Public Resources Code. The approval of this contract and completion of this work is also exempt from CEQA review under CEQA Guidelines Section 15301 as repairs to an existing facility.

STRATEGIC PLAN

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

ACTION REQUESTED OF THE CITY COUNCIL

Adopt a resolution approving the execution of a General Services Agreement with Carbon Activated Corporation, a California corporation to remove, dispose, and replace the iron sponge media at the City of Tracy Wastewater Treatment Plant for a not-to-exceed amount of \$58,005 and a term ending December 31, 2025.

Prepared by: Jorge Gonzalez, Utilities Maintenance Supervisor

Reviewed by: Gordon MacKay, Interim Public Works Director
Stephanie Reyna-Hiestand, Assistant Director of Utilities
Sara Castro, Director of Finance
Andrew Shen, Interim City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

Attachments:

A - GSA with Carbon Activated Corporation

City of Tracy – General Services Agreement with Carbon Activated Corporation

CITY OF TRACY GENERAL SERVICES AGREEMENT

This General Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and Carbon Activated Corporation, a *California corporation* (**Contractor**). City and Contractor are referred to individually as "Party" and collectively as "Parties."

Recitals

A. City desires to retain Contractor to provide services to remove, dispose, and replace the iron sponge media at the Tracy Wastewater Treatment Plant; and

B. On December 6, 2024, the City issued a Notice of Inviting (NIB) for the Iron Sponge Media Removal, Disposal and Replacement Services at the Wastewater Treatment Plant (**Project**). On January 15, 2025, Contractor submitted its proposal for the Project to the City. City has determined that Contractor possesses the skills, experience and certification required to provide the services in pursuant of Tracy Municipal Code (TMC) 2.20.180."

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

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

Now therefore, the Parties mutually agree as follows:

1. **Scope of Work.** Contractor shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Contractor's Authorized Representative: Dale Kerr, Sales/Operations Manager. Contractor shall not replace its Authorized Representative, nor shall Contractor use or replace any subcontractors or subconsultants, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor may result in the termination of this Agreement.

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

2.1 Term. The term of this Agreement shall commence as indicated on the Notice to Proceed and end on December 31, 2025, unless terminated in accordance with Section 6.

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

3.1 Not to Exceed Amount. Contractor's total compensation under this Agreement shall not exceed \$58,005 (fifty-eight thousand five dollars). Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

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

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

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

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

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

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

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

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

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

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

5.4 Pollution Liability

5.4.1 Pollution Coverage shall be provided for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 (one million) per claim. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations."

5.4.2 The policy shall provide and be endorsed to include the City, its officers, officials, employees, agents, and volunteers as additional insureds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.1 Rates. These prevailing wage rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to perform the services described herein. The schedule of per diem wages

is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the City harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker, or any other third party.

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

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

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

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

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

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

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

To City:

City of Tracy
Attn: Assistant Director of Utilities
3900 Holly Dr
Tracy, CA 95034

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

To Contractor:

Carbon Activated Corporation
Attn: Dale Kerr
2250 S. Central Ave
Compton, CA 90220

14. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

City of Tracy – General Services Agreement with Carbon Activated Corporation

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

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

City of Tracy

By: Dan Arriola
Title: Mayor

Date: _____

Attest:

Necy Lopez, Interim City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

Carbon Activated Corporation

DocuSigned by:

Lionel Perera

By: Lionel Perera

Title: CFO/President/Officer

Date: 3/5/2025 | 12:36 PM EST

Federal Employer Tax ID No. 95-4577883

DocuSigned by:

Anne Nash

By: Anne Nash

Title: Corporate Secretary/Officer

Date: 3/5/2025 | 9:02 AM PST

Exhibits:

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

EXHIBIT A - Scope of Work

The scope of work generally includes removal, disposal, and replacement of the existing iron sponge media, including performance of a visual inspection of the MARCAB Gas Scrubber stainless steel tank iron sponge filter vessel.

- Work performed shall comply with the MARCAB Operations and Maintenance Instructions Media Replacement Procedure, attached as Appendix A.
- The gas scrubber shall be purged with Nitrogen Gas, after completion of Step 1 of the Media Replacement Procedure, Regeneration, to remove any remaining methane prior to opening the unit for media replacement.
- The Contractor will remove and protect all exterior pipe and equipment connections required to remove the lid of the gas scrubber and replace equipment connections once media replacement is complete.
- The Contractor will complete the Media Replacement Procedure in the MARCAB Operations and Maintenance Instructions. Bidder will coordinate with Utilities Maintenance Supervisor prior to beginning any work.

NOTE: The replacement iron sponge media is currently located outdoors at the WWTP. The integrity of some of the totes containing the media has degraded. The Bidder will need to consider what will be necessary to move the totes of new media if the tote straps are not sound.

- The Bidder will provide containers for the spent media, manage the moisture content of the spent media, and monitor the internal temperature of the spent media to ensure it does not combust, for ten days or until the temperature of the spent media no longer exceeds the ambient outdoor temperature.

NOTE: No drying beds or containers are available for the Contractors use at the WWTP. The Contractor shall provide containers for this purpose. The spent media containers can be managed onsite or removed from the WWTP during the 10-day monitoring period. The Contractor assumes all responsibility for management of the spent media.

- Bidder will follow the procedure manual to prevent the bypass of any digester gas around any portion of the replaced iron sponge media and ensure that there is no channeling and/or bypassing the digester gas through voids or around compacted areas in the iron sponge media upon completion of the project.

Timeline. Execution of the work shall begin as indicated on the Notice to Proceed and must be completed within thirty (30) calendar days from the agreed upon start date. Work will be performed at 3900 Holly Dr, Tracy, CA 95304 (WWTP). Working hours are Monday through Thursday from 6:00AM to 3:30PM, and 6:00AM to 2:30PM Fridays, on days when CITY offices

are open. CITY offices are closed on every other Friday. If any work performance is required outside of the scheduled days and times, the Contractor must notify Utilities Maintenance Supervisor or the CITY designee within 72 hours before such work takes place.

Contractor Duties/Responsibilities: The Contractor shall supply all materials (excluding CITY provided iron sponge media), tools, machinery, safety plan, supplies, transportation, portable restroom (no onsite restroom available) and staff to conduct work. Contractor shall also supply all signage, cones, and other necessary equipment needed to create a safe work zone. All work within the WWTP must be coordinated with the Utilities Maintenance Supervisor.

CITY Responsibilities: The Utilities Maintenance Supervisor will coordinate with the Contractor to arrange for site access and provide direction on available locations for media containers, information about WWTP activities that may impact the Contractor work schedule.

Disposal Reports. Contractor must dispose spent iron sponge media at a facility licensed to receive it according to Federal, State, and local regulations. Contractor must provide disposal report to the CITY within fifteen (15) working days of the date it was received by the facility.

Bonds. A performance and payment bonds, for 100% of the maximum Contract Price, and a warranty bond for 10% of the maximum Contract Price will be required after execution of the contract, but before a Notice to Proceed will be issued.

EXHIBIT B - Compensation

Contractor's total compensation under this Agreement shall not exceed \$58,005 (fifty thousand five dollars). Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

Description	Total Price
Nitrogen Purge, Removal, Loading, Food, and Lodging	-
Checking bins while at Wastewater Treatment Plant during cool off period	\$35,005
Non-Hazardous disposal	\$21,000
MARCAB new HDPE net and pre-punched Neoprene gasket	\$2,000
Media Installation	-
Total	\$58,005

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

**APPROVING THE EXECUTION OF A GENERAL SERVICES AGREEMENT
WITH CARBON ACTIVATED CORPORATION, A CALIFORNIA
CORPORATION TO REMOVE, DISPOSE, AND REPLACE THE IRON
SPONGE MEDIA AT THE CITY OF TRACY WASTEWATER TREATMENT
PLANT FOR A NOT-TO-EXCEED AMOUNT OF \$58,005 AND A TERM
ENDING DECEMBER 31, 2025.**

WHEREAS, as a part of the treatment process, the MARCAB scrubber system through the iron sponge media removes hydrogen sulfide (H₂S) that is generated as a byproduct of anaerobic digestion; and

WHEREAS, H₂S is highly corrosive and must be removed in order to ensure that WWTP is operating efficiently and effectively; and

WHEREAS, the City is permitted to use methane gas as a biogas in its boiler, which keeps loop water at the desired temperature to allow the WWTP to operate at optimal capacity; and

WHEREAS, the iron sponge media must be replaced every four to five years according to the effectiveness of the media in removal of the H₂S; and

WHEREAS, the iron sponge media was last replaced in 2021, therefore has reached its life expectancy and is no longer providing effective removal; and

WHEREAS, without such effectiveness, the maintenance cost may increase as well as the City may not comply with its permit requirement; and

WHEREAS, on December 6, 2024, staff followed established procedures, in accordance with the Tracy Municipal Code, Section 2.20.180, and issued a Notice Inviting Bids (NIB) to retain a Contractor to remove, dispose, and replace the iron sponge media; and

WHEREAS, two (2) bid proposals were submitted on January 15, 2025, one of which was from Carbon Activated Corporation (Contractor); and

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

WHEREAS, staff is requesting that the City Council authorize the execution of the General Services Agreement with the Contractor, in the form attached as Exhibit 1, for the term beginning as indicated on the Notice to Proceed and ending on December 31, 2025 for the total amount of \$58,005 to provide the services required to comply with the permit requirements; and

WHEREAS, the cost of the services provided by the Contractor will be accounted for in the adopted FY24/25 annual operations and maintenance budget of the Wastewater Fund (521); and

WHEREAS, the approval of the Project will not result in the physical change in the environment; therefore, this action is not considered as a project as defined by Section 21065 of the Public Resources Code; and

NOW, THEREFORE, be it resolved as follows:

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

FURTHER RESOLVED: That the City Council of the City of Tracy, hereby approves the General Services Agreement with Carbon Activated Corporation, attached as Exhibit 1, for the term commencing as indicated on the Notice to Proceed and ending on December 31, 2025; and be it,

FURTHER RESOLVED: That the City Council finds the actions taken herein are not considered as a project as defined by Section 21065 of the Public Resource Code and are exempt from CEQA (California Environment Quality Act) review and are also exempt from CEQA review under CEQA Guidelines Section 15301 as repairs to an existing facility.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 1st day of April, 2025, by the following vote:

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

DAN ARRIOLA
Mayor of the City of Tracy, California

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

Exhibit 1: GSA with Carbon Activated Corporation

CITY OF TRACY GENERAL SERVICES AGREEMENT

This General Services Agreement (**Agreement**) is entered into between the City of Tracy, a municipal corporation (**City**), and Carbon Activated Corporation, a *California corporation* (**Contractor**). City and Contractor are referred to individually as "Party" and collectively as "Parties."

Recitals

A. City desires to retain Contractor to provide services to remove, dispose, and replace the iron sponge media at the Tracy Wastewater Treatment Plant; and

B. On December 6, 2024, the City issued a Notice of Inviting (NIB) for the Iron Sponge Media Removal, Disposal and Replacement Services at the Wastewater Treatment Plant (**Project**). On January 15, 2025, Contractor submitted its proposal for the Project to the City. City has determined that Contractor possesses the skills, experience and certification required to provide the services in pursuant of Tracy Municipal Code (TMC) 2.20.180."

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

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

Now therefore, the Parties mutually agree as follows:

1. **Scope of Work.** Contractor shall perform the services described in Exhibit "A" attached and incorporated by reference. The services shall be performed by, or under the direct supervision of, Contractor's Authorized Representative: Dale Kerr, Sales/Operations Manager. Contractor shall not replace its Authorized Representative, nor shall Contractor use or replace any subcontractors or subconsultants, without City's prior written consent. A failure to obtain the City's prior written consent for any change or replacement in personnel or subcontractor may result in the termination of this Agreement.

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

2.1 Term. The term of this Agreement shall commence as indicated on the Notice to Proceed and end on December 31, 2025, unless terminated in accordance with Section 6.

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

3.1 Not to Exceed Amount. Contractor's total compensation under this Agreement shall not exceed \$58,005 (fifty-eight thousand five dollars). Contractor's billing rates shall cover all costs and expenses for Contractor's performance of this Agreement. No work shall be performed by Contractor in excess of the total compensation amount provided in this section without the City's prior written approval.

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

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

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

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

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

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

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

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

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

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

5.4 Pollution Liability

5.4.1 Pollution Coverage shall be provided for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 (one million) per claim. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations."

5.4.2 The policy shall provide and be endorsed to include the City, its officers, officials, employees, agents, and volunteers as additional insureds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.1 Rates. These prevailing wage rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to perform the services described herein. The schedule of per diem wages

is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the City harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker, or any other third party.

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

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

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

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

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

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

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

To City:

City of Tracy
Attn: Assistant Director of Utilities
3900 Holly Dr
Tracy, CA 95034

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

To Contractor:

Carbon Activated Corporation
Attn: Dale Kerr
2250 S. Central Ave
Compton, CA 90220

14. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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.

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City of Tracy – General Services Agreement with Carbon Activated Corporation

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

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

City of Tracy

By: Dan Arriola
Title: Mayor

Date: _____

Attest:

Necy Lopez, Interim City Clerk

Approved as to form:

Andrew Shen, Interim City Attorney

Carbon Activated Corporation

DocuSigned by:

Lionel Perera

By: Lionel Perera

Title: CFO/President/Officer

Date: 3/5/2025 | 12:36 PM EST

Federal Employer Tax ID No. 95-4577883

DocuSigned by:

Anne Nash

By: Anne Nash

Title: Corporate Secretary/Officer

Date: 3/5/2025 | 9:02 AM PST

Exhibits:

- A Scope of Work, including personnel and time of performance (See Agreement sections 1 and 2.)
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EXHIBIT A - Scope of Work

The scope of work generally includes removal, disposal, and replacement of the existing iron sponge media, including performance of a visual inspection of the MARCAB Gas Scrubber stainless steel tank iron sponge filter vessel.

- Work performed shall comply with the MARCAB Operations and Maintenance Instructions Media Replacement Procedure, attached as Appendix A.
- The gas scrubber shall be purged with Nitrogen Gas, after completion of Step 1 of the Media Replacement Procedure, Regeneration, to remove any remaining methane prior to opening the unit for media replacement.
- The Contractor will remove and protect all exterior pipe and equipment connections required to remove the lid of the gas scrubber and replace equipment connections once media replacement is complete.
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NOTE: The replacement iron sponge media is currently located outdoors at the WWTP. The integrity of some of the totes containing the media has degraded. The Bidder will need to consider what will be necessary to move the totes of new media if the tote straps are not sound.

- The Bidder will provide containers for the spent media, manage the moisture content of the spent media, and monitor the internal temperature of the spent media to ensure it does not combust, for ten days or until the temperature of the spent media no longer exceeds the ambient outdoor temperature.

NOTE: No drying beds or containers are available for the Contractors use at the WWTP. The Contractor shall provide containers for this purpose. The spent media containers can be managed onsite or removed from the WWTP during the 10-day monitoring period. The Contractor assumes all responsibility for management of the spent media.

- Bidder will follow the procedure manual to prevent the bypass of any digester gas around any portion of the replaced iron sponge media and ensure that there is no channeling and/or bypassing the digester gas through voids or around compacted areas in the iron sponge media upon completion of the project.

Timeline. Execution of the work shall begin as indicated on the Notice to Proceed and must be completed within thirty (30) calendar days from the agreed upon start date. Work will be performed at 3900 Holly Dr, Tracy, CA 95304 (WWTP). Working hours are Monday through Thursday from 6:00AM to 3:30PM, and 6:00AM to 2:30PM Fridays, on days when CITY offices

are open. CITY offices are closed on every other Friday. If any work performance is required outside of the scheduled days and times, the Contractor must notify Utilities Maintenance Supervisor or the CITY designee within 72 hours before such work takes place.

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Non-Hazardous disposal	\$21,000
MARCAB new HDPE net and pre-punched Neoprene gasket	\$2,000
Media Installation	-
Total	\$58,005

Agenda Item 1.L

RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving the schedule of towing fees charged by private towing service operators for tow services within the City.

EXECUTIVE SUMMARY

This staff report is to provide the City Council with background information supporting a request to increase the fees that local towing service operators may charge for towing services and daily storage fees. The fees that these towing service operators may charge the owners of vehicles towed and stored were last established on November 15, 2022, pursuant to Resolution No. 2022-171. Staff recommends the City Council adopt a resolution approving a new schedule of towing fees under Tracy Municipal Code section 3.44.190.

BACKGROUND AND LEGISLATIVE HISTORY

Tracy Municipal Code 3.44.190 mandates that City Council regulates the fees that may be charged by towing service operators on the City's rotational list and establish those fees by resolution. These rates and fees are to be established after a review of rates used in comparable communities and the operating expenses by towing service operators currently on the rotational list. The staff report provided to Council fulfills these requirements.

ANALYSIS

Tracy Police Department staff requested information from all of the local towing service operators to support the request to increase the fees they may charge for rotational list towing and vehicle storage services. The responding towing service operators provided information related to operational costs from 2022-2024. Listed below is a summary of the information the Police Department received regarding the increases in costs from 2022 to 2024:

1. Worker's Compensation rates vary between companies but on average, they reported an increase of approximately 8.8%.
2. Salaries increased on average by approximately 7%.
3. During 2022 and 2023 the average cost of a gallon of diesel fuel in California was **\$5.69** per gallon. In 2024, the average price of a gallon of diesel fuel is **\$4.93** per gallon, representing an approximate **13.36% decrease**.

Source: U.S. Energy Information Administration

<https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMD EPD2DXL0 PTE SCA DPG&f=M>

4. Tow truck maintenance costs varied between the companies, but all reported costs increased on average by approximately 23.4%.

5. Vehicle insurance rates have increased on average by approximately 36.8%.
6. Vehicle replacement costs vary depending on the type of equipment purchased but on average, those costs have increased by approximately 16%.
7. DMV fees and rates have increased on average approximately 11%.
8. Reported employee medical benefits cost increased an average of approximately 13.5%.
9. Other operating expenses that were not reported in the survey but should be taken into consideration as increased operational costs are:
 - a. Facility/property maintenance
 - b. Utilities and Support Equipment (i.e. gas, electric, phones and water/sewer)
 - c. Rent/lease agreements

Tracy Police Department staff believes that the fees charged by towing service operators under agreement for rotational tow services should be consistent with what the neighboring city or county law enforcement agencies allow. The neighboring communities of Livermore, Manteca, Lathrop, Ripon, Stockton, and Turlock were polled as to their allowable tow and storage rates. Refer to Attachment B. The average area rate for towing was \$267.60 and the average daily storage was \$89.58. More significantly the average of the immediate area (Tracy CHP Office), who use many of the same rotational tows as the City of Tracy averages \$296.33 for standard towing and \$105 for inside storage. The Tracy Area CHP and Stockton Area CHP Office's were polled, as they are in agreement with multiple area tow service operators.

The proposed rate increase is a reasonable request due to the increased operating expenses for business owners since the last rates were adopted in 2022. Currently, the City of Tracy does not employ its own vehicle tow service and relies only on local, privately owned tow companies to perform all towing and vehicle storage services.

In considering average rates, staff recommends the following proposed rates:

TOW COMPANY SERVICES

	<u>Current Rate</u>	<u>Proposed Rate</u>
1. Standard Tow	\$255	\$300
2. Heavy Vehicle Towing (Class B)	\$450	\$500
3. Very Large Vehicle Tow (Class C/D)	\$500	\$650
4. Hourly Rate	\$255	\$300
5. City Vehicle (half standard rate)	\$127.50	\$150
6. Storage per Day – Standard Vehicle	\$90	\$105
7. Police Impounds (first 48 hours)	\$90	\$105
8. After Business Hour Release	\$90	\$105
9. Heavy Vehicle Storage (per day)	\$100	\$125

FISCAL IMPACT

There is no cost to the City of Tracy. Approval of this request would allow privately owned tow companies that agree to provide tow operator services with the City of Tracy to increase their fees for towing services and vehicle storage.

PUBLIC OUTREACH/ INTEREST

This is a routine operational item that is reviewed periodically to ensure fees are up to date. Tracy Police Department surveyed local tow operators and neighboring law enforcement agencies during this review process.

COORDINATION

Tracy Police Department surveyed local tow operators, neighboring law enforcement agencies and California Highway Patrol during the review of the current tow fee schedule. The proposed increased fees would be comparable and consistent with California Highway Patrol and neighboring law enforcement agencies.

CEQA DETERMINATION

The proposed action is not a "project" under the California Environmental Quality Act. Pursuant to CEQA Guidelines Section 15061(b)(3), there is no possibility that this action will have an effect on the physical environment.

STRATEGIC PLAN

This agenda item relates to the City of Tracy Council Strategic Priorities for 2023-2025, Public Safety, Goal #1 support emergency operations preparedness, response and recovery.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution approving increased maximum fees charged by private towing service operators for services rendered to reflect increased operating expenses.

Prepared by: Yordan Coss, Traffic Safety Officer

Reviewed by: Brian Wilmshurst, Sergeant
Miguel Contreras, Lieutenant
Beth Lyons-McCarthy, Support Operations Manager
Sekou Millington, Chief of Police
Sara Castro, Finance Director
Karin Schnaider, Assistant City Manager
Matthew Summers, Interim Assistant City Attorney

Approved by: Midori Lichtwardt, City Manager

Attachments

Attachment A: Proposed Tow Fee Schedule

Attachment B: Local Fees Survey Results

Attachment A

<u>SERVICES</u>	<u>Current Rate</u>	<u>Proposed Rate</u>
1. Standard Towing	\$255	\$300
2. Heavy Vehicle Towing	\$450	\$500
3. Very Large Vehicle Towing	\$500	\$650
4. Hourly Rate	\$255	\$300
5. City Vehicle (half standard rate)	\$127.50	\$150
6. Storage Per Day – Standard Vehicle	\$90	\$105
7. Police Impounds (1 st 48 hours)	\$90	\$105
8. After Business Hour Release	\$90	\$105
9. Heavy Vehicle Storage (per day)	\$90	\$125

Attachment B

<u>Agency</u>	<u>Maximum Hourly Rate</u>	<u>Daily Storage Fees</u>
Livermore	Follows CHP area rate	Follows CHP area rate
Lodi	Follows Stockton CHP rates	Follows Stockton CHP rates
***Manteca	\$280/hr	\$75
***Lathrop	\$280/hr	\$75
Ripon	Follows CHP's rate	Follows CHP's rate
Stockton	\$229/hr	\$84.63 Inside \$73.81 Outside
Turlock	\$220/hr	\$75 Inside \$65 Outside \$110 Gate fee
*Tracy CHP	\$296.33	\$105 Inside \$102.50 Outside
**Stockton CHP	\$278.50/hr	\$100.68 Inside \$88.23 Outside

*Average among 6 towing service operators in agreement for towing services with Tracy Area CHP Office.

**Average among 23 towing service operators in agreement for towing services with Stockton Area CHP Office.

***Rates as of 2022.

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. 2025-

APPROVING THE SCHEDULE OF TOWING FEES CHARGED BY PRIVATE TOWING SERVICE OPERATORS FOR TOW SERVICES WITHIN THE CITY.

WHEREAS, the City of Tracy's Police Department utilizes private towing and vehicle storage services on a rotational list; and

WHEREAS, Tracy Municipal Code 3.44.190 requires that the City Council, by resolution, regulate and establish the rates and fees that may be charged by private towing service operators on the City's rotational list; and

WHEREAS, these rates and fees are to be established after a review of rates used in comparable communities and the operating expenses by towing service operators currently on the rotational list; and

WHEREAS, these rates were last increased by Resolution 2022-171, adopted by City Council on November 15, 2022; and

WHEREAS, representatives from the towing service operators have indicated that the cost of doing business for the City of Tracy has continued to increase significantly since 2022, and the increases in rates are necessary to accommodate the increased operating costs, and staff completed a survey of other towing operators and local jurisdictions as required by Tracy Municipal Code section 3.44.190; now, therefore, be it

RESOLVED: That City Council does hereby approve a revised schedule of towing fees charged by private towing service operators for tow services within the City, reflecting increased operating expenses, as set forth in Exhibit 1 attached hereto.

* * * * *

The foregoing Resolution 2025- was passed and adopted by the Tracy City Council on April 1, 2025, by the following vote:

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

DAN ARRIOLA
Mayor of the City of Tracy, California

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

Exhibit 1: Proposed Tow Fee Schedule

Exhibit 1

<u>SERVICES</u>	<u>Current Rate</u>	<u>Proposed Rate</u>
1. Standard Towing	\$255	\$300
2. Heavy Vehicle Towing	\$450	\$500
3. Very Large Vehicle Towing	\$500	\$650
4. Hourly Rate	\$255	\$300
5. City Vehicle (half standard rate)	\$127.50	\$150
6. Storage Per Day – Standard Vehicle	\$90	\$105
7. Police Impounds (1 st 48 hours)	\$90	\$105
8. After Business Hour Release	\$90	\$105
9. Heavy Vehicle Storage (per day)	\$90	\$125

Agenda Item 1.M

RECOMMENDATION

Staff recommends that the City Council adopt a resolution 1) making a determination that strict compliance with standard procurement procedures is not in the best interests of the City and disposing these requirements pursuant to Tracy Municipal Code Section 2.20.180 for the purchase, installation, operation, training and maintenance of Peregrine software; and 2) approving the execution of Master Service Agreement with Peregrine Technologies, Inc. for these services for a two-year term and total not to exceed \$220,000.

EXECUTIVE SUMMARY

Tracy Police Department (TPD) desire to enter into an agreement with Peregrine Technologies, Inc. for the procurement, implementation, and training associated with their software platform. The Police Department (PD) requires the expertise and technology that Peregrine Technologies, Inc. has to fully implement the Real Time Information Center.

This advanced data integration and aggregation tool is specifically designed to support law enforcement agencies in analytical operations. As Peregrine Technologies, Inc. is the exclusive vendor for the integrated platform software, staff is recommending that the City Council waive the procurement procedure requiring a competitive procurement process pursuant to Tracy Municipal Code 2.20.180(b)(4).

BACKGROUND

The Tracy Police Department is in the process of establishing a Real-Time Information Center (RTIC) this year to revolutionize its approach to public safety and community well-being. The RTIC is designed to provide real-time situational awareness, reduce crime, enhance officer safety, and foster improved collaboration with City partners. As the community grapples with the challenges posed by the opioid epidemic, the RTIC serves as a critical hub for integrating technology and data to deliver innovative solutions.

The City of Tracy received settlement funds through the California Department of Health as a result of several national pharmaceutical lawsuits which provided these settlements back to the states and have been passed to local governments for opioid related programs and activities. The PD is seeking to utilize a portion of the funding for the Master Services Agreement with Peregrine Technologies, Inc. will be through the State of California's opioid relief distributions. The City received these settlement funds and appropriated them to the PD's operational budget through Resolution 2025-020 on February 4, 2025.

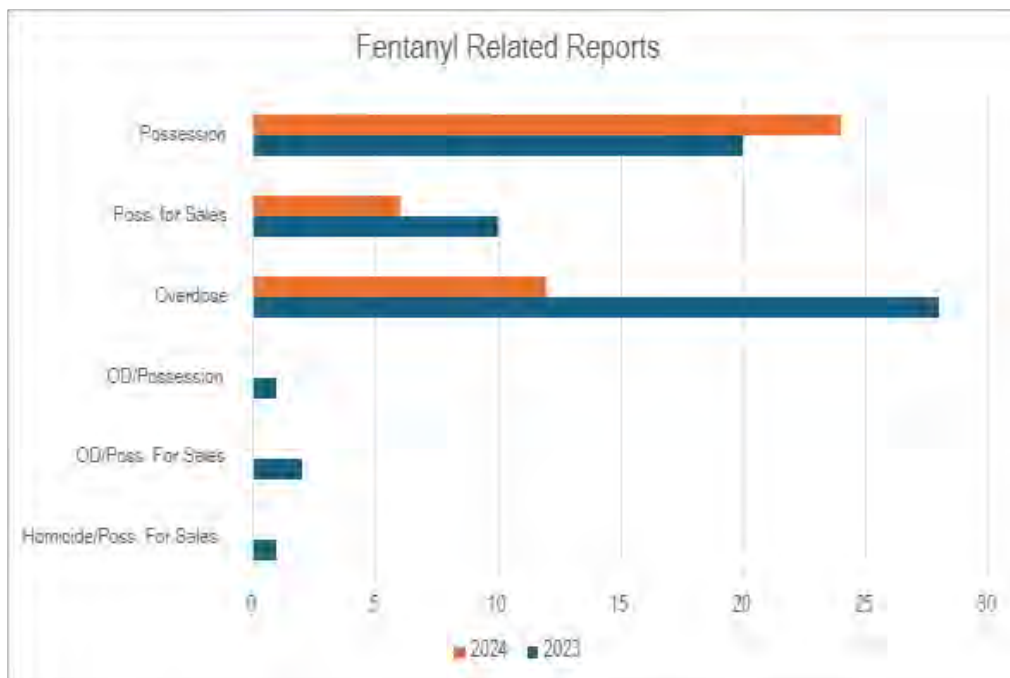
ANALYSIS

The software will play a vital role in tackling the opioid epidemic, which continues to impact Tracy residents and San Joaquin County. By integrating overdose reports, Narcan usage data, opioid-related calls for service, and locations of high-risk activity, the software will help identify hotspots and emerging trends in real time. This information will allow law enforcement during their response, and our Community Services Division teams like Neighborhood Resource Officers and Familiar Faces to deploy resources more strategically, ensuring timely interventions in the areas where they are needed most.

The Peregrine software's predictive capabilities enable the RTIC to take a proactive stance in combating opioid misuse. By analyzing trends and identifying patterns, such as the geographic spread of overdoses or increased opioid-related criminal activity, the RTIC can act as an early warning system. This allows law enforcement and City partners to implement preventative measures, such as conducting outreach in high-risk areas, increasing public awareness about the dangers of opioids, or establishing mobile clinics to provide on-the-spot treatment and support.

Additionally, Peregrine Technologies, Inc. provides a one-stop solution to data integration through their proprietary software that allows personnel to access multiple databases through one useful, actionable, portal. Peregrine will integrate new and archived Computer Aided Dispatch (CAD) data, new and archived Records Management Systems (RMS) data, traffic accident diagrams and reporting, mapping information, body and dash camera footage, automatic license plate reader (ALPR) information, and many other Public Safety data sources. This will create a comprehensive dashboard to easily gain immediate, real-time access, to virtually all Tracy Police Department information systems.

The Tracy Police Department has been combating the misuse of opioids that have led to multiple investigations. The chart below discusses the investigations the Police Department has been involved in during 2023 and 2024.



Peregrine Technologies, Inc. has been identified as the sole provider capable of delivering an end-to-end software solution that meets the unique needs of the Tracy Police Department and its Real Time Information Center (RTIC). Their software offers a comprehensive suite of capabilities, including:

- Purpose-built data integrations
- Fully integrated features such as advanced search, mapping, link, analysis, reporting, and dashboards
- Proprietary data duplication algorithms
- A secure collaboration and data sharing functionality
- Fully open and interoperable architecture
- End-to-end security, CJIS and CAL DOJ compliance

The software enables the creation of searchable dashboards and automated alerts to monitor and manage officer and staff exposure to opioids and other safety risks. By integrating data from multiple underlying systems, the platform provides comprehensive insights, seamlessly processing unstructured data such as Computer Aided Dispatch (CAD) notes, report narratives, and other data sources from our current systems like Mark43.

Additionally, the system's dashboard functionality can automate the dissemination of critical information and location data to our City partners. This includes updates on Narcan usage, encampment locations, opioid incidents, and overdoses, thereby serving as an early warning system to enhance both officer safety and community response efforts. The early warning system will identify officers who have responded to multiple opioid overdoses or traumatic events. Supervisors will be able to intervene and offer services and support to ensure a healthy and supported workforce. Peregrine Technologies, Inc. will also allow city staff to quickly identify specific areas of the City that need comprehensive support to avoid fatal opioid overdoses and proactively bring in resources to save lives.

Peregrine Technologies, Inc. has provided sole source documentation verifying their unique qualifications to deliver this solution. As Peregrine Technologies, Inc. is the exclusive vendor for an integrated platform software capable of meeting all of the City's needs for this kind of software system and opioid overdose prevention program, staff is recommending that the City Council waive the procurement procedure requiring a competitive procurement process pursuant to Tracy Municipal Code 2.20.180(b)(4).

FISCAL IMPACT

Funding for the Master Services Agreement with Peregrine Technologies, Inc. will be through the State of California's opioid relief settlements which have been appropriated to the Police Department's operational budget. The two-year agreement will cost:

Year 1: \$110,000
Year 2: \$110,000
Total: \$220,000

PUBLIC OUTREACH/ INTEREST

Through many community engagement activities and proactive policing, residents have many opportunities to meet, interact with department personnel, and discuss issues impacting the community. The community supports the Police Department's initiatives and goals to promote officer safety and community safety, improve efficiency, and advance department technology.

COORDINATION

The Police Department has coordinated with the City's Innovation and Technology Department on various aspects of this project including purchasing quotes and infrastructure.

CEQA DETERMINATION

The proposed action is not a "project" under the California Environmental Quality Act. Pursuant to CEQA Guidelines Section 15061(b)(3), there is no possibility that this action will have an effect on the physical environment.

STRATEGIC PLAN

This agenda item relates to Council's Strategic Priorities for Public Safety, specifically to continue to strengthen community safety through crime prevention reduction activities and continuing to enhance and implement the use of technology to generate evidence-based intelligence to enhance enforcement efforts.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution 1) making a determination that strict compliance with standard procurement procedures is not in the best interests of the City and disposing these requirements pursuant to Tracy Municipal Code Section 2.20.180 for the purchase, installation, operation, training and maintenance of Peregrine software; and 2) approving the execution of Master Service Agreement with Peregrine Technologies, Inc. for these services for a two-year term and total not to exceed \$220,000.

Prepared by: Daniel Garcia, Sergeant

Reviewed by: Beth Lyons-McCarthy, Support Operations Manager
Sekou Millington, Chief of Police
Sara Castro, Finance Director
Karin Schnaider, Assistant City Manager
Andrew Shen, Interim City Attorney

Approved by: Midori Lichtwardt, City Manager

Attachments

Attachment A: Master Services Agreement, Peregrine Technologies, Inc.



PEREGRINE CUSTOMER ORDER FORM & SCOPE OF SERVICES

Customer Information	
Customer Name: Tracy Police Department	Contact: Beth Lyons-McCarthy
Address: 1000 Civic Center Dr Tracy, CA 93576	Phone: 209-831-6594
Email: beth.lyons-mccarthy@tracypd.com	Fax: N/A

Peregrine Services
Effective Date: April 10, 2025
Initial Term: From the Effective Date through April 9, 2027 (" <u>Initial Term</u> ").
Service Fee: The following fee schedule is available to the Customer if Order Form is signed on or before April 2, 2025. Unless otherwise terminated as set forth in the Terms and Conditions, Customer shall pay Peregrine a service fee of \$110,000 annually for the Term as follows: a. \$110,000 within 30 days of the Effective Date b. \$110,000 within 30 days of April 10, 2026
Users: Customer may allow an unlimited number of employees of the Tracy Police Department to access and use the Service.
Onboarding and Training Services: Peregrine will provide Customer with an introductory training session that provides an overview of the Service, background on accessible data sources as of the Effective Date and an introduction to the analytic capabilities of the Service. Peregrine will provide additional training, including refresher sessions and advanced training modules, from time to time upon mutual agreement of the parties.
Professional Services: The initial Customer Data sources and systems that Peregrine will integrate with the Service for Customer are: Mark 43 CAD, Mark 43 RMS, Axon BWC, Laserfische, Flock ALPR, Axon Fleet 3, Dronesense, and Crossroads eCitation. The fee schedule above includes support for up to 75 million annual LPR reads and a 30-day retention of LPR detections. This agreement provides for an allowance of \$5,000 in third-party API or data access fees. The Customer is responsible for any third-party API or data access fees in excess of \$5,000. Any additional data integrations or new functionality shall be subject to mutual written agreement of the parties, including with respect to fees. All additional data integration services or new functionality and corresponding fees will be set forth in a statement of work. For clarity, Peregrine will provide any other Professional Services and additional data integration services in accordance with Section 2.2 of the Terms and Conditions.

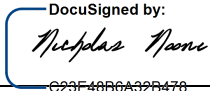


February 18, 2025

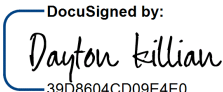
Peregrine services are provided subject to the terms set forth above on this Order Form together with the attached terms and conditions (the “**Terms and Conditions**,” and together with this Order Form, the “**Agreement**”). Any capitalized term used in this Order Form but not defined herein shall have the meaning ascribed to it in the Terms and Conditions. By signing this Order Form, Peregrine and Customer each agree to the terms and conditions set forth in this Agreement. In the event of any conflict between this Order Form and the Terms and Conditions, the terms of this Order Form shall govern to the extent of such conflict. This Order Form may be executed in counterparts (which may be delivered by electronic mail of .pdf files), each of which counterparts, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.

Peregrine

Customer

By: 
C23E48B6A32B478...
Name: Nicholas Noone
Title: President & CEO
Date Signed: 3/5/2025

By: _____
Name: _____
Title: _____
Date Signed: _____


39D8604CD09E4E0...
Dayton Killian
Head of Finance
3/5/2025

Attest: _____
Name: _____



February 18, 2025

Peregrine Customer Terms and Conditions

These Peregrine Customer Terms and Conditions govern the provision of the services described on the attached Order Form ("**Order Form**") by Peregrine Technologies, Inc. ("**Peregrine**") to Tracy Police Department ("**Customer**"). By executing an Order Form with Peregrine, Customer agrees to be bound by these Terms and Conditions.

1. Definitions.

"**Aggregated Data**" has the meaning specified in Section 6.1.

"**CJIS Security Policy**" means the FBI CJIS Security Policy document as published by the FBI CJIS Information Security Officer, currently located at <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>.

"**Client-Side Software**" means any software in source or object code form that Peregrine makes available for use in connection with the Service, including Peregrine's mobile application(s).

"**Criminal Justice Information Services Division**" or "**CJIS**" means the FBI division responsible for the collection, warehousing, and timely dissemination of relevant criminal justice information to the FBI and to qualified law enforcement, criminal justice, civilian, academic, employment and licensing agencies.

"**Customer Data**" means any of Customer's data, information, documents or electronic files that are provided to Peregrine via the Service or otherwise in connection with this Agreement, including any databases Customer procures from third party vendors for Peregrine's integration with the Service; provided that, for purposes of clarity, Customer Data as defined herein does not include Aggregated Data.

"**Documentation**" means the materials supplied by Peregrine hereunder, in any media, including any and all installer's, operator's and user's manuals, training materials, guides, functional or technical specifications or other materials for use in conjunction with the Service.

"**Personal Information**" means any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located, including without limitation all data considered "personal data", "personally identifiable information", or something similar under applicable laws, rules, or regulations relating to data privacy.

"**Professional Services**" has the meaning specified in Section 2.2.

"**Service**" means Peregrine's proprietary platform that assists Users with criminal investigations and police leadership decision making, consisting of a hosted web-based interface and the Client-Side Software. For purposes of this Agreement, the Service is exclusive of Professional Services that may be rendered upon mutual agreement of the parties in accordance with Section 2.2.

"**SOW**" has the meaning specified in Section 2.2.

"**Third Party Data**" means any third party databases that Peregrine licenses from third party vendors and makes accessible via the Service. For clarity, Third Party Data does not include any Customer Data.

"**Third Party Products**" means any third-party products provided with, integrated with, or incorporated into the Service, including Third Party Data.

"**Users**" means the individuals authorized by Customer to use the Service in accordance with the terms in the Order Form (including number and type of individuals who may access the Service) and that have been supplied user identifications and passwords by Peregrine.

2. Provision of the Service and Additional Services.

2.1. Service. During the Term and subject to the terms and conditions of this Agreement, including payment of the fees set forth on the Order Form, Customer may: (a) access and use the Service for up to the number of Users set forth in the Order Form, (b) download and reproduce the applicable Documentation solely for internal use in association with the Service, and (c) download, install, and use any Client-Side Software in support of Customer's use of the Service, in each case on a nonexclusive, non-transferable, and non-sublicensable basis and solely for



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Customer's internal business purposes. Peregrine shall provide Customer with authentication credentials for individual Users upon written request from authorized personnel of Customer, (ii) onboarding and training services as set forth in the Order Form ("**Onboarding and Training Services**"), and (iii) telephone and standard technical support to Customer during normal business hours ("**Technical Support**"). Except as set forth herein, Peregrine shall, at its sole cost and expense, provide all facilities and equipment that may be necessary for Peregrine to perform the Services.

2.2. Professional Services. Except as set forth in the Order Form, in the event that Customer requests that Peregrine perform data integration, configuration or implementation services regarding the Service, including integration of Customer Data or Third Party Data and creation of specific modifications to the Service (but excluding any Onboarding and Training Services), Peregrine will discuss the scope and fees for such services and, if agreed, such work will be performed pursuant to a statement of work executed by the parties and referencing this Agreement that describe such scope and fees (an "**SOW**," and such services, the "**Professional Services**"). Any fees associated with the Professional Services shall be set forth in the applicable SOW and Customer shall pay such fees in accordance with Section 4.2 below. To the extent the Professional Services result in any software code or other tangible work product ("**Work Product**"), all such Work Product will remain owned solely and exclusively by Peregrine and may be used by Customer solely in connection with Customer's authorized use of the Service under this Agreement. Customer shall permit Peregrine access to Customer's offices and any other facilities necessary for Peregrine to provide the Professional Services.

2.3. Access and Policies. Customer will permit Peregrine access to Customer's offices and any other facilities necessary for Peregrine to provide the Service, Onboarding and Training Services, Technical Support, and any Professional Services. Peregrine agrees to, and cause its personnel to, abide by Customer's facilities access and use policies as provided by Customer to Peregrine in writing in advance of any on-site visits. Customer will also permit and enable Peregrine to have offsite access to Customer Data and the Customer's production platform for the Service in order to provide the Service, Technical Support and Professional Services. Peregrine agrees to comply with the CJIS Security Policy in connection with its access to Customer Data, including CJIS-defined policies for remote access.

2.4. Compliance with Applicable Laws. Each party and its agents shall comply with all laws applicable to the performance or receipt, as applicable, of the Service hereunder.

2.5. Licenses and Permits. Peregrine and its employees, agents, and any subcontractors have, and will maintain at their sole cost and expense, all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. In addition to the foregoing, Peregrine and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from Customer as required by law.

2.6. Nondiscrimination and Equal Opportunity. Peregrine shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, sex, sexual orientation, gender or gender identity, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Peregrine under this Agreement. Peregrine shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Peregrine thereby.

2.7. Suspension. Notwithstanding anything to the contrary in this Agreement, Peregrine may temporarily suspend Customer's and any User's access to any portion or all of the Service if: (a) Peregrine reasonably determines that (i) there is a threat or attack on the Service; (ii) Customer's or any User's use of the Service disrupts or poses a security risk to the Service or to any other customer or vendor of Peregrine; (iii) Customer, or any User, is using the Service for fraudulent or illegal activities; (iv) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; (v) Peregrine's provision of the Service to Customer or any User is prohibited by applicable law; or (vi) any Customer Data submitted,



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posted, or otherwise transmitted by or on behalf of Customer or an User through the Service may infringe or otherwise violate any third party's intellectual property or other rights; (b) any vendor of Peregrine has suspended or terminated Peregrine's access to or use of any Third Party Products required to enable Customer to access the Service; or (c) if Customer fails to pay any undisputed fees when due (any such suspension described in subclauses (a), (b), or (c), a "**Service Suspension**"). Peregrine shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Service following any Service Suspension. Peregrine shall use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Peregrine will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any User may incur as a result of a Service Suspension.

2.8. Third Party Products. Peregrine may from time to time make Third Party Products available to Customer or Peregrine may allow for certain Third Party Products to be integrated with the Service. For purposes of this Agreement, such Third Party Products are subject to their own terms and conditions. Peregrine is not responsible for the operation of any Third Party Products and makes no representations or warranties of any kind with respect to Third Party Products or their respective providers. If Customer does not agree to abide by the applicable terms for any such Third Party Products, then Customer should not install or use such Third Party Products. By authorizing Peregrine to transmit Customer Data from Third Party Products into the Service, Customer represents and warrants to Peregrine that it has all right, power, and authority to provide such authorization.

2.9. Open Source Components. Certain aspects of the Service, such as the Client-Side Software, may contain or be distributed with open source software code or libraries ("**Open Source Components**"). Peregrine will provide a list of Open Source Components for a particular version of any distributed portion of the Service, such as the Client-Side Software, on Customer's request. To the extent required by the license applicable to such Open Source Components: (a) Peregrine will use reasonable efforts to deliver to Customer any notices or other materials (such as source code); and (b) the terms of such licenses will apply to such Open Source Components in lieu of the terms of this Agreement. To the extent the terms of such licenses prohibit any of the restrictions in this Agreement with respect to any particular Open Source Component, such restrictions will not apply to such Open Source Component. To the extent the terms of such licenses require Peregrine to make an offer to provide source code or related information in connection with the Open Source Component, such offer is hereby made. For purposes of clarity, Open Source Components are Third Party Products.

3. Customer Responsibilities.

3.1. Generally. Customer is responsible for all activities that occur under User accounts. Customer also shall: (a) ensure it has all rights necessary for Peregrine to integrate the Customer Data with the Service; (b) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (c) prevent unauthorized access to, or use of, the Service, and notify Peregrine immediately of any unauthorized access or use; (d) ensure each User has its own unique account on the Service and that Users do not share their account credentials with one another or any third party; and (e) comply with all applicable laws in using the Service. Customer agrees to provide its Users with the applications necessary to run the Service as set forth in the Documentation.

3.2. Use Restrictions. Customer shall not use the Service for any purposes beyond the scope of access granted under this Agreement. Without limiting the generality of the foregoing, Customer shall not, and shall ensure Users do not: (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party; (b) send spam or otherwise duplicative or unsolicited messages via the Service; (c) send or store infringing or unlawful material; (d) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (e) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (f) attempt to gain unauthorized access to the Service or its related systems or networks; (g) copy, modify, or create derivative works based upon the Service or any component thereof; (h) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Service or any component thereof; (i) use the Service in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property or other right of any third party or that violates any applicable law; (j) access or use the Service for purposes of competitive analysis of Peregrine or the Service, the development,



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provision, or use of a competing service or product, or any other purpose that is to Peregrine's detriment or commercial disadvantage; or (k) input, upload, transmit, or otherwise provide to or through the Service any information or materials, including Customer Data, that are unlawful or injurious in any way

3.3. CJIS Requirements. Customer certifies that it and its Users will comply with the following CJIS requirements: (a) Customer agrees to use training, policy and procedures to ensure Users use proper handling, processing, storing and communication protocols for Customer Data and any Third Party Data; (b) Customer agrees to protect the Service and any Third Party Data by monitoring and auditing staff user activity to ensure that it is only within the purview of system application development, system maintenance and the support roles assigned; (c) Customer will only provide access to the Service and any Third Party Data through Customer-managed role-based access and applied sharing rules configured by Customer; (d) Customer agrees to create and retain activity transaction logs to enable auditing by Peregrine staff, CJIS and any Third Party Data owners; (e) Customer agrees to perform independent employment background screening for its staff at Customer's own expense; and (f) Customer agrees to reinforce staff policies for creating User accounts with only one Customer domain email address for each User, with exceptions only as granted in writing by Peregrine.

3.4. Operation Restrictions. Under certain circumstances, it may be dangerous to operate a moving vehicle while attempting to operate a laptop, mobile device or other touch screen and any of their applications. Customer agrees that the Users will be instructed to only utilize the interface for the Service at times when it is safe to do so. Peregrine is not liable for any accident caused by a result of distraction such as from viewing the screen while operating a moving vehicle.

3.5. Customer Logo. Peregrine may use Customer's name and logo in Peregrine's lists of customers provided that such use will comply with any standard trademark guidelines provided by Customer to Peregrine.

3.6. Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Peregrine by mail, email, telephone, or otherwise, suggesting or recommending changes to the Service, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Peregrine is free to use such Feedback irrespective of any other obligation or limitation between the parties governing such Feedback.

4. Fees & Payment.

4.1. Fees. Customer shall pay the fees for the Service as specified in the Order Form and in any SOWs. All fees are non-refundable except to the extent otherwise expressly set forth in this Agreement.

4.2. Payment Terms. Except as set forth on the Order Form, Customer shall pay all fees within thirty (30) days of Peregrine issuing an invoice.

4.3. Taxes. Peregrine's fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("**Taxes**"). Customer is responsible for paying all Taxes, excluding only taxes based on Peregrine's income. If Peregrine has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Peregrine with a valid tax exemption certificate authorized by the appropriate taxing authority.

5. Proprietary Rights. The "**Peregrine Technology**" means (a) the Peregrine name, the Peregrine logo, and other trademarks and service marks; (b) audio and visual information, documents, software and other works of authorship, including training materials; (c) other technology included in the Service, including Client-Side Software, graphical user interfaces, workflows, products, processes, algorithms, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information provided by Peregrine under this Agreement; and (d) the work product or other results of Professional Services. Peregrine owns and shall retain all rights in the Peregrine Technology. Other than as expressly set forth in Section 2.1 above, no license or other rights in or to the Peregrine Technology or related intellectual property rights are granted to Customer or Users, and all such licenses and rights are hereby expressly reserved to Peregrine. For clarity, "**Peregrine Technology**" does not include Customer Data.

6. Data Access, Sharing and Security.



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6.1. Customer Data. Peregrine may access, reproduce, and use Customer Data to provide the Service, including to provide Technical Support, Onboarding and Training Services and any Professional Services. Customer agrees that Peregrine may generate technical logs, data and insights about Customer's usage of the Service (e.g., frequency of logins) ("**Peregrine Insights**") and may use the Customer Data in aggregated and anonymized form that does not individually identify any person or entity, including Customer or its Users ("**Aggregated Data**") for Peregrine's internal business purposes and to operate and improve Peregrine's proprietary software and services, and that Peregrine shall own the Peregrine Insights and the Aggregated Data. Peregrine shall destroy Peregrine Insights and Aggregated Data on termination of this Agreement. Peregrine may choose to terminate the provision of any Customer Data via the Service if the provision of such data may be harmful to the Service, as determined by Peregrine in its reasonable discretion.

6.2. CJIS Security Policy. Peregrine has implemented procedures to allow for adherence to the CJIS Security Policy. The hosting facility for the Service uses access control technologies that meet or exceed CJIS requirements. In addition, Peregrine has installed and configured solid network intrusion prevention appliances for adherence to the CJIS Security Policy.

6.3. Third Party Data. Any Third Party Data that Peregrine may provide via the Service is governed by the third party owner's retention policy. Peregrine does not provide any warranties with respect to any Third Party Data and Peregrine may choose to terminate the provision of any Third Party Data via the Service if Peregrine's applicable rights to such Third Party Data terminate or the provision of such data may be harmful to the Service, as determined by Peregrine in its reasonable discretion.

6.4. Processing of Personal Information. Peregrine's rights and obligations with respect to Personal information it collects directly from individuals are set forth in Peregrine's Privacy Policy <<https://peregrine.io/privacy-policy/>>. Personal Information included within Customer Data and processed by Peregrine on behalf of Customer is governed by this Agreement.

6.5. Sensitive Information; Marking Requirements. To the extent Customer provides Customer Data that Customer considers to be sensitive, proprietary, restricted, or otherwise requiring sensitive treatment ("**Sensitive Information**"), Customer is solely responsible for providing appropriate markings to designate the applicable Customer Data as Sensitive Information. Customer shall provide Peregrine with documentation and/or instructions in writing with sufficient detail for Peregrine to identify and distinguish content that is Sensitive Information within other provided Customer Data. Customer shall (a) mark Sensitive Information on its face, (b) make the appropriate designations for Sensitive Information in document metadata, (c) provide Peregrine with a table or other list of Sensitive Information that contains sufficient detail to identify the Sensitive Information; or (d) identify Sensitive Information to Peregrine in some other mutually agreed upon method. Peregrine shall not be responsible for failure to designate Sensitive Information with specific access control status based on Customer failure to provide sufficient information to identify Sensitive Information.

7. Confidentiality.

7.1. Definition of Confidential Information. The term "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including Customer Data, any Third Party Data, the Service, the Documentation, the Peregrine Technology, business and marketing plans, technology and technical information, product designs, and business processes.

7.2. Confidentiality. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party except to perform its obligations or exercise its rights under this Agreement, except with the Disclosing Party's prior written permission on a case-by-case basis. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event with less than reasonable care. If the Receiving Party is compelled by law or a government authority to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent practicable and legally



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permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

7.3. Exceptions. The parties' obligations in Section 7.2 shall not apply to any information that: (a) is or becomes publicly available without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (d) is received from a third party without breach of any obligation owed to the Disclosing Party.

7.4. Public Records Acts. Peregrine acknowledges that Customer is a public entity and may be governed by applicable laws, rules, or regulations relating to public records (each a "**Public Records Act**"). Nothing in this Section 7 shall prevent Customer from disclosing Confidential Information for purposes of complying with an applicable Public Records Act to the extent legally required.

7.5. Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 7, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that such unauthorized disclosure or use may cause irreparable harm to the Disclosing Party for which any other available remedies are inadequate.

8. Warranties & Disclaimers.

8.1. Warranties. Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Peregrine represents and warrants that (i) it will provide the Service in a professional manner consistent with the standards observed by a competent practitioner of the profession in which Peregrine is engaged, and (ii) the Service will perform in accordance with and otherwise substantially conform to its associated documentation.

8.2. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8.1, PEREGRINE MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT TO THE SERVICE, THE PEREGRINE TECHNOLOGY, ANY THIRD PARTY DATA AND ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT. PEREGRINE HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. Indemnification.

9.1. Indemnification by Peregrine. Peregrine shall at its expense defend Customer and its officers, directors, officials, agents, volunteers and employees ("**Customer Indemnified Parties**") against any claim made or brought against any Customer Indemnified Party by a third party alleging that the Service as provided to Customer and when used in accordance with this Agreement infringes any intellectual property rights of a third party (each, a "**Customer Claim**"), and shall indemnify and hold Customer Indemnified Parties harmless from and against any and all liability, loss, damage, claims, expenses, and costs, including without limitation, attorney's fees, awarded by a court or agreed to by Peregrine in a settlement with respect to such Customer Claim; provided, that Customer (a) promptly gives written notice of the Customer Claim to Peregrine; (b) gives Peregrine sole control of the defense and settlement of the Customer Claim (provided that Peregrine may not agree to any settlement that imposes any liability or obligation on Customer without Customer's prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed); and (c) provides to Peregrine, at Peregrine's cost, all reasonable assistance in the defense and settlement of the Customer Claim. Peregrine shall have no obligation under this Section 9.1 or otherwise regarding claims that arise from or relate to (i) Customer's use of the Service other than as contemplated by this Agreement, (ii) any modifications to the Service made by any entity other than Peregrine (where the liability would not have arisen but for such modification), (iii) any combination of the Service with services or technologies not provided by Peregrine (where the liability would not have arisen but for such combination), (iv) Customer's use of the Service or portion thereof after Peregrine has terminated this Agreement or such portion of the Service in accordance with this Section 9.1, or (v) Third Party Products. If in Peregrine's opinion a Customer Claim is likely to be made, or if an existing Customer Claim may cause Peregrine liability, Peregrine may in its discretion (x) obtain a license to enable Customer to continue to use the potentially infringing portion of the Service, (y) modify the Service to avoid the potential



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infringement, or (z) if the foregoing cannot be achieved after using reasonable commercial efforts, terminate the Agreement or the license to the infringing portion of the Service and refund the amount of any pre-paid fees applicable to the portion of the terminated Services to be provided after the termination date.

9.2. Indemnification by Customer. To the extent permitted by applicable law, Customer shall at its expense defend Peregrine and its officers, directors, officials, agents, volunteers and employees ("**Peregrine Indemnified Parties**") against any claim made or brought against any Peregrine Indemnified Party by a third party based on: (a) Customer's or any User's negligence, gross negligence, fraud, or willful misconduct; (b) Customer's or any User's use of the Service in a manner not authorized by this Agreement; or (c) Customer Data or Peregrine's authorized use of such Customer Data (each, a "**Peregrine Claim**"), and shall indemnify and hold Peregrine Indemnified Parties harmless from and against any and all liability, loss, damage, claims, expenses, and costs, including without limitation, attorney's fees, awarded by a court or agreed to by Customer in a settlement with respect to such Peregrine Claim; provided, that Peregrine (i) promptly gives written notice of the Peregrine Claim to Customer; (ii) gives Customer sole control of the defense and settlement of the Peregrine Claim (provided that Customer may not agree to any settlement that imposes any liability or obligation on Peregrine without Peregrine's prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed); and (iii) provides to Customer, at Customer's cost, all reasonable assistance in the defense and settlement of the Peregrine Claim.

9.3. Sole Remedy. THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PEREGRINE'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS BY THIRD PARTIES RELATING TO THE SERVICE OR ITS USE.

10. Limitation of Liability.

10.1. Exclusion of Consequential and Related Damages. EXCEPT FOR A PARTY'S BREACH OF SECTION 7, A PARTY'S INDEMNIFICATION AND DEFENSE OBLIGATIONS, OR A PARTY'S GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, MULTIPLE, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

10.2. Liability Cap. IN NO EVENT SHALL PEREGRINE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID TO PEREGRINE UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM.

11. Term & Termination.

11.1. Term of Agreement. This Agreement commences on the Effective Date and continues for the duration of the term set forth on the Order Form ("**Term**"), unless earlier terminated in accordance with the Order Form or Section 11.2

11.2. Termination for Cause. A party may terminate this Agreement for cause upon thirty (30) days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to Peregrine prior to the effective date of termination.

11.3. Data. Upon expiration or termination of this Agreement, Peregrine shall have no obligation to maintain or provide any Customer Data or Third Party Data. Unless legally prohibited, Peregrine shall delete all Customer Data in its systems or otherwise in its possession or under its control. Notwithstanding the foregoing or any other provision of this Agreement, Peregrine may use in perpetuity any Aggregated Data.

11.4. Survival. The following provisions shall survive termination or expiration of this Agreement: Sections 4, 5, 6.1, 6.3, 7, 8, 9, 10, 11.3, 11.4, and 12.

12. General Provisions.



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12.1. Insurance. Peregrine shall maintain the insurance coverages described on Appendix A: Insurance.

12.2. Relationship of the Parties. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third-party beneficiaries to this Agreement. At all times during the term of this Agreement, Peregrine shall be an independent contractor and shall not be an employee of Customer. Except as Customer may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Customer in any capacity whatsoever as an agent. Peregrine shall have no authority, express or implied, pursuant to this Agreement to bind Customer to any obligation whatsoever.

12.3. Peregrine's Books and Records. To the extent required by applicable laws, rules, or regulations, Peregrine shall maintain any and all records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the Customer under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to Peregrine to this Agreement. All such records shall be maintained in accordance with generally accepted standards and shall be made available for inspection, audit, and/or copying during regular business hours, upon written request of the Customer.

12.4. Force Majeure. Neither party shall be liable by reason of any failure or delay in performance of its obligations under this Agreement (except for the payment of money) on account of events beyond the reasonable control of such party, which may include Internet denial-of-service attacks, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes, and material shortages (each, a "**Force Majeure Event**"). Upon the occurrence of a Force Majeure Event, the non-performing party will be excused from any further performance of its obligations affected by the Force Majeure Event for so long as the event continues and such party continues to use commercially reasonable efforts to resume performance.

12.5. Federal Government. Any use, copy or disclosure of the Service by the U.S. Government is subject to restrictions as set forth in this Agreement and as provided by DFARS 227.7202-1(a) and 227.7202-3(a)(1995), DFARS 252.227-7013(c)(1)(ii)(October 1998), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227(ALT III), as applicable.

12.6. Additional Government Terms. Peregrine acknowledges that Customer may be a public entity and, accordingly, certain additional laws, rules, and regulations may take precedence over the terms and conditions of this Agreement (the "**Additional Government Terms**"). The Additional Government Terms, if any, are attached hereto as **Error! Reference source not found.**, and will govern to the extent of any conflict with any other term of this Agreement.

12.7. Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (a) personal delivery; (b) the second business day after mailing; (c) the second business day after sending by confirmed facsimile; or (d) after confirmed receipt of an email. Notices to Peregrine shall be addressed to the attention of Nick Noone, CEO, Peregrine Technologies, nick@peregrine.io, with a copy to ben@peregrine.io. Notices to Customer are to be addressed to the individual identified in the Order Form.

12.8. Waiver; Cumulative Remedies Severability. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

12.9. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing, Peregrine may assign this Agreement, together with all rights and obligations hereunder, without consent of Customer, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its stock or assets that relate to this Agreement. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.



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12.10. Governing Law. This Agreement shall be governed by the laws of California. The state courts located in San Joaquin County, CA or in the United States District Court for the Eastern District of California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts provided that nothing in this Section 12.10 prohibits either party from seeking or obtaining in any jurisdiction injunctive or similar relief in connection with the enforcement of this Agreement.

12.11. Construction. The division of this Agreement into Sections and the insertion of captions and headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms "this Agreement," "hereof," "hereunder" and any similar expressions refer to this Agreement and not to any particular Section or other portion hereof. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including," and variations thereof, will be deemed to be followed by the words "without limitation" and "discretion" means sole discretion

12.12. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation (excluding the Order Form) shall be incorporated into or form any part of this Agreement, and all such terms or conditions are hereby rejected and shall be null and void.



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Appendix A: Insurance

Peregrine, at its own cost and expense, shall procure the types and amounts of insurance specified herein and maintain that insurance throughout the term of the Agreement. The cost of such insurance shall be included in the Peregrine's bid or proposal. Peregrine shall be fully responsible for the acts and omissions of its subcontractors or other agents.

Workers' Compensation. Peregrine shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Peregrine in the amount required by applicable law. The requirement to maintain Statutory Workers' Compensation and Employer's Liability Insurance may be waived by the Customer upon written verification that Peregrine is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.

Commercial General and Automobile Liability Insurance

General requirements. Peregrine, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, combined single limit coverage for risks associated with the work contemplated by this Agreement.

Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition) covering any auto (Code 1), or if Peregrine has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage.

Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Commercial General and Automobile Liability Insurance shall cover on an occurrence basis.
- b. Customer, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds for liability arising out of work or operations on behalf of the Peregrine, including materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the Peregrine. Coverage can be provided in the form of an endorsement to the Peregrine's insurance at least as broad as CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01.
- c. For any claims related to this Agreement or the work hereunder, the Peregrine's insurance covered shall be primary insurance as respects the Customer, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the Customer, its officers, officials, employees, agents or volunteers shall be excess of the Peregrine's insurance and non-contributing.
- d. The policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.
- e. Peregrine agrees to give at least 30 days prior written notice to Customer before coverage is canceled or modified as to scope or amount.

Professional Liability Insurance.

General requirements. Peregrine, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 per occurrence or claim covering the Peregrine's errors and omissions.

Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.



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- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Peregrine must purchase an extended period coverage for a minimum of five (5) years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the Customer for review prior to the commencement of any work under this Agreement.

All Policies Requirements.

Submittal Requirements. Peregrine shall submit the following to Customer prior to beginning services:

Certificate of Liability Insurance in the amounts specified in this Agreement; and

Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.

Acceptability of Insurers. All insurance required by this Agreement is to be placed with insurers with a Bests' rating of no less than A:VII.

Deductibles and Self-Insured Retentions. Insurance obtained by the Peregrine shall have a self-insured retention or deductible of no more than \$100,000.

Wasting Policies. No policy required herein shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

Waiver of Subrogation. Peregrine hereby agrees to waive subrogation which any insurer or contractor may require from Peregrine by virtue of the payment of any loss. Peregrine agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the Customer has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Customer for all work performed by the Peregrine, its employees, agents, and subcontractors.

Subcontractors. Peregrine shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein, and Peregrine shall ensure that Customer, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.

Excess Insurance. If Peregrine maintains higher insurance limits than the minimums specified herein, Customer shall be entitled to coverage for the higher limits maintained by the Peregrine.

Remedies. In addition to any other remedies Customer may have if Peregrine fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Customer may, at its sole option, order Peregrine to stop work under this Agreement and withhold any payment that becomes due to Peregrine hereunder until Peregrine demonstrates compliance with the requirements hereof, or terminate this Agreement.



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Appendix B: Provisions for California Public Entities

Compliance with Applicable California Laws. Peregrine shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates as determined by the California Department of Industrial Relations.

California Public Records Act. Peregrine acknowledges that Customer is a public entity governed by the California Public Records Act and that nothing in this Agreement shall prevent Customer from disclosing Confidential Information for purposes of complying with the California Public Records Act.

PERS Indemnification by Peregrine. In the event that Peregrine or any employee, agent, or subcontractor of Peregrine providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System ("PERS") to be eligible for enrollment in PERS as an employee of Customer, at Peregrine shall indemnify, defend, and hold harmless Customer for the payment of any employee and/or employer contributions for PERS benefits on behalf of Peregrine or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Customer.

Political Reform Act Conflicts. Peregrine may serve other clients, but none whose activities within the corporate limits of Customer or whose business, regardless of location, would place Peregrine in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 et seq. No officer or employee of Customer shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 et seq.

California State Auditor Requirements. Pursuant to Government Code Section 8546.7, the Agreement may be subject to the examination and audit of the State Auditor for a period of 3 years after final payment under the Agreement.



Tracy Police Department
1000 Civic Center Dr
Tracy, Ca 95376

2/17/25

Thank you for your agency's interest in Peregrine's unified data platform ("the Peregrine platform" or "the platform"). The Peregrine platform has been built with law enforcement and public safety agencies in mind, making it uniquely suited to the needs of the Tracy Police Department (TPD). The Peregrine platform is the only end-to-end software available on the market with the following integrated capabilities:

- **Purpose-built data integrations Specifically for systems used by TPD.** Peregrine offers proven, pre-built connectors that allow for seamless integration with critical existing TPD systems such as Mark 43 CAD, Mark 43 RMS, AXON Body Worn Cameras, FLOCK ALPRs, CROSSROADS eCitation, Fleet 3 ALPR, Laserfische and Dronsense. These pre-built connectors eliminate any requirements for TPD IT to develop and maintain interfaces between Peregrine and TPD source systems and ensure that data available in Peregrine is complete, accurate, and always up-to-date.
- **Fully Integrated Search, Map, Link Analysis, Reporting, and Dashboarding.** Peregrine offers the only solution on the market that offers a fully integrated set of user-facing applications for search, map-based analysis, link analysis, reporting, and dashboarding that allow for seamless movement of data between those applications without the need to export and import data manually. Additionally, Peregrine is the only solution that offers desktop, laptop, tablet, and mobile device accessible versions of those integrated applications so that they can be accessed by authorized users wherever and whenever they are needed.
- **Proprietary Data Deduplication Algorithms.** Peregrine offers proprietary algorithms that will enable automatic and auditable deduplication and merging of data, such as person records. This will allow the TPD to have automatically clean, reliable information upon which to conduct data searches and compile reporting products without the need to make any changes to the agency's underlying source systems.
- **Proprietary Ontology Purpose-Built for Law Enforcement.** Peregrine offers the only dynamic ontology capability that has been purpose-built for Law Enforcement data. This allows the TPD to automatically establish connections and relationships between data elements within and across disparate systems that are otherwise likely to be missed. Additionally, Peregrine's dynamic ontology allows the TPD to have fully flexibility to change its desired data model over time without needing to build and maintain additional interfaces or make any changes to the agency's underlying source systems and the way they store or represent information. The Peregrine Ontology has been developed and continuously refined to specifically accommodate law enforcement data and concepts.
- **Secure Collaboration and Data Sharing.** The Peregrine platform's proprietary integration, ontology, and granular security permissions enable secure sharing within the TPD and between TPD and partner agencies, public and private, that is otherwise not possible. Within the TPD, this will allow secure collaboration across investigations, patrol, custody operations, traffic, analysis and command staff. Additionally, Peregrine will allow the TPD to securely collaborate and share data in a common platform with critical Peregrine customer agencies within San Joaquin County and beyond including, but not limited to Alameda County, Contra Costa County, Stanislaus County and Santa Clara County. All data sharing and collaboration features are automatically synchronized with TPD's existing user, group, and role security and access policies.
- **Fully Open and Interoperable Architecture.** Peregrine is the only solution on the market that ensures the TPD will never be at risk of vendor lock-in or issues related to data ownership. Peregrine's fully open and interoperable architecture is fully vendor-agnostic, allowing Peregrine to integrate data from any current or future TPD solution and allow any such solutions to access data from Peregrine, without limitation, if desired by TPD. A customer retains full and total rights to

its data within Peregrine at all times and has the ability to access and export that data in open, standard data formats at any time.

- **End-to-end security, CJIS, and CAL DOJ compliance.** Peregrine is hosted on the secure, CJIS compliant Amazon Web Services (AWS) Government Cloud region. Peregrine meets or exceeds all standards and controls set forth in the most current CJIS and CAL DOJ security policies. Peregrine has been approved at multiple California agencies to handle sensitive information such as criminal justice information. Additionally, Peregrine offers seamless integration with TPD's existing single-sign-on and multi-factor authentication services. This allows TPD to avoid any redundancy and duplication in managing user access and permissions and automatically ensure all interactions with sensitive data are compliant with existing agency data and information system security policies.

We look forward to working with TPD in the near future. If there are any additional questions, please do not hesitate to reach out to me directly.

Thank you,

A handwritten signature in black ink that reads "Nick Noone". The signature is written in a cursive, flowing style.

Nick Noone
Co-Founder/CEO
Nick@peregrine.io

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION NO. _____

-
- 1) MAKING A DETERMINATION THAT STRICT COMPLIANCE WITH STANDARD PROCUREMENT PROCEDURES IS NOT IN THE BEST INTEREST OF THE CITY PURSUANT TO TRACY MUNICIPAL CODE SECTION 2.20.180(4) AND DISPOSING THESE REQUIREMENTS FOR THE PURCHASE, INSTALLATION, OPERATION, TRAINING AND MAINTENANCE OF PEREGRINE SOFTWARE; AND**
 - 2) APPROVING EXECUTION OF A MASTER SERVICE AGREEMENT WITH PEREGRINE TECHNOLOGIES, INC., FOR SUCH SERVICES FOR A TWO-YEAR TERM AND FOR A TOTAL NOT TO EXCEED AMOUNT OF \$220,000.**

WHEREAS, the Police Department (PD) requires the expertise and technology that Peregrine Technologies, Inc. has to fully implement the Real Time Information Center; and

WHEREAS, this technology will provide real-time situational awareness, enhance officer safety and foster improved collaboration with City partners; and

WHEREAS, this software will play a vital role in tackling the opioid epidemic by integrating overdose reports, Narcan usage data, opioid-related calls for service and locations of high-risk activity; and

WHEREAS, this software will disseminate data automatically to police personnel and in response ensuring timely interventions in the areas where they are needed the most; and

WHEREAS, The Tracy Municipal Code 2.20.180(b)(4) provision allows the City Council to waive a procurement process when it determines that, compliance with the procedure is not in the best interest of the City for those commodities, equipment or general services the costs of which equal or exceed Fifty Thousand and no/100ths (\$50,000.00) Dollars; and

WHEREAS, Peregrine Technologies, Inc. (Vendor) has been identified as the sole provider capable of delivering an end-to-end software solution that meets the unique needs of the Tracy Police Department and its Real Time Information Center (RTIC). Their software offers a comprehensive suite of capabilities and they are the only vendor capable of meeting all of the City's requirements for this software system; and

WHEREAS, staff has negotiated a Master Services Agreement with the Vendor for a two-year term and a total not to exceed amount of \$220,000; now, therefore, be it

RESOLVED: That the City Council hereby makes a determination that strict compliance with standard procurement procedures is not in the best interest of the City and disposes such requirement for the purchase, installation, operation, training and maintenance of Peregrine software; and be it

FURTHER RESOLVED: That the Council hereby approves the execution of the Master Service Agreement with Peregrine Technologies, Inc., attached hereto as Exhibit 1, for a two-year term and for a total not to exceed \$220,000.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on April 1, 2025 by the following vote:

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

DAN ARRIOLA
Mayor of the City of Tracy, California

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

EXHIBITS:

(1) Master Services Agreement with Peregrine Technologies, Inc.



PEREGRINE CUSTOMER ORDER FORM & SCOPE OF SERVICES

Customer Information	
Customer Name: Tracy Police Department	Contact: Beth Lyons-McCarthy
Address: 1000 Civic Center Dr Tracy, CA 93576	Phone: 209-831-6594
Email: beth.lyons-mccarthy@tracypd.com	Fax: N/A

Peregrine Services
Effective Date: April 10, 2025
Initial Term: From the Effective Date through April 9, 2027 (" <u>Initial Term</u> ").
Service Fee: The following fee schedule is available to the Customer if Order Form is signed on or before April 2, 2025. Unless otherwise terminated as set forth in the Terms and Conditions, Customer shall pay Peregrine a service fee of \$110,000 annually for the Term as follows: a. \$110,000 within 30 days of the Effective Date b. \$110,000 within 30 days of April 10, 2026
Users: Customer may allow an unlimited number of employees of the Tracy Police Department to access and use the Service.
Onboarding and Training Services: Peregrine will provide Customer with an introductory training session that provides an overview of the Service, background on accessible data sources as of the Effective Date and an introduction to the analytic capabilities of the Service. Peregrine will provide additional training, including refresher sessions and advanced training modules, from time to time upon mutual agreement of the parties.
Professional Services: The initial Customer Data sources and systems that Peregrine will integrate with the Service for Customer are: Mark 43 CAD, Mark 43 RMS, Axon BWC, Laserfische, Flock ALPR, Axon Fleet 3, Dronesense, and Crossroads eCitation. The fee schedule above includes support for up to 75 million annual LPR reads and a 30-day retention of LPR detections. This agreement provides for an allowance of \$5,000 in third-party API or data access fees. The Customer is responsible for any third-party API or data access fees in excess of \$5,000. Any additional data integrations or new functionality shall be subject to mutual written agreement of the parties, including with respect to fees. All additional data integration services or new functionality and corresponding fees will be set forth in a statement of work. For clarity, Peregrine will provide any other Professional Services and additional data integration services in accordance with Section 2.2 of the Terms and Conditions.

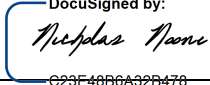


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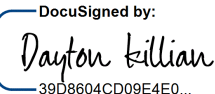
Peregrine services are provided subject to the terms set forth above on this Order Form together with the attached terms and conditions (the “**Terms and Conditions**,” and together with this Order Form, the “**Agreement**”). Any capitalized term used in this Order Form but not defined herein shall have the meaning ascribed to it in the Terms and Conditions. By signing this Order Form, Peregrine and Customer each agree to the terms and conditions set forth in this Agreement. In the event of any conflict between this Order Form and the Terms and Conditions, the terms of this Order Form shall govern to the extent of such conflict. This Order Form may be executed in counterparts (which may be delivered by electronic mail of .pdf files), each of which counterparts, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.

Peregrine

Customer

By: 
C23E48B6A32B478...
Name: Nicholas Noone
Title: President & CEO
Date Signed: 3/5/2025

By: _____
Name: _____
Title: _____
Date Signed: _____


39D8604CD09E4E0...
Dayton Killian
Head of Finance
3/5/2025

Attest: _____
Name: _____



February 18, 2025

Peregrine Customer Terms and Conditions

These Peregrine Customer Terms and Conditions govern the provision of the services described on the attached Order Form ("**Order Form**") by Peregrine Technologies, Inc. ("**Peregrine**") to Tracy Police Department ("**Customer**"). By executing an Order Form with Peregrine, Customer agrees to be bound by these Terms and Conditions.

1. Definitions.

"**Aggregated Data**" has the meaning specified in Section 6.1.

"**CJIS Security Policy**" means the FBI CJIS Security Policy document as published by the FBI CJIS Information Security Officer, currently located at <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>.

"**Client-Side Software**" means any software in source or object code form that Peregrine makes available for use in connection with the Service, including Peregrine's mobile application(s).

"**Criminal Justice Information Services Division**" or "**CJIS**" means the FBI division responsible for the collection, warehousing, and timely dissemination of relevant criminal justice information to the FBI and to qualified law enforcement, criminal justice, civilian, academic, employment and licensing agencies.

"**Customer Data**" means any of Customer's data, information, documents or electronic files that are provided to Peregrine via the Service or otherwise in connection with this Agreement, including any databases Customer procures from third party vendors for Peregrine's integration with the Service; provided that, for purposes of clarity, Customer Data as defined herein does not include Aggregated Data.

"**Documentation**" means the materials supplied by Peregrine hereunder, in any media, including any and all installer's, operator's and user's manuals, training materials, guides, functional or technical specifications or other materials for use in conjunction with the Service.

"**Personal Information**" means any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located, including without limitation all data considered "personal data", "personally identifiable information", or something similar under applicable laws, rules, or regulations relating to data privacy.

"**Professional Services**" has the meaning specified in Section 2.2.

"**Service**" means Peregrine's proprietary platform that assists Users with criminal investigations and police leadership decision making, consisting of a hosted web-based interface and the Client-Side Software. For purposes of this Agreement, the Service is exclusive of Professional Services that may be rendered upon mutual agreement of the parties in accordance with Section 2.2.

"**SOW**" has the meaning specified in Section 2.2.

"**Third Party Data**" means any third party databases that Peregrine licenses from third party vendors and makes accessible via the Service. For clarity, Third Party Data does not include any Customer Data.

"**Third Party Products**" means any third-party products provided with, integrated with, or incorporated into the Service, including Third Party Data.

"**Users**" means the individuals authorized by Customer to use the Service in accordance with the terms in the Order Form (including number and type of individuals who may access the Service) and that have been supplied user identifications and passwords by Peregrine.

2. Provision of the Service and Additional Services.

2.1. Service. During the Term and subject to the terms and conditions of this Agreement, including payment of the fees set forth on the Order Form, Customer may: (a) access and use the Service for up to the number of Users set forth in the Order Form, (b) download and reproduce the applicable Documentation solely for internal use in association with the Service, and (c) download, install, and use any Client-Side Software in support of Customer's use of the Service, in each case on a nonexclusive, non-transferable, and non-sublicensable basis and solely for



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Customer's internal business purposes. Peregrine shall provide Customer with authentication credentials for individual Users upon written request from authorized personnel of Customer, (ii) onboarding and training services as set forth in the Order Form ("**Onboarding and Training Services**"), and (iii) telephone and standard technical support to Customer during normal business hours ("**Technical Support**"). Except as set forth herein, Peregrine shall, at its sole cost and expense, provide all facilities and equipment that may be necessary for Peregrine to perform the Services.

2.2. Professional Services. Except as set forth in the Order Form, in the event that Customer requests that Peregrine perform data integration, configuration or implementation services regarding the Service, including integration of Customer Data or Third Party Data and creation of specific modifications to the Service (but excluding any Onboarding and Training Services), Peregrine will discuss the scope and fees for such services and, if agreed, such work will be performed pursuant to a statement of work executed by the parties and referencing this Agreement that describe such scope and fees (an "**SOW**," and such services, the "**Professional Services**"). Any fees associated with the Professional Services shall be set forth in the applicable SOW and Customer shall pay such fees in accordance with Section 4.2 below. To the extent the Professional Services result in any software code or other tangible work product ("**Work Product**"), all such Work Product will remain owned solely and exclusively by Peregrine and may be used by Customer solely in connection with Customer's authorized use of the Service under this Agreement. Customer shall permit Peregrine access to Customer's offices and any other facilities necessary for Peregrine to provide the Professional Services.

2.3. Access and Policies. Customer will permit Peregrine access to Customer's offices and any other facilities necessary for Peregrine to provide the Service, Onboarding and Training Services, Technical Support, and any Professional Services. Peregrine agrees to, and cause its personnel to, abide by Customer's facilities access and use policies as provided by Customer to Peregrine in writing in advance of any on-site visits. Customer will also permit and enable Peregrine to have offsite access to Customer Data and the Customer's production platform for the Service in order to provide the Service, Technical Support and Professional Services. Peregrine agrees to comply with the CJIS Security Policy in connection with its access to Customer Data, including CJIS-defined policies for remote access.

2.4. Compliance with Applicable Laws. Each party and its agents shall comply with all laws applicable to the performance or receipt, as applicable, of the Service hereunder.

2.5. Licenses and Permits. Peregrine and its employees, agents, and any subcontractors have, and will maintain at their sole cost and expense, all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. In addition to the foregoing, Peregrine and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from Customer as required by law.

2.6. Nondiscrimination and Equal Opportunity. Peregrine shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, sex, sexual orientation, gender or gender identity, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Peregrine under this Agreement. Peregrine shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Peregrine thereby.

2.7. Suspension. Notwithstanding anything to the contrary in this Agreement, Peregrine may temporarily suspend Customer's and any User's access to any portion or all of the Service if: (a) Peregrine reasonably determines that (i) there is a threat or attack on the Service; (ii) Customer's or any User's use of the Service disrupts or poses a security risk to the Service or to any other customer or vendor of Peregrine; (iii) Customer, or any User, is using the Service for fraudulent or illegal activities; (iv) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; (v) Peregrine's provision of the Service to Customer or any User is prohibited by applicable law; or (vi) any Customer Data submitted,



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posted, or otherwise transmitted by or on behalf of Customer or an User through the Service may infringe or otherwise violate any third party's intellectual property or other rights; (b) any vendor of Peregrine has suspended or terminated Peregrine's access to or use of any Third Party Products required to enable Customer to access the Service; or (c) if Customer fails to pay any undisputed fees when due (any such suspension described in subclauses (a), (b), or (c), a "**Service Suspension**"). Peregrine shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Service following any Service Suspension. Peregrine shall use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Peregrine will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any User may incur as a result of a Service Suspension.

2.8. Third Party Products. Peregrine may from time to time make Third Party Products available to Customer or Peregrine may allow for certain Third Party Products to be integrated with the Service. For purposes of this Agreement, such Third Party Products are subject to their own terms and conditions. Peregrine is not responsible for the operation of any Third Party Products and makes no representations or warranties of any kind with respect to Third Party Products or their respective providers. If Customer does not agree to abide by the applicable terms for any such Third Party Products, then Customer should not install or use such Third Party Products. By authorizing Peregrine to transmit Customer Data from Third Party Products into the Service, Customer represents and warrants to Peregrine that it has all right, power, and authority to provide such authorization.

2.9. Open Source Components. Certain aspects of the Service, such as the Client-Side Software, may contain or be distributed with open source software code or libraries ("**Open Source Components**"). Peregrine will provide a list of Open Source Components for a particular version of any distributed portion of the Service, such as the Client-Side Software, on Customer's request. To the extent required by the license applicable to such Open Source Components: (a) Peregrine will use reasonable efforts to deliver to Customer any notices or other materials (such as source code); and (b) the terms of such licenses will apply to such Open Source Components in lieu of the terms of this Agreement. To the extent the terms of such licenses prohibit any of the restrictions in this Agreement with respect to any particular Open Source Component, such restrictions will not apply to such Open Source Component. To the extent the terms of such licenses require Peregrine to make an offer to provide source code or related information in connection with the Open Source Component, such offer is hereby made. For purposes of clarity, Open Source Components are Third Party Products.

3. Customer Responsibilities.

3.1. Generally. Customer is responsible for all activities that occur under User accounts. Customer also shall: (a) ensure it has all rights necessary for Peregrine to integrate the Customer Data with the Service; (b) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (c) prevent unauthorized access to, or use of, the Service, and notify Peregrine immediately of any unauthorized access or use; (d) ensure each User has its own unique account on the Service and that Users do not share their account credentials with one another or any third party; and (e) comply with all applicable laws in using the Service. Customer agrees to provide its Users with the applications necessary to run the Service as set forth in the Documentation.

3.2. Use Restrictions. Customer shall not use the Service for any purposes beyond the scope of access granted under this Agreement. Without limiting the generality of the foregoing, Customer shall not, and shall ensure Users do not: (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party; (b) send spam or otherwise duplicative or unsolicited messages via the Service; (c) send or store infringing or unlawful material; (d) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (e) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (f) attempt to gain unauthorized access to the Service or its related systems or networks; (g) copy, modify, or create derivative works based upon the Service or any component thereof; (h) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Service or any component thereof; (i) use the Service in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property or other right of any third party or that violates any applicable law; (j) access or use the Service for purposes of competitive analysis of Peregrine or the Service, the development,



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provision, or use of a competing service or product, or any other purpose that is to Peregrine's detriment or commercial disadvantage; or (k) input, upload, transmit, or otherwise provide to or through the Service any information or materials, including Customer Data, that are unlawful or injurious in any way

3.3. CJIS Requirements. Customer certifies that it and its Users will comply with the following CJIS requirements: (a) Customer agrees to use training, policy and procedures to ensure Users use proper handling, processing, storing and communication protocols for Customer Data and any Third Party Data; (b) Customer agrees to protect the Service and any Third Party Data by monitoring and auditing staff user activity to ensure that it is only within the purview of system application development, system maintenance and the support roles assigned; (c) Customer will only provide access to the Service and any Third Party Data through Customer-managed role-based access and applied sharing rules configured by Customer; (d) Customer agrees to create and retain activity transaction logs to enable auditing by Peregrine staff, CJIS and any Third Party Data owners; (e) Customer agrees to perform independent employment background screening for its staff at Customer's own expense; and (f) Customer agrees to reinforce staff policies for creating User accounts with only one Customer domain email address for each User, with exceptions only as granted in writing by Peregrine.

3.4. Operation Restrictions. Under certain circumstances, it may be dangerous to operate a moving vehicle while attempting to operate a laptop, mobile device or other touch screen and any of their applications. Customer agrees that the Users will be instructed to only utilize the interface for the Service at times when it is safe to do so. Peregrine is not liable for any accident caused by a result of distraction such as from viewing the screen while operating a moving vehicle.

3.5. Customer Logo. Peregrine may use Customer's name and logo in Peregrine's lists of customers provided that such use will comply with any standard trademark guidelines provided by Customer to Peregrine.

3.6. Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Peregrine by mail, email, telephone, or otherwise, suggesting or recommending changes to the Service, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Peregrine is free to use such Feedback irrespective of any other obligation or limitation between the parties governing such Feedback.

4. Fees & Payment.

4.1. Fees. Customer shall pay the fees for the Service as specified in the Order Form and in any SOWs. All fees are non-refundable except to the extent otherwise expressly set forth in this Agreement.

4.2. Payment Terms. Except as set forth on the Order Form, Customer shall pay all fees within thirty (30) days of Peregrine issuing an invoice.

4.3. Taxes. Peregrine's fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("**Taxes**"). Customer is responsible for paying all Taxes, excluding only taxes based on Peregrine's income. If Peregrine has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Peregrine with a valid tax exemption certificate authorized by the appropriate taxing authority.

5. Proprietary Rights. The "**Peregrine Technology**" means (a) the Peregrine name, the Peregrine logo, and other trademarks and service marks; (b) audio and visual information, documents, software and other works of authorship, including training materials; (c) other technology included in the Service, including Client-Side Software, graphical user interfaces, workflows, products, processes, algorithms, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information provided by Peregrine under this Agreement; and (d) the work product or other results of Professional Services. Peregrine owns and shall retain all rights in the Peregrine Technology. Other than as expressly set forth in Section 2.1 above, no license or other rights in or to the Peregrine Technology or related intellectual property rights are granted to Customer or Users, and all such licenses and rights are hereby expressly reserved to Peregrine. For clarity, "**Peregrine Technology**" does not include Customer Data.

6. Data Access, Sharing and Security.



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6.1. Customer Data. Peregrine may access, reproduce, and use Customer Data to provide the Service, including to provide Technical Support, Onboarding and Training Services and any Professional Services. Customer agrees that Peregrine may generate technical logs, data and insights about Customer's usage of the Service (e.g., frequency of logins) ("**Peregrine Insights**") and may use the Customer Data in aggregated and anonymized form that does not individually identify any person or entity, including Customer or its Users ("**Aggregated Data**") for Peregrine's internal business purposes and to operate and improve Peregrine's proprietary software and services, and that Peregrine shall own the Peregrine Insights and the Aggregated Data. Peregrine shall destroy Peregrine Insights and Aggregated Data on termination of this Agreement. Peregrine may choose to terminate the provision of any Customer Data via the Service if the provision of such data may be harmful to the Service, as determined by Peregrine in its reasonable discretion.

6.2. CJIS Security Policy. Peregrine has implemented procedures to allow for adherence to the CJIS Security Policy. The hosting facility for the Service uses access control technologies that meet or exceed CJIS requirements. In addition, Peregrine has installed and configured solid network intrusion prevention appliances for adherence to the CJIS Security Policy.

6.3. Third Party Data. Any Third Party Data that Peregrine may provide via the Service is governed by the third party owner's retention policy. Peregrine does not provide any warranties with respect to any Third Party Data and Peregrine may choose to terminate the provision of any Third Party Data via the Service if Peregrine's applicable rights to such Third Party Data terminate or the provision of such data may be harmful to the Service, as determined by Peregrine in its reasonable discretion.

6.4. Processing of Personal Information. Peregrine's rights and obligations with respect to Personal information it collects directly from individuals are set forth in Peregrine's Privacy Policy <<https://peregrine.io/privacy-policy/>>. Personal Information included within Customer Data and processed by Peregrine on behalf of Customer is governed by this Agreement.

6.5. Sensitive Information; Marking Requirements. To the extent Customer provides Customer Data that Customer considers to be sensitive, proprietary, restricted, or otherwise requiring sensitive treatment ("**Sensitive Information**"), Customer is solely responsible for providing appropriate markings to designate the applicable Customer Data as Sensitive Information. Customer shall provide Peregrine with documentation and/or instructions in writing with sufficient detail for Peregrine to identify and distinguish content that is Sensitive Information within other provided Customer Data. Customer shall (a) mark Sensitive Information on its face, (b) make the appropriate designations for Sensitive Information in document metadata, (c) provide Peregrine with a table or other list of Sensitive Information that contains sufficient detail to identify the Sensitive Information; or (d) identify Sensitive Information to Peregrine in some other mutually agreed upon method. Peregrine shall not be responsible for failure to designate Sensitive Information with specific access control status based on Customer failure to provide sufficient information to identify Sensitive Information.

7. Confidentiality.

7.1. Definition of Confidential Information. The term "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including Customer Data, any Third Party Data, the Service, the Documentation, the Peregrine Technology, business and marketing plans, technology and technical information, product designs, and business processes.

7.2. Confidentiality. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party except to perform its obligations or exercise its rights under this Agreement, except with the Disclosing Party's prior written permission on a case-by-case basis. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event with less than reasonable care. If the Receiving Party is compelled by law or a government authority to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent practicable and legally



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permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

7.3. Exceptions. The parties' obligations in Section 7.2 shall not apply to any information that: (a) is or becomes publicly available without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (d) is received from a third party without breach of any obligation owed to the Disclosing Party.

7.4. Public Records Acts. Peregrine acknowledges that Customer is a public entity and may be governed by applicable laws, rules, or regulations relating to public records (each a "**Public Records Act**"). Nothing in this Section 7 shall prevent Customer from disclosing Confidential Information for purposes of complying with an applicable Public Records Act to the extent legally required.

7.5. Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 7, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that such unauthorized disclosure or use may cause irreparable harm to the Disclosing Party for which any other available remedies are inadequate.

8. Warranties & Disclaimers.

8.1. Warranties. Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Peregrine represents and warrants that (i) it will provide the Service in a professional manner consistent with the standards observed by a competent practitioner of the profession in which Peregrine is engaged, and (ii) the Service will perform in accordance with and otherwise substantially conform to its associated documentation.

8.2. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8.1, PEREGRINE MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT TO THE SERVICE, THE PEREGRINE TECHNOLOGY, ANY THIRD PARTY DATA AND ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT. PEREGRINE HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. Indemnification.

9.1. Indemnification by Peregrine. Peregrine shall at its expense defend Customer and its officers, directors, officials, agents, volunteers and employees ("**Customer Indemnified Parties**") against any claim made or brought against any Customer Indemnified Party by a third party alleging that the Service as provided to Customer and when used in accordance with this Agreement infringes any intellectual property rights of a third party (each, a "**Customer Claim**"), and shall indemnify and hold Customer Indemnified Parties harmless from and against any and all liability, loss, damage, claims, expenses, and costs, including without limitation, attorney's fees, awarded by a court or agreed to by Peregrine in a settlement with respect to such Customer Claim; provided, that Customer (a) promptly gives written notice of the Customer Claim to Peregrine; (b) gives Peregrine sole control of the defense and settlement of the Customer Claim (provided that Peregrine may not agree to any settlement that imposes any liability or obligation on Customer without Customer's prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed); and (c) provides to Peregrine, at Peregrine's cost, all reasonable assistance in the defense and settlement of the Customer Claim. Peregrine shall have no obligation under this Section 9.1 or otherwise regarding claims that arise from or relate to (i) Customer's use of the Service other than as contemplated by this Agreement, (ii) any modifications to the Service made by any entity other than Peregrine (where the liability would not have arisen but for such modification), (iii) any combination of the Service with services or technologies not provided by Peregrine (where the liability would not have arisen but for such combination), (iv) Customer's use of the Service or portion thereof after Peregrine has terminated this Agreement or such portion of the Service in accordance with this Section 9.1, or (v) Third Party Products. If in Peregrine's opinion a Customer Claim is likely to be made, or if an existing Customer Claim may cause Peregrine liability, Peregrine may in its discretion (x) obtain a license to enable Customer to continue to use the potentially infringing portion of the Service, (y) modify the Service to avoid the potential



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infringement, or (z) if the foregoing cannot be achieved after using reasonable commercial efforts, terminate the Agreement or the license to the infringing portion of the Service and refund the amount of any pre-paid fees applicable to the portion of the terminated Services to be provided after the termination date.

9.2. Indemnification by Customer. To the extent permitted by applicable law, Customer shall at its expense defend Peregrine and its officers, directors, officials, agents, volunteers and employees ("**Peregrine Indemnified Parties**") against any claim made or brought against any Peregrine Indemnified Party by a third party based on: (a) Customer's or any User's negligence, gross negligence, fraud, or willful misconduct; (b) Customer's or any User's use of the Service in a manner not authorized by this Agreement; or (c) Customer Data or Peregrine's authorized use of such Customer Data (each, a "**Peregrine Claim**"), and shall indemnify and hold Peregrine Indemnified Parties harmless from and against any and all liability, loss, damage, claims, expenses, and costs, including without limitation, attorney's fees, awarded by a court or agreed to by Customer in a settlement with respect to such Peregrine Claim; provided, that Peregrine (i) promptly gives written notice of the Peregrine Claim to Customer; (ii) gives Customer sole control of the defense and settlement of the Peregrine Claim (provided that Customer may not agree to any settlement that imposes any liability or obligation on Peregrine without Peregrine's prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed); and (iii) provides to Customer, at Customer's cost, all reasonable assistance in the defense and settlement of the Peregrine Claim.

9.3. Sole Remedy. THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PEREGRINE'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS BY THIRD PARTIES RELATING TO THE SERVICE OR ITS USE.

10. Limitation of Liability.

10.1. Exclusion of Consequential and Related Damages. EXCEPT FOR A PARTY'S BREACH OF SECTION 7, A PARTY'S INDEMNIFICATION AND DEFENSE OBLIGATIONS, OR A PARTY'S GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, MULTIPLE, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

10.2. Liability Cap. IN NO EVENT SHALL PEREGRINE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID TO PEREGRINE UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM.

11. Term & Termination.

11.1. Term of Agreement. This Agreement commences on the Effective Date and continues for the duration of the term set forth on the Order Form ("**Term**"), unless earlier terminated in accordance with the Order Form or Section 11.2

11.2. Termination for Cause. A party may terminate this Agreement for cause upon thirty (30) days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to Peregrine prior to the effective date of termination.

11.3. Data. Upon expiration or termination of this Agreement, Peregrine shall have no obligation to maintain or provide any Customer Data or Third Party Data. Unless legally prohibited, Peregrine shall delete all Customer Data in its systems or otherwise in its possession or under its control. Notwithstanding the foregoing or any other provision of this Agreement, Peregrine may use in perpetuity any Aggregated Data.

11.4. Survival. The following provisions shall survive termination or expiration of this Agreement: Sections 4, 5, 6.1, 6.3, 7, 8, 9, 10, 11.3, 11.4, and 12.

12. General Provisions.



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12.1. Insurance. Peregrine shall maintain the insurance coverages described on Appendix A: Insurance.

12.2. Relationship of the Parties. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third-party beneficiaries to this Agreement. At all times during the term of this Agreement, Peregrine shall be an independent contractor and shall not be an employee of Customer. Except as Customer may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Customer in any capacity whatsoever as an agent. Peregrine shall have no authority, express or implied, pursuant to this Agreement to bind Customer to any obligation whatsoever.

12.3. Peregrine's Books and Records. To the extent required by applicable laws, rules, or regulations, Peregrine shall maintain any and all records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the Customer under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to Peregrine to this Agreement. All such records shall be maintained in accordance with generally accepted standards and shall be made available for inspection, audit, and/or copying during regular business hours, upon written request of the Customer.

12.4. Force Majeure. Neither party shall be liable by reason of any failure or delay in performance of its obligations under this Agreement (except for the payment of money) on account of events beyond the reasonable control of such party, which may include Internet denial-of-service attacks, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes, and material shortages (each, a "**Force Majeure Event**"). Upon the occurrence of a Force Majeure Event, the non-performing party will be excused from any further performance of its obligations affected by the Force Majeure Event for so long as the event continues and such party continues to use commercially reasonable efforts to resume performance.

12.5. Federal Government. Any use, copy or disclosure of the Service by the U.S. Government is subject to restrictions as set forth in this Agreement and as provided by DFARS 227.7202-1(a) and 227.7202-3(a)(1995), DFARS 252.227-7013(c)(1)(ii)(October 1998), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227(ALT III), as applicable.

12.6. Additional Government Terms. Peregrine acknowledges that Customer may be a public entity and, accordingly, certain additional laws, rules, and regulations may take precedence over the terms and conditions of this Agreement (the "**Additional Government Terms**"). The Additional Government Terms, if any, are attached hereto as **Error! Reference source not found.**, and will govern to the extent of any conflict with any other term of this Agreement.

12.7. Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (a) personal delivery; (b) the second business day after mailing; (c) the second business day after sending by confirmed facsimile; or (d) after confirmed receipt of an email. Notices to Peregrine shall be addressed to the attention of Nick Noone, CEO, Peregrine Technologies, nick@peregrine.io, with a copy to ben@peregrine.io. Notices to Customer are to be addressed to the individual identified in the Order Form.

12.8. Waiver; Cumulative Remedies Severability. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

12.9. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing, Peregrine may assign this Agreement, together with all rights and obligations hereunder, without consent of Customer, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its stock or assets that relate to this Agreement. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.



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12.10. Governing Law. This Agreement shall be governed by the laws of California. The state courts located in San Joaquin County, CA or in the United States District Court for the Eastern District of California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts provided that nothing in this Section 12.10 prohibits either party from seeking or obtaining in any jurisdiction injunctive or similar relief in connection with the enforcement of this Agreement.

12.11. Construction. The division of this Agreement into Sections and the insertion of captions and headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms "this Agreement," "hereof," "hereunder" and any similar expressions refer to this Agreement and not to any particular Section or other portion hereof. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including," and variations thereof, will be deemed to be followed by the words "without limitation" and "discretion" means sole discretion

12.12. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation (excluding the Order Form) shall be incorporated into or form any part of this Agreement, and all such terms or conditions are hereby rejected and shall be null and void.



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Appendix A: Insurance

Peregrine, at its own cost and expense, shall procure the types and amounts of insurance specified herein and maintain that insurance throughout the term of the Agreement. The cost of such insurance shall be included in the Peregrine's bid or proposal. Peregrine shall be fully responsible for the acts and omissions of its subcontractors or other agents.

Workers' Compensation. Peregrine shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Peregrine in the amount required by applicable law. The requirement to maintain Statutory Workers' Compensation and Employer's Liability Insurance may be waived by the Customer upon written verification that Peregrine is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.

Commercial General and Automobile Liability Insurance

General requirements. Peregrine, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, combined single limit coverage for risks associated with the work contemplated by this Agreement.

Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition) covering any auto (Code 1), or if Peregrine has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage.

Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Commercial General and Automobile Liability Insurance shall cover on an occurrence basis.
- b. Customer, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds for liability arising out of work or operations on behalf of the Peregrine, including materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the Peregrine. Coverage can be provided in the form of an endorsement to the Peregrine's insurance at least as broad as CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01.
- c. For any claims related to this Agreement or the work hereunder, the Peregrine's insurance covered shall be primary insurance as respects the Customer, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the Customer, its officers, officials, employees, agents or volunteers shall be excess of the Peregrine's insurance and non-contributing.
- d. The policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.
- e. Peregrine agrees to give at least 30 days prior written notice to Customer before coverage is canceled or modified as to scope or amount.

Professional Liability Insurance.

General requirements. Peregrine, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 per occurrence or claim covering the Peregrine's errors and omissions.

Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.



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- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Peregrine must purchase an extended period coverage for a minimum of five (5) years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the Customer for review prior to the commencement of any work under this Agreement.

All Policies Requirements.

Submittal Requirements. Peregrine shall submit the following to Customer prior to beginning services:

Certificate of Liability Insurance in the amounts specified in this Agreement; and

Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.

Acceptability of Insurers. All insurance required by this Agreement is to be placed with insurers with a Bests' rating of no less than A:VII.

Deductibles and Self-Insured Retentions. Insurance obtained by the Peregrine shall have a self-insured retention or deductible of no more than \$100,000.

Wasting Policies. No policy required herein shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

Waiver of Subrogation. Peregrine hereby agrees to waive subrogation which any insurer or contractor may require from Peregrine by virtue of the payment of any loss. Peregrine agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the Customer has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Customer for all work performed by the Peregrine, its employees, agents, and subcontractors.

Subcontractors. Peregrine shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein, and Peregrine shall ensure that Customer, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.

Excess Insurance. If Peregrine maintains higher insurance limits than the minimums specified herein, Customer shall be entitled to coverage for the higher limits maintained by the Peregrine.

Remedies. In addition to any other remedies Customer may have if Peregrine fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Customer may, at its sole option, order Peregrine to stop work under this Agreement and withhold any payment that becomes due to Peregrine hereunder until Peregrine demonstrates compliance with the requirements hereof, or terminate this Agreement.



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Appendix B: Provisions for California Public Entities

Compliance with Applicable California Laws. Peregrine shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates as determined by the California Department of Industrial Relations.

California Public Records Act. Peregrine acknowledges that Customer is a public entity governed by the California Public Records Act and that nothing in this Agreement shall prevent Customer from disclosing Confidential Information for purposes of complying with the California Public Records Act.

PERS Indemnification by Peregrine. In the event that Peregrine or any employee, agent, or subcontractor of Peregrine providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System ("PERS") to be eligible for enrollment in PERS as an employee of Customer, at Peregrine shall indemnify, defend, and hold harmless Customer for the payment of any employee and/or employer contributions for PERS benefits on behalf of Peregrine or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Customer.

Political Reform Act Conflicts. Peregrine may serve other clients, but none whose activities within the corporate limits of Customer or whose business, regardless of location, would place Peregrine in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 et seq. No officer or employee of Customer shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 et seq.

California State Auditor Requirements. Pursuant to Government Code Section 8546.7, the Agreement may be subject to the examination and audit of the State Auditor for a period of 3 years after final payment under the Agreement.



Tracy Police Department
1000 Civic Center Dr
Tracy, Ca 95376

2/17/25

Thank you for your agency's interest in Peregrine's unified data platform ("the Peregrine platform" or "the platform"). The Peregrine platform has been built with law enforcement and public safety agencies in mind, making it uniquely suited to the needs of the Tracy Police Department (TPD). The Peregrine platform is the only end-to-end software available on the market with the following integrated capabilities:

- **Purpose-built data integrations Specifically for systems used by TPD.** Peregrine offers proven, pre-built connectors that allow for seamless integration with critical existing TPD systems such as Mark 43 CAD, Mark 43 RMS, AXON Body Worn Cameras, FLOCK ALPRs, CROSSROADS eCitation, Fleet 3 ALPR, Laserfische and Dronsense. These pre-built connectors eliminate any requirements for TPD IT to develop and maintain interfaces between Peregrine and TPD source systems and ensure that data available in Peregrine is complete, accurate, and always up-to-date.
- **Fully Integrated Search, Map, Link Analysis, Reporting, and Dashboarding.** Peregrine offers the only solution on the market that offers a fully integrated set of user-facing applications for search, map-based analysis, link analysis, reporting, and dashboarding that allow for seamless movement of data between those applications without the need to export and import data manually. Additionally, Peregrine is the only solution that offers desktop, laptop, tablet, and mobile device accessible versions of those integrated applications so that they can be accessed by authorized users wherever and whenever they are needed.
- **Proprietary Data Deduplication Algorithms.** Peregrine offers proprietary algorithms that will enable automatic and auditable deduplication and merging of data, such as person records. This will allow the TPD to have automatically clean, reliable information upon which to conduct data searches and compile reporting products without the need to make any changes to the agency's underlying source systems.
- **Proprietary Ontology Purpose-Built for Law Enforcement.** Peregrine offers the only dynamic ontology capability that has been purpose-built for Law Enforcement data. This allows the TPD to automatically establish connections and relationships between data elements within and across disparate systems that are otherwise likely to be missed. Additionally, Peregrine's dynamic ontology allows the TPD to have fully flexibility to change its desired data model over time without needing to build and maintain additional interfaces or make any changes to the agency's underlying source systems and the way they store or represent information. The Peregrine Ontology has been developed and continuously refined to specifically accommodate law enforcement data and concepts.
- **Secure Collaboration and Data Sharing.** The Peregrine platform's proprietary integration, ontology, and granular security permissions enable secure sharing within the TPD and between TPD and partner agencies, public and private, that is otherwise not possible. Within the TPD, this will allow secure collaboration across investigations, patrol, custody operations, traffic, analysis and command staff. Additionally, Peregrine will allow the TPD to securely collaborate and share data in a common platform with critical Peregrine customer agencies within San Joaquin County and beyond including, but not limited to Alameda County, Contra Costa County, Stanislaus County and Santa Clara County. All data sharing and collaboration features are automatically synchronized with TPD's existing user, group, and role security and access policies.
- **Fully Open and Interoperable Architecture.** Peregrine is the only solution on the market that ensures the TPD will never be at risk of vendor lock-in or issues related to data ownership. Peregrine's fully open and interoperable architecture is fully vendor-agnostic, allowing Peregrine to integrate data from any current or future TPD solution and allow any such solutions to access data from Peregrine, without limitation, if desired by TPD. A customer retains full and total rights to

its data within Peregrine at all times and has the ability to access and export that data in open, standard data formats at any time.

- **End-to-end security, CJIS, and CAL DOJ compliance.** Peregrine is hosted on the secure, CJIS compliant Amazon Web Services (AWS) Government Cloud region. Peregrine meets or exceeds all standards and controls set forth in the most current CJIS and CAL DOJ security policies. Peregrine has been approved at multiple California agencies to handle sensitive information such as criminal justice information. Additionally, Peregrine offers seamless integration with TPD's existing single-sign-on and multi-factor authentication services. This allows TPD to avoid any redundancy and duplication in managing user access and permissions and automatically ensure all interactions with sensitive data are compliant with existing agency data and information system security policies.

We look forward to working with TPD in the near future. If there are any additional questions, please do not hesitate to reach out to me directly.

Thank you,

A handwritten signature in black ink that reads "Nick Noone". The signature is written in a cursive, flowing style.

Nick Noone
Co-Founder/CEO
Nick@peregrine.io

Agenda Item 1.N

RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving the selection of the Interstate 205/Mountain House Parkway Interchange Project as the City of Tracy 2025 Regional Transportation Project submittal for congressional appropriation requests during San Joaquin Council of Governments' One Voice trip to Washington D.C.

EXECUTIVE SUMMARY

City Council's approval of the listed project will allow the transportation improvement project to be eligible for inclusion in the San Joaquin Council of Governments' (SJCOG) One Voice trip to Washington D.C. legislative agenda and congressional funding appropriation requests.

BACKGROUND AND LEGISLATIVE HISTORY

Every year the City of Tracy submits a list of projects to SJCOG for consideration in their legislative agenda and congressional appropriation requests during the One Voice trip to Washington D.C. The One Voice trip includes representatives of San Joaquin County, SJCOG, and City elected officials. This year each city was asked to submit one project of regional significance.

City staff worked with consultants at Mark Thomas & Company, Inc. to prepare the SJCOG One Voice application, attached as Attachment A. This application was submitted to the San Joaquin Council of Governments on or before January 31, 2025.

ANALYSIS

Nominated regional projects must meet the following criteria:

- Be regional in nature and have a federal nexus.
- Must be at or near completion of NEPA (National Environmental Policy Act) clearance, or qualified waiver, for projects seeking ROW (Right-of-Way) or construction funding.
- Be sufficiently developed to suggest federal assistance is warranted (shovel-ready).
- Explain whether the sponsor is utilizing any formula funding for the project elements and detail how formula funds are being applied. If not utilizing formula funds, explain why formula funds are not being applied to the project.
- Projects should be targeted for appropriations in the Federal Fiscal Year 2025 budget or an upcoming notice of agency funding opportunity.
- Demonstrated community support.

Staff has reviewed the existing needs of various transportation projects and is recommending Interstate 205 (I-205)/Mountain House Parkway Interchange Project (Project) for the 2025 One Voice trip.

Project Description:

The purpose of the Project is to provide an improved connection to Interstate 205 (I-205) that serves the existing and planned residential, commercial, and industrial development in the area. This growth is expected within the International Park of Commerce (IPC), and elsewhere in the City, City of Mountain House, San Joaquin County, and neighboring counties. These efforts will also relieve forecasted increases in traffic demand at surrounding interchanges and increase regional mobility. The northeast area of Tracy and its surrounding communities (particularly southwest Lathrop) are growing rapidly. This is expected to continue over the next several decades. Growth will continue to increase demand on local interchanges, causing them to operate at a less than acceptable level of service. The Project will help reduce congestion resulting from ongoing and planned development and improve local traffic circulation while increasing accessibility and efficiency for users. Currently the closest access to I-205 is from MacArthur Drive, where future traffic demands at the interchange will result in unacceptable levels of service. This interchange improvement is listed within the City's circulation element. The Project will support efforts to mitigate climate change impacts, reduce vehicle and diesel emissions, support fiscally responsible land use and transportation efficient design, support domestic manufacturing, increase active transportation opportunities in the region, and enhance mobility and jobs access for multiple communities within the City and regionally.

The Project will improve the existing interchange to enhance traffic operations, reduce travel times, and improve goods movement. The Project will add new travel lanes southbound along Mountain House Parkway (north of the freeway) and northbound along International Parkway (south of the freeway) approaching the ramp termini. The Project will add a westbound loop on-ramp, realign the westbound diagonal on-ramps and off-ramps, and widen the eastbound diagonal and loop on-ramps. The Project will also retune the signals at the ramp termini to maximize throughput during peak hours and accommodate bicyclists and pedestrians. The mouths of ramp entrances will be widened to accommodate truck turning movements from either direction. The improvements will accommodate the future I-205 Managed Lanes Project along the freeway. Additional improvements will include the interconnection between ramp meters and local roads located within 1,000 feet of the ramp termini signals.

The Project also accommodates non-motorized travel. The design includes Class II bike lanes and sidewalks on the interchange approaches. The bike lane and sidewalk in the northbound approach transition to a Class I ribbon path that is grade separated at the new westbound off-ramp. The on-street Class II bike lane and sidewalk in the southbound direction continue through the interchange.

Project Environmental Benefits:

The proposed interchange has completed its environmental phase and has achieved state and federal environmental clearance. The Project has identified mitigations to significantly reduce environmental impacts. There are no biological impacts or required mitigations. The environmental and traffic analysis does show improvements to air quality with the reduction of vehicles in the corridor and increased efficiency of travel. The Project components are projected to improve air quality for the Project area. Required mitigation measures include paleontological investigations during construction and stormwater best management practices.

FISCAL IMPACT

The City is requesting \$51,121,000 in congressional appropriations. The funding that has already been secured is \$2,918,000. The total cost of the Project is estimated at \$54,039,000. In addition to this funding, the proposed Project will be supported through other funding sources, including developer funding, and development impact fees. If the City can secure additional funding through One Voice and a grant, less local funding would be required.

COORDINATION

City staff worked with consultants at Mark Thomas & Company, Inc. to prepare the SJCOG One Voice application, attached as Attachment A.

CEQA DETERMINATION

This action is not a "Project" and, therefore, not subject to California Environmental Quality Act (CEQA). The submittal of this Project for SJCOG's One Voice Trip does not require CEQA analysis.

STRATEGIC PLAN

This agenda item supports City of Tracy's Economic Development Strategic Priority, which is to enhance the competitiveness of the City while further developing a strong and diverse economic base.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution approving the selection of the Interstate 205/Mountain House Parkway Interchange Project as the City of Tracy 2025 Regional Transportation Project submittal for congressional appropriation requests during San Joaquin Council of Governments' One Voice trip to Washington D.C.

Prepared by: Habibullah Habib, PE, Associate Civil Engineer

Reviewed by: Sharat Bandugula, PE, Acting Assistant City Engineer
Sara Castro, Finance Director
Andrew Shen, Interim City Attorney
Karin Schnaider, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A – SJCOG One Voice Application 2025



City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

ENGINEERING DIVISION

MAIN 209.831.6478
FAX 209.831.4430
www.cityoftracy.org

January 31, 2025

Diane Nguyen, Executive Director
San Joaquin Council of Governments
555 E. Weber Avenue
Stockton CA 95202

City of Tracy – SJCOG 2025 One Voice Project Application

The City of Tracy (City) is pleased to officially submit the application for the SJCOG 2025 One Voice Program. Our submission focuses on the Interstate 205 (I-205/ Mountain House Parkway Interchange Project, a vital initiative situated within the City of Tracy community.

The primary objective of the proposed project is to enhance the existing Mountain House Parkway interchange, a regionally significant corridor. The project will add new travel lanes southbound along Mountain House Parkway (north of the freeway) and northbound along International Parkway (south of the freeway) approaching the ramp termini. The Project will add a westbound loop on-ramp, realign the westbound diagonal on- and off-ramps, and widen the eastbound diagonal and loop on-ramps. The Project will also retime the signals at the ramp termini to maximize throughput during peak hours and accommodate bicyclists and pedestrians. The mouths of ramp entrances will be widened to accommodate truck turning movements from either direction. The improvements will accommodate the future I-205 Managed Lanes Project along the freeway. Additional improvements will include the interconnection between ramp meters and local roads located within 1,000 feet of the ramp termini signals.

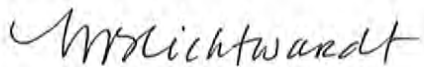
The Project also accommodates non-motorized travel. The design includes Class II bike lanes and sidewalks on the interchange approaches. The bike lane and sidewalk in the northbound approach transition to a Class I ribbon path that is grade separated at the new westbound off-ramp. The on-street Class II bike lane and sidewalk in the southbound direction continue through the interchange.

We appreciate the opportunity to contribute to the growth and development of our community through this vital project. The City is committed to ensuring the success of

the I-205/Corridor Interchange project, and we look forward to the positive impact it will have on both local and regional transportation infrastructure.

Thank you for considering the City of Tracy's I-205/Mountain House Parkway Interchange project.

Sincerely,



Midori Lichtwardt, City Manager

cc: Karin Schnaider, Assistant City Manager
Sharatchandra Bandugula, Acting Assistant City Engineer
File

Attachment: City of Tracy: 2025 One Voice Project Application

2025 SJCOG One Voice® Application Form

Project Application Checklist

The San Joaquin Council of Governments Board approved the following project criteria:

- Be regional in nature and have a federal nexus.
- Must be at or near completion of (NEPA) clearance, or qualified waiver, for projects seeking ROW or construction funding.
- Be sufficiently developed to suggest federal assistance is warranted (shovel ready)
- Explain whether the sponsor is utilizing any formula funding for the project elements and detail how formula funds are being applied. If not utilizing formula funds, explain why formula funds are not being applied to the project.
- Projects should be targeted for appropriations in the Federal Fiscal Year 2025 budget or an upcoming notice of agency funding opportunity.
- Demonstrated community support.
- Identify if a project can be submitted as an “earmark” if a congressional call for projects is announced.
- All narrative shall be written in Microsoft Word for ease in cutting and pasting to project sheets.

The following contents are required to be submitted by SJCOG member agencies:

1. Signed cover letter (electronic signature is accepted)
2. Completed One Voice® Application Form
3. Complete Appendix – in order
 - a. A **high-resolution JPEG or PNG photo, graphic, map or diagram** of your project to be included on the project fact sheet.
 - b. **Project talking points** Talking points are limited to ten (10) bullet points, no more than 2-3 sentences each. (These highlights and benefits will be included in the participant binder and used during meetings in Washington, DC).
 - c. In 200 words or less describe the project's benefit to the region and the scope of the project.
 - d. Attach a copy of the environmental clearance resolution or other signed documentation approving or adopting the environmental document (if completed).
 - e. Projects must be approved by your respective city councils or boards prior to submission to SJCOG. Please provide a copy of the minutes or resolution detailing approval. If the project has not secured these documents at the time of application submittal, indicate the date when this will be secured.
4. Letters of community support (Minimum 2 / Maximum 5)

One (1) electronic copy must be submitted via email/file sharing site of the complete application packet no later than **4:00 p.m. on December 13, 2024** to:

ATTN: SJCOG 2025 One Voice® Project Submittal
San Joaquin Council of Governments
555 E. Weber Avenue
Stockton, CA 95202
onevoice@sjcog.org

2025 SJCOG One Voice® Application Form

1. Project Title: I-205/Mountain House Parkway-International Parkway Interchange

2. Applicant Agency: City of Tracy

3. Agency Address: 333 Civic Center Plaza, Tracy, CA, 95376

4. Staff-level Point of Contact/Title: Sharat Bandugula/Acting Assistant City Engineer

Email: sharat.bandugula@cityoftracy.org **Phone Number:** (209) 831.6463

5. Executive-Point of Contact/Title: Midori Lichtwardt, City Manager

Email: midori.lichtwardt@cityoftracy.org **Phone Number:** (209) 831.6159

6. Project Information:

6.a Provide project talking points. Talking points are limited to ten (10) bullet points, no more than 2-3 sentences each. (These highlights and benefits will be included in the participant binder and used during meetings in Washington, DC).

1. The Interstate 205 (I-205)/International Parkway-Mountain House Parkway Interchange project (Project) will occur in the City of Tracy (City) located in the San Joaquin Valley, California.
2. The Project involves enhancing the regionally significant corridor through interchange enhancements, including widening and realigning freeway ramps, adding missing westbound loop ramp, and installing a dedicated multi-use path.
3. The Project aligns with several regional plans and reports including: City General Plan; City Sustainability Action Plan; Northern California Megaregion: Innovative, Connected, and Growing Report; Metropolitan Transportation Commission San Francisco Bay Area Goods Movement Plan; San Joaquin Valley Air Pollution Control District Plan; 2022 SJCOG Regional Transportation Plan/Sustainable Communities Strategy; 2020 SJCOG I-205, I-5, SR 120 & SR 99 Congested Corridor Plan; and 2023 Caltrans California Freight Mobility Plan.
4. The Project adheres to existing and planned regional developments, addressing current and future vehicle and truck congestion and providing multimodal accessibility.
5. The Project addresses prevalent crash patterns, such as rear-end collisions and unsafe speed, along the freeway ramps and the regional arterial as well as provides bicycle and pedestrian facilities to separate vulnerable users from vehicles and trucks.

2025 SJCOG One Voice® Application Form

6. The Project bolster economic competitiveness by providing improvements to mobility and goods movement, reducing travel times and transportation costs. The Project provides specific benefits to the International Park of Commerce (IPC), the region's largest distribution and fulfillment center development.
7. The Project provides bicycle lanes and sidewalks, ensuring ADA compliance and non-motorized access to the future Valley Link Mountain House Mobility Hub for residents and IPC workers.
8. The Project ensures equitable access for all users and provides engagement opportunities to influence project design elements.
9. The Project reduces greenhouse gas (GHG) emissions and improves air quality by reducing congestion, smooths traffic operations and reduces vehicle idling, incorporates stormwater treatment elements, and supports climate and environmental justice initiatives.

6.b. Provide a description of the project (project limits, overall scope of work), and federal nexus and provide a high-resolution map, site plan, or diagram. Include description how the project is significantly developed to warrant federal funding.

Project Scope

The Project will improve the existing interchange to enhance traffic operations, reduce travel times, and improve goods movement. The Project will add new travel lanes southbound along Mountain House Parkway (north of the freeway) and northbound along International Parkway (south of the freeway) approaching the ramp termini. The Project will add a westbound loop on-ramp, realign the westbound diagonal on- and off-ramps, and widen the eastbound diagonal and loop on-ramps. The Project will also retime the signals at the ramp termini to maximize throughput during peak hours and accommodate bicyclists and pedestrians. The mouths of ramp entrances will be widened to accommodate truck turning movements from either direction. The improvements will accommodate the future I-205 Managed Lanes Project along the freeway. Additional improvements will include the interconnection between ramp meters and local roads located within 1,000 feet of the ramp termini signals.

The Project also accommodates non-motorized travel. The design includes Class II bike lanes and sidewalks on the interchange approaches. The bike lane and sidewalk in the northbound approach transition to a Class I ribbon path that is grade separated at the new westbound off-ramp. The on-street Class II bike lane and sidewalk in the southbound direction continue through the interchange.

Project Need

The purpose of the Project is to provide an improved connection to I-205 that serves the existing and planned residential, commercial, and industrial development in the area. This growth is expected within the IPC, and elsewhere in the City, City of Mountain House, San Joaquin County, and neighboring counties. These efforts will also relieve forecasted increases in traffic demand at surrounding interchanges and increase regional mobility. The northeast area of Tracy and its surrounding communities (particularly southwest Lathrop) are growing rapidly. This is expected to continue over the next several decades. Growth will continue to increase demand on local interchanges, causing them to operate at less than acceptable level of service. The Project will help reduce congestion resulting from ongoing and planned development and improve local traffic circulation while increasing accessibility and efficiency for users. The currently closest access to I-205 is from MacArthur Drive, where future traffic demands at the interchange will result in unacceptable levels of service.

2025 SJCOG One Voice® Application Form

This interchange improvement is listed within the City's circulation element.

The Project will support efforts to mitigate climate change impacts, reduce vehicle and diesel emissions, support fiscally responsible land use and transportation efficient design, support domestic manufacturing, increase active transportation opportunities in the region, and enhance mobility and jobs access for multiple communities within the City and regionally.

Project Location:

The Project is located on I-205 at the Mountain House Parkway Interchange within the City of Tracy and the City of Mountain House.

Federal Nexus:

I-205 is classified as a Principal Arterial Interstate Freeway which primarily serves as a route for interregional recreation, commuter and freight traffic between the Bay Area and the Central Valley. The Project modifies access to I-205, which provides the federal nexus. The Project has also received federal environmental approval in April 2022.

Project Design Exhibit



2025 SJCOG One Voice® Application Form

High Resolution map

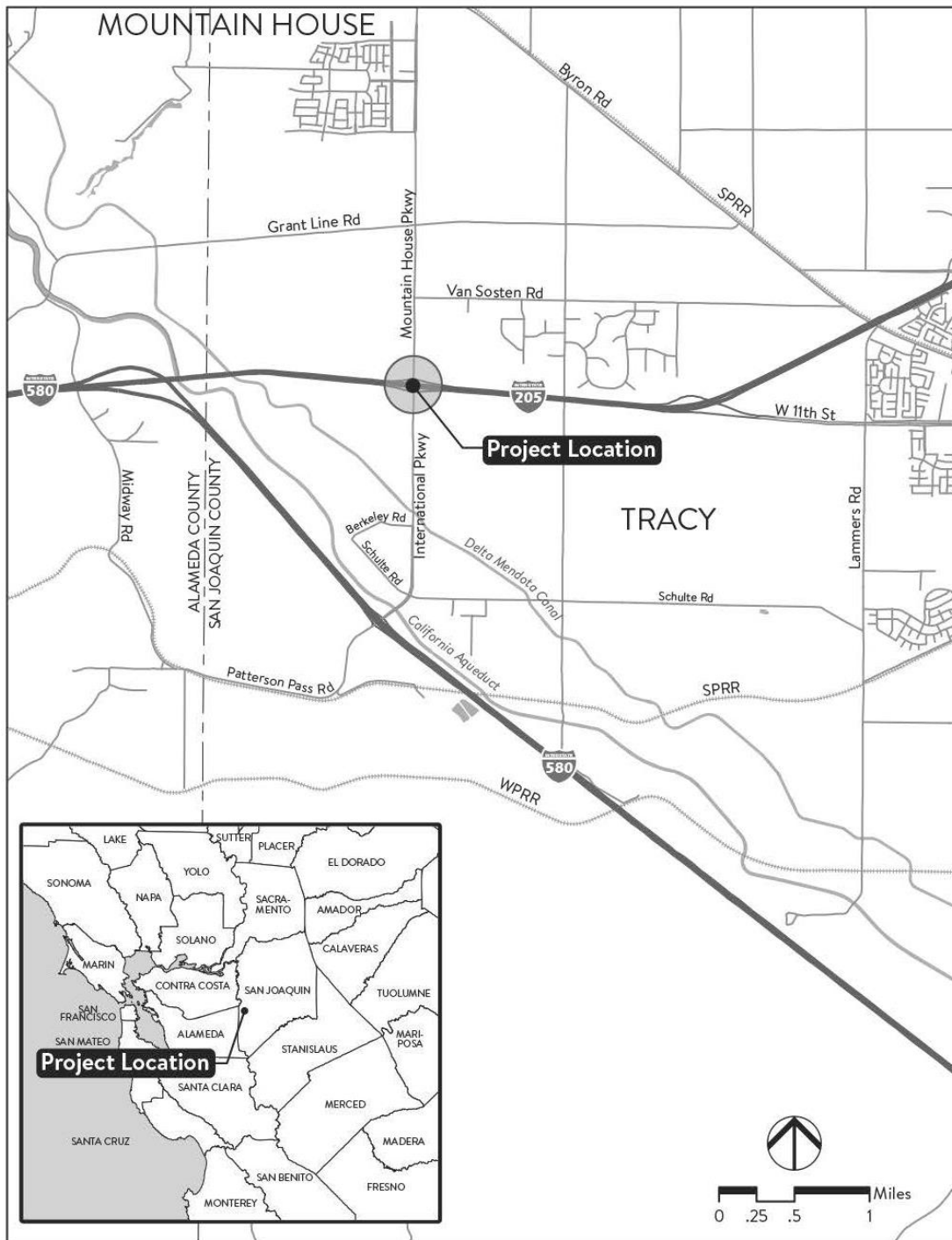


Figure: Project location in the context of the Northern California Megaregion.

2025 SJCOG One Voice® Application Form

6.c Provide a description of how the project provides or improves regional connectivity across a variety of existing or planned developments, resources, facilities, job centers, etc. within the region.

The Project will assist in alleviating congestion and support goods movement efficiency between the City and the wider Bay Area through travel on the I-205 and I-580. The Project links multiple employment centers, including the IPC which is planned to have 16,000 jobs, and the growing City of Mountain House to the freeway. Commuters from the City and the City of Mountain House travel to and from the San Francisco Bay Area for good paying jobs. Freight traverses the freeway to the Port of Oakland, a significant economic hub in the Northern California Megaregion. The Project will improve access to the freeway, including the future managed lanes on I-205, with additional vehicle lanes and freeway ramp modifications. The improvements will significantly reduce travel times for trucks and commuters.

The Project provides bicycle and pedestrian connectivity over I-205 that will provide multimodal access between housing and jobs. This will support residents who prefer to walk or cycle to jobs to travel along International Parkway-Mountain House Parkway without the need for a vehicle. This will be further enhanced as Valley Link is extended

6.d Provide a description of how the project supports and/or logically extends existing local and countywide or regional plans, strategies, or programs.

City of Tracy Sustainability Action Plan ([Link](#))

The Project is expected to improve employment accessibility by a mix of commercial, industrial, and office uses, further supported by the City's Sustainability Action Plan. The Project's impact on job creation is seen as a crucial factor in reducing vehicle miles traveled (VMT) and improving economic opportunities, especially for disadvantaged households in the project area as identified in the plan.

Northern California Megaregion: Innovative, Connected, and Growing Report ([Link](#))

Identified in the 2016 report, the project area faces a housing crisis, heightened traffic, and congestion due to concentrated employment centers and increased goods movement. Before March 2020, over 64,932 commuters traveled from Northern San Joaquin to the Bay Area, with significantly higher home values and 68% of Megaregion jobs located in the Bay Area. Trucks handle 74.1% of freight, resulting in daily volumes of 15,000 to 37,000 from Northern San Joaquin to the Bay Area. Morning peak period congestion at Altamont Pass on I-580 leads to commute times over 90 minutes from San Joaquin County to the Bay Area, causing delays of 40 to 50 minutes and exacerbating transportation challenges in the region. The Project addresses these concerns identified in the report.

Metropolitan Transportation Commission San Francisco Bay Area Goods Movement Plan ([Link](#))

Positioned near the Bay Area, the region serves as a vital goods distribution center. Challenges identified in the 2016 SF Bay Area Goods Movement Plan include limited rail capacity and numerous at-grade railway-highway crossings, leading to reliance on trucks along the I-580 corridor. The Project addresses these identified concerns.

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San Joaquin Valley Air Pollution Control District Plan ([Link](#))

The Project aligns with the plan by improving air quality and reducing GHG emissions.

2023 California Freight Mobility Plan ([Link](#))

Recognized in the 2023 California Freight Mobility Plan, I-580 is designated as a key truck corridor, making it eligible for federal investments. The Project area provides a direct connection to I-580 just west of the interchange location. The Project addressed these concerns identified in the plan by reducing congestion accessing the freeway.

6.e. Describe safety, economic, mobility, equity and environmental and other benefits which are expected upon project completion.

Safety Benefits:

A safety analysis was prepared using collision data from UC Berkeley Transportation Injury Mapping System (TIMS) for the five-year period of January 2019 to December 2024. The data recorded indicates the corridor is at great risk of additional collisions, with a total of 87 crashes over this period. There was 1 casualty over five years the Project site, as well as 7 severe injuries. The breakdown of all crashes for is showcased below.

Table 1 – Crash History 2019-2024

Number of Crashes	Fatality	Severe Injury	Injury - Other Visible	Injury - Complaint of Pain
87	1	7	23	56

Source: TIMS

The Project will address collision patterns by implementing proven safety countermeasures and design elements. The freeway ramps will be widened and realigned which will improve geometry, provide additional queue length for vehicles, and improve stopping time. A westbound loop on-ramp will be constructed, eliminating left turns for vehicles entering the freeway. Ultimately, the Project will alleviate congestion and reduce queueing along International Parkway-Mountain House Parkway, on both ramps, and along the highway mainline. The Project will also provide bicycle and pedestrian facilities through the interchange to protect vulnerable roadway users.

Economic Benefits:

The Bay Area's housing affordability crisis, location of employment centers, and growth of goods movement activity and freight hubs has resulted in significant traffic volumes and congestion on the highways in the Northern California Megaregion. Individuals and businesses have located in San Joaquin County, particularly in the City, to find affordable housing and available land. Median home values of the San Francisco Bay are nearly three times higher than comparable homes in the Central Valley. Compounding the residential price differential issue, the Bay Area retains 68% of the Northern California Megaregion jobs. An influx of commuters and freight traffic has created a significant transportation challenge along the local arterials accessing the interregional freeways. The existing interchange at I-205 and International Parkway-Mountain House Parkway cannot support future traffic demands to occur as the result of the development growth. The proposed partial cloverleaf interchange will provide travel time savings for freight and commuters by alleviating congestion and increasing

2025 SJCOG One Voice® Application Form

access points to the highway network. The new interchange is anticipated to increase traffic flow by over 60% at peak traffic times.

The Project will provide increased access to multiple employment hubs and regional opportunities through additional travel connections to active transportation choices. The Project is critical due to the expected development growth from the IPC, which predicts a diverse collection of retail, housing, commercial spaces, manufacturing, and distribution points growing exponentially. These developments will provide new employment, training, and educational opportunities for those utilizing the I-205 to commute. The Project will also benefit regional growth, as well-paid jobs will entice increased numbers of residents to seek out housing and employment in Tracy and the surrounding regions.

The IPC is a private development with direct access to the I-205 freight network and has driven the need for the Project. Freight movement is a major economic component for the Northern California Megaregion. More than \$1 trillion of goods move through the region annually, 74% of which is by trucks using the highway freight corridors. This includes between 15,000 and 37,000 trucks per day from the Northern San Joaquin region to the Bay Area. The IPC provides for significant employment opportunities for the residents in San Joaquin County. Employment opportunities in the IPC are in the transportation and warehousing industry. This is a growing industry with higher wages for unskilled labor than comparable industries. San Joaquin County has demographics that support this industry. The University of the Pacific study *Warehousing, E-Commerce, and Evolving Trade Patterns in San Joaquin County* analyzed the job postings and population age and education. The study found that the available jobs in the transportation and warehousing industry are looking for high school education and vocational training. This is a good match for San Joaquin County's young workforce with below average educational attainment. These jobs include truck drivers, packagers, freight movers, and supervisors. These positions have seen real wage growth of 25% from 2013 to 2018. These occupations have similar, if not higher, pay than jobs in the retail sector with similar work experience and education requirements.

Mobility Benefits:

There is a projected increase in commuter traffic for I-205, necessitating Project improvements to reduce traffic congestion and subsequent GHG emissions. Existing traffic is further exacerbated by commuters seeking the increased availability and affordability of housing within Tracy, Mountain House, and other communities in San Joaquin County. Commuters are often delayed by significant congestion both on the freeway and exiting to connect to the local arterial. This results in congestion on both the interstate main line and local road.

The Project's mobility benefits will include congestion reduction for commuters. Travel times will be reduced through improved mobility. The Project will include HOV bypass on the metered on-ramps as well as connectivity to the I-205 Managed Lanes. The congestion reduction will also improve access to the future Valley Link Mountain House Mobility Hub, providing multimodal choices for commuters. Additionally, the Project will install bicycle and pedestrian infrastructure to provide multimodal mobility choices for residents and workers.

The Project supports an increase in goods movement due to more efficient freight travel along the corridor. Within the City of Tracy Transportation Infrastructure Master Plan, there are truck routes that run primarily in north-south and east-west directions which connect to the I-205. The existing truck route network connects industrial areas in the south and commercial areas in the north and central. These routes are essential for major

2025 SJCOC One Voice® Application Form

economic needs for the City and subsequent freight network for the region.

The Project contributes to USDOT's ROUTES initiative through supporting economic development and highway safety in a rural area of San Joaquin County and neighboring counties. I-205 is a significant freight corridor connecting agricultural land uses and distribution centers in San Joaquin County to the Bay Area and the Port of Oakland. Agricultural products produced in San Joaquin, Stanislaus, and Merced counties contribute more than \$8 billion to the economy, as stated in the 2018 *North San Joaquin Valley Index*. Many of these products are transported along I-205. The Project supports the movement of agricultural goods, which supports the rural economy. The interchange project enhances safety as well as improves goods movement access.

Equity Benefits:

This Project includes many benefits throughout the region in addition to mobility and reduced commute times. The interchange improvement will greatly increase safety and reduce the number of vehicle accidents by providing sufficient capacity and vehicle queuing space at the intersections. The Project will result in a reduction in GHG emissions that are a direct result of trucks idling and vehicle congestion during peak hours.

This Project, though not all Tracts are classified as disadvantaged, will serve adjacent historically disadvantaged communities by reducing emissions in their region and will provide more efficient access to local job hubs (see economic benefits above). The Project interchanges are located across two Tracts: 52.07 and 52.06. Though these Tracts are not classified as disadvantaged, they certainly suffer from the same transportation barriers and economic costs of living within the City and will be benefited by the Project. The data showcases transportation insecurity at 94%, annualized disaster losses at 99%, asthma prevalence at 70%, transportation access at 95%, and transportation safety at 98% (CalEnviroScreen). These communities will enjoy greater mobility benefits such as less congestion and more transit connections from the Project improvements.

Environmental Benefits:

The proposed interchange has completed its environmental phase and has achieved state and federal environmental clearance. The Project has identified mitigations to significantly reduce environmental impacts. There are no biological impacts or required mitigations. The environmental and traffic analysis does show improvements to air quality with the reduction of vehicles in the corridor and increased efficiency of travel. The Project components are projected to improve air quality for the Project area. Required mitigation measures include paleontological investigations during construction and stormwater best management practices.

Per the CalEnviroScreen, the Project areas are located within two Tracts. Mountain House Parkway is located within both Tract 52.07 and 52.06. These Tracts experience high pollution burdens (53 and 86 percentiles, respectively), alongside traffic pollution (70 and 55 percentiles), and hazardous waste (88 and 78 percentiles). These Tracts also all suffer from heightened asthma, low birth weight, and cardiovascular disease.

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7. Project Readiness:

Attach detailed information on any completed project milestones or phases, and the project schedule. Describe whether the project can be split into clear and distinct phases.

Milestones & Phases

The environmental clearance was completed in April of 2022. Final design will be progressed starting in February of 2026. Schedule milestone dates are as follows:

- Right of Way Certification – January 2028
- Final Plans, Specifications, & Estimates (PS&E) Complete February 2028
- Advertise – May 2028
- Begin Construction – August 2028
- End Construction – December 2030

Project Milestone			Proposed (Month/Year)
Begin Environmental (PA&ED) Phase			
Circulate Draft Environmental Document	Document Type		
End Environmental Phase (PA&ED Milestone)			4/2022
Begin Design (PS&E) Phase			
End Design Phase (Ready to List for Advertisement Milestone)			2/2025
Begin Right of Way Phase			
End Right of Way Phase (Right of Way Certification Milestone)			1/2025
Begin Construction Phase (Contract Award Milestone)			7/2025
End Construction Phase (Construction Contract Acceptance Milestone)			12/2026

Engineering Design

The Cordes Ranch Specific Plan (IPC) identified the need to improve the I-205 to provide improved truck access and capacity for the planned warehouses. The City, in cooperation with Prologis, began development of the Project Study Report-Project Development Support (PSR-PDS) documents, which were completed in June 2015. During this phase, the feasibility of the interchange improvement was analyzed and served as the basis of the design. This included project elements, interchange configurations, right of way requirements, traffic operations, and environmental impacts.

Upon approval of the PSR-PDS's, the interchange began detailed engineering and environmental analysis. This included the preparation of final environmental technical studies, draft CEQA and NEPA documents, final TOAR, draft geotechnical and soils studies, final Pavement Life Cycle Cost Analysis (LCCA), draft Drainage and Storm Water Data Reports, final Initial Site Assessment (hazardous materials), draft Right of Way Data Sheet, and Final Geometric Approval Drawings (GAD) and Structures Advanced Planning Studies (APS). The Project Report was approved by Caltrans in April of 2022 and the Modified Access Report was approved by FHWA in November of 2021.

Right of Way Acquisitions

The right of way needs have been carefully analyzed for the Project. To construct the project improvements, approximately 18.8 acres of right of way were acquired from 13 parcels. Upon construction completion, the roadway right of way will be deeded to Caltrans for future operations and maintenance. The Project will also

2025 SJCOG One Voice® Application Form

require the relocation of four private utilities: Chevron 18”/20” steel oil line, PG&E gas line, PG&E overhead 12kV electrical line, and PG&E underground 12kV electrical line. Coordination with the impacted utilities has already begun and has been included in Project scheduling.

7.b If your project is being delivered in phases, indicate the phases that are **NOT** a part of the project application to provide show the project is part of a larger/ “ultimate” project. Please answer the following questions:

- Describe how the specific stage, segment, phase, or activity fits into a larger project.
- Describe the larger project and additional benefits (not described earlier) of the larger project.

8. Funding Plan for the project being nominated.

This section shows all the funds in each phase of the project. Please copy/paste tables if there is more than one funding source. Indicate in the comments section under “FUNDING AGENCY” whether the funds have been secured/committed or whether the funds are still being sought/not committed. Identify the name of the FUNDING AGENCY.

Feel free to change the names of the phases if they’re not applicable (i.e. substitute capital procurement for “construction” phase.

8a. Project Funding Plan

Total Project Cost (\$1,000s)									Implementing Agency
Component	Prior	22-23	23-24	24-25	25-26	26-27	27-28+	Total	
E&P (PA&ED)	918							918	City of Tracy
PS&E					2,000			2,000	
R/W SUP (CT)									
CON SUP (CT)									
RW					11,657			11,657	
CON							39,464	39,464	
TOTAL	918				13,657		39,464	54,039	

2025 SJCOG One Voice® Application Form

Fund No. 1:	City TIMP								
Funding (\$1,000s)									
Component	Prior	22-23	23-24	24-25	25-26	26-27	27-28+	Total	Funding Agency
E&P (PA&ED)	918							918	City of Tracy
PS&E					1,750			1,750	
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
TOTAL	918				1,750			2,668	

Fund No. 2:	City RTIF								Program Code
Funding (\$1,000s)									
Component	Prior	22-23	23-24	24-25	25-26	26-27	27-28+	Total	Funding Agency
E&P (PA&ED)									
PS&E				250			250		
R/W SUP (CT)									
CON SUP (CT)									
R/W									
CON									
TOTAL				250			250		

Fund No. 3:	OneVoice Need								Program Code
Funding (\$1,000s)									
Component	Prior	22-23	23-24	24-25	25-26	26-27	27-28+	Total	Funding Agency
E&P (PA&ED)									TBD
PS&E									
R/W SUP (CT)									
CON SUP (CT)									
R/W					11,657			11,657	
CON							39,464	39,464	
TOTAL					11,657		39,464	51,121	

2025 SJCOG One Voice® Application Form

8b. Explain whether the sponsor is utilizing any formula funding for the project elements and detail how formula funds are being applied. If not utilizing formula funds, explain why formula funds are not being applied to the project.

The City is not anticipating pursuing federal formula funds for the Project. The City has other needs for formula funds that will be pursued. The City intends to leverage local and regional development impact fees to use as a match for federal and state discretionary grants.

8c. Provide a Funding Summary:

Line 1: One Voice® Request:	\$51,121,000
Line 2: Funds already secured:	\$ 2,918,000
Total Project (add lines 1 and 2 from above):	\$54,039,000

9. Letters of Community Support (or other information that show the project's history in community engagement/support).

Attach letters of support from interested parties including community groups and other agencies.

10. Prospective federal funding opportunities that this project will apply to (check all that apply):

- ☐ Advanced Transportation Technology and Innovation (ATTAIN) program
- ☐ Bridge Investment Program
- ☐ Bus and Bus Facilities Competitive Grants
- ☐ Capital Investment Grants
- ☐ Charging and Fueling Infrastructure Grants (Community Charging)
- ☐ Charging and Fueling Infrastructure Grants (Corridor Charging)
- ☐ Congestion Relief Program
- ☐ Consolidated Rail Infrastructure and Safety Improvement Grants
- ☒ Rebuilding American Infrastructure with Sustainability and Equity (RAISE)
- ☐ Low or No Emission (Bus) Grants
- ☐ National Culvert Removal, Replacement, & Restoration Grant

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- ☐ National Infrastructure Project Assistance (Megaprojects)
- ☒ Nationally Significant Freight and Highway Projects (INFRA)
- ☐ Pilot Program for Enhanced Mobility
- ☐ Pilot Program for Transit Oriented Development
- ☐ Port Infrastructure Development Program Grants
- ☐ Promoting Resilient Operations for Transformative, Efficient, and Cost Saving Transportation (PROTECT) - Discretionary
- ☐ Railroad Crossing Elimination Grants
- ☐ Reconnecting Communities Pilot Program
- ☐ Reduction of Truck Emissions at Port Facilities
- ☒ Safe Streets and Roads for All
- ☐ Strengthening Mobility and Revolutionizing Transportation (SMART) Grants
- ☐ Thriving Communities Program
- ☐ Wildlife Crossings Pilot Program
- ☐ Other: _____

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

RESOLUTION 2025-_____

**APPROVING THE SELECTION OF THE INTERSTATE 205/MOUNTAIN HOUSE
PARKWAY INTERCHANGE PROJECT AS THE CITY OF TRACY 2025
REGIONAL TRANSPORTATION PROJECT SUBMITTAL FOR
CONGRESSIONAL APPROPRIATION REQUESTS DURING SAN JOAQUIN
COUNCIL OF GOVERNMENTS' ONE VOICE TRIP TO WASHINGTON D.C.**

WHEREAS, the City of Tracy submits a list of projects each year to San Joaquin Council of Governments (SJCOG) for consideration in their legislative agenda and congressional appropriation requests during the One Voice trip to Washington D.C.; and

WHEREAS, this year the City was asked to submit a project of regional significance; and

WHEREAS, staff has reviewed the existing needs of various transportation projects and reviewed the project criteria provided by SJCOG; and

WHEREAS, staff has determined that the Interstate 205/Mountain House Parkway Interchange Project (Project) is best suited for submission to SJCOG; and

WHEREAS, staff submitted the application to SJCOG in January of 2025; and

WHEREAS, staff would like Council approval to continue the process with SJCOG and to include the Project in the San Joaquin Council of Governments' One Voice trip; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy approves the selection of the Interstate 205/Mountain House Parkway Interchange Project as the City of Tracy 2025 Regional Transportation Project submittal for congressional appropriation requests during San Joaquin Council of Governments' One Voice trip to Washington D.C.

* * * * *

The foregoing Resolution 2025-_____ was adopted by the Tracy City Council on the 1st day of April 2025, by the following vote:

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

DAN ARRIOLA
Mayor of the City of Tracy, California

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

Agenda Item 3.A

RECOMMENDATION

Staff recommends that the City Council receive an informational report on the South San Joaquin County Fire Authority (SSJCFA) Board's February 12, 2025, decision to form a Joint Powers Authority (JPA) with the City of Stockton and the City of Lodi, referred to as the CENCAL Fire EMS Authority (CENCAL), to pursue the award of an ambulance contract for San Joaquin County to provide ambulance services.

EXECUTIVE SUMMARY

On February 12, 2025, the SSJCFA Board adopted a resolution authorizing the Fire Chief to enter on behalf of SSJCFA, into a Joint Powers Agreement with the City of Stockton and the City of Lodi to form CENCAL. CENCAL will be formed to pursue the award of an ambulance contract for San Joaquin County. The impact of such a contract on EMS in San Joaquin County could include:

- Fire agency control of ambulance resources and EMS system management.
- Increased number of system ambulances.
- Reduced response times.
- A single communication center with coordinated dispatch.
- Additional revenue streams to further enhance service levels.

This informational briefing is intended to provide the City Council with an overview of the formation and objectives of the CENCAL Fire and EMS Authority as the CENCAL JPA prepares to compete for the San Joaquin County EMS contract, in partnership with American Medical Response (AMR).

BACKGROUND AND LEGISLATIVE HISTORY

The San Joaquin County Emergency Medical Services Agency (SJCEMSA) oversees emergency medical services (EMS) within the county, including exclusive operating areas (EOAs) for ambulance providers. Under California Health and Safety Code Section 1797.224, SJCEMSA has the authority to establish EOAs for ambulance services. Zone X, one of four EOAs in San Joaquin County, covers the greater Lodi, Stockton, and Tracy areas and is currently serviced by AMR under an agreement set to expire in May 2026.

With the impending expiration of the existing ambulance transport provider agreement, in May 2022, the Stockton Fire Department (SFD), Lodi Fire Department (LFD), and SSJCFA began evaluating the feasibility of forming a JPA to compete for the new ambulance contract for Zone X. The initial discussions focused on improving service levels by:

- Establishing direct public fire agency-based EMS oversight in patient care and system management.
- Enhancing revenue streams through access to increased Medicaid reimbursements.
- Reinvesting additional revenues to improve service levels.

A consultant was engaged to conduct a comprehensive analysis of the feasibility of competing for the contract and exploring different service delivery models. Based on the consultant's

findings, the agencies determined that forming a JPA and partnering with a private ambulance company was the optimal approach to:

- Leverage the experience of a private ambulance provider.
- Increase the likelihood of securing the ambulance contract.
- Reduce financial and operational risks.

Subsequently, the three agencies entered into a Memorandum of Agreement (MOA), authorizing the issuance of a joint Request for Proposals (RFP) for ambulance services. The RFP, released on October 29, 2024, sought proposals for ground transport, 9-1-1 dispatch support, interfacility transport, and critical care transport. Pursuant to the County's RFP process AMR was awarded the contract.

FORMATION OF CENCAL FIRE AND EMS AUTHORITY

Following the identification of a viable private ambulance partner, AMR, SSJCFA, SFD, and LFD approved the formation of CENCAL, a separate legal entity from the Cities of Stockton and Lodi and the SSJCFA, and a separate legal entity from the members of the SSJCFA – the City of Tracy and the Tracy Rural Fire Protection District. This step enabled the fire agencies to formalize a partnership with AMR to jointly compete for the County's upcoming RFP.

CENCAL has the following structure:

- CENCAL would have a three-member Board of Directors, with each member agency – SSJCFA, Stockton, and Lodi – having one representative on the CENCAL Board. Currently, pursuant to the same motion that approved the resolution for the formation of the CENCAL JPA, Jeff Ramsey was appointed to serve as the primary representative for SSJCFA to the CENCAL Board, with Steve Abercrombie as first alternate and Dotty Nygard as the second alternate.
- Board approval would require a simple majority vote, unless the approval addresses a financial matter, in which case a unanimous vote would be required.
- CENCAL would have an Administrating Member that would assist with the day-to-day work of the Board and other tasks assigned by the Board. As of the effective date of the Joint Powers Agreement, the SSCJFA would serve as the Administrating Member for two years. Thereafter, the Administrating Member role would alternate between SSJCFA and Lodi every two years.
- The City of Stockton would serve as the Treasurer which, among other duties, would receive all money for CENCAL, be responsible for disbursement of CENCAL funds, and provide quarterly financial reporting.
- CENCAL's intention is that it would be funded with revenue derived from the provision of services, if and when those services are operational. Until those services are operational, CENCAL would incur expenses, and the member agencies would be responsible for those expenses according to the following, initial percentages: City of Stockton - 65.9%; SSJCFA - 21.5%; and City of Lodi - 12.6%. The anticipated startup costs for CENCAL are estimated to total \$2,237,000.
- Access to services would proceed through a single command center operating through the City of Stockton Fire Department's Emergency Communication Division.

Key elements of the Teaming Agreement negotiated with AMR include:

- Collaboration on Proposal Development: CENCAL will lead proposal development, with AMR providing operational, financial, and technical expertise.

- Exclusivity: Both parties agree to work exclusively together for this RFP and not engage with other entities for a competing proposal.
- Defined Roles and Responsibilities: Each entity will contribute resources and expertise necessary for a competitive submission.
- Confidentiality and Compliance: The agreement ensures confidentiality of strategic information and compliance with all regulatory requirements.
- Termination Provisions: The agreement outlines conditions for termination, including material changes to the RFP, non-selection by the County, or failure to meet regulatory standards.

Additionally, per Exhibit A to the SSCJFA February 12, 2025: Scope of Work and Fees details the operational and financial responsibilities of each party, including:

- Day-to-day transport service operations.
- Oversight of patient care and medical control responsibilities.
- Quality management services and regulatory compliance.
- Cost structures, compensation for ambulance unit hours, and reimbursement procedures.
- Deferred service payment provisions and repayment structures.

The Teaming Agreement does not create a formal business partnership or joint venture but provides a structured framework for collaboration to strengthen CENCAL's competitive position. Should CENCAL secure the contract, an operations agreement will be established to define the long-term relationship between CENCAL and AMR. The agreement between CENCAL and the County would, in turn, govern CENCAL's provision of ambulance services in its service territory.

Upon the release of the SJCEMSA Ambulance RFP, CENCAL will evaluate its feasibility to develop and submit a competitive proposal. If the proposal is deemed unfeasible, AMR will be released from its exclusivity obligation, and CENCAL will be dissolved. Should CENCAL submit a proposal but fail to secure the contract, CENCAL will also be dissolved.

ANALYSIS

This is an informational item on an action that was already taken by the SSJCFA Board, which includes two Council Members. The SSJCFA Board exercised its authority to authorize the Fire Chief, on behalf of SSJCFA, to enter into a Joint Powers Agreement with the City of Stockton and the City of Lodi to form CENCAL and implement this program. Therefore, the immediate focus of this staff report is on the fiscal implications moving forward.

Staff also notes that questions have been raised regarding whether SSJCFA may participate in a JPA to provide ambulance services and whether SSJCFA has the power to provide services – through the JPA – beyond the boundaries of its two members. Regarding such questions, the SSJCFA could amend its joint powers agreement to clarify both issues.

FISCAL IMPACT

There is no immediate fiscal impact. Assuming that CENCAL would be awarded the EMS contract, SSJCFA's estimated pro-rata share of startup costs is approximately \$500,000. Staff recommends funding these costs through existing SSJCFA fund balance reserves, with anticipated cost recovery in the initial contract phase. Future fiscal impacts to the City are unknown at this time. If a contract between CENCAL and SJCEMSA occurs, the terms should be evaluated for fiscal impacts to member agencies. The City's share of SSJCFA's budget is

62.5%. Any further contribution from the City, if ever requested, would require City Council approval. Likewise, the City's ongoing financial support of the SSJCFA, and the resulting indirect support of CENCAL, also requires City Council approval each budget year.

Costs and revenues for CENCAL will be distributed based on the population served. Initial funding will be derived from operational revenue, with any deficits shared proportionally among member agencies. The first priority for any surplus revenue would be reimbursement to CENCAL's member agencies for the initial startup costs. Thereafter, surplus revenue would be reinvested into EMS improvements.

COORDINATION

Staff has coordinated and discussed the presentation of their report with SSJCFA Fire Chief Bradley.

CEQA DETERMINATION

Review under the California Environmental Quality Act is not applicable for this informational report.

STRATEGIC PLAN

This agenda item relates to Council's Strategic Priorities for Public Safety.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive this informational report.

Prepared by: Karin Schnaider, Assistant City Manager
Randall Bradley, Fire Chief, SSJCFA

Reviewed by: Arturo Sanchez, Assistant City Manager
Sara Castro, Finance Director
Andrew Shen, Interim City Attorney

Approved by: Midori Lichtwardt, City Manager

Attachments:

- Attachment A – CENCAL Fire and EMS Authority PowerPoint
- Attachment B – SSJCFA Board Staff Report



CENCAL FIRE & EMS AUTHORITY

1

BACKGROUND

- The San Joaquin County Emergency Medical Services Agency (SJCEMSA) oversees EMS within the county.
- SJCEMSA establishes exclusive operating areas (EOAs) for ambulance services under California Health and Safety Code Section 1797.224.
- Zone X (covering Lodi, Stockton, and Tracy) is currently served by AMR under an agreement expiring May 2026.

2

JPA FORMATION & FEASIBILITY STUDY

- Stockton Fire Department (SFD), Lodi Fire Department (LFD), and SSJCFA explored forming a Joint Powers Authority (JPA) in May 2022 to compete for the new ambulance contract.
- Goals of the JPA:
 - Establish direct fire-based EMS oversight.
 - Enhance revenue streams through increased Medicaid reimbursements.
 - Reinvest additional revenues to improve service levels.
- A consultant study confirmed that forming a JPA and partnering with a private ambulance company was the optimal approach.

3

JOINT RFP FOR AMBULANCE SERVICES

- Stockton Fire Department (SFD), Lodi Fire Department (LFD), and SSJCFA entered into a Memorandum of Agreement (MOA) to issue a joint Request for Proposals (RFP)
- RFP released on October 29, 2024 seeking:
 - Ground transport services
 - 9-1-1 dispatch support
 - Interfacility and critical care transport
- A satisfactory proposal was received from AMR

4

FORMATION OF CENCAL FIRE AND EMS AUTHORITY

- SSJCFA, SFD and LFD formally established the CENCAL Fire and EMS Authority
- Teaming Agreement with AMR includes:
 - **Collaboration on Proposal Development** CENCAL leads, AMR provides operational and financial expertise
 - **Exclusivity** CENCAL and AMR will work solely together on this bid
 - **Defined Roles & Responsibilities** Each entity contributes resources for a competitive proposal
 - **Confidentiality & Compliance** Strategic information is protected; all regulatory requirements met
 - **Termination Provisions** Agreement ends if the RFP changes significantly. CENCAL is not selected, or regulatory standards are unmet

5

OPERATIONAL & FINANCIAL FRAMEWORK

- Exhibit A outlines:
 - Day-to-day transport service operations.
 - Oversight of patient care and medical control responsibilities.
 - Quality management services and regulatory compliance.
 - Cost structures, unit-hour compensation, and reimbursement procedures.
 - Deferred service payments and repayment structures.
- **No formal business partnership or joint venture**—structured framework for collaboration.
- If CENCAL secures the contract, an operations agreement will be established.

6

PATH FORWARD

- Upon release of the SJCEMSA Ambulance RFP, CENCAL will evaluate feasibility for submission.
- If submission is unfeasible, AMR will be released from exclusivity, and CENCAL will dissolve.
- If submitted but unsuccessful, CENCAL will also dissolve.

7

FISCAL IMPACTS

- No immediate fiscal impact.
- Estimated SSJCFA startup cost share: **\$500,000** (funded via SSJCFA reserves, with cost recovery in initial contract phase).
- Costs and revenues distributed based on population served.
- Initial funding derived from operational revenue; deficits shared proportionally; surplus reinvested in EMS.

8

SUMMARY

- **Transformational impact on EMS if awarded the contract:**
 - Fire agency control of ambulance resources and system management.
 - Increased system ambulance availability.
 - Reduced response times.
 - Centralized dispatch communication.
 - Additional revenue reinvested into EMS improvements.

9

CONCLUSION

- This briefing provides an overview of the formation and objectives of the CENCAL Fire and EMS Authority
- **Next Steps:** Prepare to complete for the San Joaquin County EMS Contract
- **Questions?**

10

Attachment B



South San Joaquin County Fire Authority

835 Central Avenue, Tracy, CA 95376 | Tel: (209)831-6702 Fax: (209)831-6732

STAFF REPORT

TO: Board of Directors MEETING DATE: February 12, 2025

PREPARED BY: Randall Bradley, Fire Chief

APPROVED BY: Randall Bradley, Fire Chief

ITEM: ADOPT A RESOLUTION AUTHORIZING THE FIRE CHIEF TO ENTER INTO A JOINT POWERS AGREEMENT WITH THE CITY OF STOCKTON AND THE CITY OF LODI TO FORM THE CENCAL FIRE EMS AUTHORITY (CENCAL) AND APPOINTING SSJCFA REPRESENTATIVES TO THE CENCAL BOARD OF DIRECTORS

RECOMMENDATION

Staff recommends the South San Joaquin County Fire Authority (SSJCFA) Board of Directors adopt a resolution authorizing:

1. The Fire Chief to enter into a Joint Powers Agreement (JPA) with the City of Stockton and the City of Lodi to form the CENCAL Fire EMS Authority (CENCAL).
2. The appointment of an SSJCFA Board member to serve on the CENCAL Board of Directors, along with two SSJCFA Board members to serve as first and second alternates.

BACKGROUND

The San Joaquin County Emergency Medical Services Agency (SJCEMSA) manages emergency medical services (EMS) within the county, including exclusive operating areas (EOAs) for ambulance providers. With the upcoming expiration of the existing ambulance transport provider agreement in May 2026, the Stockton Fire Department (SFD), Lodi Fire Department (LFD), and South San Joaquin County Fire Authority (SSJCFA) seek to collaborate with a private ambulance provider to submit a joint proposal for EMS delivery in one or more EOAs.

To facilitate this effort, the agencies propose forming the CENCAL Fire EMS Authority (CENCAL), a JPA created through a Joint Powers Agreement (Exhibit A). This JPA will allow SFD, LFD, and SSJCFA to contract with a private ambulance provider and oversee service delivery if awarded a contract by SJCEMSA.

Under California Health and Safety Code Section 1797.224, SJCEMSA has the legal authority to establish EOAs for ambulance services. Zone X, one of four EOAs in San Joaquin County

(Attachment 3), covers the greater Lodi, Stockton, and Tracy areas and is currently serviced by American Medical Response (AMR) under an agreement set to expire in May 2026.

In anticipation of SJCEMSA's Request for Proposals (RFP) for emergency ambulance services, SFD, LFD, and SSJCFA conducted a comprehensive analysis of the county's EMS system, determining that a joint response would be advantageous. Consequently, the agencies entered into a Memorandum of Agreement (MOA) (Attachment 2), authorizing the issuance of a joint RFP for ambulance services, including ground transport, 9-1-1 dispatch support, interfacility transport, and critical care transport. Following the release of the RFP on October 29, 2024, a satisfactory proposal was received from AMR.

To proceed, the creation of a JPA is necessary to provide a unified legal and operational framework for the joint EMS response, ensuring stability, shared governance, and enhanced accountability.

By forming CENCAL, SSJCFA will:

1. Strengthen regional EMS collaboration.
2. Retain direct fire-based EMS oversight in patient care and system management.
3. Enhance efficiency and service delivery through a coordinated approach.
4. Maintain local control over ambulance quality, response times, and integration.
5. Create a new revenue stream to improve overall service levels.

DISCUSSION

If approved, SSJCFA will join SFD and LFD to establish CENCAL, a separate legal entity responsible for managing emergency medical transport services, including ambulance response, interfacility transport, and critical care transport.

CENCAL will be governed by a three-member Board of Directors, with each participating agency appointing one representative. Each director will hold one vote, with most decisions requiring a simple majority and financial decisions requiring unanimous consent. Costs will be shared based on the population served, reassessed every five years. Initial funding will come from operational revenue, with any deficits shared proportionally among member agencies. Debts incurred by the JPA will remain the sole responsibility of CENCAL, as per California Government Code Section 6508. Any surplus revenue will be reinvested into EMS improvements.

CENCAL will contract with AMR to establish a public-private partnership, aligning performance metrics, regulatory compliance, and operational goals outlined in the forthcoming SJCEMSA RFP. This partnership will:

- Increase ambulance availability by approximately 11%.
- Improve response times and emergency preparedness.
- Ensure seamless EMS coordination from 911 call to hospital transfer.
- Provide flexibility during high-demand periods and major incidents.
- Centralize data collection to enhance performance monitoring and quality improvement.

Additionally, as a public entity, CENCAL qualifies for a higher Medi-Cal reimbursement rate than AMR would receive as a private provider. Structuring transport services under the JPA, even with a subcontracted provider, maximizes available reimbursements, improving financial sustainability.

If CENCAL's joint proposal is selected, the JPA will oversee EMS operations. If not, or if the SJCEMSA RFP significantly changes the existing EMS model, CENCAL will be dissolved, and AMR will be released from its non-compete obligation.

The City of Stockton will serve as CENCAL's Treasurer, managing finances and ensuring regulatory compliance. Stockton will oversee all JPA funds and maintain records in accordance with accepted accounting standards.

FISCAL IMPACTS

There is no immediate fiscal impact. Any financial commitments will require future Board approval. If the JPA is approved, an agreement is reached with a private ambulance provider, and CENCAL is awarded an EMS contract, SSJCFA's estimated pro-rata share of startup costs is approximately \$500,000. Staff recommends funding these costs through existing SSJCFA fund balance reserves, with recovery anticipated in the initial contract phase.

ATTACHMENTS

1. Resolution authorizing the Fire Chief to enter into a Joint Powers Agreement with the City of Stockton and the City of Lodi to form the CENCEL Fire EMS Authority (CENCAL), and appointing South San Joaquin County Fire Authority Board Representatives to the CENCAL Board of Directors
2. Memorandum of Agreement between SSJCFA, City of Stockton and City of Lodi
3. SJCEMSA Exclusive Operating Area (EOA) Map

EXHIBITS

- A. DRAFT Joint Powers Agreement between the City of Stockton, City of Lodi and the South San Joaquin County Fire Authority creating the CENCAL Fire EMS Authority

RESOLUTION NO.: 2025-0XX

AUTHORIZING THE FIRE CHIEF TO ENTER INTO A JOINT POWERS AGREEMENT WITH THE CITY OF STOCKTON AND THE CITY OF LODI TO FORM THE CENCAL FIRE EMS AUTHORITY (CENCAL), AND APPOINTING SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY BOARD REPRESENTATIVES TO THE CENCAL BOARD OF DIRECTORS

WHEREAS, the South San Joaquin County Fire Authority (SSJCFA) is a Joint Powers Authority (JPA) established under California Government Code Section 6500 et seq., formed to provide fire protection, emergency medical services, and related emergency response functions within its jurisdiction; and

WHEREAS, the San Joaquin County Emergency Medical Services Agency (SJCEMSA) oversees emergency medical services (EMS) within San Joaquin County, including the establishment of Exclusive Operating Areas (EOAs) pursuant to California Health and Safety Code Section 1797.224; and

WHEREAS, the current agreement for ambulance transport services within San Joaquin County's Zone X EOA is set to expire in May 2026, requiring the issuance of a Request for Proposals (RFP) for ambulance service providers; and

WHEREAS, the City of Stockton Fire Department (SFD), the City of Lodi Fire Department (LFD), and SSJCFA seek to collaborate with a private ambulance provider to submit a joint proposal to provide prehospital emergency medical services within one or more of SJCEMSA's EOAs; and

WHEREAS, in accordance with a previously executed Memorandum of Agreement (MOA), SSJCFA, SFD, and LFD conducted a feasibility analysis and subsequently issued an RFP for ambulance service providers, receiving a favorable proposal from American Medical Response (AMR); and

WHEREAS, to facilitate a unified response to the SJCEMSA RFP and to effectively manage ambulance transport services, SSJCFA, SFD, and LFD propose the formation of a new Joint Powers Authority, the CENCAL Fire EMS Authority (CENCAL), through a Joint Powers Agreement (JPA) as authorized under California Government Code Section 6502 (Exhibit A); and

WHEREAS, the establishment of CENCAL will provide a dedicated governance structure to oversee ambulance transport operations in collaboration with AMR, leveraging public-private partnerships to enhance service delivery, improve response times, and maximize financial sustainability; and

WHEREAS, CENCAL will be governed by a three-member Board of Directors, consisting of one representative from each participating entity, with each entity appointing a first alternate and a secondary alternate representative to ensure continuity in decision-making; and

WHEREAS, SSJCFA's participation in CENCAL aligns with its mission to enhance regional collaboration in emergency medical services, maintain local control over ambulance operations, and establish sustainable revenue sources for future EMS improvements.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the South San Joaquin County Fire Authority hereby:

1. **Authorizes the Fire Chief to execute the Joint Powers Agreement establishing the CENCAL Fire EMS Authority in collaboration with the City of Stockton and the City of Lodi.**
2. **Appoints one SSJCFA Board Member, _____ to serve as the primary representative on the CENCAL Board of Directors.**
3. **Appoints two SSJCFA Board Members, _____ (1st alternate) and _____ (2nd alternate) to serve as the first and second alternates on the CENCAL Board of Directors.**
4. **Directs the Fire Chief to take all necessary actions to implement this resolution, including coordinating with CENCAL member agencies, executing necessary agreements, and ensuring compliance with applicable laws and regulations.**

IT IS HEREBY CERTIFIED that the above and foregoing resolution was passed and adopted by the Board of Directors of the South San Joaquin County Fire Authority at its regular meeting held on the 12th day of February 2025, by the following vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ABSTAIN: BOARD MEMBERS:

ATTEST:

APPROVED:

Nicole Boswell, Clerk of the Board

TBD, Chairperson of the Board

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is made and entered into by and among the City of Stockton, a charter city and municipal corporation in the State of California ("Stockton"), the City of Lodi, a general law city and municipal corporation in the State of California ("Lodi"), and the South San Joaquin County Fire Authority, a duly organized joint powers agency under the Joint Exercise of Powers Act ("SSJCFA"), each of which may be hereinafter referred to individually as "Party" and collectively as the "Parties" or "Members." There are no other parties to this Agreement.

RECITALS

1. Government Code sections 6500-6515 permit two or more local public entities to jointly exercise any power common to them by agreement.
2. The Parties desire to improve the delivery of emergency medical services by establishing a holistic approach, including, but not limited to, emergency ground ambulance transportation, 9-1-1, interfacility, and critical care transportation, which they each are authorized to provide.
3. To accomplish this goal, the Parties agree that a public-private alliance model for the provision of emergency ground ambulance transportation may be appropriate.
4. The Parties agree that access to service determined by a single command center operating through the City of Stockton Fire Department's Emergency Communication Division ("Stockton Fire ECD") will ensure the right medical resources are dispatched to the most appropriate call for service.
5. The Parties believe that the joint retention of a private ambulance service provider may deliver a higher level of service and faster emergency response times for our communities with the planned addition of ambulances, paramedics, and Emergency Medical Technicians (EMTs), to better meet the needs of each Parties' communities, and the increased demand to provide services to the expanded geographic area and locations. This joint retention could also allow greater transparency and accountability to the Parties and individuals served, because both first responders and the public would know precisely where and how ambulances are deployed to serve community needs.
6. The Parties further believe that utilizing a platform that tracks all active incidents, responses, and real-time operations will allow the mobilization of resources to occur quickly to different county regions, which will in turn ensure that emergency resources are available to each community whenever they need it most.
7. The Parties desire to enter into a Joint Powers Agreement ("JPA") to jointly consider the provision of emergency and non-emergency ambulance services and contracting with a private ambulance service provider for such service delivery. To that end, the Parties desire to enter into this Agreement to coordinate efforts in procuring a private ambulance service

provider to partner with the proposed JPA. Should a qualified provider be selected and a sustainable financial model be developed, the Parties agree, pursuant to the terms and conditions set forth herein, to enter into a JPA and submit a proposal and request authorization by the San Joaquin County EMS Agency to provide emergency and non-emergency ambulance services.

NOW, THEREFORE, it is mutually understood and agreed by the Parties as follows:

AGREEMENT

- I. **Recitals.** The recitals set forth above ("Recitals") are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Sections 1 through 21 of this Agreement, Sections 1 through 21 shall prevail.
2. **Purpose.** The purpose of this Agreement is to develop a single Request for Proposals ("RFP") for procurement of emergency and non-emergency ambulance services, including, but not limited to, emergency ground ambulance transportation, 9-1-1 emergency dispatch assistance, interfacility transportation, and critical care transportation (the "Services"). It is the intention of the Parties that such Services would ultimately be contracted by and the responsibility of a separate joint powers agency, formed by the Parties hereto pursuant to Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with § 6500, as amended from time to time) (the "Authority").
3. **Formation of the Authority.** The Parties agree that, should one (1) or more qualified bidders submit a satisfactory proposal in response to the RFP and a sustainable financial model is developed, a JPA forming the Authority shall be presented to each Party's governing body for consideration and approval. The JPA shall give the Authority authorization, in its own name, to do all acts necessary to procure and provide the Services, including, but not limited to, each of the following:
 - (1) Make and enter contracts, including, but not limited to, contracting with San Joaquin County EMS Agency (the "EMS Agency") to serve as the EMS provider under the EMS Agency's plan and contracting with ambulance service providers to assist with delivering such services.
 - (2) Incur debts, liabilities, and obligations; provided that no debt, liability, or obligation of the Authority is a debt, liability, or obligation of any Party except as separately agreed to by a Party in writing, agreeing to be so obligated.
 - (3) Acquire, hold, construct, manage, sell, or otherwise dispose of real and personal property by appropriate means, excepting only eminent domain.

- (4) Receive contributions and donations of property, funds, services, and other forms of assistance from any source.
- (5) Sue and be sued in its own name.
- (6) Employ agents and employees.
- (7) Lease real or personal property as lessee or lessor.
- (8) Receive, collect, invest, and disburse monies.
- (9) Issue revenue bonds or other forms of indebtedness, as provided by law.
- (10) Carry out other duties as required to accomplish other responsibilities as set forth in this Agreement.
- (11) Assign, delegate or contract with a Party or third party to perform any of the duties of the Board including but not limited to, acting as administrator for the Authority.
- (12) Exercise all other powers necessary and proper to carry out the provisions of this Agreement.

These powers will be exercised in the manner provided by applicable law and as expressly set forth in the JPA.

- 4. **Term.** This Agreement shall become effective upon full execution by all Parties hereto ("Effective Date") and shall remain in effect until terminated in accordance with Section 10, below.

5. **Development of the RFP.**

- a. The Parties agree to cooperate to develop an RFP seeking qualified and responsible bidders to partner with the Authority to perform the Services; however, the Parties agree and understand that any award of a contract pursuant to the RFP shall be completed by the Authority formed pursuant to Section 2, above.
- b. The Parties agree to cooperate to review and evaluate any proposals submitted pursuant to the RFP for purposes of assisting their respective governing bodies in considering the formation of the Authority to partner with a qualified and responsible bidder to provide the Services.
- c. The Parties agree to cooperate to develop a JPA, including, but not limited to, recommended procedures for governance, funding, administration, dispute resolution, and stakeholder participation requirements.

6. **Roles and Responsibilities of the Parties.** In addition to performance of the roles and responsibilities set forth above related to, among other things, development of the RFP, the Parties shall:
- a. Work jointly to meet the objectives of this Agreement through, among other things, coordination of all activities related to fulfillment of said objectives;
 - b. Internally or jointly designate a staff person(s) to provide expertise and existing information in a timely manner and to participate in the development of the RFP or related materials or actions being considered by each Party agency; and
 - c. Upon recommendation of staff for each Party agency, consider approval of the IPA and, as defined in the JPA once approved, participate as necessary in the formation of the JPA. Notwithstanding the foregoing, nothing contained in this Agreement shall be construed as obligating any Party to approve the JPA developed pursuant to this Agreement, or as preventing any Party from adopting the JPA developed pursuant to this Agreement in the event that any Party hereto fails to recommend approval or another Party elects not to approve the JPA developed under this Agreement.
7. **Interagency Communication.** To provide for consistent and effective communication among the Parties, each Party agrees to designate a representative as its central point of contact on all matters relating to this Agreement and the JPA. Additional representatives from a Party's staff may be appointed to serve as points of contact on specific actions or issues.
8. **Fiscal.** Each Party shall be responsible for their own costs and expenses incurred in carrying out the cooperative efforts agreed to and set forth herein, up to and including the final approval of the JPA by each Party's governing body. Each party shall operate within their respective authority limits and applicable processes.
9. **Liability and Indemnification.** No Party, nor any officer or employee of a Party, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by another Party under or in connection with this Agreement. The Parties further agree, pursuant to Government Code section 895.4, that each Party shall fully indemnify and hold harmless each other Party and its agents, officers, employees, and contractors from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any work delegated to or action taken or omitted to be taken by such Party under this Agreement.
10. **Termination.** Unless earlier terminated pursuant to this Section 10, this Agreement shall automatically terminate without any further action of the parties, upon the occurrence of any of the following events:

- a. Failure to develop an RFP seeking qualified and responsible bidders to partner with the Authority to perform the Services; or
- b. Failure of the RF: to secure a qualified and responsible bidder to partner with the Authority to perform the Services; or
- c. Approval of the JPA by the governing bodies of all Parties ("Automatic Termination").

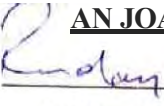
The Parties may mutually agree in writing to terminate or extend this Agreement at any time prior to the Automatic Termination.

11. **Withdrawal from MOA.** Any Party may withdraw from this Agreement by delivery of at least sixty (60) days advance written notice to the other Parties of the proposed withdrawal. The withdrawing Party's legal rights and obligations under the Agreement shall continue through the proposed withdrawal date, and such withdrawal shall not affect the legal status of the Agreement or alter any other Party's legal rights or obligations under the Agreement.
12. **Modification.** No alteration, amendment, or modification of this Agreement shall be valid unless made in writing and executed by all Parties to this Agreement.
13. **Assignment.** No Party to this Agreement shall assign, transfer, or otherwise dispose of this Agreement, in whole or in part, to any individual, firm, or corporation, without the prior written consent of the other Party. Subject to the forgoing provisions, this Agreement shall be binding upon, and inure to the benefit of, the respective successors and assigns of the Parties hereto.
14. **Authority.** All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into the Agreement have been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.
15. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.
16. **Entire Agreement.** This Agreement constitutes the sole, entire, integrated, and exclusive agreement between the Parties regarding the contents herein. Any other contracts, agreements, terms, understandings, promises, or representations not expressly set forth or referenced in this writing are null and void and of no force and effect.

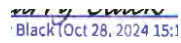
17. **Construction and Interpretation.** The Parties agree and acknowledge that this Agreement has been developed through negotiation, and that each Party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in construing or interpreting this Agreement.
18. **No Third-Party Beneficiaries.** Nothing in this Agreement, expressed or implied, is intended to confer on any person or entity other than the Parties hereto and their respective successors and assigns, any rights or remedies under or by virtue of this Agreement.
19. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California and venue in San Joaquin County.
20. **Section Headings.** All section headings contained herein are for the convenience of the Parties and reference only and are not intended to define or limit the scope of any provision of this Agreement.
21. **Counterparts.** This Agreement may be executed in several counterparts, each of which is an original and all of which constitute but one and the same instrument.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates shown below.

ANJOA COUNTY FIRE AUTHORITY:
By: 
Randall Bradley, Fire Chief

Date: 10-28-2024
1
Approved as to Form:
To111 Hatti11a.11
Torn Hallinan (Oct 18, 2024 15:08 POT)
Tom Hallinan, General Counsel

CITY OF STOCKTON:
By: 
Black (Oct 28, 2024 15:12 PDT)
Harry Black, City Manager

Date: 10-28-2024

Approved as to Form:
fk\-

Lori Asuncion, City Attorney

CITY OF LODI:


Scott R. Carney, City Manager

Date: October 31, 2024

Approved as to Form:

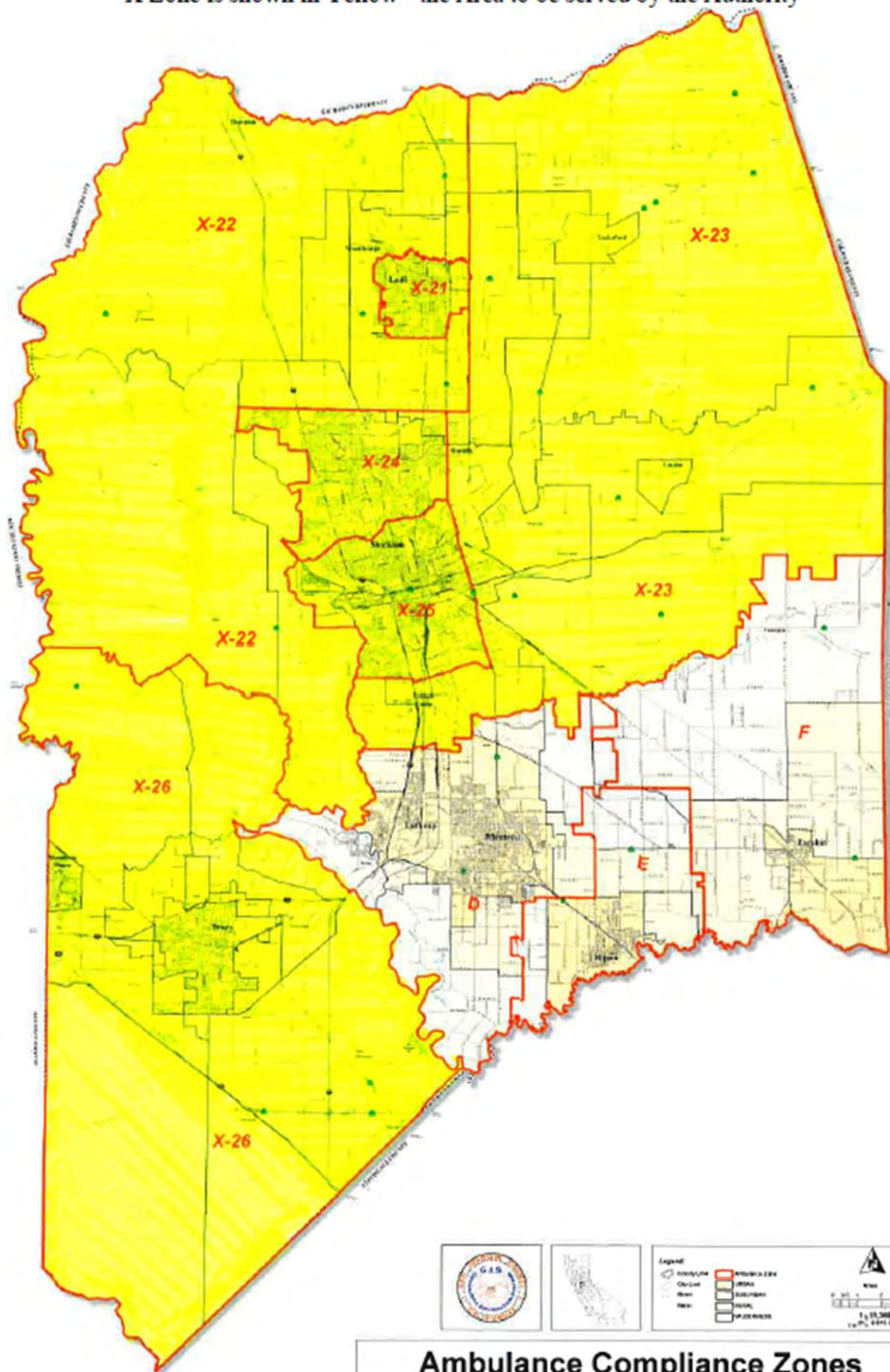
Katie Lucchesi
Katie Lucchesi (Oct 18, 2024 15:32 PDT)

Katie Lucchesi, City Attorney

ATTEST:
Olivia Nashed
OLIVIA NASHED
City Clerk

EXHIBIT A

X Zone is shown in Yellow - the Area to be served by the Authority



Ambulance Compliance Zones

JOINT EXERCISE OF POWER AGREEMENT
BETWEEN THE CITY OF STOCKTON, THE CITY OF LODI, THE SOUTH SAN
JOAQUIN COUNTY FIRE AUTHORITY
CREATING THE CENCAL FIRE EMS AUTHORITY

JOINT POWERS AGREEMENT

This Joint Powers Agreement (“Agreement”) dated _____, 2025, is made and entered into by and among the City of Stockton, a Charter City and municipal corporation in the State of California (“Stockton”), the City of Lodi, a general law city and municipal corporation in the State of California (“Lodi”), and the South Stockton San Joaquin County Fire Authority, a duly organized joint powers agency under the Joint Exercise of Powers Act (“SSJCFA”), each of which may be hereinafter referred to individually as “Party” and collectively as the “Parties” or “Members.”

RECITALS

1. Government Code sections 6500-6515 permit two or more local public entities to jointly exercise any power common to them by agreement, and authorizes the Parties to enter into this Agreement.
2. The Parties desire to establish a holistic approach to emergency medical services, including but not limited to emergency ground ambulance transportation, 9-1-1, interfacility, and critical care transportation, which they each are authorized to provide.
3. To accomplish this goal, the Parties agree that a public-private alliance model for the provision of emergency ground ambulance transportation may be appropriate.
4. The Parties agree that having access to service determined by a single command center operating through the City of Stockton Fire Department’s Emergency Communication Division (“Stockton Fire ECD”) will ensure the right medical resources are dispatched to the most appropriate call for service.
5. The Parties believe that the joint retention of a private ambulance service provider will:
 - a. deliver a higher level of service and faster emergency response times for our communities with the planned addition of ambulances, paramedics, and Emergency Medical Technicians (EMTs), to better meet the needs of each Parties’ communities, and the increased demand to provide services to the expanded geographic area and locations. This joint retention will also allow greater transparency and accountability to the Parties and individuals served, because both first responders and the public will know precisely where and how ambulances are deployed to serve our community needs.
6. The Parties further believe that utilizing a platform that tracks all active incidents, responses, and real-time operations will allow the mobilization of resources to occur quickly to different county regions, which will in turn ensure that emergency resources are available to each community member when they need it most.
7. To those ends, the Parties desire to enter into a Joint Powers Agreement (“JPA”) to jointly consider the provision of emergency and non-emergency ambulance services and contract with a private ambulance service provider for such service delivery.

AGREEMENT

1. Agency Established.

- a. Formation. Pursuant to Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with § 6500, as amended from time to time, the “JPA Law”), the Parties hereby create a separate joint powers agency which is named CENCAL Fire EMS Authority (the “Authority”).
- b. Authorization. Each Party also certifies that the legislative body of each Party hereby authorizes, by entry into this Agreement, the joint exercise of powers common to the Parties to further the Purpose, as defined in Subsection (c) below.
- c. Purpose. The purpose of the Authority is to benefit those persons served by the Parties and, if approved by the County, those persons currently in the X Zone, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, that are currently served by other agencies, by operating an emergency medical transportation services system, including, but not limited to, emergency ground ambulance transportation, 9-1-1 emergency dispatch assistance, interfacility transportation, and critical care transportation (collectively the “Services”).
- d. Limitation. Except as otherwise authorized or permitted by the JPA Law and for purposes of, and to the extent required by Government Code section 6509, the Authority is subject to the restrictions upon the manner of exercising the powers of SSJCFA.
- e. Powers. The Authority is authorized, in its own name, to do all acts necessary to fulfill the purposes of this Agreement referred to in Subsection (c) above, including but not limited to, each of the following:
 - (1) Make and enter contracts, including, but not limited to, contracting with San Joaquin County EMS Agency (the “EMS Agency”) to serve as the EMS provider under the EMS Agency’s plan and contracting with ambulance service providers to assist with delivering such services.
 - (2) Incur debts, liabilities, and obligations; provided that no debt, liability, or obligation of the Authority is a debt, liability, or obligation of any Party except as separately agreed to by a Party in writing, agreeing to be so obligated.
 - (3) Acquire, hold, construct, manage, sell, or otherwise dispose of real and personal property by appropriate means, excepting only eminent domain.
 - (4) Receive contributions and donations of property, funds, services, and other forms of assistance from any source.

- (5) Sue and be sued in its own name.
- (6) Employ agents and employees.
- (7) Lease real or personal property as lessee or lessor.
- (8) Receive, collect, invest, and disburse monies.
- (9) Issue revenue bonds or other forms of indebtedness, as provided by law.
- (10) Carry out other duties as required to accomplish other responsibilities as set forth in this Agreement.
- (11) Assign, delegate, or contract with a Party or third party to perform any of the duties of the Board, including but not limited to, acting as administrator for the Authority.
- (12) Exercise all other powers necessary and proper to carry out the provisions of this Agreement.

These powers will be exercised in the manner provided by applicable law and as expressly set forth in this Agreement.

f. Appointment of Administrating Member. Each member shall serve as the Administrating Member on a rotating basis. As of the Effective Date of this Agreement, SSCJFA shall automatically be appointed as the Administrating Member and shall serve for two (2) years. The position of Administrating Member shall alternate between a representative of SSJCFA and Lodi every two (2) years (the “Rotation Schedule”). SSJFCA and Lodi shall have the discretion to delegate the Administrating Member duties to any person employed by or contracted with each of them. The Rotation Schedule may be amended at the discretion of the Board from time to time. The Administering Member shall include, but not necessarily be limited to, the following duties:

- (1) Day-to-day work of the Board including agenda preparation.
- (2) Scheduling and preparation for regular and special meetings of the Board.
- (3) Coordination of Members to accomplish Board directives and the purposes and intent of this Agreement.
- (4) Other tasks and responsibilities, as may be directed by the Board from time-to-time.

g. Appointment of Treasurer. City of Stockton shall serve as the Treasurer for the Authority. Any employee, volunteer, elected official, contractor, or agent of the City of Stockton delegated the duties of Treasurer is the exclusive agent of the City of Stockton and shall have no agency relationship with the Authority or be entitled as a beneficiary, directly or otherwise, of this Agreement. The Treasurer

shall perform such duties and responsibilities specified in Government Code §§ 6505.5 and 6505.6.

- h.** Unless otherwise expressly provided herein, nothing contained in this Agreement shall be construed as creating an employment, agency or partnership relationship between the Authority and any agent, employee, contractor, volunteer, or elected official of any Member. The Authority shall have the right to control the Administrating Member and Treasurer only insofar as the result of that Member's services rendered pursuant to this Agreement; however, the Authority shall not have the right to control the means by which any Member accomplishes their respective obligations pursuant to this Agreement.

2. Governance.

a. Board of Directors.

- (1) The Authority shall be governed by a three-member Board of Directors.
- (2) Each Party shall appoint one (1) of its legislative body members as a primary Director ("Primary Director") and two (2) alternate Directors – "First Alternate" and "Second Alternate." Alternate Directors shall serve in the absence of the Primary Director in the order of availability by First Alternate and then to Second Alternate.
- (3) Upon appointment of the primary and alternate Directors, each Party shall deliver to the Administrating Member a written notification identifying its primary and alternate Directors. Until such notification is delivered to the Administrating Member, the Authority shall not recognize the appointee(s) and any previous appointments shall remain in effect.
- (4) The Board of Directors is responsible for:

 - (i) Providing recommendations to the governing bodies of the Parties regarding the addition of new parties to this Agreement; and
 - (ii) Approval of the annual budget and assessment schedule of the Authority.
- (5) The Board of Directors may establish rules governing its own conduct and procedure, including Board Bylaws and Policies that are consistent with this Agreement
- (6) A quorum for the transaction of all business by the Board of Directors shall exist when all Primary Directors (100%) are present, or Alternate Directors as may be necessary, as defined in Section 2(a)(2) above.

- (7) No one serving on the Board of Directors shall receive any salary or compensation from the Authority. However, with Board approval a Director or alternate Director may be reimbursed for reasonable expenses incurred in the conduct of the business of the Authority.
- (8) At its annual organizational meeting, the Board of Directors shall:
 - (i) Select one (1) of its Directors to serve as Chairperson of the Board of Directors and one Director to serve as the Vice Chairperson of the Board until the next annual meeting; and
 - (ii) Establish a regular meeting schedule for the coming year. Unless waived by the Board of Directors, the Board of Directors shall schedule at least two (2) regular meetings per year.

b. Committees.

- (1) The Board has the authority to create an Executive Committee as necessary to carry out the purpose of this Agreement.
- (2) The Board has the authority to create other committees as necessary to carry out the purpose of this Agreement.

c. Voting.

- (1) Board of Directors
 - (i) Each member of the Board of Directors shall have one (1), equal vote.
 - (ii) A vote may only be cast by that Party's Director (primary or alternate) who is physically present (or is lawfully present via teleconference).
 - (iii) Board action shall require a simple majority vote unless the decision is financial in nature, in which case a unanimous vote is required. For purposes of this Agreement, the phrase "financial in nature" shall mean any decision with financial consequences to any Party or in which liability may be incurred.

d. Vacancies.

A vacancy shall immediately occur in the office of any director of the Board of Directors, upon the resignation or death of such person holding such office, or upon his/her ceasing to be an officer or employee of the Party that appointed him or her. Parties shall fill any vacancies arising using the appointment procedure in Section 3.

3. **Fiscal.**

- a. **Dispatch and Dispatch-Related Services.** Dispatch and dispatch related service costs will be billed to the Authority through a separate agreement with Stockton Fire Department Emergency Communication Division (“Dispatch Center”).
- b. **Costs and Expenses.** The Parties recognize that, from time-to-time, the Authority may incur costs and expenses which are not directly related to the provision of services to Parties. Each Party shall pay its pro-rata share by population of the areas served (including contract districts) by each Party as defined in Section 3.c., below (“pro-rata share”), of such costs and expenses upon approval by the Board. The Parties agree to meet and confer at least once every five (5) years to re-evaluate the pro-rata share.
- c. **Ongoing Financial Obligations.** It is the Parties’ intention that the ongoing expenses of the Authority will be funded with revenue derived from the provision of Services, if and when the Services are operational. The Authority will incur expenses until such Services are operational and there may be circumstances where those revenues cannot be used for such purposes or where the revenues are insufficient to meet the Authority’s obligations. In those cases, each Party shall be responsible for its pro-rata share of any obligation that was incurred at a time when that entity was a Party. This shall include, by way of illustration and not limitation: long-term debt and multi-fiscal-year debt related to the above-described Services, Costs and Expenses.
- (1) Pro-rata share shall be determined by using each Party’s population served, including any contractual fire districts. Populations would be determined for the cities by using the U.S. Census Bureau’s data and San Joaquin LAFCO for the fire districts. This pro-rata share shall be re-evaluated when the new 2030 U.S. Census Bureau data is released. The initial pro-rata share for each Party shall be as follows :
- City of Stockton- 65.9%
- South County- 21.5%
- City of Lodi- 12.6%.
- (2) The pro-rata obligation of each Party is immediately binding on the Party at the time the obligation is incurred.
- (3) In order to fund the Authority’s initial startup costs, each Party agrees to make an initial pro rata contribution to cover the initial start up costs and expected expenses during the first 120 days following award of the award of an EMS provider contract by the EMS Agency. Anticipated

costs include: Franchise Fee, dispatch costs, insurance premiums, and administrative costs for an estimated total of \$2,237,000.

d. Excess Revenues

- (1) The Parties anticipate that the operation of the Services may generate revenues that exceed the costs of operating the Services. The Authority shall use such revenues in the following order of priority:
 - (i) To reimburse the initial funding contributed by each Member Agency pursuant to Section 3.c.(3) of this Agreement; then
 - (ii) To improve the Services, such as improvement service levels and making infrastructure investments that are in the best interests of the areas receiving the Services.
 - (iii) Maintenance of any necessary budget reserve limit established by the Board.
 - (iv) Any remaining excess revenue will then be distributed at the close out of each budget cycle to the Parties in accordance with their pro-rata share defined in Section 3(b) above.

e. Billing.

- (1) If there is an underfunding of the Authority, the Treasurer of the Authority shall bill each Party for its Fiscal Contributions quarterly, unless a request is made and approved for bi-annual billing. The Parties shall pay the bill within sixty (60) days of receipt.
- (2) Any Party whose bill has not been paid within sixty (60) days may be deemed by the Authority to be in default and required to pay interest on the unpaid balance, not to exceed one (1) percent per month ("Defaulting Party").
- (3) The members of the Authority not in Default, have the power, at their option, to take the following action against a Defaulting Party:
 - (i) Commence an action in its own name against the Defaulting Party to recover the amount of the obligation due to the Authority hereunder; or
 - (ii) Suspend the voting rights of the Defaulting Party until all Fiscal Contributions have been paid; or
 - (iii) Involuntarily terminate the Defaulting Party as set forth in Paragraph 6, below.

f. **Accountability and Audits.** The Authority shall be strictly accountable for all funds and shall report all receipts and disbursements, as required by Government Code section 6505.

- (1) An independent audit of the Authority shall be undertaken annually by an independent, certified public accountant, in compliance with Section 6505 of the Government Code.
- (2) Audit costs to be paid by the JPA and each Party is responsible for its pro rata share of any overage.

4. **Liability, Indemnification, and Insurance.**

- a. **No Vicarious Liability.** Pursuant to Government Code section 820.9, as may be amended from time to time, members of the Board of Directors for the Authority are not vicariously liable for injuries caused by the act or omission of the Authority or any of its members. Nothing in this section exonerates an official from liability for injury caused by that individual's own wrongful conduct. Nothing in this section affects the immunity of any other public official.
- b. **Indemnity by Parties.** Except as provided in Section f below, from and after the Effective Date of this JPA, the Authority shall defend, indemnify, and hold harmless the Members and their officers, employees, agents, and representatives with respect to any loss, damage, injury, claim, demand, litigation, or liability and all expenses and costs relating thereto (including attorneys' fees) arising out of or in any way related to the performance of services pursuant to this Agreement.
- c. **Insurance.** The Authority shall procure and maintain general liability, auto, professional, and worker's compensation insurance policies with limits set out in **Exhibit B**, as amended from time to time by the Board of Directors, attached hereto and incorporated herein by reference. The Parties agree to pay their pro-rata share of the first year of insurance policy costs out of each Party's initial contribution to the Authority. To the extent that the Authority or any Party does not have an employee, workers compensation coverage shall not be required. The Authority and each Party may satisfy the insurance requirement set forth herein with an adequate self-insurance program or participation in a public agency insurance pool.
- d. **Indemnification by Members to the Authority.** From and after the Effective Date of this JPA, each member shall defend, indemnify, and hold harmless the Authority, its Directors, officers, employees, agents, and representatives, each other individual member, and its respective officers, employees, agents, and

representatives with respect to any loss, damage, injury, claim, demand, litigation, or liability and all expenses and costs relating thereto (including attorneys' fees) arising out of the member's actions or omissions **prior to** the Effective Date of this JPA, that related to the provision of emergency and non-emergency dispatch services and related operations.

e. **Employment of Personnel and Administration of Services.**

The Authority will contract with a Member to serve as the "Employer of Record" and provide all employees and employee services to the Authority. In the event that the Authority elects to employ its own personnel, the Board shall appoint an officer to prepare a personnel plan (the "Personnel Plan"), with the assistance of staff and consultants of the Members, detailing how the Authority would employ its own personnel. The Personnel Plan shall detail the treatment of matters such as transfer of employees from the Members to the Authority (and the transfer's effect on existing collective bargaining agreements, the allocation of pension liabilities and obligations, the treatment of accrued leave, civil service and seniority rights, and other employee benefits and rights), risk management, and other administrative matters required at the start-up of a new organization. The Personnel Plan shall be presented to the legislative bodies of the Members. Upon their receipt of the Personnel Plan, the Members agree to meet and confer in good faith to negotiate the terms of the Authority employing personnel. Thereafter, Members and the Authority shall enter into an agreement regarding the terms of employing personnel (the "Personnel Agreement").

Until such time as personnel are transferred to the Authority, the Authority pursuant to this Section, the Employer of Record shall assign the functions of its personnel to the Authority.

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all wages and benefits, disability, workers compensation, and other benefits which apply to the activities of officers, agents, or employees of the Members when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions of duties under this Agreement.

5. **Termination/Withdrawal/Dissolution.**

a. **Termination**

(1) This JPA is entered into for the purposes stated in both the Recitals and Section 1(c) above. The first step in that process is to enter into contract with a private partner that would provide emergency and non-emergency ambulance services if the Authority is the selected provider in the EMS Agency's process. The second step is for the Authority and the private partner to participate in the EMS Agency's process to select

a provider of emergency services. If the Authority or a majority determines that either step was unsuccessful, the JPA shall automatically terminate, subject to following all applicable statutory procedures.

- (2) This Agreement may be terminated with respect to a Party for material non-compliance with provisions of this Agreement upon a no less than a two-thirds vote of the Board of Directors, excluding the vote of the Party subject to possible termination. Prior to any vote to terminate this Agreement with respect to a Party, written notice of the proposed termination shall be provided. The written notice of proposed termination shall identify the specific provisions of this Agreement that the Party has allegedly violated and provide notice of the right to provide a written response within ten (10) business days, either evidencing compliance with the terms of this Agreement or a plan to cure the default and a reasonable timeline acceptable to the Authority within which the Party subject to termination will diligently prosecute the same to completion.
- (3) If the Party subject to possible termination is unable to provide satisfactory evidence of their compliance with the Agreement or ability to cure the default, the Party subject to possible termination shall have the right to respond to the reasons for the proposed termination at the Board of Directors meeting prior to any vote regarding termination. Any vote for termination by the Board of Directors shall be at least thirty (30) business days after delivery of the written notice identified in Paragraph 9(a), above.
- (4) Any Party that is involuntarily terminated in accordance with Paragraph 9(a), above, shall remain responsible for their pro-rata share of all outstanding debts and obligations that were incurred while they were a Party. This shall include, by way of illustration and not limitation: long-term debt, pension obligations and multi-fiscal- year debt.

b. Withdrawal.

- (1) Any Party may withdraw as a party to this Agreement should the withdrawing Party determine, in its sole discretion, that the conditions placed on any proposed contract between the EMS Agency and the Authority are untenable or undesirable. The Parties acknowledge and agree that, should one Party withdraw, the Authority shall continue to operate and will not automatically terminate.
- (2) Any Party may withdraw as a party to this Agreement as follows:

- (i) Notice of Intent to Withdraw shall be given not less than eighteen (18) months prior to the proposed date that the withdrawal shall take effect (“Notice Period”).
 - (ii) Notice of Intent to Withdraw shall be in writing and addressed to the Chairperson of the Board of Directors of the Authority at its primary address and by electronic mail.
 - (iii) Notice of Intent to Withdraw must be accompanied by a proof of service that notice was sent by certified mail with return receipt requested. Notice shall be considered given on the date of service.
- (3) No withdrawing Party shall be entitled to any payment for its interests or assets in the Authority upon withdrawal.
- (4) A withdrawing Party must:
 - (i) Pay their full pro-rata share of all outstanding debts and obligations that were incurred while they were a Party. This shall include, by way of illustration and not limitation: long-term debt and multi-fiscal-year debt.
 - (ii) Or, execute a contract with the Authority to pay for all outstanding debts and obligations that were incurred while they were a Party
- (5) Prior to the end of the Notice Period, the remaining Members shall meet and confer in good faith to renegotiate the terms of this Agreement to properly contemplate the participation of only those remaining members.

c. Dissolution.

- (1) If this Agreement is terminated and/or dissolved by the Board by a two-thirds (2/3) vote:
 - (i) No assets may be distributed (divided or returned) until all outstanding debts and obligations have been resolved. Resolved means that each Party has:
 - (ii) Either paid their pro-rata share of all outstanding debts and obligations that were incurred while they were a Party; or
 - (iii) Executed a contract with the Authority to pay for all outstanding debts and obligations that were incurred while they were a Party.
 - (iv) All assets of the Authority will be distributed in proportion to the contributions of the Parties during the fiscal year of dissolution.

6. **Enforcement.**

The Authority is hereby given authority to enforce this Agreement against the individual Parties. If suit is necessary to enforce any of the provisions of this Agreement, the Authority and the Parties shall pay their own attorney fees, regardless of who is the prevailing party.

7. **Debts.**

- a. To the furthest extent permitted by law, the debts, liabilities and obligations of the Authority shall not be the debts, liabilities, and/or obligations of the Parties.

8. **Miscellaneous**

a. **Provisions Required by Law Deemed Inserted.**

- (1) This Agreement is subject to all provisions of the Constitution and laws of California and the United States which: (1) govern, control, or affect the Authority and/or the Parties; or (2) the property, funds, operations, or powers of the Authority and/or the Parties.
- (2) Such provisions are by this reference made a part of this Agreement.
- (3) Any provision required by law to be included in this Agreement shall be deemed to be inserted.

- b. **Amendment.** This Agreement may be amended and the Authority may be terminated or its power may be modified, restricted, or eliminated by supplemental agreement executed by all Members at any time, with approval from each respective governing body. A proposed amendment must be submitted to each Member at least thirty (30) days in advance of the date when the governing body will consider it.

- c. **Notices.** Notices to Members shall be sufficient if delivered to the Clerk and Fire Chief for the each Member.

- d. **Assignment.** This Agreement may be amended, and the Authority may be terminated, or its power may be modified, restricted, or eliminated by supplemental agreement executed by all Members at any time, with approval from each respective legislative body.

- e. **Severability.** Should any part, term, or provision of this Agreement be decided by the courts to be invalid or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, or provisions shall not be affected and shall remain effective and enforceable.

- f. **Non-Discrimination.** The Parties to this Agreement shall comply with all applicable federal, state, and local laws, rules, and regulations regarding nondiscrimination in employment or provision of services. All nondiscrimination laws, rules, or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- g. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California and venued in San Joaquin County.
- h. **Force Majeure.** Neither the Authority nor any of the Parties shall be held responsible or liable to any other Party or the Authority for any loss, damage or delay caused by accidents, strikes, lockouts, fire, flood, declared public health emergencies, act of civil or military authority or by insurrection or riot or by any other cause which is beyond its control.
- i. **Form of Approvals.** Whenever an approval is required in this Agreement, unless the context specifies otherwise it shall be given by resolution duly adopted by the respective governing body of each member agency and in the case of the Authority, by resolution duly adopted by the Board.
- j. **Section Headings.** All section headings contained herein are for the convenience of the Parties and reference only and are not intended to define or limit the scope of any provision of this Agreement.
- k. **Counterparts.** This Agreement may be executed in several counterparts, each of which is an original and all of which constitutes but one and the same instrument.
- l. **Effective Date.** This Agreement becomes effective on the date the last required signature is executed, following separate approvals by the legislative bodies of each Party.

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned public agencies have set their signature on the respective dates set forth below, which have been executed and attested by their duly authorized officers, and their official seals to be hereto affixed, as of the day and year first above written.

CITY OF STOCKTON:

By: _____
Will Crew, Acting City Manager

Date: _____

ATTEST:

By: _____
Katherine Roland, CMC, CPMC
City Clerk

Approved as to Form:

Lori Asuncion, City Attorney

CITY OF LODI

By: _____
Scott R. Carney, City Manager

Date: _____

ATTEST:

By: _____
Olivia Nashed, City Clerk

Approved as to Form:

Katie Lucchesi, City Attorney

SOUTH SAN JOAQUIN COUNTY FIRE AUTHORITY:

By: _____
Randall Bradley, Fire Chief

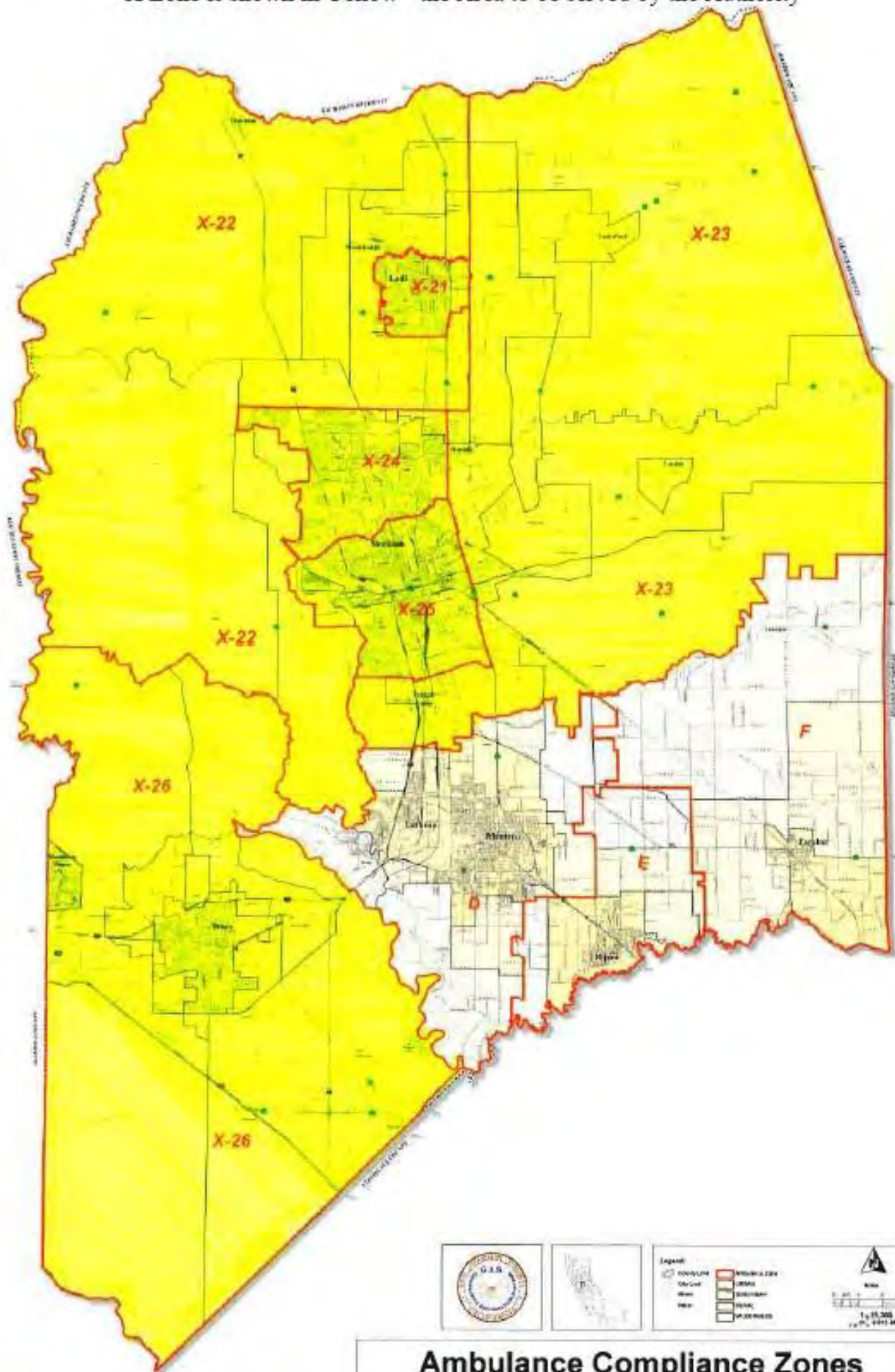
Date: _____

Approved as to Form:

Tom Hallinan, General Counsel

EXHIBIT A

X Zone is shown in Yellow - the Area to be served by the Authority



Ambulance Compliance Zones

EXHIBIT B:

Insurance Requirements

(Joint Powers Authority)

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Party shall carry General Liability Insurance covering all operations performed by or on behalf of Party providing coverage for bodily injury and property damage with a combined single limit of not less than two million dollars (\$2,000,000), per occurrence. The policy coverage shall include:

- a) Premises operation and mobile equipment.
- b) Products and completed operations.
- c) Broad form property damage (including completed operations)
- d) Explosion, collapse, and underground hazards.
- e) Personal Injury
- f) Contractual liability
- g) \$4,000,000 general aggregate limit

2. Automobile Liability: Primary insurance coverage shall be written on Insurance Services Office Business Auto coverage form for all owned, hired, and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If party transporting one or more non-employee passengers in performance of services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

3. Workers' Compensation / Employers Liability

A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with limit of no less than \$1,000,000 per accident for bodily injury or disease, covering all persons, including volunteers, providing services on behalf of Party and all risks to such persons under this agreement.

4. Cyber Liability Insurance, with limits not less than **\$1,000,000** for each occurrence or event with an annual aggregate of, **\$2,000,000** covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion, network security, breach response cost, and regulatory fines and penalties.

5. Additional Insured Status- The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or

equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Umbrella or Excess Policy

The Member may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of coverage will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability coverage.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Authority (minimum 30 days written notice)..

Acceptability of Insurers

Coverage is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Authority.

April 1, 2025

Agenda Item 3.B

RECOMMENDATION

The Tracy Finance Committee recommends that the City Council receive a report on the Five-year forecast for the City's General Fund and provide direction regarding the City's preliminary Fiscal Year 2025-26 Operating and Capital Budget.

EXECUTIVE SUMMARY

This item provides a report on the five-year forecast for the City's General Fund. A financial forecast allows the creation of a sustainable financial vision for the City. The forecast is a dynamic tool that allows for consideration of the most reasonable outcomes. The City's forecast will continue to be updated annually to allow the City to better anticipate future challenges and opportunities, thereby creating a solid foundation to make strategic decisions about the City's financial position. The forecast reflects economic estimations and assumptions based upon what is known today and provides guidance on what may be coming ahead. It should be used to provide guidance and policy direction to staff related to the development of the operating, capital, and liabilities budget.

In addition to providing the report, staff seeks direction on the City's preliminary Fiscal Year (FY) 2025-26 Operating and Capital Budget.

BACKGROUND AND LEGISLATIVE HISTORY

The City Council remains committed to maintaining fiscal sustainability while providing high quality public safety, public works, and community development to meet its existing and future needs. In 2023, the City Council adopted a two-year Strategic Priority Work Plan and identified desired outcomes related to the City's social, economic, organizational, and environmental priorities. The City Council adopted a governance strategy designed to enhance fiscal stability, retain and attract new talent, improve the use of technology, and enhance transparency for the betterment of the Tracy community. In response, a set of strategic priorities, goals and objectives were adopted to carry out the vision of the City Council. The Council's strategic priorities, along with their goals and objectives, are the foundation for development of the budget and forecast.

The City prepares a five-year fiscal plan annually as a tool for the Council to meet these strategic priorities and budget development. The City's fiscal strategy includes the creation of a financial forecast to evaluate current and future fiscal conditions and is to guide policy and programmatic decisions. In building the multi-year forecast, the City uses information based on past, current, and projected financial conditions and has developed and maintains several tools to provide analytic measurements of future fiscal impacts.

First, the forecast includes two separate actuarial studies to analyze the impacts of employee retirement benefits on the City's finances over time. One is focused on the fiscal impacts of pension and one on retiree medical costs. These reports are updated every 2-3 years based on Government Accounting Standards Board (GASB) rules.

Secondly, the City conducts three separate studies on revenue forecasts based on economic trends surrounding short and long-term retail and housing markets. The City overlays each of these studies into the planning documents to create a multi-layered approach to fiscal analysis and planning.

The goal of the City's annual Operating and Capital budget is to provide a plan that allocates resources to meet the needs and desires of Tracy's residents. It balances City revenues and costs with community priorities and requirements. In preparing for the FY 2025-26 Operating and Capital Budget, City staff reviewed the FY 2024-25 amended budget and estimated the expenditures and revenues anticipated for the upcoming fiscal year, FY 2025-26. These trends are then applied to the short term (first year) to see projected outcomes. It reflects current market conditions both for revenues and expenditures. The long-term (5-year) forecast applies more conservative revenue and expenditure trends that are indicative of the restrictiveness of revenues while applying current spending to measure the City's ability to sustain a fiscally balanced budget.

ANALYSIS

Economic Outlook

Tracy's economy continues to experience consistent growth, supported by diverse sectors such as logistics and manufacturing. Tracy's strategic location between the Bay Area and Central Valley has continued to be beneficial for both business and residential growth.

The transportation linkage to the Tri-Valley and the Silicon Valley with the ACE line and future Valley Link plan, combined with investments into downtown, have allowed the City to emerge as a great place to live, work, and play.

Tracy's economy is diverse with over 4,000 businesses. In addition to many supply chain and e-commerce businesses in its business parks, over half of the businesses are considered small businesses, which are the backbone of our community. The City of Tracy has experienced new job growth over the last three years. As a result, Tracy's unemployment rate is at 4.6%, below that of the County and State, and the median household income is \$117,761.

The housing market in Tracy remains healthy, with consistent growth year over year. Currently, there are 30,610 completed housing units in the City with the median home price in being \$652,500, trending slightly lower than the prior year's median price of \$700,000. New home sales continue to be the primary driver of residential home sales, as the inventory of existing homes remains limited.

The City is focused on implementing the Economic Development Strategic Plan, a document serving as a roadmap for the next ten years with key strategies to help expand, maintain, and protect the City's tax base by bringing new retail amenities to the city, getting resources into the hands of small businesses, and partnering with advanced industries. Businesses on the horizon include Popeyes, Starbucks, Crunch Fitness, and Trader Joe's. Tracy will also be the home of the first net zero Taco Bell restaurant, complete with carport canopies and electric vehicle charging stations.

The construction and planning of several regional hotels—Marriott Courtyard, Tru by Hilton, Extended Stay America Premier Suites, Candlewood Suites, Hilton Garden Inn, and Cambria Hotel and Event Center—are contributing to our tourism industry with direct and indirect economic benefits, including increases to our transient occupancy tax revenues. Another planned project includes Tracy Assisted Living and Memory Care.

Tracy is leading as a test bed for innovation, entrepreneurship, and investment in clean and green technology. Heirloom Carbon and Tracy Renewable created 20 new jobs in San Joaquin County, built 20,000 sq. ft. of new or expanded space, or made a \$1 million capital investment. Heirloom Carbon is the nation's first commercial direct carbon removal facility fully powered by renewable energy. The technology uses abundant, easy-to-source, inexpensive limestone to pull CO₂ from the air. Tracy Renewable Energy cleans and discharges wastewater for companies in Northern California through renewable energy. The City's support in attracting these types of businesses contributes to reducing emissions, reaching carbon neutrality goals, and creating jobs, research and development, and partnership opportunities that provide economic benefits for all.

With that being said, the economy has natural growth and contractions that are outside of the City's control. Even with solid financial planning and long-term forecasting, not all future outcomes can be predicted. Knowing that, the City has positioned itself well by building financial reserves, adopting strong fiscal policies, and passing important revenue measures to support City services. However, even with these proactive steps, the City, like other agencies, will continue to be faced with unmet needs in an environment where resources are limited.

At the State and Federal level, the impacts of legislative changes remain unknown. The forecast is based on current laws and does not reflect any future policy changes that may be implemented by the new Federal administration, including tariffs, immigration, and grant funding. Staff will continue to monitor legislative changes and will report out on any significant impacts.

Creating a forecast has helped identify future revenue and expenditure trends that may have an immediate or long-term influence on government policies, strategic goals, funding obligations, or community services. The City uses the five-year financial forecast as a management tool to best anticipate inflows and outflows of City resources in the short-term, then projects out these trends into the longer five-year model to ensure budget sustainability. Modeling of long-term strategies also allows marginal shifts to occur over time to maintain healthy reserves while still actively improving services to the public. The forecast has become an integral part of the annual and mid-year budget process.

General Fund Fiscal Sustainability:

In FY 2021-22, a change in tax reporting by a predominant sales tax producer shifted the tax allocation from a statewide allocation through the County sales tax pool where the tax was distributed pro-rata throughout the State to a local sales tax allocation based upon the businesses' point-of-sale or fulfillment of the sale. The change has had a significant impact on the City's General Fund revenues; nearly doubling the Sales Tax revenues for the City.

However, this increase in revenue is not guaranteed as there is significant interest to have these funds reallocated to other jurisdictions. In 2022, CDTFA published a study related to sales tax specific to e-commerce, which reviewed the impacts of changing the method of sales tax allocation from the point of fulfillment to the point of delivery. The study showed that if this change occurred, the impact to the City would be 25% or greater from the City's current allocation. Through the League of California Cities, a City Manager's sales tax working group was formed to provide input on possible legislation change in relation to sales tax specific to e-commerce.

Through the working group, a recommendation was made to the Cal Cities board to split the allocation by 50% based on point-of-sale and 50% based upon point-of-destination, with a +/- of 10%. The recommendation also included a five-year phase in period. While no decision has been made, staff is tracking possible changes and their impacts. The forecast reflects a drop in sales tax beginning in FY2028-29, which is when it is estimated that the first year of a reduction could begin.

Since the FY 2022-23 operating budget, Council has adopted a set of strategies for use of the General Fund surplus to City Council, which included prepayment of CalPERS and retiree medical liabilities, funding to cover deferred maintenance for streets and parks, and a 3% increase to City services and programs. These fiscal sustainability strategies are continued with this forecast through FY2027-28.

In the long-term forecast, all but the program increases will stop being funded in FY 2028- 29, the same year the potential Sales Tax revenues could be reduced. As a result, the five-year forecast shows that the General Fund is fiscally sustainable with the revenue growth from other tax sources and reduction in one-time funding commitments.

Table 1: Council Adopted Fiscal Sustainability Strategies

On-Going Revenue	Estimated			
	% of Revenues	FY25/26	FY26/27	FY27/28
General Fund Revenues*		\$148,231	\$152,276	\$155,879
CalPERS Pre-funding	2%	\$2.9M	\$3.0M	\$3.1M
Retiree Medical Pre-funding	2%	\$2.9M	\$3.0M	\$3.1M
Road Improvements - Deferred Mtc.	3%	\$4.4M	\$4.5M	\$4.6M
Parks - Deferred Mtc.	2%	\$2.9M	\$3.0M	\$3.1M
City Services and Program Increase	3%	\$4.4M	\$4.5M	\$4.6M
Total		\$17.5M	\$18.0M	\$18.5M

*Revenues defined as total General Fund revenues less Measure-V Sales Tax and Transfers In

General Fund Fiscal Highlights:

Revenue Trends

Property Tax: New housing units being added to the assessor's roll, coupled with commercial developments in the community, and higher property values, have led to a steady increase in local property tax revenues over the last few fiscal years. In 2024, new construction continued to thrive in Tracy. Small declines in interest rates increased demand for new home sales. In 2024, Tracy saw an increase in sales of single-family residential homes of 9%. This is largely due to the combination of a lack of inventory of existing homes and Tracy's affordability in comparison to bay area home prices.

Commercial and industrial real estate sales have continued to see moderate growth. As property tax revenue lags 12-18 months behind market conditions, the City estimates FY2025-26 will see an estimated increase of 2-3%. Property tax will begin to grow in FY2026-27 by 4-5% annually over the following 4 years based on anticipated market turnover and valuation growth. In the long-term (5-year term), the City will see property tax slow to the 2% annual growth cap as allowed under Proposition 13.

Sales Tax (Bradley Burns): Over the last three fiscal years, the City's sales tax allocation from Bradley Burns rapidly increased as a result of changes from the CDTFA. The rapid growth seen in prior fiscal years has begun to slow as rising interest rates and inflation have slowed consumer spending. FY 2025-26's sales tax allocation is projected to grow by 2.5%. FY 2026-27 is also projected to gain a moderate amount of growth in the 2-3% range.

Sales Tax from Bradley Burns is now nearly 50% of the City's total General Fund revenues because of this recent taxpayer allocation change. The City is currently tracking a policy discussion occurring within the League of California Cities to consider supporting legislation that would modify the allocation of Bradley Burns (1% of State Sales Tax) for e-commerce businesses statewide. This has the potential to have a significant impact to the City's Sales Tax revenues and its long-term forecast. As a result, staff continues to recommend that the 5-year forecast only shows the current Bradley Burns Sales Tax revenues from ecommerce in the short-term, until FY2027-28. The forecast has a phased decline of \$5M in FY 2028-2029, and a \$10M decline in FY 2029-30 to reflect the start of phased risk of the Sales Tax revenues being reduced. By placing this decline in the forecast, the City will have the flexibility to see the potential outcomes on a conservative basis to understand what these future impacts could generate.

Measure V Sales Tax (Local Sales Tax): In November 2016, the City Council and voters passed an additional ½ cent local sales tax (known as Measure V) that has a twenty-year sunset (expires April 2037). Over the last five years, the City Council has adopted several resolutions, which prioritized Measure V Sales Tax to fund multiple amenities located in the City: The Aquatic Center, Multigenerational Recreation Center, Legacy Fields Sports Complex, Ritter Family Ball Park, and the Nature Park. These capital expenditures demonstrate the City Council's Strategic Priority for improved Quality of Life and Economic Development.

Transient Occupancy Tax (TOT): The Transient Occupancy Tax (TOT), is a tax collected on hotel stays within the City of Tracy. The TOT is currently 10%. With tourism statewide remaining strong, the City has seen TOT revenues remain steady. There are currently two new hotels under construction and three approved, but not yet constructed. The City is also in review of an additional three proposed hotels. It is expected that the two under construction will be completed in the upcoming fiscal year and as a result, the City can likely expect to see an increase in TOT revenue.

Business License and Cannabis Tax: In November 2022, voters approved the modernization of the Business License Tax. The updated tax went into effect on July 1, 2023 and is based upon a percentage of gross receipts, depending on business category. The updated tax increased Business Tax revenues by approximately \$6M. In August 2024, after public discussion and workshops, the City Council amended the Business Tax, reducing the tax rates to provide relief to the business community. The updated tax is anticipated to provide \$3.5 million in tax revenue and provides vital funding for community priorities, such as improving City streets and roads, public safety, and recreation programs.

Additionally, Cannabis tax is an overlay component of business license tax classifications. The City Council and voters approved a Cannabis Tax in 2020, which provided a gross receipts tax on retail, distribution, and manufacturing and a square foot tax on cultivation. In July 2023, Tracy's first Cannabis business opened. There are currently five Cannabis businesses open in Tracy. Like the Business Tax, Cannabis taxes are based on the gross receipts of the business. It is estimated that FY2025-26 Cannabis revenues will be \$1 million.

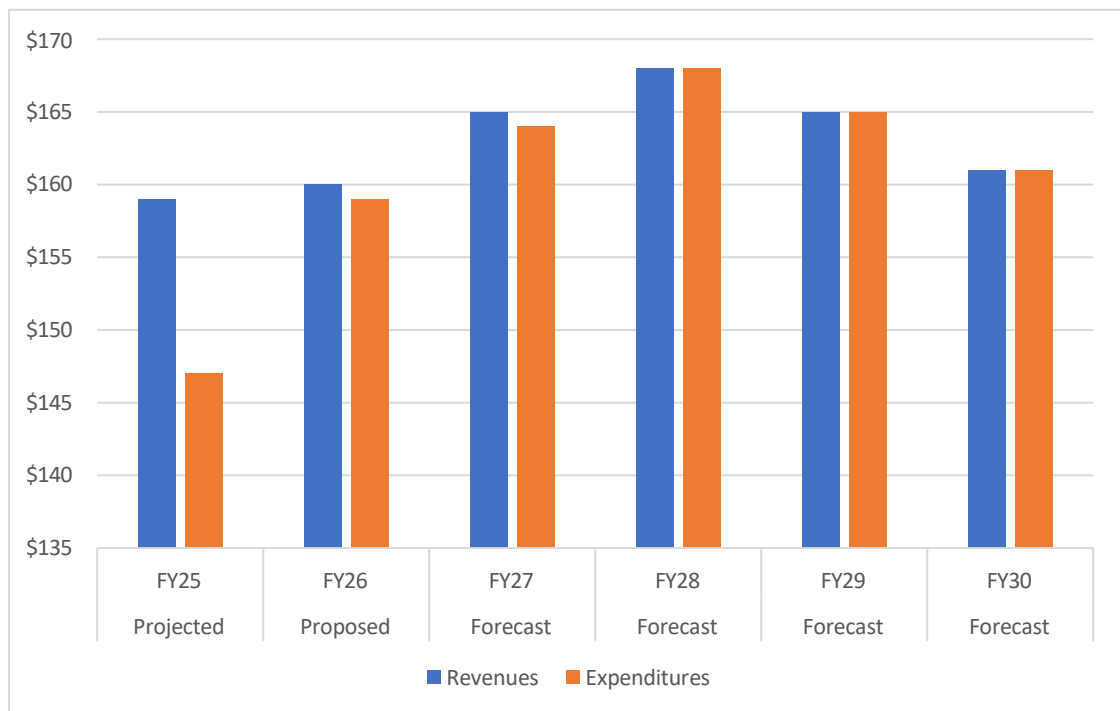
Expenditure Trends & Assumptions

Because it takes people to provide services, the City's General Fund personnel costs are more than 50% of operating expenses. Drivers of cost as it relates to personnel expenses over the forecast horizon include but are not limited to: changes in labor agreements, health care, and CalPERS normal cost and unfunded liability. The City's current labor agreements expire on June 30, 2025 and it is currently unknown what the cost of the new agreements will be.

The General Fund forecast is based upon the assumption of full staffing levels. Although some attrition can be expected, it is difficult to rely upon personnel savings to reduce annual expenditures. In addition, it is uncertain when and where the vacancies may occur and their potential impact on service demands. It is not a good practice to rely upon salary savings as a permanent cost saving measure.

The General Fund forecast includes an inflation factor of 3% for non-personnel expenses in the short term and flattens to 1-2% in the long-term. This factor is used to maintain the current buying power of the City. The inflation factor may result in the City's costs rising higher than the forecast and reducing the overall buying power. The City will continue to monitor the inflation rate on goods and services as it has historically outpaced the City's revenue growth due to regulatory restrictions on revenues. Staff will continue to monitor the costs of goods and services and their impacts on a quarterly basis.

Chart 1: 5-Year Revenue and Expenditure Projections



(In Millions)

GENERAL FUND RESERVES: The City's General Fund is projected to have a surplus for the next three fiscal years, assuming the Sales Tax revenues collected today remain in place for the next three years.

Table 2: Five-Year Forecast

(In millions)

	Projected	Proposed	Forecast	Forecast	Forecast	Forecast
	FY25	FY26	FY27	FY28	FY29	FY30
Revenues	\$159	\$160	\$165	\$168	\$165	\$161
Expenditures	\$147	\$159	\$164	\$168	\$165	\$161
Surplus/Deficit	\$12	\$1	\$1	\$0	\$0	\$0

Pre-funding Pension/Medical Leave Liabilities: Adopted in the FY2022-23 budget, the City Council approved the recommendations from City Council's Fiscal Sustainability Ad-Hoc Committee to begin setting aside funding to pay down debt by making additional payments towards liabilities for pension and retiree medical benefits, 2% of General Fund revenues, approximately \$4M each in the has been pre-funded to date. By making additional payments towards these debts, the overall balance owed declines, better positioning the City for when it expects to see a decline in revenue. The additional payments drop off in FY 2028-29 when Sales Tax is projected to decline.

Deferred Maintenance and Capital Improvement Projects: Included in the Forecast, is funding for deferred maintenance and capital improvement projects, such as road, building, and park improvement projects. Adopted fiscal sustainability strategies provide \$4.5M for road improvement deferred maintenance and \$3M for parks deferred maintenance. This funding drops off in FY 2028-29 when Sales Tax is projected to decline.

During the March 10, 2025 Finance Committee meeting, the Committee requested that staff return with modifications to the fiscal sustainability strategies that allow for maximization of one-time dollars over the next three fiscal years to fund deferred maintenance and prefund PERS and retiree medical liabilities. Staff is evaluating possible changes and will discuss the options with the Committee at the next Finance Committee meeting. Changes recommended by the Committee will be presented to City Council with the budget adoption.

FISCAL IMPACT

There is no fiscal impact associated with this item. However, the five-year forecast is critical in establishing financial policy. The forecasted outcome has the potential to improve or worsen. Some potential outcomes that would improve the forecast would include higher employee vacancy rates (more vacant positions or vacancies for longer periods of time), PERS investment gains, and stronger economic development activity beyond what is included in the forecast.

Potential outcomes that could worsen the forecast include: PERS investment losses (or additional discount rate cuts), weaker revenue growth, fewer new hotels, delays, or closures in commercial activities, inflationary or recessionary losses, adjustment in labor COLAs, staffing beyond current levels assumed in the forecast, impacts from changes in Federal legislation, and unplanned, one-time expenditures.

STRATEGIC PLAN

This agenda item supports Governance Strategic Goal 3: Ensure Short and Long-term Financial Sustainability.

ACTION REQUESTED OF THE CITY COUNCIL

The Tracy Finance Committee recommends that the City Council receive a report on the Five-year forecast for the City's General Fund and provide direction regarding the City's preliminary FY 2025-26 Operating and Capital Budget.

Prepared by: Sara Castro, Director of Finance

Reviewed by: Karin Schnaider, Assistant City Manager
Andrew Shen, Interim City Attorney

Approved by: Midori Lichtwardt, City Manager

ATTACHMENTS

Attachment A – Five Year Forecast Power Point Presentation



**CITY COUNCIL
FIVE-YEAR FORECAST
GENERAL FUND UPDATE FY 2025-2030**

APRIL 1, 2025

City of Tracy Five-Year Forecast

- Annual five-year fiscal plan to begin budget planning process.
- Presented to Finance Committee on March 10, 2025
- Forecast incorporates:
 - Council's adopted 2023 – 2025 Strategic Priorities
 - Past, current and projected financial conditions
 - Known economic conditions

Agenda

- Economic Outlook
- Revenue and Expenditure Trends
- Forecast
- Next Steps



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Economic Outlook



Economic Trends - Local

- Tracy's local economy remains stable
 - Over 4,000 businesses
 - 4.6% unemployment rate, lower than County/State
- Home sales have remained steady
 - Low inventory of existing homes has driven new home sales
 - Tracy housing remains more affordable than neighboring Bay Area homes
 - Median home price of \$652,500 (December 2024)



Economic Trends - Local

The City adopted an Economic Development Strategic Plan, a 10-year roadmap to maintain and expand the City's tax base by:

- Bringing new retail amenities
- Getting resources to small businesses
- Partnering with advanced industries



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Economic Trends – State & Federal

- Impacts of legislative changes at the State and Federal level that have unknown impacts:
 - Tariffs
 - Grant funding
 - Immigration
 - State's budget deficit

Staff will continue to monitor changes as they occur and will report out any significant impact.



Revenue and Expenditure Trends



Revenue Trends

- Property Tax
 - Short Term: 2-3% growth
 - Long Term: 4-5% growth
- Sales Tax
 - Short Term: 2.5% growth
 - Long Term: 2-3% growth in fiscal years 2026/27 and 2027/28
 - Estimated loss of \$5M in FY 2029 and \$10M in FY 2030 possible if ecommerce changes move forward

Revenue Trends, Continued

- Other Revenues
 - Business License tax
 - Short Term: 3% growth
 - Long Term: 1-2% growth
 - TOT
 - Short Term: 10% growth
 - Long Term: 15% growth
 - Cannabis tax
 - Short Term: 3% growth
 - Long Term: 1-2% growth

Expenditure Trends

- Salary and Benefits
 - Labor contracts expire June 30, 2025, impacts unknown
 - Short Term: 2.5% growth, based on current CPI
 - Long Term: 1-2% growth
- Non-personnel
 - Short Term: 3% growth for standard inflation
 - Long Term: 1-2% growth
 - Current inflation rates are approximately 2.5%

Council Adopted Fiscal Sustainability Strategies

\$2.9M CalPERS (2% of revenues*)

\$2.9M Retiree Medical (2% of revenues*)

\$4.4M Deferred Maint. - Streets (3% of revenues*)

\$2.9M Deferred Maint. – Parks (2% of revenues*)

\$4.4M Program Increase (3% of revenues*)

\$17.5M budget increase FY26

*Revenues defined as total General Fund revenues less Measure V-Sales Tax and Transfers In



Think Inside the 'Triangle'

Forecast of Fiscal Sustainability Strategies

On-Going Revenue	Estimated			
	% of Revenues	FY25/26	FY26/27	FY27/28
General Fund Revenues*		\$148,231	\$152,276	\$155,879
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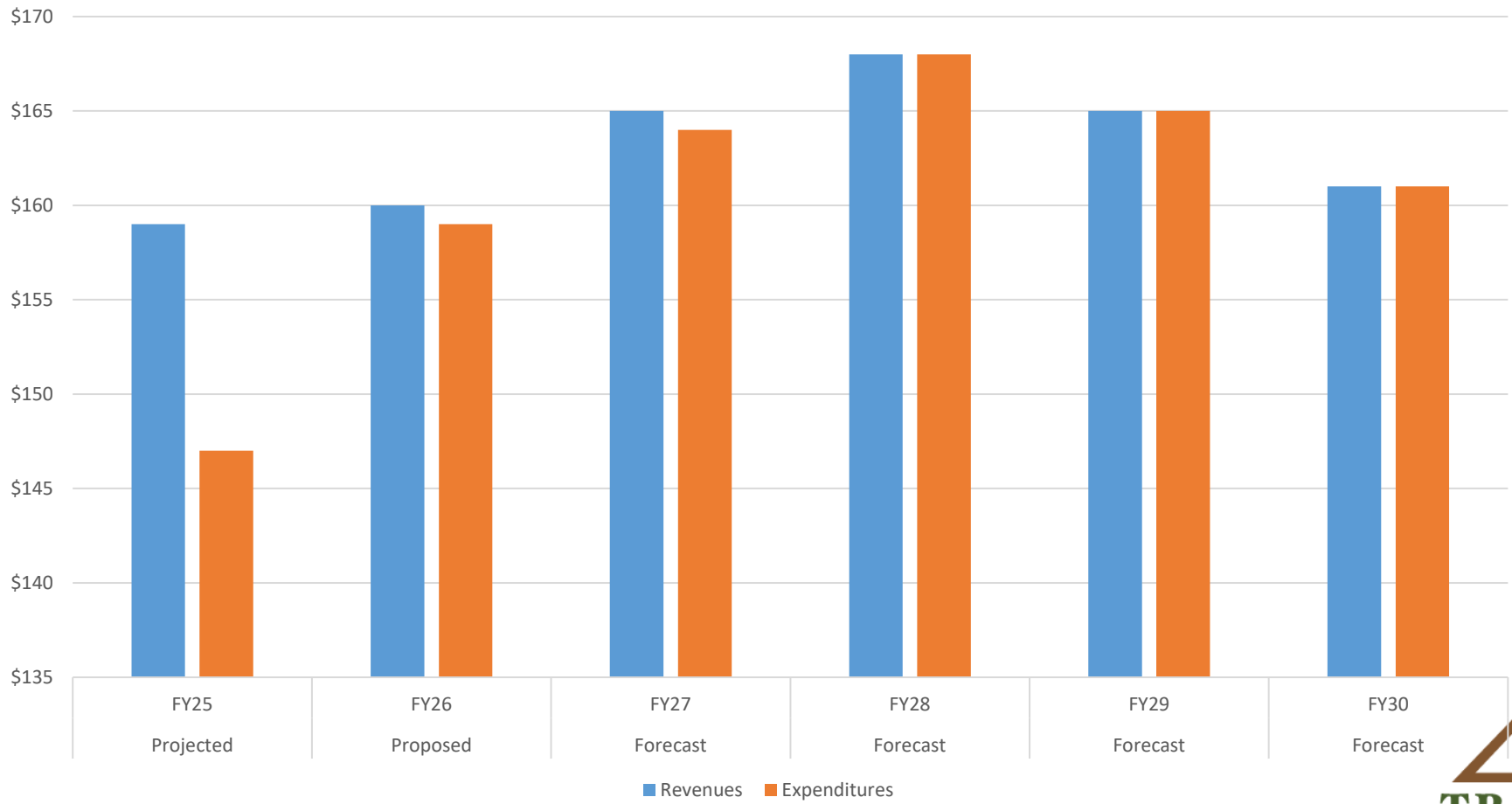
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General Fund 5-year Forecast FY 2025-2030

	Projected	Proposed	Forecast	Forecast	Forecast	Forecast
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Expenditures	\$147	\$159	\$164	\$168	\$165	\$161
Surplus/Deficit	\$12	\$1	\$1	\$0	\$0	\$0

The City's General Fund is projected to maintain a surplus for the next three fiscal years, assuming the current Sales Tax revenue allocation method remains in place.

General Fund 5-year Forecast FY 2025-2030





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Sales Tax

- The City is tracking possible legislation change related to sales tax related to ecommerce.
- California Department of Tax and Fee Administration (CDTFA) studied changing the allocation method from point of fulfillment to point of delivery.
- The study showed that if such a change occurred, Tracy's allocation would be impacted by 25% or greater.



Sales Tax, Continued

- The League of California Cities formed a City Manager's sales tax working group to provide input on possible legislation change specific to e-commerce.
- A recommendation to the Cal Cities board was made to split the allocation 50% based on point of sale and 50% based on point of destination, with a +/- of 10%, with a 5-year phase in.

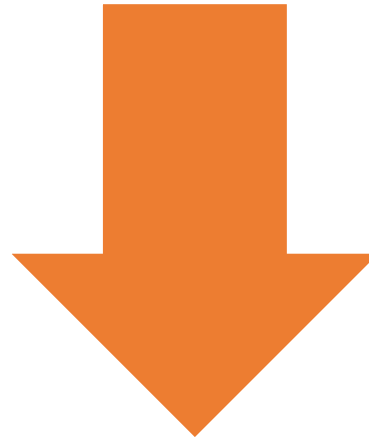


Sales Tax, Continued

- While no decision has been made, staff is tracking possible changes and their impacts.
- The forecast reflects a drop in sales tax of \$5 million in FY2028-29, which is when it is estimated the first year a reduction could begin.



Offset Future Costs and Revenue Instability to Gain Fiscal Sustainability



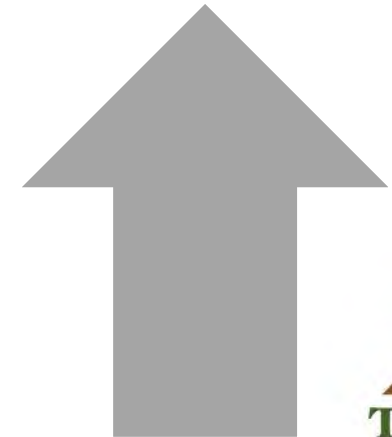
Projected Revenues/Expenses

- 5M decrease in sales tax revenue expected FY29
- 10M decrease in sales tax revenue expected FY30
- Expenses continue to rise



Prefunding Liabilities/New Revenue Sources

- Prefunding deferred maintenance
- Prefunding employee retirement liabilities



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Use of Forecast

- The forecast is meant to provide the City Council with potential impacts that could have a long-term impact of the fiscal sustainability of the General Fund.
- It provides indicators based on current trends and potential impacts as they are known today.



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Recommendation from Finance Committee

- Staff to review additional options for fiscal sustainability strategies to maximize prepayment of liabilities and deferred maintenance
- Staff will present options to the Committee at the next Finance Committee meeting
- Recommended outcome will be presented to the City Council with the FY26 budget adoption



Next Steps





Next Steps

May 2025

Staff will present the proposed changes to the FY26 operating budget to the Finance Committee at a special meeting.

June 3, 2025

Staff will present the five-year capital plan to the City Council.

June 17, 2025

Staff will present the proposed FY26 budget to the City Council for adoption.